IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 29875 of 2015 (H)

PETITIONER :

V.P.RAPHAEL,
VALLACHIRAKARAN HOUSE,
CHERPU P.O., THRISSUR -680 561.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

RESPONDENT :

THE TAHSILDAR,
THRISSUR -680 001.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 29875 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **TRUE COPY OF THE LETTER ISSUED BY THE NATIONAL MONUMENTS AUTHORITY DATED 12/9/2012**

P2: **TRUE COPY OF THE RECOMMENDATION OF THE NATIONAL MONUMENTS AUTHORITY DATED 12/9/2012**

P3: **TRUE COPY OF THE PLAN CERTIFIED BY THE COMPETENT AUTHORITY, AMASR (A&V) DATED 2/7/2011**

P4: **TRUE COPY OF NOTICE NO.G5-44896/2014 ISSUED BY THE RESPONDENT DATED 5/1/2015.**

P5: **TRUE COPY OF THE ORDER NO.G5-44896/2014 ISSUED BY THE RESPONDENT DATED 5/1/2015**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29875 of 2015

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Dated this the 3rd day of December, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 order of assessment passed in relation to the petitioner under the Kerala Building Tax Act. It is the contention of the petitioner that there was a building that was constructed in the property prior to 10.02.1992, the appointed day specified in Section 2(a) of the Kerala Building Tax Act,1975. Thereafter in 2014, the petitioner effected certain additional constructions to the existing building and approached the respondent with documents to show the extent of the additional construction put up by him. It is stated that, the respondent thereafter informed the petitioner that there would be an inspection pursuant to which alone the assessment proceedings would be completed against the petitioner. Counsel for the petitioner submits that although an inspection was conducted, the petitioner was not afforded a hearing after the inspection, and the respondent proceeded to pass Ext.P5 assessment order subjecting the entire plinth area of the building to tax, and raising a demand of Rs.5,22,000/- on the petitioner. It is therefore that the petitioner challenges Ext.P5 order in the writ petition as being vitiated by a non-compliance with the rules of natural justice.

2. I have heard the learned counsel appearing on behalf of

the petitioner as also the learned Government Pleader for the respondent. The learned Government Pleader on instructions would submit that, the petitioner was afforded a hearing before the respondent in connection with the assessment proceedings, and on the date of the hearing the petitioner had produced some documents to show the extent of the construction put up by him. It is stated that, there were no documents produced by the petitioner suggesting that there was an existing building in the property and that the constructions effected in 2014 were additional constructions. It is further stated that, the respondent had caused an inspection of the building to be conducted and it was after ascertaining the plinth area of the building in the said inspection that the assessment order was passed.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, although there was a hearing afforded to the petitioner by the respondent, the respondent subsequently caused an inspection of the building to be conducted and had caused the plinth area of the building to be measured by the Charge Officer. It was based on the report of the said Charge Officer that the respondent proceeded to complete the assessment. It is not in dispute, however, that before completing the assessment after the inspection, the petitioner was not afforded an opportunity of hearing. Taking note of the said

fact, I am of the view that, the petitioner should be afforded an opportunity of producing materials to indicate the existence of a building in the property prior to 10.02.1992 to substantiate his contention that he would be liable to building tax under the Kerala Building Tax Act, 1975 only in respect of the extent of additional construction effected in 2014. I, therefore, quash Ext.P5 order and direct the respondent to pass fresh orders of assessment in relation to the building of the petitioner within a period of one month from the date of receipt of a copy of this judgment, after hearing the petitioner. To enable the respondent to do so, I direct the petitioner to appear before the respondent at his office at 11 am on 14.12.2015 with all relevant documents to substantiate his contention on merits.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/3.12.15