**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937**

**WP(C).No. 19692 of 2011 (J)**

---

**PETITIONER:**

---

K.A.SIRAJ MATHER, SIRAJ MANZIL,
THAMMANAM P.O., ERNAKULAM.

BY ADVS.SRI.V.V.ASOKAN
SRI.R.JAIKRISHNA

**RESPONDENTS:**

---

1. DISTRICT COLLECTOR, ERNAKULAM-682015.
2. REVENUE DIVISIONAL OFFICER,
   FORT KOCHI-682 001.
3. THE TAHSILDAR, ALUVA-683101.
4. PERIYAR PALACE RESIDENTS ASSOCIATION,
   PERIYAR PALACE, ALUVA-683102,
   REPRESENTED BY ITS SECRETARY.

BY ADV. GOVERNMENT PLEADER SRI.SUDHISH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.19692 OF 2011

**APPENDIX**

**PETITIONER'S EXHIBITS :**

EXT P1: COPY OF THE CONSTRUCTION AGREEMENT

EXT P2: COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT.

EXT P2(a):COPY OF THE DEMAND NOTICE.

EXT P3: COPY OF THE RECEIPT EVIDENCING REMITTANCE OF RS.1,23,800/-

EXT P4: COPY OF THE HEARING NOTICE ISSUED BY THE 2ND RESPONDENT.

EXT P5: COPY OF THE APPELLATE ORDER PASSED BY THE 2ND RESPONDENT.

EXT P6: COPY OF THE RECEIPT EVIDENCING REMITTANCE OF RS.61,900/-

EXT P7: COPY OF THE REVISION FILED BEFORE THE 1ST RESPONDENT.

EXT P8: COPY OF THE REVISIONAL ORDER PASSED BY THE 1ST RESPONDENT.

**RESPONDENTS' EXHIBITS** : NIL

//TRUE COPY//

P.A.TO JUDGE

sm

**SHAJI P. CHALY, J.**

-- -- -- -- -- -- -- -- -- -- -- -- --

**W.P.(C). No. 19692 of 2011**

-- -- -- -- -- -- -- -- -- -- -- -- --

Dated this the 8th day of October, 2015

## JUDGMENT

This writ petition is filed by the petitioner seeking to quash Exts. P2, P5 and P8 orders passed by respondents 3, 2 and 1 respectively, under the Kerala Building Tax Act.

Brief facts for the disposal of the writ petition are as follows:

2. Petitioner is the Managing Partner of a firm called M/s.Periyar Palace, who undertook construction of a multi-storied residential apartment complex by entering into construction agreement and agreement for sale of undivided share of land as per the model prescribed under Ext.P1. Construction was completed in the year 1995-96 and before 29.07.1996, is the contention of the petitioner. Since returns were not filed, Ext.P2 order of assessment was issued by the 3rd respondent, assessing the whole building as a single unit and as per Ext.P2, dated 12.02.2007, demand was raised

against the petitioner.

3. Aggrieved by the assessment of the 3rd respondent and demand so raised, petitioner preferred revision before the 2nd respondent. By Ext.P3 order, 2nd respondent dismissed the appeal, against which petitioner has preferred Ext.P7 revision before the 1st respondent and suffered Ext.P8 order.

4. Heard Sri.V.V.Asokan, learned counsel for the petitioner and Sri. S. Sudhish Kumar, learned counsel for respondents 1 to 3.

5. The thrust of the contention advanced by learned counsel for the petitioner is that, in view of the agreement entered into by the petitioner with respective buyers for sale of the residential apartments, the 3rd respondent was not empowered to issue an assessment order by assessing the whole multistoried building against him individually. Learned counsel also contended that by virtue of Explanation 2 of Sec.2(e) of the Kerala Building Tax Act, 2nd respondent is to carry out the assessment of each individual apartment

especially when the petitioner has sold the apartments to various individuals. However, I find from Ext.P2 order of assessment that apart from issuing notice to the petitioner in his status as the Managing Partner of the firm, 2nd respondent has chosen to issue notice to the Secretary of the Apartment Owners Association of the building in question. But the 2nd respondent in Ext.P2 order, has categorically found that the petitioner has failed to produce necessary and legal evidence to establish that the construction of the apartment was completed by receiving funds from each individual owners, and having failed to do so, he has no other alternative than to finalise the assessment against the petitioner.

6. The 2nd respondent in Ext.P5 appellate order also found that the petitioner has failed to produce appropriate evidence to establish his case that each apartment belongs to separate persons and therefore the 3rd respondent Thahsildar was justified in making the assessment against the petitioner. By Ext.P8 order, the 1st respondent also found

that, having not produced sufficient evidence to establish that the assessment is to be made against individual owners of the residential apartments, the authorities below was justified in making the assessment against the petitioner.

7. Having considered the rival submissions made at the bar, what I gathered from the orders passed by respondent 1 to 3, was that even though notices were issued to each individual owners of the apartment, neither the petitioner nor the apartment owners have produced required evidence so as to establish the case of the petitioner narrated above. But at the same time, it is common knowledge that in the construction of multi storied residential apartments, funds are generated periodically from individuals who enter into agreement with the builder. But that apart, the petitioner cannot be heard to say that he is not having sufficient materials in order to prove that the funds were generated from various individuals. Definitely the builder also will be having necessary material proof to establish that the funds were received from the persons who have entered into

agreement with the builder.

8. However, truth remains that adverse orders were passed by respondents 1 to 3 against the petitioner for want of production of necessary documents. Having heard the rival submissions, and the request made by the petitioner that sufficient documents are available with them to establish that the petitioner is not liable for assessment for the whole building, I think, in view of the submissions made and evaluating the pros and cons that takes place in the construction of multi storied residential apartments, an opportunity can be provided to the petitioner to establish his claim. Moreover, it is contended that an amount of Rs.1,23,800/- was paid evident from Ext.P3 receipt dated 20.03.2007 issued by the Village Officer and it is submitted by the learned counsel for petitioner that Rs.61,900/- was paid as a pre-condition for maintaining revision before 1st respondent, against the demand of Rs.3,71,400/-. This submission is not disputed by the learned Senior Government Pleader also. In that view of the cumulative

circumstances, I propose to remand this matter to the 1st respondent. On production of documents, 1st respondent will be at liberty to take a decision whether the issue is to be decided by the 1st respondent or remand the same either to the 2nd or 3rd respondents for evaluating the documents so produced by the petitioner. But however, I feel that a time limit should be prescribed in view of long pendancy of the matter. Accordingly I set aside Ext.P8 order and direct the 1st respondent to take a decision in the revision in accordance with the observations made above. In order to proceed with the matter by the 1st respondent, petitioner will produce all documents required for establishing his case before the 1st respondent or any officer authorised by him within a period of 45 days from the date of receipt of copy of this judgment and thereafter the 1st respondent or any of the statutory authorities as stated above, will take a suitable decision taking in to account observations made above within a period of two months thereafter, after providing opportunity of hearing to the parties.

Writ petition is allowed Accordingly. In order to proceed with the matter, petitioner will produce a certified copy of this judgment before the 1st respondent.

Sd/-
**SHAJI P. CHALY**
**JUDGE**

sm