IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 13111 of 2015 (L)

PETITIONER :

PALERI GOVINDAN NAIR, AGED 66 YEARS,
S/O LATE CHANDU, SREEKRISHNA NIVAS, MAVICHERY
PO. PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS :
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1. PAYYANNUR MUNICIPALITY
REPRESENTED BY ITS SECRETARY, P.O. PAYYANNUR,
KANNUR DISTRICT, PIN:670307.

2. SECRETARY
PAYYANNUR MUNICIPALITY, P.O. PAYYANNUR,
KANNUR DISTRICT, PIN:670307.

R1 & R2 BY ADV. SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-3025, THE COURT ON 29-07-2015 DELIVERED THE FOLLOWING:

bp

WP(C).No. 13111 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF THE REVISION FILED BY THE PETITIONE RBEFOR ETHE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION, THIRUVANANTHAPURAM DATED 10.2.2015.**

EXHIBIT P2: **TRUE COPY FO PROCEEDINGS OF THE COURT OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 24.3.2015.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.13111 of 2015

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Dated this the 29th day of July, 2015

<u>JUDGMENT</u>

Under challenge in this writ petition is Ext.P2 order of the Tribunal for Local Self Government Institutions.

2. The petitioner was paying half yearly property tax from 2007, assessed by the municipal council of respondent municipality at the rate of ₹19,688/-. The second respondent issued a special notice dated 4.4.2013 informing that the above tax was enhanced to ₹63,000/- on the basis of a vigilance report dated 6.10.2012 and insisted to pay accordingly, with 7 years retrospective effect. That demand was challenged in appeal under Section 509 of the Kerala Municipalities Act which was dismissed by an unconsidered single lined order. When correctness of that appellate order was challenged as per Ext.P1 before the Tribunal for Local Self Government Institutions, the learned Tribunal by Ext.P2 insisted demanded amount and did not number the revision. It is with this background, the petitioner has approached this Court.

3. In the statement filed by respondents 1 and 2, it was contended that the pre-deposit of tax demanded is mandatory as per Section 509(11) of the Kerala Municipalities Act, 1994.

4. Arguments have been heard.

5. The prayer in this writ petition is for a direction to the Tribunal for Local Self Government to consider Ext.P1 revision without insisting for payment of the demanded amount by the respondent municipality. In Ext.P1, revision petitoner is challenging the demand of property tax by the respondent municipality.

6. The petitioner has earlier approached this Court with W.P (C) No.28884 of 2013 which was disposed of directing the petitioner to approach the municipal council since the the order under challenge in that petition is an appealable order. Accordingly the petitioner approached the municipal council in appeal. The appeal has been dismissed and against the same, the petitioner again approached this Court with W.P(C) No.31370 of 2014. That writ petition was dismissed directing the petitioner to approach the Tribunal challenging the appellate order. It is with this background, the petitioner has preferred the revision before the Tribunal as evident from Ext.P1.

7. As per Section 509(11) of the Kerala Municipalities Act, 1994, no appeal or revision shall be filed against the levy of tax if the tax shown in the demand notice has not been paid. By virtue of the above provision, the payment of tax for entertaining the appeal

or revision is a pre-condition and without that, no appeal or revision can be entertained.

8. The contention of the petitioner that if the demand is assailed before the Tribunal for the first time then only the Tribunal can insist for payment of the amount is incorrect and unsustainable. The argument that the municipal council did not insist for payment of the amount at the time of entertaining the appeal also does not have any force at all because of the mandate of Section 509(11) of the Act. It has been settled by a catena of decisions that the statutory prescription of pre-deposit for filing appeal or revision under various fiscal statutes is valid. Such a condition is not arbitrary and sustainable. In the light of the settled law, the petitioner's challenge against Ext.P2 cannot stand.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

krj