IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 15582 of 2015 (W)

PETITIONER(S):

JOSE MATHEW AGED 58 YEARS
S/O MATHEW PROPWRIETORROYAL MARBLES AND GRANITES
MAIN ROAD MUTTUCHIRA VAIKOPM KOTTAYAM

BY ADVS.SRI.FRANCIS JOSEPH KURISUNKAL
SRI.SAJU J PANICKER

RESPONDENT(S):

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1. STATE OF KERALA
   REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
   DEPARTMENT REVENUE GOVERNMENT SECRETARAT
   THIRUVANANTHAPURAM

2. DISTRICT COLLECTOR,
   KOTTAYAM

3. THE REVENUE DEIVISIONAL OFFICER
   KOTTAYAM

4. THE TAHSILDAR TALUK OFFICE
   VAIKOM KOTTAYAM

5. THE VILLAGE OFFICER
   MUTTUCHIERA VILLAGE MUTTUCHIRA KOTTAYAM

6. GENERAL MANAGER
   DISTRICT INDUSTRIES CENTRE , KOTTAYAM

R1-R6 BY ADV. GOVERNMENT PLEADER, SRI. LIJU V. STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15582 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	**THE TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 28/06/2007 ISSUED BY THE COMMERCIAL TAX OFFICER , VAIKOM**
EXT.P2	**THE TRUE COPY OF THE CERTIFICATE DATED 1107.2008 ISSUED BY THE DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA**
EXT.P3	**THE TRUE COPY OF THE CERTIFICATED DATED 14/03/2013 ISSUED BY THE DISTRICT INDUSTRIAL CENTRE KOTTAYAM**
EXT.P4	**THE TRUE COPY OF TH EREQUEST DATED 19/12/2012 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT**
EXT.P5	**THE TRUE COPY OF THE ORDER DATED 27/08/13 OF THE 1ST RESPONDENT**
EXT.P6	**THE TRUE COPY OFTHE REGISTRAR OF WAGES**
EXT.P7	**THE TRUE COPY OF THE NOTICE OF DEMAND DATED 28/10/13 AND ORDER OF ASSESSMENT OF BUILDING TAX DATED NIL**
EXT.P8	**THE TRUE COPY OF THE ORDER DATED 30/08/14 OF THE 1ST RESPONDENT**
EXT.P9	**THE TURE COPY OF THE NITICE DATED 6/12/14 OF THE 4TH RESPONDENT**
EXT.10	**THE TRUE COPY OF TGHE NOTICE DATED 4/5/2015 ISSUED BY THE TAHSILDAR (RR)**

RESPONDENT'S EXHIBITS:-

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 15582 of 2015
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Dated this the 28th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 order of the 1st respondent, as confirmed in Ext.P8 order passed in a review petition filed by the petitioner against Ext.P5 order, denying the petitioner the benefit of an exemption under Section 3 of the Kerala Building Tax Act, on the ground that the building constructed by the petitioner does not qualify as a Factory for the purposes of exemption. Ext.P10 demand notice has been issued to the petitioner, after finalising an assessment under the Kerala Building Tax Act, by denying the exemption as aforesaid. In the writ petition, it is the case of the petitioner that, while passing Exts.P5 and P8 orders, the 1st respondent did not advert to the plea of the petitioner that the premises in question was a Factory as defined under the Factories Act, for the purposes of claiming the benefit of exemption under Section 3 of the Kerala Building Tax Act.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the

case and the submissions made across the bar, I find that by the decision of this Court in **Dream World Water Park** v. **Tahsildar, Mukundapuram Taluk and Others** [2013 (4) KLJ 572], it has been held that, for the purposes of exemption from assessment to building tax on the ground that the building is a Factory, the building has to satisfy the definition of Factory as contemplated under the Factories Act. Accordingly, the 1st respondent ought to have considered the nature of the building, and the activities conducted therein by the petitioner, in the light of the definition of "Factory" under the Factories Act, 1948. Inasmuch as this has not been done by the 1st respondent in Ext.P5 or Ext.P8 orders, I quash Exts.P5 and P8 orders and direct the 1st respondent to consider the matter in the light of the principles laid down in the aforementioned judgment of this Court, and by taking into account the definition of "Factory" under the Factories Act 1948. The 1st respondent shall pass fresh orders as directed, within a period of one month from the date of receipt of a copy of this judgment, after hearing the petitioner. The demand of building tax on the petitioner shall be made afresh only after the 1st respondent passes orders as directed. Ext.P7 order of assessment and Ext.P10 demand notice are also quashed, leaving it open to the official respondents to pass a fresh assessment order and issue a consequential demand notice, after obtaining the order of the 1st respondent on the application for exemption filed by the petitioner.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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