IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

W.P(C).No. 24047 of 2015 (E)

PETITIONER :

T.P. PRATHIBHA,
W/O.G.MURALEEDHARAN, AGED 40 YEARS,
HAVING PERMANENT RESIDENCE AT SANTHI VIHAR,
MISSION COMPOUND,
ROBINSON ROAD, PALAKKAD-14.

BY ADV. SRI.C.AJITH KUMAR

RESPONDENTS :

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1. STATE OF KERALA REPRESENTED BY
   SECRETARY TO GOVERNMENT,
   REVENUE DEPARTMENT,
   THIRUVANANTHAPURAM,
   PIN - 695 001.

2. THE TAHSILDAR,
   PALAKKAD,
   PIN - 678 001.

3. THE REVENUE DIVISIONAL OFFICER,
   PALAKKAD,
   PIN - 678 001.

BY ADV. GOVERNMENT PLEADER : SRI. LIJU.V.STEPHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bpr

W.P.(C).No. 24047 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE COPY OF THE BUILDING PERMIT NO.EJBR/423/0607/PW4 DATED 15/11/2006 ISSUED BY PALAKKAD MUNICIPALITY.
EXT.P2	TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 12/07/2007 ISSUED BY PALAKKAD MUNICIPALITY.
EXT.P3	TRUE COPY OF THE DEMAND NOTICE DATED 15/02/2012 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
EXT.P4	TRUE COPY OF THE LETTER DATED 14/03/2012 OF THE PETITIONER.
EXT.P5	TRUE COPY OF THE APPEAL FILED UNDER SECTION 11 OF THE KERALA BUILDING TAX ACT.
EXT.P6	TRUE COPY OF THE ORDER DATED 27/11/2012 PASSED BY THE 3RD RESPONDENT.
EXT.P7	TRUE COPY OF THE ORDER DATED 21/07/2015 ISSUED BY THE 2ND RESPONDENT.
EXT.P8	TRUE COPY OF THE REPORT DATED 03/08/2015 PREPARED BY ER.JOHNSON GEORGE, CHARTERED ENGINEER & APPROVED VALUER EVIDENCING THE TOTAL PLINTH AREA OF THE RESIDENTIAL BUILDING OF THE PETITIONER.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

bpr

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.24047 OF 2015 (E)

Dated this the 22nd day of September, 2015

J U D G M E N T

The petitioner, who is the owner of a building bearing No.B-49, 2471/A2 in Palakkad Municipality, is aggrieved by Ext.P7 order of the second respondent, whereby her building has been assessed to luxury tax on the assumption that the plinth area of the building is 286.47 square metres. It is the contention of the petitioner in the writ petition that the plinth area of the building excluding the car porch will only be 270.90 square metres, and therefore, there was no justification for the levy of luxury tax in respect of the building. It is on this contention that the petitioner prays for quashing of Ext.P7 order.

2. A counter affidavit has been filed on behalf of the second respondent, wherein, it is stated that contrary to the averments in the writ petition, the plinth area taken for the purposes of levy of luxury tax did not include the area covered by the car porch of the building in question.

3. I have heard the learned counsel appearing for the petitioner and learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that inasmuch as the second respondent in the counter affidavit has clearly stated that the plinth area of the building, that is taken for the purposes of levy of luxury tax, did not cover the area covered by the car porch, the contention of the petitioner in the writ petition that the plinth area covered the area of the car porch also cannot be accepted. I therefore see no reason to interfere with Ext.P7 order, as Ext.P7 order itself was passed pursuant to an order of remand by the First Appellate Authority on an earlier occasion. Resultantly, the writ petition, in its challenge against Ext.P7 order fails, and is accordingly dismissed.

The learned counsel for the petitioner would state that the factual finding in Ext.P7 order, that the plinth area of the building reckoned for the purposes of levy of luxury tax is 286.47 square metres, is wrong. He would rely on Ext.P1 building permit as also

Ext.P8 certificate issued by the Chartered Engineer which would indicate that the plinth area of the building excluding the car porch is only 270.90 square metres. Taking note of the said contention of the petitioner, I make it clear that while the writ petition is dismissed in its challenge against Ext.P7 order, nothing in this judgment will stand in the way of the petitioner approaching the respondents with representation showing the plinth area of the building in question, together with supporting documents, for establishing that the plinth area of the building for the purposes of the luxury tax is only 270.90 square metres. If the petitioner prefers such a representation before the second respondent within a period of one month from today, the second respondent shall cause a measurement of the building to be taken, in the presence of the petitioner, and proceed to levy luxury tax only on the basis of the plinth area of the building so ascertained.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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