IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 10499 of 2015 (J)

PETITIONER(S):

PRASANNA JAYADEVAN,
W/O.M.JAYADEVAN, AGED 56 YEARS,
'PRASEEJA', VIDYA NAGAR,
MANAPPULLYKAVU, PALAKKAD.

BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SRI.T.U.SUJITH KUMAR
SMT.ANU JACOB

RESPONDENT(S):

1.STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
TRIVANDRUM PIN 695 001.

2.THE REVENUE DIVISIONAL OFFICER, PALAKKAD PIN 678 001.

3.THE TAHSILDAR, PALAKKAD. PIN 678 001.

4.THE VILLAGE OFFICER, PALAKKAD III VILLAGE,
PALAKKAD DISTRICT PIN 678 001.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.10499/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE BUILDING PERMIT IN RESPECT OF THE CONSTRUCTION ISSUED BY THE LOCAL AUTHORITY DATED MAY 5, 2001.

EXT.P2: COPY OF THE MEMORANDUM OF APPEAL FILED UNDER SECTION 11 OF THE KERALA BUILDING TAX ACT, 1975.

EXT.P3: COPY OF THE ORDER DATED JUNE 10, 2008 OF THE SECOND RESPONDENT.

EXT.P4: COPY OF THE NOTICE DATED MARCH 27, 2015 ISSUED BY THE FOURTH RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10499 OF 2015 (J)

Dated this the 31st day of March, 2015

J U D G M E N T

The challenge in the writ petition is against the levy of luxury tax in terms of Section 5A of the Kerala Building Tax Act. The facts in the writ petition would reveal that the building of the petitioner was assessed to building tax and luxury tax as early as in 2001. Thereafter the petitioner has been paying luxury tax every year upto 2013-14. It is when she was faced with a demand of luxury tax for the assessment year 2014-15 that the petitioner has approached this Court through the present writ petition.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that inasmuch as the levy of luxury tax is a yearly levy, the mere fact that the assessment against the petitioner for the earlier years were not

challenged, cannot stand in the way of the petitioner disputing his liability for the subsequent year if he is able to demonstrate that, the facts necessary for the levy of luxury tax on the building constructed by him, do not exist. Accordingly, if the petitioner remits the luxury tax amount for the assessment year 2014-15, within a period of two weeks from today, and then prefers an appeal against the demand notice before the Appellate authority under the Kerala Building Tax Act, within a period of two weeks from the date of payment of the luxury tax, then the Appellate authority shall consider the appeal preferred by the petitioner on merits after causing a verification of the plinth area of the building, belonging to the petitioner, to be done by the 3rd and 4th respondents. The 2nd respondent Appellate authority shall ensure that the petitioner is also given notice of the date of inspection by the 3rd and 4th respondents for measuring the plinth area of the building owned by the petitioner. The 2nd respondent shall pass orders in the appeal, after hearing the petitioner, and affording him an opportunity of commenting upon the findings of the 3rd and 4th respondents as regards the plinth area of the building. It is made clear that, the liability of the petitioner to luxury tax for the year 2014-15 and future years, will depend upon the outcome of the measurement conducted by the 3rd and 4th respondents, as directed above.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp