IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 32232 of 2014 (D)

PETITIONER:

THE VAIDYARATNAM OUSHADASALA PVT.LTD.,
THAIKKATTUSSERY, THRISSUR, REP. BY ITS
DIRECTOR E.T.NEELAKANDAN MOOSS,
39/2144, M.G.ROAD, ERNAKULAM.

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL

RESPONDENTS:

1. THE COCHIN CORPORATION,
COCHIN-682 011, REP. BY ITS SECRETARY.

2. THE SECRETARY, COCHIN CORPORATION,
COCHIN-682 011.

3. THE TOWN PLANNING OFFICER,
COCHIN CORPORATION, COCHIN-682 011.

BY ADV. SRI.BABU KARUKAPADATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 32232 of 2014 (D)

PETITIONER'S EXHIBITS:

EXT. P1 : A TRUE COPY OF THE SALE DEED DATEDD 29.3.2000.

EXT. P2 : A TRUE COPY OF THE SALE DATED 17.5.2000.

EXT. P3 : A TRUE COPY OF THE SPECIAL NOTICE DATED 6.1.2012 IN RESPECT FO THE BUILDING 39/2144.

EXT. P4 : A TRUE COPY OF THE NOTICE DATED 6.1.2012 IMPOSING TAX IN RESPECT OF BUILDING 39/2144 I (U/A).

EXT. P5 : A TRUE COPY OF THE RECEIPT DATED 13.3.2012 EVIDENCING P.AYMENT OF RS.3,63,591/-.

EXT. P6 : A TRUE COPY OF THE RECEIPT SHOWING PAYMENT OF THE TAX DEMANDED DATED 3.10.2012.

EXT. P6(a) : A TRUE COPY OF THE RECEIPT SHOWING PAYMENT OF THE TAX DEMANDED DATED 26.12.2012.

EXT. P7 : A TRUE COPY OF THE REPRESENTATION DATED 26.12.2012 SUBMITTED ON BEHALF OF THE PETITIONER'S ESTABLISHMENTS.

EXT. P8 : A TRUE COPY OF THE NOTICE UNDER SECTION 406(i) DATED 18.6.2013.

EXT. P9 : A TRUE COPY OF THE OBJECTION DATED 1.7.2013 SUBMITTED BY THE PETITIONER BEFORE THE CORPORATION.

EXT. P10 : A TRUE COPY OF THE NOTICE DATED 19.7.2013 ISSUED TO THE PETITIONER.

EXT. P11 : A TRUE COPY OF THE STATEMENT DATED 23.9.2013 SUBMITTED BY THE PETITIONER BEFORE THE MUNICIPALITY.

EXT. P12 : A TRUE COPY OF THE NOTICE DATED 30.5.2014 IN RESPECT OF THE BUILDING NO.41/2144(1) (U/A) & 66/1859 A (U/A).

EXT. P12(a) : A TRUE COPY OF THE NOTICE DATED 30.5.2014 IN RESPECT OF THE BUILDING NO.41/2144 (62/1859).

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.32232 of 2014 D

Dated this the 20th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, an Ayurveda treatment institution, purchased 9.11 cents of land, with structures existing thereon, near M.G.Road, through Exhibits P1 and P2 sale deeds dated 29.03.2000 and 17.05.2000 respectively.

3. After the purchase of the property by the petitioner, the respondent Corporation is said to have revised the building tax in 2012, as could be seen from

Exhibit P3. Later, in the same year, through Exhibit P4 the respondent Corporation raised another demand for additional property tax, as if the property contained two structures. The petitioner seems to have complied with both the demands in Exhibits P3 and P4 and paid the requisite property tax.

4. Having concluded that the property contained two buildings, the respondent Corporation has demanded payment of arrears of property tax amounting to ₹ 3,63,691/- which, in fact, was paid by the petitioner on 13.03.2012, as per Exhibit P5.

5. Under those circumstances, the petitioner submitted Exhibit P7 application dated 26.12.2012 seeking regularisation of the structures on the property purchased by the petitioner way back in 2000. Without considering Exhibit P7, the respondent Corporation issued Exhibit P8 notice directing the petitioner to demolish the alleged

unauthorised construction. In the wake of Exhibit P9 objection submitted by the petitioner, the respondent Corporation provided a hearing to the petitioner, as could be seen from Exhibit P10 dated 19.07.2013. Eventually, apprehending demolition of the structures, the petitioner has filed the present writ petition.

6. The learned counsel for the petitioner has strenuously contended that all along only one building has been in existence in the property purchased by the petitioner. Since the property was purchased through two sale deeds, i.e. Exhibits P1 and P2, the respondent Corporation came to an erroneous conclusion that there were two buildings in existence having two separate numbers. At any rate, the petitioner, contends the learned counsel, has submitted Exhibit P7 application for regularisation, having paid the entire tax arrears as has been demanded by the respondent Corporation.

7. It is the singular contention of the learned counsel for the petitioner that the respondent Corporation ought not to have issued Exhibit P8 and initiated further steps without, in the first place, considering Exhibit P7 application of the petitioner.

8. The learned Standing Counsel for the respondent Corporation has strenuously opposed the claims and contentions of the petitioner. To begin with, he has submitted that though there is only one structure in existence, it has two floors, a part of which is unauthorised. Eventually, he has submitted that the respondent Corporation will consider Exhibit P7 application of the petitioner in accordance with law before it could take any further steps.

9. In the light of the submissions made by the learned Standing Counsel for the respondent Corporation, I do not deem it appropriate to adjudicate the issue on

merits. In fact, the respondent Corporation is required to consider the petitioner's Exhibit P7 application in terms of Section 406(i) of the Kerala Municipality Act.

In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel, this Court, without expressing any opinion on the merits of the matter, disposes of the writ petition with a direction to the second respondent to consider Exhibit P7 application of the petitioner for regularisation in accordance with law and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

tkv