IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 15233 of 2013 (D)

PETITIONER:

B.THANKAMANI, AGED 65 YEARS,
W/O.K.P.RAJENDRA PRASAD, LAKSHMI NILAYAM,
MATHUR LANE, PAZHAVEEDU LANE, ALAPPUZHA.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA

RESPONDENTS:
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1. THE TAHSILDAR,
   AMBALAPUZHA TALUK, ALAPPUZHA-688 001.

2. THE VILLAGE OFFICER,
   PAZHAVEEDU VILLAGE, ALAPPUZHA-688 009.

3. THE DISTRICT COLLECTOR,
   ALAPPUZHA-688 001.

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 15233 of 2013 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1	**COPY OF THE APPROVED PLAN OF THE PETITIONER'S BUILDING.**
EXHIBIT-P2	**COPY OF THE NOTICE RECEIVED BY THE PETITIONER FROM THE IST RESPONDENT DATED 12.2.2008.**
EXHIBIT-P3	**COPY OF THE COMMUNICATION FROM THE IST RESPONDENT DATED 13.2.2008.**
EXHIBIT-P4	**COPY OF THE REQUEST SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 11.3.2008**
EXHIBIT-P5	**COPY OF THE ASSESSMENT ORDER OF THE IST RESPONDENT DATED 21.11.2008**
EXHIBHIT-P6	**COPY OF THE APPEAL FILED BY THE PETITIONER DATED 21/11/2008 BEFORE THE APPELLATE AUTHORITY**
EXHIBIT-P7	**COPY OF THE MEMORANDUM SUBMITTED BY THE PETITIONER BEFORE THE MINISTER FOR REVENUE DATED 1.6.2010**
EXHIBIT-P8	**COPY OF THE ORDER OF THE DISTRICT COLLECTOR DATED 6.1.2011.**
EXHIBIT-P9	**COPY OF THE COMMUNICATION OF THE IST RESPONDENT DATED 11.1.2011**
EXHIBIT-P10	**COPY OF THE MEASUREMENT DETAILS DONE BY THE TALUK SURVEYOR.**
EXHIBIT-P11	**COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE IST RESPONDENT DATED 3.5.2011.**
EXHIBIT-P12	**COPY OF THE REMITTANCE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 21.12.2012.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

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ANU SIVARAMAN, J.

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W.P.(C).No.15233 of 2013

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Dated this the 17th day of September, 2015

JUDGMENT

The writ petition is filed challenging the assessment of the petitioner's residential building to luxury tax on what is termed as a 'wrong measurement' by the petitioner. It is the case of the petitioner that the residential building constructed by him in Alappuzha Municipality has a total plinth area, after reconstruction, of only 277.39 sq.metres. Since under Section 5A of the Building Tax Act, luxury tax is chargeable only on residential buildings having plinth area of 278.7 sq.metres or more, it is submitted that, the petitioner's residential building is not liable to be assessed to luxury tax. However, the petitioner had been assessed to luxury tax and had preferred Ext.P7 representation which was forwarded to the District Collector for orders. The petitioner has a further case that Ext.P6 appeal preferred before the R.D.O, who is the appellate authority under the Act, had not been considered, which constrained him to prefer Ext.P7 representation before the Minister, which was forwarded to the 3rd respondent.

2. Heard Sri.S.Sanal Kumar, learned counsel appearing for the petitioner and Sri.Sudhish Kumar, learned Government Pleader appearing on behalf of the respondents. It is the contention of the learned counsel for the petitioner that by Ext.P8 order, the District Collector has stated that in the measurement made by the 1st respondent, the plinth area of the petitioner's house was found to be 283.49 sq.metres. In the same order it is stated that on a re-measurement by the Taluk Surveyor, the plinth area was found to be 290.68 sq.metres. The petitioner has a specific case that 17.66 sq.metres of open terrace has also been included in the plinth area to arrive at the plinth area of 283.49 sq.metre. The District Collector in Ext.P8 has not considered the contentions of the petitioner regarding the plinth area, though the representation preferred by the petitioner had been placed before him. In any view of the matter, the District Collector has also found that there is discrepancy in the measurement of plinth area as made by the Tahasildar as well as the Taluk Surveyor. The petitioner has a further contention that there is a mistake in the measurement of

the length of the entire building to an extent of 2m and if the same is rectified, the petitioner's building will come well within the limit under Section 5A for imposition of luxury tax.

3. A plain reading of the impugned order would show that the authorities under the Building Tax Act also do not have a consistent case about the plinth area of the petitioner's building. The representation filed by the petitioner had been forwarded to the 3rd respondent for consideration. However, while considering the said representation, the contentions raised by the petitioner regarding the plinth area of the building have not been considered by the 3rd respondent. It was on account of the failure of the statutory appellate authority to take steps for considering the appeal in accordance with law that the petitioner was constrained to make Ext.P7 representation. In the above circumstances, it ought to have been considered as a revision by the 3rd respondent and all contentions raised by the petitioner including the contention with regard to plinth area ought to have been dealt with and a decision rendered in accordance with law.

4. In the above circumstances, I am of the opinion that this is a fit case where the District Collector is to be directed to re-

consider the contentions raised by the petitioner by treating Ext.P7 which was placed before him as a revision petition under the Building Tax Act. To enable such a consideration, Ext.P8 is set aside. The District Collector shall take up Ext.P7 and any petition to be preferred by the petitioner to supplement Ext.P7 and pass orders on the same, after hearing the petitioner and the 1st respondent within a period of three months from the date of receipt of a copy of the judgment. The petitioner is directed to produce a copy of the judgment before the 2nd respondent for compliance with a copy of the writ petition. All contentions of the parties are left open to be agitated before the 2nd respondent .

The writ petition is disposed of as above.

Anu Sivaraman, Judge

sj