IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 31438 of 2014 (D)

PETITIONER(S):

E.ABDUL KHADER,
AGED 52 YEARS,
S/O. LATE IBRAHIM, RESIDING AT T.N.M HOUSE,
MUTTATHODY P.O., VIDYANAGAR VIA
KASARAGOD TALUK AND DISTRICT.

BY ADVS.SRI.T.R.RAVI
SRI.JAWAHAR JOSE
SRI.V.VINAY MENON
SMT.CISSY MATHEWS
SRI.ARUN AJAY SHANKAR

RESPONDENT(S):

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1. THE DISTRICT COLLECTOR
CIVIL STATION, KASARAGOD - 671 123.

2. THE REVENUE DIVISIONAL OFFICER,
KASARAGOD AT KANHANGAD, KANHANGAD P.O.
KASARAGOD DISTRICT - 671 315.

3. THE TAHSILDAR,
TALUK HEADQUARTERS, KASARAGOD- 671 121.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr.

WP(C).No. 31438 of 2014 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE CERTIFICATE DATED 22/01/2010 ISSUED BY THE SECRETARY, CHENGALA GRAMA PANCHAYATH.

EXHIBIT-P2-TRUE COPY OF THE ORDER DATED 24/11/2009 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT-P3-TRUE COPY OF THE ORDER DATED 18/02/2011 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE ORDER DATED 17/09/2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE ORDER DATED 24/10/2008 IN W.P(C) 2195/2005.

EXHIBIT-P6-TRUE COPY OF THE RECEIPTS EVIDENCING PAYMENT.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.S.TO JUDGE

vmr

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.31438 of 2014

Dated this the 13th day of July, 2015

J U D G M E N T

The petitioner impugning assessment of Luxury Tax has approached this Court.

2. The only issue to be considered is whether construction of the petitioner was before 01.04.1999. The Kerala Building Tax Act, 1975 was added with Section 5A which empowers the assessing authority to charge Luxury Tax by assessing all buildings having plinth area of 278.7 m^2 or more completed on or after 01.04.1999. The authority rejected the petitioner's claim that building has been assessed before 01.04.1999 for the reason that, the certificate issued by the Secretary of Local Authority cannot be taken as a conclusive evidence about the date of completion of construction of the building. The authority relied on the judgment of this Court in W.P.(C).No.2195/2005 wherein this Court held that, the certificate issued by the authority cannot be taken as a conclusive evidence about the date of completion of construction of the building. However, it was held that, if the owner has taken regular electricity connection and had started using power for the residential purpose, the same will be a valuable piece of evidence as proof of date of completion of construction. The petitioner relies on the certificate issued by the Electricity Department which certifies that service connection to the consumer has been effected on 18.02.1998. The

petitioner also relies on Ext.P1 certificate issued by the Local Authority certifying that, this house has been registered in the A sessment Register of Ward IV of Chengala Grama Panchayath du ing 1993-1998.

3. The learned Government Pleader submits that, the petitioner having not submitted return of the building in time after competition, therefore, he cannot take advantage of his own failure to submit return within time to contend that, building was in occupation prior to 01.04.1999.

4. The learned counsel for the petitioner in answer to the above argument submits that, Section 5A was brought only with effect from 01.04.1999. Merely, because of he has not filed return pursuant to Rule 5A cannot be a ground to assume that, this building was constructed after 01.04.1999. It is further submitted that, the Panchayat was at that time exempted from obtaining building permit and it is consequent upon Amendment Act 13 of 1999, the Building Rules were brought applicable to this area.

5. I am not expressing on other issues, since this Court is of the view that, the matter requires reconsideration in the light of the claim made by the petitioner based on the electricity connection obtained prior to 01.04.1999.

6. This Court is of the view that, the judgment relied by the authority in the impugned order did not overrule the reliance being

placed by the assessee in respect of the certificate issued by the local authority. In fact that judgment directs overall assessment of evidence produced to rely upon the date of occupation of the building. In this case, the petitioner has produced Ext.P7, a certificate issued by the Electricity Department. Necessarily, the Board will have relevant records to show the consumption of electricity from that date onwards. That be so, I am of the view that, the matter requires reconsideration after adverting to Ext.P7. If possible the Thahsildar is also free to call for any records from the Electricity Board regarding consumption of electricity for the building from 18.02.1998. If the material placed by the petitioner is sufficient to hold that the construction was before 01.04.1999, necessarily the building in question shall be excluded from the purview of Luxury Tax.

Accordingly, the impugned order is set aside. This writ petition is disposed of directing the Thahsildar to re-consider the matter afresh within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV