IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 35701 of 2005 (A)

PETITIONER :

C.K.UMMER, AGED 50,
S/O.MUHAMMED @ KUNHAPPA HAJI, PACHEERY P.O.
MANNARMALA, PATTIKKAD, MALAPPURAM DISTRICT.

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS :

1. THE DISTRICT COLLECTOR,
MALAPPURAM.

2. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA, MALAPPURAM DISTRICT.

3. THE TAHSILDAR, PERINTHALMANNA,
MALAPPURAM DISTRICT.

4. THE VETTATHOOR GRAMA PANCHAYATH,
REPRESENTED BY THE SECRETARY, THELAKKAD P.O.
MALAPPURAM DISTRICT.

R4 BY ADV. SRI.SALISH ARAVINDAKSHAN
R4 BY ADV. SRI.GHILS P.MATHEW
R1-R3 BY GOVERNMENT PLEADER SMT.K.J.LILLY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 35701 of 2005 (A)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	:	COPY OF THE RECEIPT DTD.23.2.1998.
EXT.P2	:	COPY OF THE CERTIFICATE DTD.31.7.2003.
EXT.P3	:	COPY OF THE RECEIPT DTD.18.5.2005.
EXT.P4	:	COPY OF THE ORDER DTD.30.4.2002.
EXT.P5	:	COPY OF THE RECEIPT DTD.29.3.2004.
EXT.P5(a)	:	COPY OF THE RECEIPT DTD.11.10.2004.
EXT.P6	:	COPY OF THE ORDER PASSED BY THE RDO DTD.23.7.2005.
EXT.P7	:	COPY OF THE REVISION PETITION DTD.30.7.2005.
EXT.P8	:	COPY OF THE ORDER PASSED BY THE DISTRICT COLLECTOR, MALAPPURAM DTD.26.11.2005.
EXT.P9	:	COPY OF THE CERTIFICATE ISSUED BY VETTATHUR GRAMA PANCHAYATH DTD.2.6.2005.

RESPONDENTS' EXHIBITS :-

EXT.R4(1)	:	COPY OF THE NOTICE DTD.15.3.2006 ISSUED BY PANCHAYATH.
EXT.R4(2)	:	COPY OF THE ASSESSMENT ORDER DTD.25.3.2006.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.35701 of 2005

Dated this the 3rd day of July, 2015

JUDGMENT

The petitioner, who is the owner of a residential building bearing registration No.VP 4/246 B in Vettathoor Grama Panchayat, has filed this Writ Petition seeking a writ of certiorari to quash Exts.P4, P6 and P8 and seeking a writ of mandamus commanding the third respondent to pass necessary orders for refunding the luxury tax remitted by the petitioner as per Exts.P5 and P5(a). The petitioner has also sought a declaration that he is not liable to pay luxury tax in respect of the aforesaid residential building.

2. Going by averments in the Writ Petition the construction of the building in question was completed in the year 1997 itself. Since the petitioner was employed abroad, his family occupied the building in the year 1997. After construction, the building was also assigned with Building No.VP 4/246B by the 4th respondent Panchayat. Relying on Ext.P1 receipt dated 23.2.1998, the petitioner would contend that, he has remitted property tax for the building in question for the assessment year 1997-98. He is also relying in Ext.P2 certificate issued by the 4th respondent Grama Panchayat in

order to substantiate his contention that the building in question was assessed by the 4th respondent Panchayat during the period from 1998-99 to 2002-03. Ext.P3 receipt is produced in order to show that the tax for the period upto 2005 was also remitted with the 4th respondent Panchayat.

3. The petitioner was issued with Ext.P4 notice of the 3rd respondent demanding luxury tax under Section 5A of the Kerala Building Tax Act, 1975, on the ground that he has constructed a building having a plinth area of 344 sq.mtr., after the appointed day and hence he is liable to pay luxury tax for the said building @ ₹.2,000/- per year. In Ext.P4 the petitioner was directed to remit a sum of ₹.6,000/- for the assessment years 2000-01, 2001-02 and also for 2002-03. According to the petitioner, since he was abroad his brother remitted the luxury tax demanded in Ext.P4 together with interest and collection charges, when revenue recovery proceedings were initiated by the 3rd respondent. Ext.P5(a) receipt produced along with the Writ Petition shows that, the petitioner has paid luxury tax for the building in question for the year 2004 as well.

4. On his return from abroad the petitioner submitted an appeal before the second respondent against the demand for luxury tax made in Ext.P4. But the said appeal ended in dismissal by Ext.P6 order passed by the second respondent on the ground that it is not filed within the prescribed time limit. Challenging Ext.P6 order the petitioner filed a Revision Petition before the first respondent, which also ended in dismissal by Ext.P8 order upholding the levy of tax. It is aggrieved by Exts.P4, P6 and P8 the petitioner is before this Court in this Writ Petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 3rd respondent, contending that the petitioner has constructed a residential building having a plinth area of 339.24 m^2. In response to Form No.III notice issued under Rule 6 of the Kerala Building Tax (Plinth area) Rules, 1992 (hereinafter referred to as the 'Plinth Area Rules'), the petitioner's wife submitted Form No.II return as provided under Rule 5 of the said Rules in which it has been stated that the building was occupied on 06.06.2000 and the construction of the building is yet to be completed. Pursuant to a notice issued under Form No.IV the petitioner appeared for personal hearing. But

he has not raised any objection regarding the plinth area. Thereafter, the 3rd respondent had inspected the building on 19.2.2001, in which it was found that plinth area of the building is 344 m^2. The petitioner expressed his willingness to remit the amount in 4 equal instalments and orders were issued accordingly. Therefore, according to the 3rd respondent, in view of the return filed in Form No.II, it is evident that the construction of the building was completed only after the appointed day, namely, 1.4.1999. Therefore, according to the 3rd respondent, the levy of luxury tax as well as the consequential demand are perfectly legal and no interference of this Court is called for.

