IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 31304 of 2010 (K)

PETITIONER(S):

THE BLOSSOM HEALTH CARE PRIVATE LIMITED,
PERUMTHANAM, UZHAVOOR, KOTTAYAM,
REPRESENTED BY ITS MANAGING DIRECTOR, E.M.STEPHEN,
S/O.LATE V.E.MATHEW, ELAVUNKAL HOUSE,
UZHAVOOR.

BY ADVS.SRI.K.J.JOSEMON,
SRI.MATHEW SKARIA &
SRI.JOY JOSEPH (MUNDACKAL).

RESPONDENT(S):

1. UZHAVOOR GRAMA PANCHAYAT,
   REPRESENTED BY ITS SECRETARY,
   UZHAVOOR P.O., KOTTAYAM-686 634.

2. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
   THIRUVANANTHAPURAM,
   REPRESENTED BY ITS SECRETARY, NEAR MEDICAL COLLEGE,
   THIRUVANANTHAPURAM 695 001.

R1 BY ADV. SRI.P.SANTHALINGAM (SR.),
R1 BY ADV. SRI.S.SHARAN &
BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT. P1 : TRUE COPY OF THE APPEAL PETITION DATED 25/08/2008 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT. P2 : TRUE COPY OF THE APPLICATION DATED 14/09/2009 SUBMITTED BY THE PETITIONER BEFORE STANDING COMMITTEE FOR FINANCE OF THE 1ST RESPONDENT.

EXT. P3 : TRUE COPY OF THE DECISION NO.2 DATED 07/01/2010 OF THE STANDING COMMITTEE FOR FINANCE OF THE 1ST RESPONDENT.

EXT. P4 : TRUE COPY OF THE APPEAL FILED BY PETITIONER BEFORE 2ND RESPONDENT AND CORRECTED AND NUMBERED AS REVISION NO.33/2010.

EXT. P5 : TRUE COPY OF THE REPLY DATED 20/04/2010 FILED BY THE 1ST RESPONDENT BEFORE 2ND RESPONDENT.

EXT. P6 : TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 11/06/2010 IN REVISION PETITION NO.33/2010.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.31304 of 2010

Dated this the 26th day of May, 2015

JUDGMENT

The petitioner which is a private limited company incorporated under the Companies Act, has constructed buildings at Uzhavoor for the purposes of the petitioner. The petitioner alleges that the construction was not completed and the activities of the company have not started during the year 2009-2010. Building numbers were assigned to the rooms and different portions of the building by the first respondent and assessed property tax for the said rooms and portions amounting to ₹1,62,725/- per year. The petitioner did not pay the aforesaid amount for the year 2008-2009 and made Ext.P1 appeal before the standing committee for finance of the first respondent requesting to exempt the petitioner from payment of tax till the petitioner starts functioning and to refund the tax amount already paid. However, the same was not considered by the standing committee for Finance of the first respondent.

2. During the next year, i.e. in the year 2009-2010, the petitioner submitted Ext.P2 application for the very same relief. It was rejected as per Ext.P3 decision. The rejection was for the reason that the application was given only on 16.9.2009. Though the petitioner filed an appeal before the second respondent, the second respondent dismissed the appeal stating that as per Rule 15(3)(b), the period in respect of which remission is granted cannot be calculated from the date of issuance of notice or from the date on which the building remains vacant whichever comes later in the half year and the remission is sought for the reason that the petitioner has made the application only on 14.9.2010. The appeal was also rejected.

3. In the counter affidavit filed by the respondent it was contended that Ext.P2 application dated 14.9.2009 was submitted at the fag end of that period. Rule 15(1) of the Kerala Panchayat Raj Act, Building Tax and Surcharge thereon, Rule 1996 is applicable, if the building is vacant

during half year. It was pointed out that as the application was submitted just before the expiry of half year, the petitioner is not entitled to get tax remission. Therefore, they justified their stand in rejecting the petitioner's application.

4. Arguments have been heard.

5. The learned counsel for the petitioner inviting my attention to Ext.P1 application submitted that the petitioner had submitted the same on 25.8.2008 itself stating that the buildings were lying vacant and the company has not started functioning and there was a request to exempt the petitioner from payment of tax till the petitioner starts functioning and to refund the tax amount already paid. It was submitted by the learned counsel for the petitioner that the first respondent was well aware of the fact that the buildings were lying idle. There are specific averments in the writ petition which is not controverted in the counter affidavit. It is clear from Ext.P5 reply of the first respondent that the first respondent knew that the building was lying vacant. As

the buildings were lying vacant, presumably, the buildings were not fetching any income during that period. Therefore, the property tax assessed for half year for the period 2009-2010 is arbitrary and disproportionate. Therefore, this Court is of the view that the petitioner is entitled to remission as prayed for.

In the result, this writ petition is allowed. Exts.P3 and P6 are quashed and respondents 1 and 2 are directed to allow remission of property tax in respect of the period from 1.4.2009 to 30.9.2009.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/ **true copy**

P.S.TO JUDGE