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. 10547 of 2015 (P)

PETITIONER :

SAINUDHEEN, AGED 57 YEARS,S/O.MOIDEEN,
KONNAKKATTIL HOUSE, VALANCHERRY,
MALAPPURAM DISTRICT,PIN-676 552

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.Y.JAFAR KHAN

RESPONDENT(S):

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1. REVENUE DIVISIONAL OFFICER,
   TIRUR, MALAPPURAM DISTRICT,PIN-676 101

2. TAHSILDAR, TIRUR TALUK, TIRUR,
   MALAPPURAM DISTRICT,PIN-676 101

3. VILLAGE OFFICER, KATTIPARUTHI VILLAGE,
   P.O.VALANCHERRY, MALAPPURAM DISTRICT,PIN-676 552.

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

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

sts

WP(C).NO.10547/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ORDER NO.B4-4585/2003 DATED 9/6/2003 ISSUED BY THE 2ND RESPONDENT

P2 COPY OF THE ORDER NO.H-3728/14 DATED 15/03/2014 ISSUED BY THE 1ST RESPONDENT

P3 COPY OF THE REPRESENTATION DATED 7/4/2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

P4 COPY OF THE REPRESENTATION DATED 20/3/2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 10547 of 2015 (P)

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Dated this the 31st day of March, 2015

JUDGMENT

The petitioner, who had constructed a building, was assessed to building tax in the year 2003. While completing the building tax assessment of the petitioner, the respondents also levied luxury tax, on finding that the plinth area of the building was such as would attract the levy of luxury tax under Section 5A of the Kerala Building Tax Act, 1976 [for short, the 'Act'].

2. It is the case of the petitioner in the writ petition that, as he was abroad in connection with work, he could not challenge the levy of luxury tax on the building constructed by him during the past years, and it is only after he returned to India, and measured the building that was put up by him, that he realised that the plinth area of the building was not such as would attract the levy of luxury tax under the Act. It is his contention that, although, he had approached the appellate authority under the Act challenging the levy of luxury tax, the said appeal was rejected on the ground that, it was delayed. It is under these circumstances that, the petitioner has approached this Court for a direction to the respondents to re-measure the building before levying luxury tax in future.

3. I have heard Sri.Santheep Ankarath, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, inasmuch as the levy of luxury tax is a yearly levy and the non-filing of appeals for the previous years cannot act as a bar for the petitioner challenging the levy of luxury tax in subsequent years, if the circumstances exist for challenging the levy, I dispose the writ petition with the following directions :

   i. If the petitioner remits the luxury tax dues for the assessment year 2014 – 2015, within a period of two weeks from today, and files an appeal against the said payment of tax before the 1st respondent within two weeks thereafter, then, the 1st respondent shall treat the appeal as one against the levy of luxury tax, in respect of the petitioner's building for the assessment year 2014 – 2015, and consider the same on merits, after hearing the petitioner.

   ii. On receipt of the appeal filed by the petitioner, the 1st respondent shall cause a measurement of the building of the petitioner to be done by the 2nd and 3rd respondents, who shall measure the building in the presence of the petitioner or his representative, after giving the petitioner sufficient notice of the date on which they propose to visit the premises for conducting the measurement.

iii. The petitioner shall also be furnished a report of the measurement conducted by the 2nd and 3rd respondents, and the 1st respondent shall decide the appeal based on the measurements conducted by the 2nd and 3rd respondents, after considering the objections of the petitioner, if any, to the said report.

iv. It is made clear that, the liability of the petitioner to luxury tax in respect of the building owned by him for the period 2014 – 2015, as well as subsequent periods, will be determined based on the plinth area measurements as reported by the 2nd and 3rd respondents.

I make it clear that, if pursuant to the order of the 1st respondent in the appeal, the petitioner is entitled to any refund of the luxury tax amount paid by him in pursuance to this judgment, then, the 1st respondent shall ensure that the petitioner is given a refund of the excess tax amount so paid by him, expeditiously.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/01/04/

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