IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 29880 of 2013 (H)

PETITIONER(S):

N. VISWANATHAN,
PROPRIETOR, VIDYA PICTURE PALACE,
THATHAAMPALLY P.O., AVALUKUNNU WARD,
ALAPPUZHA DISTRICT - 688 613.

BY ADVS.SRI.R.AZAD BABU,
SMT.SMITHA PILLAI.

RESPONDENT(S):
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1. TAHSILDAR, TALUK OFFICE,
   AMBALAPUZHA, ALAPPUZHA- 688 565.

2. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO REVENUE,
   SECRETARIAT, THIRUVANANTHAPURAM -695 001.

BY SR. GOVT. PLEADER SRI.R. RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 29880 of 2013 (H)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 -	TRUE COPY OF THE CERTIFICATE DATED 12-09-1980 ISSUED BY THE REGIONAL ELECTRICAL INSPECTOR.
EXT.P2 -	TRUE COPY OF THE RELEVANT PART OF THE AGREEMENT DATED 03-09-1980 ENTERED INTO BETWEEN THE DISTRIBUTOR AND THE PETITIONER.
EXT.P3 -	TRUE COPY OF THE LICENCE DATED 15-09-1980 ISSUED BY THE MUNICIPAL COUNCIL, ALAPPUZHA.
EXT.P4 -	TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER DATED 28/03/2011.
EXT.P5 -	TRUE COPY OF THE ORDER OF ASSESSMENT DATED 28-03-2011 ISSUED BY THE RESPONDENT.
EXT.P6 -	TRUE COPY OF THE DEMAND NOTICE DATED 28-03-2011 ISSUED BY THE RESPONDENT TO THE PETITIONER.
EXT.P7 -	TRUE COPY OF THE JUDGMENT DATED 22-06-2011 IN WP(C).NO. 10956 OF 2011.
EXT.P8 -	TRUE COPY OF THE ORDER NO.BT 115/11/J1 DATED 28-10-2011 PASSED BY THE 1ST RESPONDENT.
EXT.P9 -	TRUE COPY OF THE APPEAL MEMORANDUM FILED DATED 14-12-2011.
EXT.P10 -	TRUE COPY OF THE LETTER DATED 30-01-2013 BEARING NO.C.6574/12 ISSUED BY THE RDO, ALAPPUZHA.
EXT.P11 -	THE NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER BEARING NO. BT.115/11/J1 DATED 03-09-2013.

RESPONDENT'S EXHIBITS:-

EXT.R1A	COPY OF THE NEWS IN MATHRUBHUMI DAILY DATED 23/06/2011.

//TRUE COPY//

P.S. TO JUDGE

rs.

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 29880 of 2013

Dated this the 04th day of August, 2015

JUDGMENT

The petitioner has approached this Court challenging an assessment order under the Building Tax Act, 1975.

2. The case of the petitioner is that he has constructed a cinema theatre in the year 1980 and he has changed the use of the theatre by converting it to an auditorium before the last three years. It is submitted that there is no enhancement in the plinth area of the building as a result of the change of use. It is submitted that only the nature of use is changed and not the nature of the building.

3. The petitioner's case was re-considered consequent upon the directions in the judgment of this Court in W.P.(C).No.10956/2011. Though, the petitioner was represented by a lawyer, he did not appear thereafter. Accordingly, the assessment was completed. The petitioner's case is that the building cannot be assessed for the building tax under Section 5 of the Act, as the building was constructed prior to 10.02.1992. The question whether the building was constructed prior to 10.02.1992 or whether the

building is liable to be assessed in terms of Section 5 of the Act is not seen addressed by the Tahsildar. It is obvious that on account of absence of the petitioner and for not raising objections, the Tahsildar did not consider the issue.

4. In that view of the matter, this Court is of the view that interests of justice demands, an opportunity should be given to the petitioner. Therefore, the impugned order is set aside to limited extent of giving an opportunity to the petitioner. The petitioner shall appear before the Tahsildar on 07.09.2015 at 11 a.m. with all the details. The petitioner shall also raise written objection on that day. Thereafter, the Tahsildar shall pass appropriate orders after hearing the petitioner.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

bpr