IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WP(C).No. 33362 of 2006 (V)

PETITIONER(S):
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* SRI. P.R.DAMODARAN,
K.V. 55, PANAMPILLY NAGAR, ERNAKULAM
KOCHI-36. [EXPIRED]

LEGAL HEIRS IMPLEADED

1. P.D.VALSA, D/O.LATE P.R.DAMODARAN (EXPIRED ON 10.11.2008)
THACHERIL, JUSTICE ROAD, JANATHA VYTTILA, KOCHI.

2. P.D.PRADEEP ,
S/O.LATE P.R.DAMODARAN, THACHERIL, JUSTICE ROAD
JANATHA, VYTTILA, KOCHI.

3. P.D.RANI,
D/O..LATE P.R.DAMODARAN, THACHERIL, JUSTICE ROAD
JANATHA, VYTTILA, KOCHI.

4. P.D.BABU, S/O.LATE P.R.DAMODARAN (EXPIRED ON 10.11.2008)
THACHERIL, JUSTICE ROAD, JANATHA, VYTTILA, KOCHI.

LEGAL HEIRS OF DECEASED PETITIONER IMPLEADED AS PER ORDER DATED 03.02.2015 IN IA 928/15.

BY ADV. SRI.DEEPU THANKAN

RESPONDENT(S):
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1. TAHASILDAR,
KANAYANNOOR TALUK ASSESSING AUTHORITY,
UNDER THE BUILDING TAX ACT, ERNAKULAM.

2. THE REVENUE DIVISIONAL OFFICER,
FORT KOCHI.

BY GOVERNMENT PLEADER SRI.R.RENJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 33362 of 2006 (V)

APPENDIX

PETITIONERS'M EXHIBITS

P1: **COPY OF PROPERTY TAX BILL ISSUED BY THE CORPORATION OF COCHIN DATED 9/6/83 TO THE PETITIONER DEMANDING THE HALF YEARLY TAX ENDED ON 30/9/83**

P2: **COPY OF THE NOTICE ISSUED BY THE ASST.ENGINEER CORPORATION OF COCHIN TO THE PETITIONER DATED 27/4/83**

P3: **COPY OF THE SETTLEMENT DEED DATED 20/11/98**

P4: **COPY OF ORDER OF THE CORPORATION OF COCHIN DATED 25/3/2000**

P5: **COPY OF THE SKETCH**

P6: **COPY OF ORDER ISSUED UNDER SECTION 9 OF THE BUILDING TAX ACT BY R1 DATED 17/8/06**

P7: **COPY OF PROCEEDINGS OF THE TAHASILDAR KANAYANNOOR TALUK IMPOSING LUXURY TAX ON THE PETITIONER**

P8: **COPY OF THE APPEAL MEMORANDUM ALONG WITH THE APPLICATION TO CONDONE THE DELAY FILED AGAINST EXT.P6 ASSESSMENT ORDER OF THE BUILDING TAX**

P9: **COPY OF THE APPEAL MEMORANDUM ALONG WITH THE PETITION TO CONDONE THE DELAY IN PREFERRING THE APPEAL AGAINST EXT.P7**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.33362/2006

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Dated this the 12th Day of June, 2015

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

The writ petition is filed challenging building tax assessment as well as luxury tax imposed on the building stated to be constructed by the original petitioner, P.R.Damodaran, in the year 1978. During the pendency of the writ petition, the original petitioner died and his legal heirs are impleaded.

2. The learned counsel for the petitioners submit that the construction was made originally by late P.R.Damodaran for himself and transferred a portion of it, to his daughter. Though, the building is in the nature of an apartment, the ownership belongs to separate persons. However, without taking into account the nature of ownership which was separated in the name of two persons, assessment has been made including luxury tax as a single building, owned by the original petitioner. Exts.P6 and P7 are the impugned orders. The petitioners also have a case

that building tax and luxury tax have to be assessed separately in the name of the respective owners.

3. The orders, Exts.P6 and P7 produced before this Court would show that it is in a printed format and the same are issued without application of mind. Necessarily, the Assessing Authorities have to take a judicious approach while assessing and determining tax. Though, the original petitioner filed Exts.P8 and P9 appeals against Exts.P6 and P7 orders, the fact remains that the tax dues remain unpaid.

4. It is evident that the orders have been vitiated for non compliance of principles of natural justice as it does not appear from the orders whether the original petitioner has been heard or not. In that view of the matter, the impugned orders are set aside and the following directions are issued:

i. The petitioners shall raise their objections as to the assessment of building tax and luxury tax within two weeks from the date of receipt of a copy of this judgment.

ii. Thereafter, fresh proceedings shall be initiated and completed by the Tahsildar after hearing the petitioners within a further period of two months.

iii. If any payment is effected, that shall be subject to fresh assessments to be made.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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