IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 18179 of 2015 (V)

PETITIONER(S):
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1. **KUNJI MUHAMMED,S/O.KUNJALI,**
   PATTERKADAVAN HOUSE, PALLIPADI POST,
   MALAPPURAM.

2. **MUHAMMED YUSUF AYAMON, S/O.MUHAMMEDALI HAJI,**
   AYAMON HOUSE,OPPOSITE POLICE STATION,
   UPHILL POST, MALAPPURAM.

3. **IBRAHIM KHALEEL, S/O.ALAVI,**
   KILIYANPARAMBIL HOUSE, PUZUNKARA ROAD,
   PALLIPPURAM POST, PALAKKAD.

4. **SAIDALAVI, S/O.LATE AHAMMED, MANAKARATHODI HOUSE,**
   DOWN HILL, MALAPPURAM.

5. **KHADEEJA, W/O.ALAVI, KILIYANPARAMBIL HOUSE,**
   PUZUNKARA ROAD, PALLIPPURAM POST, PALAKKAD.

6. **MYMUNA, W/O.LATE UMMERKUTTY, MOORKATH HOUSE,**
   RANDATHANI P.O., MALAPPURAM DISTRICT.

7. **ABDUL KAREEM, S/O.UMMERKUTTY, MOORKATH HOUSE,**
   RANDATHANI P.O., MALAPPURAM DISTRICT.

8. **YAHYAN, S/O.MUHAMMED KUTTY,**
   VALIYAVALAPPIL HOUSE, VALANCHERY POST,
   TIRUR TALUK, MALAPPURAM DISTRICT, NOW AT ENA 52,
   E.K.ENGINEERING EMIRATE AIRLINES P.O.686, DUBAI,
   U.A.E.
   (PETITIONERS 1 TO 6 AND 8 ARE REPRESENTED
   BY THEIR POWER OF ATTORNEY HOLDER,
   7TH PETITIONER, ABDUL KAREEM).

   BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   REVENUE DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

WP(C).NO.18179/2015

2. REVENUE DIVISIONAL OFFICER,
PERINTHALMMANNA-679 322.

3. TAHSILDAR, ERANAD,
MALAPPURAM DISTRICT-676 505.

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE SALE DEED NO.2402/1/08 OF SUB REGISTRY OFFICE, MANJERI.

EXT.P2. TRUE COPY OF THE ORDER NO.S.R.6/03-04/P1 DATED 28/10/2003 OF THE 3RD RESPONDENT

EXT.P3. TRUE COPY OF THE ORDER NO.15001/SLMC3/04/RD DATED 27/2/2004 OF THE 1ST RESPONDENT

EXT.P4. TRUE COPY OF THE ORDER NO.S.R.6/03-04/P1 DATED 18/3/2004 OF THE 3RD RESPONDENT

EXT.P5. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8431/12 L.D.S. DATED 16/5/2012.

EXT.P6. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8429/12 L.D.S. DATED 16/5/2012.

EXT.P7. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8425/12 L.D.S. DATED 16/5/2012.

EXT.P8. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8426/12 L.D.S. DATED 16/5/2012.

EXT.P9. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8428/12 L.D.S. DATED 16/5/2012.

EXT.P10. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8432/12 L.D.S. DATED 16/5/2012.

EXT.P11. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8433/12 L.D.S. DATED 16/5/2012.

EXT.P12. TRUE COPY OF THE OWNERSHIP CERTIFICATE NO.R1-8427/12 L.D.S. DATED 16/5/2012.

EXT.P13. TRUE COPY OF THE ORDER NO.B4/P1-373/12 DATED 16/3/2012 OF THE 3RD RESPONDENT

EXT.P14. TRUE COPY OF THE NOTICE NO.P1-373/12 DATED 16/3/2012

EXT.P15. TRUE COPY OF THE REPRESENTATION DATED 5/4/2012 FILED BY THE 7TH PETITIONER BEFORE THE 3RD RESPONDENT

EXT.P16. TRUE COPY OF THIS JUDGMENT OF THIS HONOURABLE COURT IN WPC NO.11973/2012 DATED 31/5/2012.

<u>WP(C).NO.18179/2015</u>

EXT.P17. TRUE COPY OF THE ORDER NO.P1-373/2012 DATED 3/10/2012 OF THE 3RD RESPONDENT

EXT.P18. TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WPC NO.313/2013 DATED 3/1/2013.

EXT.P19. TRUE COPY OF THE PETITION DATED 11/1/2013 FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT.

EXT.P20. TRUE COPY OF THE ORDER NO.P 373/2012 DATED 8/10/2013 OF THE 3RD RESPONDENT

EXT.P21. TRUE COPY OF THE APPEAL FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT DATED 22/11/2013 WITHOUT ANNEXURES.

EXT.22. TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 30/4/2015 NO.B.16561/2013.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.18179 of 2015

Dated this the 2nd day of July, 2015

J U D G M E N T

The petitioners, disputing assessment order passed under the Building Tax Act, approached this Court in W.P.(C).No.313/2013. This Court disposed of the writ petition ordering as follows :

> “2. From the above itself, it is evident that the petitioners are not disputing the liability but are only disputing the accuracy of the liability quantified. According to them, in quantifying the liability, a mistake has been committed by the Officer. If that be so, it will be open to them to seek rectification as provided under Section 15 of the Kerala Building Tax.”

2. The only issue that has be considered in the light of the above judgment is regarding the quantification of the liability of each of the petitioners. However, pursuant to the direction of this Court, instead of considering the application of the petitioners in terms of Section 15 of the Building Tax Act for rectification, the 3rd respondent has considered the issue, as though the petitioners have questioned the liability itself, in the light of the definition accorded to 'owner' under Section 2(e) explanation. The petitioners' claim has been rejected by Ext.P20 stating that, the petitioners failed to substantiate their claim in terms of Explanation 2 of Section 2(e). The petitioners appealed against the same, but, the appeal was also dismissed.

3. The petitioners only challenge in the earlier writ petition was regarding quantification of liability. The only issue now open for the 3rd respondent is to consider whether there was any mistake in quantifying the liability. Therefore, the issue was only relegated to consider the quantification of the liability and not to decide liability based on the definition of an owner in terms of Section 2e explanation. In that view of the matter, the impugned orders have to be set aside.

4. Accordingly, the impugned orders are set aside. There shall be a direction to the 3rd respondent to reconsider the matter after notice to the petitioners, in the light of judgment of this Court in W.P.(C).No.313/2013.

This writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

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