6. A counter affidavit has been filed by the 4th respondent Panchayat in which it has been stated that the Panchayat has not collected any tax for the period from 1999-2003 for the new building. It was without disclosing the fact that the petitioner had constructed a new building in the place of an old building, he paid tax in lumpsum to the Panchayat and obtained Ext.P2 certificate. On receipt of notice in this Writ Petition the Panchayat conducted an enquiry and came to know that without giving a notice under Rule

18 of the Kerala Panchayat Raj (Building Tax and surcharge thereon) Rules on the construction of a new building, the petitioner paid tax under old tariff concealing the fact of construction of the new building. The 4th respondent thereupon took proceedings against the petitioner and issued Ext.R4(1) notice dated 15.3.2006 under Rule 6(5) of Kerala Panchayat Raj (Building Tax and Surcharge thereon) Rules. Later the Panchayat assessed building tax for the building and demanded tax for the entire period, from the date of construction, i.e., 1999, till the first half of 2006 and issued Ext.R4(2) demand notice. Therefore, the 4th respondent Panchayat would contend that, the petitioner played a fraud on the Panchayat and obtained Ext.P2 certificate and therefore no reliance can be placed.

7. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 to 3 and also the learned Standing Counsel for the 4th respondent Panchayat.

8. The only issue that arises for consideration in this Writ Petition is as to the legality or otherwise of the levy of luxury tax on

the petitioner's residential building bearing No.VP 4/246B in Vettathoor Grama Panchayat, based on Exts.P4, P6 and P8. Section 5 of the Kerala Building Tax Act deals with charge of building tax and Section 5A of the said Act deals with charge of luxury tax. Sections 5 and 5A of the Act read thus:-

> "**5. 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.
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> (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.
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> (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 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.

5A. Charge of luxury tax.-(1) Notwithstanding anything contained in this Act, there shall be charged a luxury tax of four thousand rupees annually on all residential buildings having a plinth area of 278.7 square metres or more and completed on or after the 1st day of April, 1999.

(2) The luxury tax assessed under this Act shall be paid in advance on or before the 31st day of March, every year."

9. Going by Section 5A of the Act, notwithstanding anything contained in the Building Tax Act, there shall be charged a luxury tax of ₹.2000/- (substituted as ₹.4000/- by the Kerala Finance Act, 2014) annually on all residential buildings having a plinth area of 278 sq.mts. and completed on or after 1.4.1999. Sub-section (2) of Section 5A provides that the luxury tax assessed under this Act shall be paid in advance on or before the 31st day of March, every year. A reading of Section 5A of the Act makes it abundantly clear that the charge of luxury tax on a building having a requisite plinth area of 278.7 square metres or more is dependent upon the date on which the construction of the building is completed. As far as the date of completion of a building is concerned, Explanation to Section 5, which deals with charge of building tax categorically provides that, for the purposes of the Building Tax 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.

10. Section 7 of the Building Tax Act mandate a return of completion, etc. of building. Going by Sub-section (1) of Section 7 the owner of every building, the construction of which is completed,

or to which major repair or improvement is made on or after the appointed day shall furnish to the Assessing Authority a return in the prescribed Form, within the prescribed period, along with a copy of the plan approved by the local authority or such other authorities as may be specified by the Government in this behalf and verified in the prescribed manner and containing such particulars as may be prescribed.

11. In exercise of the powers conferred by Sub-sections (1) and (2) of Section 26 of the Kerala Building Tax Act, 1975 the Government have issued Kerala Building Tax (Plinth Area) Rules, 1992. Going by Rule 5, the return under Sub-section (1) or (3) of Section 7 or Section 8 shall be in Form II and it shall be filed within two months from the date of completion of construction, major repairs or improvement of the building or actual occupation of the building whichever is earlier. Going by Rule 6 the notice as provided under sub-section (3) of Section 7 of the Building Tax Act shall be in Form No.III.

12. In the case on hand the main contention raised by the learned counsel for the petitioner is that even before the appointed

day the petitioner has completed the construction of the residential building and his family members occupied the same. Since the construction of the building is completed before the appointed day and the building was also occupied by the family members before that day the building is not liable for levy of luxury tax under Section 5A of the Act. In support of this contention the petitioner is mainly relying on Ext.P2 certificate issued by the 4th respondent Grama Panchayat. As I have already noticed the specific stand taken by the 4th respondent is that it was without disclosing the fact that the petitioner had already constructed a new building in the place of an old building, he managed to obtain Ext.P2 certificate from the 4th respondent. In such circumstances, relying on Ext.P2 or receipt issued by the 4th respondent the petitioner cannot contend that the construction of building in question was prior to the appointed day under Section 5A.

13. In the counter affidavit filed by the 3rd respondent it has been categorically stated that the wife of the petitioner has submitted a return in the prescribed Form in response to a notice issued by the 3rd respondent in Form No.III. In the said return filed

in Form No.II, she has categorically stated that the date of occupation of the building is 6.6.2000 and that the construction of the building was not completed at that point of time. Going by the specific stand taken by the 3rd respondent in its counter affidavit dated 6.3.2015, it is evident that the construction/occupation of the building in question was subsequent to the appointed day for charging luxury tax under Section 5A of the Act. If that be so, the demand for luxury tax made in Ext.P4 and the orders passed by the appellate authority as well as the revisional authority rejecting the appeal/revision filed by the petitioner are perfectly legal and no interference of this Court is warranted.

In the result, this Writ Petition fails and the same is dismissed. No order as to costs.

ANIL K.NARENDRAN, JUDGE

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