IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 21579 of 2008 (R)

PETITIONER(S):
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1. **THOMAS MATHEW,**
   HIL VIEW, PULAMAN,
   KOTTARAKKARA.

2. **JOLY THOMAS**
   DO..DO.

   BY ADVS.SRI.N.SUKUMARAN
   SRI.S.SHYAM

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY ITS CHIEF SECRETARY
   SECRETARIAT. TRIVANDRUM.

2. **THE TAHSILDAR, KOTTARAKKARA TALUK**
   KOTTARAKKARA, KOLLAM DISTRICT.

3. **ASSISTANT COLLECTOR, KOLLAM.**

4. **THE DISTRICT COLLECTOR**
   KOLLAM DISTRICT, KOLLAM

   BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr.

WP(C).No. 21579 of 2008 (R)

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT P1- TRUE COPY OF THE SALE DEED DATED 18/04/1990.

EXHIBIT P2- TRUE COPY OF THE SALE DEED DATED 28/04/1990.

EXHIBIT P3- TRUE COPY OF THE SALE DEED DATED 04/05/1990.

EXHIBIT P4- TRUE COPY OF THE AGREEMENT DATED 21/06/1993.

EXHIBIT P5- TRUE COPY OF THE NOTICE DATED 23/10/1996 ISSUED BY THE 2ND RESPONDENT TO THE IST PETITIONER.

EXHIBIT P6- TRUE COPY OF THE STATEMENT SUBMITTED BY THE 1ST PETITIONER TO the 2ND RESPONDENT DATED 05/11/1996.

EXHIBIT P7- TRUE COPY OF THE DEMAND FOR PAYMENT OF TAX DATED 22/05/1997 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.

EXHIBIT P8- TRUE COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT OF KERALA IN O.P. NO.10492/97 DATED 19/06/1997.

EXHIBIT P9- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 24/06/1997.

EXHIBIT P10- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 22/10/1997.

EXHIBIT P11- TRUE COPY OF THE APPEAL FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT DATED 24/06/1997.

EXHIBIT P12- TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 14/03/2003.

EXHIBIT P13- TRUE COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT OF KERALA IN O.P. NO.11219/2001 DATED 09/08/2007.

EXHIBIT P14- TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT DATED 04/09/2007.

EXHIBIT P15- TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 05/10/2007.

EXHIBIT P16 - TRUE COPY OF THE LETTER ISSUED TO THE 4TH RESPONDENT IN REPLY TO EXT.P15 DATED 24/10/2007.

EXHIBIT P17- TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 29/11/2007.

EXHIBIT P18- TRUE COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT OF KERALA IN W.P(C) NO.36994/2007 DATED 14/12/2007.

EXHIBIT P19 - TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 18/06/2008.

RESPONDENTS EXHIBITS: NIL.

/TRUE COPY/

P.S.TO JUDGE

vmr.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 21579 of 2008

Dated this the 22nd day of July, 2015

<u>J U D G M E N T</u>

Petitioners are husband and wife. They have constructed a building with 4 apartments in two different land, lying contiguous. The 1st petitioner is the owner of 13¼ cents of land and 2nd petitioner is the owner of 9 cents of land. The only issue is whether the building constructed has to be treated separately for the purpose of building tax.

2. The petitioners rely on explanation in Section 2(e) of Building Tax Act, wherein it is provided 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. Petitioners also rely on an agreement to construct the building, produced as Ext.P4 and submits that in view of the agreement the building has to be considered as separate building of 1st and 2nd petitioners.

3. To claim the benefit of separate identity of the building based on explanation 2(e) petitioners have to substantiate that each of the petitioner has provided funds separately for the purpose of construction. Merely because

there is an agreement that the cost of construction will be met parties equally, is not sufficient to hold that building has separate identity for the purpose of building tax. Though legally it is possible to have separate identity unless cost of construction is jointly met, it cannot be held that building has to be identified separately for the purpose of building tax. No proof of evidence has been produced before the authority to show that each of the petitioner has separately spent the amount for construction of the building.

4. In view of the absence of any documents to substantiate the claim that building has been constructed by separate amounts spent by each of the petitioner, the authority is justified in treating the building as a composite unit for the purpose of building tax Act.

Accordingly, this writ petition is dismissed. No cost.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn