IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 17284 of 2015 (I)

PETITIONER(S):
----

1. **MUHAMMED KUTTY,**
   S/O KUNJALAN, THATTARATHODI HOUSE, PONMALA P.O.,
   OTHUKKUNNGAL, TIRUR.

2. **ISHAQUE,**
   S/O KUNJALAN, THATTARATHODI HOUSE, PONMALA P.O.,
   OTHUKKUNNGAL, TIRUR.

   BY ADVS.SRI.DINESH R.SHENOY
   SRI.SANIL JOSE

RESPONDENT(S):
----

1. **THE TAHSILDAR,**
   O/O. THE TAHSILDAR, TIRUR TALUK, TIRUR,
   MALAPPURAM DISTRICT - 676 102.

2. **THE DISTRICT COLLECTOR,**
   COLLECTORATE, TIRUR, MALAPPURAM DISTRICT - 676 102.

   BY SENIOR GOVERNMENT PLEADER SRI.R.RENJITH

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 17284 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE PHOTOCOPY OF CERTIFICATE NO. R1-21523/14 DATED 31/12/2014 ISSUED BY THE SECRETARY, KOTTAKKAL MUNICIPALITY.

P2 - TRUE PHOTOCOPY OF RETURN IN FORM II, TOGETHER WITH THE APPLICATION SUBMITTED BY THE PETITIONERS, IN THE FIRST WEEK OF JANUARY 2015.

P3 - TRUE PHOTOCOPY OF ASSESSMENT ORDER DATED 16.3.2015, TOGETHER WITH DEMAND NOTICE ISSUED BY THE FIRST RESPONDENT.

P4 - TRUE PHOTOCOPY OF LETTER DATED 6.5.2014 ISSUED BY THE PRINCIPAL SECRETARY REVENUE (SPECIAL CELL) DEPARTMENT, TOGETHER WITH ANNEXURE.

P5 - TRUE PHOTOCOPY OF LETTER DATED 6.4.2015 ISSUED BY THE PETITIONERS TO THE FIRST RESPONDENT.

P6 - TRUE PHOTOCOPY OF LETTER NO.K3-9970/2004 DATED 21.5.2015 ISSUED BY THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS:
--

EXT.R1(a): TRUE COPY OF THE LETTER GIVEN BY THE PETITIONER TO THE TAHSILDAR DTD.15.11.2014.

EXT.R1(b): TRUE COPY OF THE ORDER NO.22242/SC1/2014/REV. DTD.23.1.2015.

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 17284 of 2015

Dated this the 17th day of August, 2015

JUDGMENT

The petitioner challenging assessment order has approached this Court. The issue is regarding the rate of tax applicable under Kerala Building Tax Act, 1975. The case of the petitioner is that they have constructed the building during 2006-07.

2. The Assessing Authority has completed the assessment as per the amended rate applicable with effect from 01.04.2014. The building, in question, is a commercial building. Admittedly, the building was completed on 01.04.2007. It appears that on account of non-completion of the assessment proceedings, the building was assessed at a new rate because of the circular issued by the Government. 3. Section 5 of the Building Tax Act is the charging section, explanation of Section 5 provides as follows :

> **Charge of building tax**- (1) Subject to the other provisions contained in this Act, there shall be

charged a tax (hereinafter referred to as "building tax") based on the plinth area at the rate specified in the Schedule on every building the construction of which is completed on or after the appointed day.

(2) In the case of any building, the construction of which is completed prior to the appointed day but the assessment of which has not been initiated or completed or against which appeal or revision has been filed, building tax shall be assessed on the basis of the plinth area at the rate specified in the Schedule.

(3) Where any major repair or improvement is made on or after the appointed day to a building constructed before the said date building tax shall be payable at the rate referred to in sub-section (1) on the additional plinth area of the building resulting from such repair or improvement.

(4) Where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, in respect of the building before such extension, or repair or improvement.

(5) Where there are out-houses, garages or other structures appurtenant to the building for the more convenient enjoyment of the building, the plinth area of such structure shall be added on the plinth area of the main building and the building tax assessed accordingly;

[Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on the plinth area of that building.

(6) The building tax shall be payable by the owner of the building.

Explanation - For the purposes of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.]

Explanation to Section (5) abundantly makes clear that chargeable event is with respect to the date of occupation or the date when the building was ready for occupation. Therefore, any Government Circular issued Contrary to the above statutory provision, cannot have any overidding application. In that view of the matter, impugned order is set aside. The authorities are directed to assess the building for Building Tax Act at the rate the applicable prior to 01.04.2014.

Fresh order shall be passed after issuing notice to the petitioner within two months.

The writ petition is disposed of as above. No costs.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

bpr