IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 16964 of 2012 (U)

PETITIONER(S):
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1. **DR. GEOGI K. NINAN, AGED 58 YEARS,
KOLLAMPARAMBIL, PERINGOLE, KOLENCHERY,
ERNAKULAM DISTRICT.**

2. **JESSY N.ABRAHAM,
KOLLAMPARAMBIL, PERINGOLE, KOLENCHERY
ERNAKULAM DISTRICT.**

3. **FIBI NINAN
KOLLAMPARAMBIL, PERINGOLE, KOLENCHERY
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON
SRI.N.AJITH**

RESPONDENT(S):
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1. **THE DISTRICT COLLECTOR,
COLLECTORATE, ERNAKULAM, KOCHI 682 030.**

2. **THE REVENUE DIVISIONAL OFIFCER,
MUVATTUPUZHA 686 661.**

3. **THE TAHSILDAR
KUNNATHUNADU, PERUMBAVOOR, 682 308.**

R1 BY GOVERNMENT PLEADER SMT.LILLY.K.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REGISTERED SETTLEMENT DEED NO.1243/84, S.R.O., PUTHENCRUZ.

EXT.P2: COPY OF THE STATEMENT OF INCOME.

EXT.P3: COPY OF THE CERTIFICATE ISSUED BY THE POTHRIKA GRAMA PANCHAYAT DATED 14.6.2002.

EXT.P4: COPY OF THE CONSENT DEED NO.1404/2000, S.R.O., PUTHENCRUZ DATED 23.3.2000.

EXT.P5: COPY OF THE STATEMENT OF INCOME DATED NIL.

EXT.P6: COPY OF THE CERTIFICATE ISSUED BY THE POOTHRIKA GRAMA PANCHAYAT.

EXT.P7: COPY OF THE CONSENT DEED NO.1405/2000, S.R.O.PUTHENCRUZ.

EXT.P8: COPY OF THE CONSTRUCTION COST OF THE HALL DATED NIL.

EXT.P9: COPY OF THE CERTIFICATE ISSUED BY THE POOTHRIKA GRAMA PANCHAYAT DATED 25.11.2009.

EXT.P10: COPY OF THE JUDGMENT IN O.P.NO.30829 OF 2002 DATED 23.10.2002.

EXT.P11: COPY OF THE NOTICE ISSUED BY RESPONDENT NO.3 DATED 20.1.2009.

EXT.P12: COPY OF THE OBJECTION FILED BY THE PETITIONERS BEFORE RESPONDENT NO.3 DATED 7.11.2009.

EXT.P13: COPY OF THE PROCEEDINGS ISSUED BY RESPONDENT NO.3 DATED 21.11.2009.

EXT.P14: COPY OF THE ORDER OF ASSESSMENT IN FORM V DATED 21.11.2009.

EXT.P15: COPY OF THE ORDER IMPOSING LUXURY TAX DATED 21.11.2009.

EXT.P16: COPY OF THE JUDGMENT IN W.P.(C).NO.36304/2009 DATED 16.12.2009.

EXT.P17: COPY OF THE MEMORANDUM OF APPEAL PREFERRED BY THE PETITIONERS BEFORE THE R.D.O., MUVATTUPUZHA DATED 30.1.2010.

EXT.P18: COPY OF THE PROCEEDINGS NO.A9-846/10/K.DIS. ISSUED BY THE R.D.O., MUVATTUPUZHA.

EXT.P19: COPY OF THE REVISION PREFERRED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT DATED 20.4.2011.

EXT.P20: COPY OF THE PROCEEDINGS NO.B10-23035/11/K.DIS. ISSUED BY THE 1ST RESPONDENT DATED 4.5.2012.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.16964 OF 2012 (U)

Dated this the 3rd day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P20 order of the 1st respondent that rejects a revision petition preferred by the petitioners against an order levying building tax on them. It is the case of the petitioners before the authorities under the Kerala Building Tax Act, 1975, as well as before this Court in the present writ petition, that the building that was subject to assessment is essentially comprised of three separate apartments and ought to have been assessed separately as three units for the purposes of the Kerala Building Tax Act, 1975. The contention of the petitioners is premised on the definition of 'building' as appearing in Section 2(e) of the aforesaid Act and Explanation 2 therein, which states that “Where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building”. It is the case of the petitioners that the tile to the property, registered consent deeds, separate and independent flow of funds for the constructions, independent saleable interest in each of the owners, separate ownership certificates and tax collection by the Grama Panchayath and the existence of separate entrance to each floor of the building were highlighted before the respondents and yet the respondent authorities refused to accept the contention of the petitioners that the assessment in respect of the building ought to have been made separately in respect of each of the individual owners of the building.

2. I have heard the learned counsel for the petitioners 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, in Ext.P20 order of the 1st respondent, that is impugned in the present writ petition, the 1st respondent finds that the petitioners were using all the floors utilising the stair case built inside the building which facilitated a free access to all the floors. He lays emphasis on the fact that no separate entrance is provided to each floor, and that the building has only a single entrance. It is also the case of the 1st

respondent in Ext.P20 order that there was no separate construction agreement executed between the petitioners before the commencement of construction of the building and that they had not adduced evidence showing the source of fund and the statement of accounts from the bank revealing the incurring of expenditure during the different phases of construction. On the basis of the said reasoning, the 1st respondent found that the petitioners had no separate saleable rights in respect of the separate apartments, and, therefore, it was decided to assess the building as a single unit and not as three separate units. On a consideration of Ext.P20 order, I find that the same suffers from an erroneous line of reasoning. The provisions of Section 2 of the Kerala Building Tax Act, and, in particular, Explanation 2 thereof, are very clear when they state that where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building. In other words, what is relevant is that the building must comprise of different apartments and each of those apartments must be owned by different persons. As regards the cost of construction of the building as a whole, it would suffice that the cost of construction was made by all such persons jointly. The enquiry of the 1st respondent, therefore, ought to have been on the aspect of whether separate ownership was established in respect of the different apartments, which together constituted the entire building. This is a matter that will have to be gone into by the 1st respondent by considering the evidence adduced by the petitioners that would suggest that they have separate ownership over the different apartments of the building in question. Inasmuch as in Ext.P20 order, I do not find such an exercise having been done by the 1st respondent, I quash Ext.P20 order, and direct the 1st respondent to reconsider the matter in the light of the observations made above, and in particular, the recent decision of the Supreme Court in **State of Kerala and Others v. A.P. Mammikutty – [2015 (3) KHC 794 (SC)],** especially paragraph 14 thereof, which deals with the manner in which the requirement of meeting of cost of construction of the building for the purposes of Explanation II of Section 2(e) of the Kerala Building Tax Act, has to be interpreted. The 1st respondent shall pass fresh orders, as directed, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioners. It shall be open to the petitioners to produce all materials relevant for the purposes of establishing separate ownership over the different apartments in the building, before the 1st respondent, at the time of hearing, and the 1st respondent, while passing orders, as directed, shall advert to the materials so produced by the petitioners.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp