IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 26360 of 2015 (T)

PETITIONER(S):

BIJU THOMAS AGED 45 YEARS
THEVARVELIL, OORAMANA P.O., MUVATTUPUZHA
ERNAKULAM-686663.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENT(S):
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1. **THE DISTRICT COLLECTOR, ERNAKULAM**
   PIN-682030.

2. **THE REVENUE DIVISIONAL OFFICER**
   MUVATTUPUZHA, ERNAKULAM DISTRICT-686673.

3. **THE TAHSILDAR**
   MUVATTUPUZHA-686673.

4. **STATE OF KERALA**
   REPRESENTED BY LAND REVENUE COMMISSIONER
   SECRETARIAT, TRIVADRUM-695001.

5. **THE VILLAGE OFFICER**
   MEMURY, MUVATTUPUZHA-686673.

R BY GOVERNMENT PLEADER, SMT. LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26360 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE ASSIGNMENT DEED DT.15-1-2013 IN FAVOUR OF THE PETITIONER.

EXHIBIT P1A : TRUE COPY OF THE SKETCH PLAN OF THE BUILDING.

EXHIBIT P2 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE R3 FOR RE MEASUREMENT AND REASSESSMENT OF LUXURY TAX.

EXHIBIT P2A : TRUE COPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER FROM THE OFFICE OF 3RD RESPONDENT.

EXHIBIT P3 : TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTERS MASS CONTACT PROGRAMME THROUGH 1ST RESPONDENT.

EXHIBIT P3A : TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 26360 of 2015

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Dated this the 28th day of September, 2015

JUDGMENT

The petitioner, who was assigned 1 acre and 5 cents of land with a two storied residential building therein, was assessed to luxury tax under the Kerala Building Tax Act, for various years upto 2013-2014. In the writ petition, the petitioner is aggrieved by Exts.P2(a) and P3(a) orders, whereby the 3rd and 1st respondents respectively, have rejected the request of the petitioner for a fresh assessment of the building to luxury tax for the assessment years 2014-2015 and thereafter. It is the contention of the petitioner that the building that was assigned to the petitioner does not have the required plinth area for the purposes of levying luxury tax. In Exts.P2(a) and P3(a) orders, the 3rd and 1st respondents respectively, have taken a stand that, inasmuch as the building was assessed to building tax as early as in 2002-2003 and luxury tax in respect of the building has been remitted upto the year 2013-2014, it was not open at this stage to consider the request of the petitioner for a fresh assessment to luxury tax.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, and taking note of the fact that the levy of luxury tax is a yearly levy where a fresh assessment has to be done every year before demanding tax from the owner of the building, it would be incumbent upon the 3rd respondent assessing authority to examine the claim of the petitioner, that the building in question does not have the plinth area required to attract the levy of luxury tax for the assessment year 2014-2015 and in subsequent years. I, therefore, quash Exts.P2(a) and P3(a) orders, and direct the 3rd respondent to examine the application of the petitioner, regarding non-applicability of the provisions of the Kerala Building Tax Act, with regard to Luxury tax, to the building of the petitioner, by inspecting the said premises, if required. The 3rd respondent shall pass fresh orders of assessment in respect of the building belonging to the petitioner,after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment. If the 3rd respondent causes a measurement of the plinth area of the building to be done, then the same shall be done only after giving prior intimation to the petitioner, so that the

petitioner can also be present at the time of inspection of the building. The demand of luxury tax in respect of the building owned by the petitioner shall be made only after an assessment is done as directed above for the assessment years 2014-2015 and thereafter.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das