IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 31284 of 2009 (E)

PETITIONER(S):

M.A. MEERAN PILLAI,
T.C. NO. 16/123, KRISHNAVILASAM ROAD, COTTON HILL,
THIRUVANANTHAPURAM.

BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENT(S):
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1. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE,
PALAYAM, THIRUVANANTHAPURAM.

2. THE CHAIR PERSON,
STANDING COMMITTEE FOR FINANCE AND TAXES,
CORPORATION OF THIRUVANANTHAPURAM,
CORPORATION BUILDING, PALAYAM, THIRUVANANTHAPURAM.

3. TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, REPRESENTED BY ITS, SECRETARY,
MEDICAL COLLEGE.P.O, THIRUVANANTHAPURAM.

R1,2 BY ADVS. SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K. MANOJKUMAR, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 31284 of 2009 (E)

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF THE ASSESSMENT ORDER DATED 6/1/01

P2: COPY OF THE RECEIPT FOR TAX PAID ON 18/1/01

P3: COPY OF THE DEMAND NOTICE DATED 20/11/06

P4: COPY OF THE DEMAND NOTICE DATED 20/11/06

P5: COPY OF THE APPEAL FILED BY THE PETITIONER

P6: COPY OF THE ORDER DATED 29/12/2007 PASSED BY R2

P7: COPY OF THE JUDGMENT IN WPC.7170/09 DATED 27/5/09

P8: COPY OF THE JUDGMENT IN WPC14037/09 DATED 27/5/09

P9: COPY OF THE WRITTEN SUBMISSION FILED BY PETITIONER

P10: COPY OF THE ORDER DATED 17/8/09 PASSED THE R2

P11: COPY OF THE REVISION FILED BY THE PETITIONER

P12: COPY OF THE JUDGMENT IN WPC.28673/09 DATED 22/10/09

P13: COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE R3

P14: COPY OF THE ENDORSEMENT MADE BY THE R3 ON THE REVISION FILED BY THE PETITIONER

P15: COPY OF THE PROPERTY TAX INEX SHEET FILE NO.Q/TP3/31463/00 DATED 20/7/04

P16: COPY OF THE PROPERTY TAX INDEX SHEET FILE NO.R4/TP3/31463/00 DATED 20/7/04

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 31284 of 2009

Dated this the 4th day of September, 2015

J U D G M E N T

As per Ext.P1, the petitioner's building was assessed under Section 242 of the Kerala Municipalities Act; and yearly property tax was fixed at ₹8,658/- for the period from 1997-98 till regularization of construction of the building. The petitioner paid property tax up to 2001 and filed appeal against the assessment stating that tax assessed is on a high side. The construction of the building was regularized on 01.03.2004 on payment of compounding fee. The petitioner received Exts.P3 & P4 notices, demanding yearly property tax at the rate of ₹ 8,31,638/-. The petitioner alleges that no assessment order was passed in respect of these demand notices, which made an enhancement of yearly tax from ₹8,658/- to ₹49,458/-. Further, that demand also covered tax from 1997-98 to 2000-01, which had already been assessed and paid by the petitioner; it is alleged. According to the petitioner, the whole procedure was illegal and without authority of law. The petitioner filed appeal against these notices before the 2nd respondent. The petitioner alleges that though the appeal was filed in time, the 2nd respondent dismissed the appeal as time barred. Though the petitioner filed a revision before the 3rd respondent, it was not registered stating that 509(11) was not complied with. The petitioner filed WP(C) No.7170/2008 before this Court seeking a direction to the tribunal to waive the payment of tax and to direct the 3rd respondent to register the revision; and this Court disposed of the writ petition directing the petitioner to remit ₹3 lakhs, on payment of which the tribunal was directed to register the revision filed by the petitioner. Thereafter, the tribunal set aside the order of the 2nd respondent and remanded the matter to the 2nd respondent with a direction to pass fresh proper order. Thereafter, the 2nd respondent passed an order on 01.04.2009 intimating that tax is modified from ₹49,458/- to ₹42,043/-. Since it was not a speaking order, the petitioner again filed WP(C) No.14037/2009, in which the said order was set aside directing the 2nd respondent to pass fresh order after hearing the petitioner. The petitioner filed a detailed submission (Ext.P9). However, without considering any of the points raised by the petitioner, the 2nd respondent passed Ext.P10 order making an illusory reduction of 20% and fixing the tax at ₹39,573/-. The tax assessed at the rate ₹8,658/- vide Ext.P1 was paid as per Ext.P2 up to the year 2001 and a deposit of ₹3 lakhs was also made as directed by this Court. According to the petitioner, these facts were not considered. The petitioner filed Ext.P11 revision. However, it was not registered stating that Section 509(11) was not complied with. According to the petitioner, this is not correct in view of the above payments. He alleges that in fact, excess payment of ₹ 76,161/- was made. The petitioner has serious challenges about the legality and correctness of assessment, which has been highlighted in the appeal and revision petition. The petitioner filed WP(C) No.28673/2009 before this Court; and this Court, as per Ext.P12, directed the petitioner to file a detailed statement before the 3rd respondent; and the 3rd respondent was directed to consider it and pass a judicial order. The petitioner filed Ext.P13 statement. By Ext.P14 endorsement on the revision filed by the petitioner, the 3rd respondent returned the revision without passing a judicial order. According to the petitioner, the 3rd respondent tribunal has committed serious illegality in flouting the order of this Court and refusing to exercise the jurisdiction vested in it in an illegal and arbitrary manner. Hence, this writ petition.

2. Arguments have been heard.

3. Opposing the writ petition, the learned Standing Counsel for the respondent corporation would submit that the petitioner has not paid the entire arrears.

4. However, it is crucial to note that the direction

in the judgment has not been complied with by the Tribunal in letter and spirit; and therefore, the matter requires a reconsideration in the light of Ext.P12 judgment.

Therefore, the writ petition is disposed of quashing Exts.P10 & P14 and directing the Tribunal for Local Self Government Institutions to receive the revision on file and to dispose of the same in compliance of Ext.P12 judgment. The petitioner as well as the respondent corporation is free to raise all their contentions. It is hereby made clear that I have not touched anything on merits. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-