

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 22390 of 2015 (W)

PETITIONER(S) :

CHACKO PETER, AGED 63 YEARS,
S/O.SJ.PETER, SRAMBICKAL HILLS, VADAVATHOOR P.O., KOTTAYAM.

BY ADVS.SRI.V.P.MOHAMMED NIYAZ
SRI.M.P.MUHAMMAD FAZIL
SRI.K.RONALD JOSE
SMT.AUGNES LOVELY FRANCIS

RESPONDENT(S)/RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY SECRETARY, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.
2. THE TAHSILDAR,
KOTTAYAM- 686 501.

* ADDITIONAL R3 TO R5 IMPEADED

3. M.M.THAMPY, AGED 63 YEARS,
S/O.M.P.MATHEW, MANATHARA, JNRA-85, ARCHANA NAGAR,
POANGHAMMOOD, MEDICAL COLLEGE P.O., TRIVANDRUM - 695 011.
4. MERCY CHACKO, AGED 60 YEARS,
W/O.CHACKO PETER, SRAMBIKAL HILLS, VADAVATHOOR P.O.,
KOTTAYAM.
5. MOHAN ABRAHAM, AGED 60 YEARS,
S/O.V.C.ABRAHAM, VAHANAT HOUSE, DEVALOKAM P.O., KOTTAYAM.

* ADDITIONAL R3 TO R5 ARE IMPEADED AS PER ORDER DATED 07.08.2015 IN
I.A.NO.11309 OF 2015.

R1 & R2 BY GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN
ADDL.R3 TO 5 BY ADVS. SRI.K.ABDUL JAWAD
SMT.V.K.ANJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE PARTNERSHIP DEED OF THE FIRM M/S.CLASSIC BUILDERS DATED 01.03.1995**
- P2: TRUE COPY OF THE AGREEMENT BETWEEN THE PETITIONER AND LAND OWNERS.**
- P3: TRUE COPY OF THE AGREEMENT FOR SALE DATED 24.09.1996**
- P4: TRUE COPY OF THE AGREEMENT FOR CONSTRUCTION DATED 24.09.1996.**
- P5: TRUE COPY OF THE NOTICE DATED 30.10.2000.**
- P6: TRUE COPY OF THE JUDGMENT DATED 02.011.2007 O.P.NO.32733/2004.**
- P7: TRUE COPY OF THE ORDER DATED 22.12.2014 PASSED BY THE 2ND RESPONDENT.**
- P8: TRUE COPY OF THE JUDGMENT DATED 10.03.2015 W.P.(C).NO.4149/2015.**
- P9: TRUE COPY OF THE OBJECTION DATED 20.04.2015 FILED BY THE LAND OWNERS, BEFORE THE 2ND RESPONDENT.**
- P10: TRUE COPY OF THE LIST OF DOCUMENTS DATED 28.04.2015 FILED BY THE LAND OWNERS, BEFORE THE 2ND RESPONDENT.**
- P11: TRUE COPY OF THE LIST OF WITNESS DATED 28.04.2015 FILED BY THE LAND OWNERS, BEFORE THE 2ND RESPONDENT.**
- P12: TRUE COPY OF THE PROOF AFFIDAVIT DATED 28.04.2015 FILED BY LAND OWNERS.**
- P13: TRUE COPY OF THE PROOF AFFIDAVIT DATED 28.04.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- P14: TRUE COPY OF THE ORDER DATED 06.05.2015 PASSED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.22390 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

This writ petition is filed by a builder of 'multistoried apartment building' challenging assessment of building tax.

2. The petitioner entered into an agreement with respondents 3 to 5 for the construction of multistoried apartment complex. There are 26 apartments in the property. The Tahsildar by a very elaborate order pursuant to Ext.P8 judgment found that the petitioner is liable to pay building tax.

3. In fact, the original assessment was made in favour of the land owners(respondents 3 to 5). They have challenged the assessment before this Court in W.P.(C) No.4149/2015. It is pursuant to the directions of this Court, the Tahsildar reconsidered the matter.

4. The petitioner's case is that he has appeared before the Tahsildar as a witness and he was not given an opportunity to raise an objection and to prove that each apartment has been constructed with the cost of the present apartment owners.

5. The Tahsildar, in fact, considered a legal question as to the liability of the owner of the building to pay the building tax. It is found that in the absence of any documents to show that different apartments have been constructed based on the cost of the construction borne by each of them, it has to be concluded that the entire construction cost has been incurred by the builder. It is also found that the construction agreement entered into between the petitioner with the apartment owners are not registered and therefore, that cannot be relied upon.

6. However, the fact remains that the Tahsildar reconsidered the matter at the instance of the land owners. The land owners appeared before the Tahsildar and raised objection. It is also seen that some of the apartments were also summoned. This Court is of the view that the only question that has to be considered by the Tahsildar whether cost of the apartments has been separately met by each of the apartment owners. For the limited purpose, even unregistered documents can be relied with other evidence to prove that the agreement has been acted upon.

7. It is seen that some of the apartment owners also had deposed before the Tahsildar that they are prepared to remit building tax proportionate to the plinth area. Some of the apartment owners also have deposed that they have already remitted building tax to the builder, this Court is of the view that whether any agreement entered into between the parties as to the liability to payment of the building tax need not be considered by the Tahsildar. If the builder has not remitted the building tax on behalf of the owner, it is a matter to be worked out between them and it is not in the province of the Tahsildar to consider those questions. The only question that need to be considered by the Tahsildar whether there is an evidence to show that each of the apartment has been constructed by the cost of the owner of the apartments. It is only when the builder or owner is unable to produce any documents to substantiate that the multistoried building is not constructed with the funds of the apartment owners whom they have assigned subsequently, the assessing authority could assume that cost of the construction has been borne by the builder or the owner.

It is made clear that in the event, the petitioner is unable to prove any evidence before the Authority that cost of the construction is met by the apartment owners, the Tahsildar is free to fix liability on the petitioner as well. Therefore, in order to consider the issue whether cost of the construction was met by each of the apartment owners, this Court is of the view that an opportunity should be given to the petitioner since he was not given an opportunity to place objection other than appeared as a witness in the proceedings. Accordingly, Ext.P14 is set aside. The petitioner shall appear before the Tahsildar on 14.9.2015 at 11 a.m. The petitioner shall produce all the documents and also shall raise objection regarding proposed assessment. Based on the objection and after hearing the owner of the land, the party respondents as well as the other apartment owners, necessary order shall be passed within a further period of two months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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