IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WP(C).No. 24154 of 2015 (T)

PETITIONER(S):

KATAPRATHAKATH KAAKKI FARZANA, AGED 32 YEARS,
W/O.SAMEER, RESIDING AT 'DAWN FRESH', MOONNU NIRATH,
AZHIKODE NORTH AMSOM, DESOM, P.O. AZHIKODE,
KANNUR DISTRICT, PIN-670 009, REPRESENTED BY
POWER OF ATTORNEY HOLDER, LAKALATH VAZHAYIL MOHAMMED,
AGED 65 YEARS, S/O.ABDUL KHADER,
RESIDING AT 'AYISHAS', NEAR VILLAGE OFFICE,
PAPPINISSERY. P.O., AROLI, KANNUR DISTRICT-670 561.

BY ADVS.SRI.P.U.SHAILAJAN,
SMT.K.B.REKHA,
SMT.D.N.NISHANI.

RESPONDENT(S):
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1. THE SECRETARY TO GOVERNMENT OF KERALA,
   REVENUE DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

2. THE COMMISSIONER,
   LAND REVENUE, THIRUVANANTHAPURAM-695 001.

3. TAHSILDAR,
   KANNUR TALUK, P.O. CIVIL STATION,
   KANNUR DISTRICT-670 002.

4. THE VILLAGE OFFICER,
   AZHIKODE NORTH VILLAGE OFFICE,
   P.O. AZHIKODE, PIN- 670 009. KANNUR DISTRICT.

BY SR. GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

WP(C).No. 24154 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

P1- TRUE COPY OF THE POWER OF ATTORNEY DEED EXECUTED BY THE PETITIONER DATED 07-09-2012.

P2- TRUE COPY OF THE RECEIPT ISSUED BY THE AZHIKODE PANCHAYATH OFFICE FOR REMITTING BUILDING TAX FOR THE BUILDING WITH NO.17/435A FOR THE YEAR 2013-14 DATED 06-01-2014.

P3- TRUE COPY OF THE RECEIPT BY THE AZHIKODE PANCHAYATH OFFICE ISSUED FOR REMITTING BUILDING TAX FOR REMITTING BUILDING TAX FOR THE BUILDING NO.17/435B FOR THE YEAR 2013-14 DATED 08-05-2013.

P4- TRUE COPY OF THE RECEIPT ISSUED BY THE AZHIKODE PANCHAYATH OFFICE FOR REMITTING BUILDING TAX FOR THE BUILDING NO.17/435B FOR THE YEAR 2013-14 DATED 18-05-2013.

P5- TRUE COPY OF THE RECEIPT OF BUILDING TAX RECEIPT ISSUED BY THE AZHIKODE PANCHAYATH OFFICE FOR BUILDING WITH NO.17/435C DATED 26-11-2013.

P6- TRUE COPY OF THE ORDER DATED 13-11-2014 ISSUED BY THE 3RD RESPONDENT.

P7- TRUE COPY OF THE RECEIPT DATED 09/12/2014 ISSUED BY THE RESPONDENT.

P8- TRUE COPY OF THE RECEIPT DATED 12/01/2015 ISSUED BY THE RESPONDENT.

P9- TRUE COPY OF THE RECEIPT DATED 11/02/2015 ISSUED BY THE RESPONDENT.

P10- TRUE COPY OF THE RECEIPT DATED 19/03/2015 ISSUED BY THE RESPONDENT.

P11- TRUE COPY OF THE ORDER DATED 25/02/2015 OF THE 3RD RESPONDENT.

P12- TRUE COPY OF THE DIRECTION DATED 23/01/2015 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.24154 of 2015

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Dated this the 18th day of August, 2015

JUDGMENT

The petitioner, challenging Ext.P11 order of the Tahsildar demanding building tax at the enhanced rate applicable from 1.4.2014, has approached this Court.

2. The petitioner constructed a building originally in the year 2012 and thereafter, made an addition to that building in the year 2013. Both buildings were assessed and the petitioner remitted building tax. Thereafter, the petitioner has been served with Ext.P11 stating that the petitioner would liable to pay building tax at the enhanced rate with effect from 1.4.2014.

3. There is no dispute to the fact that the petitioner has remitted the entire tax at the rate applicable prior to 1.4.2014. Therefore, the only question is whether the petitioner is liable to pay any building tax at the new rate applicable after 1.4.2014.

4. Learned Government Pleader, on instructions, submits that the building was completed in the year 2013.

5. Apparently, Ext.P11 order was issued based on the circular issued by the Government, which is produced as Ext.P12. Section 5 of the Kerala Building Tax Act, 1975 (for short, the 'Act') is a charging Section. Section 5 of the Act reads as follows:

Charge of building tax:-

1. subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as 'building tax') based on the plinth area at the rate specified in the Schedule on every building, the construction of which is completed on or after the appointed day.
2. 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.
3. Where any major repair or improvement is made on or after the appointed day to a building constructed before the said date, building tax shall be payable at the rate referred to in sub-section (1) on the additional plinth area of the building resulting from

such repair or improvement.

4. Where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement.

5. Where there are out-houses, garages or other structures appurtenant to the building for the more convenient enjoyment of the building, the plinth area of such structure shall be added on to the plinth area of the main building and the building tax assessed accordingly.

   (provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on the plinth area of that building.

6. The building tax shall be payable by the owner of the building.

   (Explanation: for the purpose of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier).

6. The statutory provision as above would clearly indicate that chargeable event is when the building was ready for occupation or has been actually occupied. Therefore, the only question is whether the building was ready in occupation or has been actually occupied prior to 1.4.2014. The circular cannot override the statutory provision. In this case, admittedly, the building tax has been collected from the petitioner at the rate applicable prior to 1.4.2014. There is no case for the Tahsildar that the building was not ready for occupation or not in occupation of the petitioner prior to 1.4.2014.

In that view of the matter, I find that the impugned order is unsustainable. Accordingly, it is set aside.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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