IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 16104 of 2015 (K)

PETITIONER(S):

M/S.SHIRE HOMES,
VELOOR,
KOTTAYAM - 686 003 REPRESENTED BY ITS MANAGING PARTNER
MR.M.M.AJAYKUMAR.

BY ADVS.SRI.V.G.ARUN
SRI.ALEX.M.SCARIA
SMT.SARITHA THOAMS

RESPONDENT(S):

1. THE TAHSILDAR KOTTAYAM IN THE CAPACITY OF ASSESSING AUTHORITY UNDER THE BUILDING TAX ACT,
MINI CIVIL STATION, THRUMALKARA, KOTTAYAM.

2. VILLAGE OFFICER, VELOOR, KOTTAYAM - 686 003.

BY GOVERNMENT PLEADER SMT.SHOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16104 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE ORDER OF ASSESSMENT DATED 3.3.2014 PASSED UNDER THE KERALA BUILDING TAX ACT, 1975.

EXT.P-2: THE NOTICE OF DEMAND DATED 3.3.2015

EXT.P-3: TRUE COPY OF THE JUDGEMENT IN WPC NO.8073 OF 2014 DATED 13.3.2015

EXT.P-4: TRUE COPY OF THE PROCEEDINGS DATED 14.4.2015 BEARING REFERENCE NO.B317618/14 PASSED BY THE TAHSILDAR, KOTTAYAM.

EXT.P-5: TRUE COPY OF THE ORDER OF ASSIGNMENT DATED 16.4.2015 WITH REFERENCE NO.D317618/14 UNDER THE KERALA BUILDING TAX ACT, 1975

EXT.P-6: TRUE COPY OF THE NOTICE OF DEMAND DATED 16.4.2015

EXT.P-7: TRUE COPY OF THE NOTICE OF DEMAND DATED 16.4.2015

EXT.P-8: TRUE COPY OF THE BUILDING PERMIT DATED 27.1.2010 BEARING NO.PW7/BA/124/09-10

EXT.P-9: TRUE COPY OF THE OCCUPANCY CERTIFICATE DATED 12.7.2011

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

A. MUHAMED MUSTAQUE, J.

W.P. (C). No. 16104 of 2015

Dated this the 1st day of June, 2015

J U D G M E N T

The petitioner who is a builder, impugns building tax assessment. The main points alleged by the learned counsel for the petitioner are;

i*) The total plinth area as per building permit is only 12199.42 sq.mts. The assessed plinth area is 14835.015 sq.mts., which is illegal.*

ii) Whether the rate of tax payable has to be assessed from the date of occupancy of the building?

2. The petitioner submits that no reason has been assigned in the impugned order so as to arrive at a conclusion that the total plinth area, as assessed by the authority in the impugned order, is correct. He further points out that the approved documents show that the plinth area is only 12199.42 sq.mtrs. It is the bounden duty of the assessing authority to explain the reason for not accepting those documents and for arriving at a different conclusion.

3. It is also argued that as per section 5, the charge of building tax is to be made with reference to the date on the which construction of the building is completed. Therefore

occupancy certificate is a relevant document for determination of the rate of the tax payable.

4. The learned Government Pleader points out that in terms of section 5, the petitioner is bound to furnish return, on completion of the building and therefore having committed default in furnishing the return in time the entire tax amount has to be paid and he cannot take advantage of his own fault.

5. The learned counsel for the petitioner in answer to the above argument, submits that the petitioner has already filed return and therefore there is no basis for the said argument.

6. I am of the view that the essential points raised by the learned counsel for the petitioner are the question of facts. It appears that the petitioner has not specifically raised this contention before the authority. The only issue which was adverted to, by the authority is based on the explanation to section 2E. The arguments based on the above issue has not been raised before this Court. The petitioner would submit that they have in fact raised this point before the assessing authority and the assessing authority has not considered this point.

7. Considering the facts and circumstances, I am of the

view that, an opportunity should be given to the petitioner to raise this point before the authority. However the fact remains that the petitioner's building is liable to be assessed atleast for the plinth area of 12199.42 sqmtrs. Therefore the petitioner is bound to pay a portion of the amount now demanded. If the petitioner remits Rs.20,00,000/- in two installments starting from 15.06.2015, he shall be permitted to raise this contention before the assessing authority. The assessing authority is directed to conclude the proceedings after giving an opportunity of hearing to the petitioner and also enabling him to produce all the materials before the authority within a further period of 2 months. It is made clear that if the petitioner fails to remit any one of the installment as above, the assessing authority is at liberty to proceed against him based on the original assessment order. The petitioner will not be entitled for the benefit, as referred to above. The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the 1st respondent. To work out of this directions, coercive steps shall be kept in abeyance.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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