IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 31072 of 2015 (H)
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PETITIONER(S):

RADHAKRISHNAN V.S.,
VALLIKUNNATH HOUSE, VALAYANCHIRANGARA P.O.,
RAYAMANGALAM, PERUMBAVOOR.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENT(S):

THE TAHSILDAR,
TALUK OFFICE, KUNNATHUNADU,
PERUMBAVOOR - 683 542.

BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 31072 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: COPY OF THE REPORT DTD.31.1.2006 OF DEPUTY TAHSILDAR.

EXT.P2: COPY OF THE ORDER OF ASSESSMENT DTD.2.2.2006 OF TAHSILDAR, ASSESSING AUTHORITY.

EXT.P3: COPY OF THE REPORT NO.146/15/RYM DTD.6.4.2015 OF VILLAGE OFFICER, RAYAMANGALAM.

EXT.P4: COPY OF THE ORDER NO.G1-18133/05 DTD.3.2.2006 OF THE RESPONDENT.

EXT.P5: COPY OF THE NOTICE NO.G1-14342/14 DTD.24-12-2014 OF THE RESPONDENT.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 31072 of 2015

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Dated this the 13th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 demand notice demanding luxury tax from the petitioner for the assessment year 2015-2016. It is the case of the petitioner that the plinth area of the building, after excluding the area occupied by the car porch, will not be such as would attract the levy of luxury tax under Section 5A of the Kerala Building Tax act. It is, therefore, that he challenges the demand in Ext.P5 to the extent it pertains to the assessment year 2015-2016.

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, I find if that, it is the specific case of the petitioner that the building in question, after excluding the area occupied by the car porch will not come within the ambit of Section 5A of the Kerala Building Tax Act. This, however, is an aspect that has to be verified by the authority before proceeding to assess the building of the petitioner for luxury tax for

the assessment year 2015-2016. Inasmuch as this has not been done, prior to issuance of Ext.P5 demand notice against the petitioner, I quash Ext.P5 demand notice to the extent it demands luxury tax from the petitioner for the assessment year 2015-2016, and direct the respondent to cause a measurement to be done of the plinth area of the building belonging to the petitioner, after notice to the petitioner. Thereafter, the respondent shall pass an assessment order under Section 5A of the Kerala Building Tax Act, by adopting the plinth area as determined by the measurement directed to be done in this judgment. The liability of the petitioner to luxury tax shall be based on the assessment to be done by the respondent as directed in this judgment. I make it clear, that the petitioner shall be afforded by an opportunity of hearing prior to the completion of the assessment directed in this judgment.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /13.10.15