IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 21296 of 2015 (J)

PETITIONER :

PRASANTH BOSS A.,
S/O. KRISHNAN MASTER, AGED 50 YEARS
RESIDING AT ARIMBRATHODIYIL HOUSE
KAKKATH DESOM, PERINTHALMANNA VILLAGE
PERINTHALMANNA TALUK, PATHANAMTHITTA.

BY ADVS.SRI.K.T.SIDHIQ
SRI.P.VINODKUMAR
SRI.T.K.AJITH KUMAR

RESPONDENT(S) :
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1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

2. THE VILLAGE OFFICER
PERINTHALMANNA VILLAGE OFFICE
PERINTHALMANNA – 679 322.

3. THE THAHSILDAR
PERINTHALMANNA TALUK OFFICE
PERINTHALMANNA – 670 322.

R1 TO R3 BY GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...2/-

WP(C).No. 21296 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF OCCUPANCY CERTIFICATE DATED 16.8.2012 ISSUED FROM PERINTHALMANNA VILLAGE OFFICE.

EXT.P2 TRUE COPY OF ASSESSMENT ORDER NO. FILE NO. K3-012541/14 DATED 18.6.2015 ISSUED BY THE 3RD RESPONDENT, THE ASSESSING AUTHORITY.

EXT.P3 TRUE COPY OF NOTICE OF DEMAND NO. FILE NO. K3-012541/14 DATED 18.6.2015 ISSUED BY THE 3RD RESPONDENT, THE ASSESSING AUTHORITY.

EXT.P4 COPY OF PROCEEDINGS DATED 18.6.2015 ISSUED BY THE 3RD RESPONDENT, THE ASSESSING AUTHORITY.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J.

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W.P(C). No. 21296 of 2015

Dated this the 30th day of July, 2015

J U D G M E N T

Petitioner has approached this Court challenging assessment of the building tax as well as luxury tax at enhanced rate.

2. According to the petitioner, the building was constructed in the year 2012 and therefore liable to be assessed at the unamended rate. It appears that petitioner has filed return in the month of August, 2014.

3. It is admitted by the learned Government Pleader that, the return filed by the petitioner shows that the building was completed in the the year 2013.

4. The question has to be considered is whether the building was ready for the year 2013 or before 01.04.2014. If petitioner has any evidence to prove that the building was ready for occupation before 01.04.2014, necessarily the tax can be assessed only based on the unamended rate. Therefore this Court is of the view that, the matter requires reconsideration after adverting to the evidence to be produced by the petitioner.

5. With regard to the challenge regarding enhanced rate of levy for luxury tax, it is to be noted that luxury tax is a recurring liability and the petitioner cannot question the enhanced rate of luxury tax. Petitioner has to pay at the enhanced rate from the date on which the rate is enhanced. Therefore the challenge regarding enhancement of luxury tax is declined.

6. In view of the discussions as above, following directions are issued:

(i) The assessment for building tax is set aside.

(ii) The petitioner is given opportunity to produce all the materials before the Tahsildar to substantiate the claim that the building was completed before 01.04.2014.

(iii) If the petitioner produces materials before the Tahsildar that building was completed on 01.04.2014, necessarily the assessment shall be done based on unamended rate.

With the above directions, this writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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