IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 21476 of 2015 (H)

WRIT PETITIONER(S):

M.D.JOHNSON,
F/O.JOBIN DANIEL JOHNSON,
MANALOOR HOUSE, MUTHOOR,
THIRUVALLA, PATHANAMTHITTA-689107.

BY ADVS.DR.K.P.PRADEEP
SRI.T.T.BIJU

RESPONDENT(S):

1. **STATE OF KERALA,**
   REPRESENTED BY ITS PRINCIPAL SECRETARY
   TO REVENUE DEPARTMENT,
   GOVERNMENT SCRETARIAT, THIRUVANANTHAPURAM-695001.

2. **TAHSILDAR,**
   TALUK OFFICE, DEPARTMENT OF REVENUE,
   GOVERNMENT OF KERALA, THIRUVALLA,
   PATHANAMTHITTA DISTRICT, 689107.

3. **REVENUE DIVISIONAL OFFICER,**
   DEPARTMENT OF REVENUE, GOVERNMENT OF KERALA,
   THIRUVALLA, PATHANAMTHITTA DISTRICT- 689107.

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 21476 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE POWR OF ATTORNEY EXECUTED DATED 07.09.2012 BY JOHN DANIEL JOHNSON.

EXHIBIT-P2: TRUE COPY OF OCCUPANCY CERTIFICATE DATED 07.01.2013 ISSUED IN PERMIT NO.BP 592/09-10 TO JOBIN DANIEL JOHNSON FROM THE THIRUVALLA MUNICIPALITY.

EXHIBIT-P3: TRUE COPY OF THE ASSESSMENT ORDER NO.B9-1784/14/BT DATED 29.11.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P3(A): TRUE COPY OF THE DEMAND NOTICE NO.B9-1784/14BT DATED 29.11.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P4: TRUE COPY OF THE APPEAL DATED 15.12.2014 FILED BEFORE THE 3RD RESPONDENT, APPELLATE AUTHORITY UNDER KERALA BUILDING TAX ACT, 1975.

EXHIBIT-P5: TRUE COPY OF THE RECEIPT NO.2111531 DATED 10.12.2014 ISSUED BY THE VILLAGE OFFICER, THIRUVALLA.

EXHIBIT-6: TRUE COPY OF THE ORDER NO.K DIS 5431/14/A2 DATED 02.07.2015 ISSUED BY THE 3RD RESPONDENT APPELLATE AUTHORITY IN EXT.P4 APPEAL.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 21476 of 2015

Dated this the 20th day of July,2015

J U D G M E N T

The petitioner aggrieved by the assessment order under Building Tax Act has approached this Court. The petitioner raised two contentions before this Court. The first contention is related to rate of tax applicable and the second contention is related to the plinth area of the building.

2. In relation to first contention, the petitioner procduced Ext.P2 Occupancy certificate issued by the local authority. This would show that the building was completed on 1.6.2012. The authority has to verify whether the building was ready for occupation on the relevant period. The occupancy certificate of course denotes that the building was ready, but nevertheless it has to factually find out that the building was ready for occupation on that day or any other day on or before 1.4.2014. On enquiry, if it is found that the building was ready for occupation before 1.4.2014,

necessarily the rate of tax would be applicable based on unamended rate and not on amended rate. In the impugned order, it is stated that rate of tax is made applicable based on the Government order. That Government order cannot override the mandate of the statutory provision in terms of Section 5(2) of the Building Tax Act. Therefore, the rate of building tax would depend upon the explanation under Section 5 (2) of the Building Tax Act, which reads thus:

> "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 spepcified in the schedule."

3. In relation to the second contention, I am of the view that the Tahsildar shall conduct the site inspection and find out actual plinth area and tax shall be assessed only based on such report to be prepared based on the inspection.

4. In such circumstances, I am of the view that this matter requires reconsideration. Accordingly the impugned order is set aside. The petitioner shall appear before the Tahsildar on 12.8.215 at 11 A.M. and thereafter, the Tahsildar shall complete the assessment within further period of two months.

The writ petition is disposed of as above.

Sd/

A.MUHAMED MUSTAQUE,
JUDGE

jm/

The reference made in paragraph 2, page 2 of the judgment dated 20/07/2015 in W.P.(C) No.21476/2015 to an explanation attached to Section 5(2) of the Building Tax Act which reads thus: "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", has been deleted as per order dated 07.09.2015 in R.P. 722/2015.

Registrar (Judicial)