IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 31397 of 2014 (Y)

PETITIONER :

BIJU.A.PAULOSE,
AGED 46 YEARS,
S/O.PAULOSE,
RESIDING AT ARACKAL HOUSE,
VELLOOKUNNAM VILLAGE, MUDAVOOR KARA,
MUVATTUPUZHA TALUK.

BY ADVS.SRI.C.DILIP
SRI.P.N.VIJAYAN NAIR

RESPONDENTS :

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1. THE DISTRICT COLLECTOR,
   CIVIL STATION, KAKKANAD, KOCHI-30.

2. REVENUE DIVISIONAL OFFICER,
   MUVATTUPUZHA P.O, MUVATTUPUZHA, PIN. 686 661.

3. THE TAHSILDAR, TALUK OFFICE,
   MUVATTUPUZHA, PIN-686 661.

R3 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31397 of 2014 (Y)

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 - TRUE COPY OF ASSESSMENT ORDER DATED 23-6-2005 ISSUED BY THE 3RD RESPONDENT.
EXT.P2 - TRUE COPY OF THE ORDER DATED 19-7-2009 PASSED BY THE SECOND RESPONDENT IN APPEAL NO. K.DIS.00079/05/A7.
EXT.P3 - TRUE COPY OF ORDER DATED 26-08-2009 PASSED BY THE THIRD RESPONDENT.
EXT.P4 - TRUE COPY OF ORDER DATED 23-5-2012 PASSED BY THE FIRST RESPONDENT.
EXT.P5 - TRUE COPY OF ORDER DATED 19-7-2013 PASSED BY THE SECOND RESPONDENT.
EXT.P6 - TRUE COPY OF THE REVISION PETITION DATED 07-11-2013 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.
EXT.P7 - TRUE COPY OF THE ORDER DATED 26-09-2014 PASSED BY THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.31397 of 2014

Dated this the 3rd day of September, 2015

JUDGMENT

The petitioner has constructed a residential building in Velloorkunnam Village of Muvattupuzha Taluk, which was assessed for building tax by Ext.P1 assessment order dated 23.6.2005 issued by the 3rd respondent under the provisions of the Kerala Building Tax Act, 1975 (hereinafter referred to as the Act). Treating the plinth area of the building at 333.79 sq.mt. the 3rd respondent assessed building tax at ₹7,800/-. Since the plinth area of the building is more than 278.7 sq.mt. the 3rd respondent has also levied luxury tax at the rate of ₹2,000/- per year, in terms of Section 5A of the Act.

2. Challenging Ext.P1 order of assessment, the petitioner filed appeal before the 2nd respondent contending, inter alia, that the plinth area of the building has not been calculated correctly and that certain non-residential portions, storage place, etc., having no concrete roof and the car porch were not exempted from plinth

area. By Ext.P2 order dated 19.7.2009 the 2nd respondent disposed of the appeal directing the 3rd respondent to pass fresh orders after deducting an area of 50.82 sq.mt. covered by the car porch. Based on Ext.P2 order, the 3rd respondent by Ext.P3 proceedings dated 26.8.2009 charged building tax at ₹4,800/- and since the plinth area of the building after excluding an area of 50.82 sq.mt. covered by the car porch comes to 283 sq.mt., luxury tax in terms of Section 5A of the Act was also levied.

3. According to the petitioner, after the order of remand by Ext.P2, he has not received any intimation whatsoever from the 3rd respondent and as such the re-assessment in Ext.P3 was made without notice to him. He was served with a copy of Ext.P3 order only on 10.5.2012, against which he filed a revision before the 1st respondent, which was disposed of by Ext.P4 order observing that, since copy of Ext.P3 fresh assessment order was communicated to the petitioner on 10.5.2012, he can very well file an appeal before the 2nd respondent. On receipt of Ext.P4 the petitioner filed appeal before the 2nd respondent, which ended in dismissal by Ext.P5 order dated 19.7.2013 on the ground of delay. Ext.P5 order of the 2nd

respondent was under challenge in Ext.P6 revision filed before the 1st respondent. The 1st respondent by Ext.P7 order dated 26.9.2014 dismissed the aforesaid revision petition and it is aggrieved by the said order the petitioner is before this Court in this writ petition, seeking a writ of certiorari to quash Ext.P7 and seeking a writ of mandamus commanding the 3rd respondent to re-assess building tax after conducting a proper measurement in his presence.

4. On 25.11.2014, while admitting the Writ Petition, this Court has granted stay of all further proceedings pursuant to Ext.P3 for a period of two weeks. On 10.12.2014 the said order was extended by two months and thereafter on 11.2.2015 for a further period of one month.

5. A counter affidavit has been filed on behalf of the 3rd respondent contending, inter alia, that the residential building constructed by the petitioner was originally assessed in Ext.P1 assessment order for a plinth area of 333.82 sq.mt. Thereafter based on Ext.P2 order passed by the 2nd respondent, the 3rd respondent issued Ext.P3 re-assessment order by reducing 50.82 sq.mt. from the plinth area of the building and by demanding

building tax at ₹4,800/- for a plinth area of 283 sq.mt. and a further sum of ₹2,000/- towards luxury tax under Section 5A of the Act since the total plinth area of the building is above 278.7 sq.mt. The revision filed by the petitioner against Ext.P3 order passed by the 3rd respondent ended in dismissal by Ext.P7 order passed by the 1st respondent.

6. A reading of Ext.P2 order passed by the 2nd respondent would show that the matter was remanded to the 3rd respondent for re-assessment after excluding the plinth area of the car porch with 50.82 sq.mt. In Ext.P2 the 2nd respondent has categorically rejected the claim made by the petitioner for exclusion of other areas like charth, varandha, etc. In the absence of a challenge made by the petitioner, the findings to that effect in Ext.P2 order passed by the 2nd respondent attained finality. Therefore, in an appeal or revision filed against Ext.P3 re-assessment order passed by the 3rd respondent, the petitioner cannot re-agitate the claim for exclusion of the aforesaid area.

7. A reading of Ext.P7 order passed by the 1st respondent would show that, it was after considering the relevant materials, in

accordance with law, the 1st respondent came to the conclusion that re-assessment made in Ext.P3 is perfectly legal and no interference is warranted. The reasoning of the 1st respondent in Ext.P7 is neither perverse nor patently illegal warranting any interference of this Court under Article 226 of the Constitution of India.

In the result, this Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-

ANIL K.NARENDRAN, JUDGE

skj