IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 10503 of 2015 (K)

PETITIONER:

P.V.RAHAMATH, W/O.MUHAMMED,
MUBARAK MANZIL, 7, KEEKKAN,
PALLIKKARA PANCHAYATH, HOSDURG,
KASARGODE - 671 316.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.VINEETH KOMALACHANDRAN

RESPONDENT(S):
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1. THE TAHSILDAR, HOSDURG,
   KASARGODE - 671 312.

2. VILLAGE OFFICER, UDUMA,
   KASARGODE - 671 319.

3. MUHAMMED KUNHI, S/O.C.H.AHAMMED,
   MUBARAK MANZIL, 7, KEEKKAN,
   PALLIKKARA PANCHAYATH, HOSDURG,
   KASARGODE - 671 316.

R1 & R2 BY GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 10503 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : **TRUE COPY OF THE CERTIFICATE ISSUED BY THE UDUMA GRAMA PANCHAYATH DATED 6.3.2015.**

EXHIBIT P2 : **TRUE COPY OF THE DRAWING OF THE SUBJECT BUILDING ON ITS COMPLETION DATED NIL.**

EXT. P2(A) : **TRUE COPY OF THE DRAWING OF THE SUBJECT BUILDING ON ITS COMPLETION DATED NIL.**

EXHIBIT P3 : **TRUE COPY OF THE LETTER ISSUED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE AND DISASTER MANAGEMENT TO LAND REVENUE COMMISSIONER, THIRUVANANTHAPURAM DATED 6.5.2014.**

EXHIBIT P4 : **TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DATED NIL.**

EXHIBIT P5 : **TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT DATED 11.2.2015.**

EXHIBIT P6 : **TRUE COPY OF THE RECEIPT EVIDENCING THE PAYMENT OF THE FIRST INSTALMENT OF THE BUILDING TAX DATED 12.3.2015.**

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C) No.10503 of 2015 (K)

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Dated this the 7th day of April, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 assessment order under the Kerala Building Tax Act,1975, [for short, the 'Act'].

2. In the writ petition, it is the case of the petitioner that, although, the petitioner had constructed a commercial building and the building was completed on 17.02.2014 with a total plinth area of 1500 sq.mtrs., the respondents have, while completing the assessment under the Act, chosen to adopt the rates of tax that are applicable subsequent to the amendment, which came into effect on 01.04.2014.

3. It is the case of the petitioner that, inasmuch as the building was completed prior to that date, it was the earlier rates that would govern the payment of tax by the petitioner, and not the amended rates. The petitioner would rely on Ext.P3 circular issued by the Revenue Department of the Government of Kerala, which would indicate that the amended rates would come into force only with effect from 01.04.2014.

4. It is the case of the petitioner that Ext.P5 order does not reflect a

consideration of these aspects, that were pointed out by the petitioner, and hence, to that extent, the said order is vitiated by a patent non-application of mind. The petitioner also has a dispute with regard to the plinth area that has been adopted for completing the assessment in Ext.P5.

5. I have heard Sri.K.I.Mayankutty Mather, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

6. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, the petitioner has an effective alternate remedy under the Act, against Ext.P5 order of assessment, by way of filing an appeal before the revenue divisional officer. Accordingly, without making any observation with regard to the legality of Ext.P5 order, I relegate the petitioner to his alternate remedy of filing an appeal under the Act against Ext.P5 order within a period of two weeks from today.

7. I make it clear that, inasmuch as the petitioner has already paid one installment of the tax confirmed against him by Ext.P5 order, the appellate authority shall consider the appeal filed by the petitioner, in pursuance to this judgment, on merits, and pass a

final order in the matter, after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment. While passing orders as directed, the appellate authority shall deal with the contentions of the petitioner, against the assessment done in Ext.P5, and give reasons for his decisions.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/07/04/