IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 33918 of 2014 (L)

PETITIONER:

M.P.PAULOSE, AGED 74 YEARS
S/O.PAVU, MUTTANCHERY HOUSE, KRAVIYELI KARA
KOMBANADU, PERUMBAVOOR, ERNAKULAM DISTRICT

BY ADVS.SRI.M.P.KRISHNAN NAIR
SMT.RAJESWARI KRISHNAN
SMT.SEEMA KRISHNAN
SRI.V.B.NARAYANAN
SRI.C.SIVADAS

RESPONDENTS:

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1. STATE OF KERALA
REP.BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001.

2. REVENUE DIVISIONAL OFFICER
MUVATTUPUZHA, ERNAKULAM DISTRICT 686 661.

3. THE TAHSILDAR
KUNNATHUNADU TALUK, PERUMBAVOOR, ERNAKULAM DISTRICT
PIN 683 542.

4. ASSISTANT EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT, BUILDING SECTION
PERUMBAVOOR 683 542.

Addl.5. VENGOOR GRAMA PANCHAYAT
VENGOOR P. O., PERUMBAVOOR, ERNAKULAM DISTRICT
REPRESENTED BY ITS SECRETARY.

ADDL.R5 IMPLEADED AS PER ORDER DATED 12.01.2015 IN IA 17612/14.

BY ADV. GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 33918 of 2014 (L)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: COPY OF THE JUDGMENT IN OP NO. 28466/02

EXHIBIT P2: COPY OF THE SETTLEMENT DEED DATED 17/6/2002 IN THE NAME OF SON OF THE PETITIONER

EXHIBIT P3: COPY OF THE TAX RECEIPT IN THE NAME OF PETITIONER'S SON DATED 28/10/10 ISSUED BY THE KUNNATHUNADU VILLAGE OFFICE

EXHIBIT P4: COPY OF THE NOTICE DATED 20/12/2010 ISSUED BY THE 2ND RESPONDENT

EXHIBIT P5: COPY OF THE JUDGMENT DATED 1/2/2011 PASSED BY THE HON'BLE HIGH COURT OF KERALA

EXHIBIT P6: COPY OF THE APPEAL DATED 3/3/11 FILED BY THE PETITIONER

EXHIBIT P7: COPY OF THE ORDER DATED 19/11/14 PASSED BY THE 2ND RESPONDENT

EXHIBIT P8: COPY OF THE RATION CARD OF THE PETITIONER

EXHIBIT P9: COPY OF THE RATION CARD OF THE PETITIONER'S SON ISSUED IN THE NAME OF MOTHER MARY POULOSE

EXHIBIT P10: COPY OF THE GAS CONNECTION CERTIFICATE OF THE PETITIONER

EXHIBIT P11: COPY OF THE GAS CONNECTION IN THE NAME OF THE WIFE OF THE PETITIONER

EXHIBIT P12: COPY OF THE APPROVED PLAN OF THE BUILDING

RESPONDENT(S)' EXHIBITS

EXHIBIT R3 (a): TRUE COPY OF THE PLAN AND CALCULATION SHEET SHOWING THE TOTAL PLINTH AREA OF THE BUILDING SUBMITTED BY THE ASSISTANT EXECUTIVE ENGINEER, PWD (BUILDINGS) SECTION, PERUMBAVOOR.

EXHIBIT R3 (b): TRUE COPY OF THE PETITION DATED 11.11.2010 FILED BY PETITIONER.

EXHIBIT R3 (c): TRUE COPY OF THE JUDGMENT DATED 01.02.2011.

EXHIBIT R3 (d): TRUE COPY OF THE NOTICE DATED 19.09.2014.

EXHIBIT R3 (e): TRUE COPY OF THE REPORT OF THE ASSISTANT EXECUTIVE ENGINEER.

EXHIBIT R3 (f): TRUE COPY OF THE ACKNOWLEDGEMENT DATED 19.10.2010.

//TRUE COPY//

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.33918 of 2014

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Dated this the 5th day of August, 2015

JUDGMENT

The petitioner challenges assessment for luxury tax under Building Tax Act, in this writ petition. The building in question has been assessed for luxury tax reckoning plinth area of 315.97sq.m. This was in the year 2000. Thereafter the petitioner assigned a portion of the building in favour of his son. That was in the year 2002. The original assessment was in the year 2001.

2. The Tahsildar rejected the same stating that the portion now assigned in favour of the son cannot be excluded from the purview of the luxury tax.

3. Luxury tax is a recurring tax. Therefore, it depend upon the availability of the plinth area for assessment of the liability. If the plinth area is reduced, subsequently, necessary steps has to be taken for the purpose of assessment.

4. The question that only remains is, whether the building has been separated legally and functionally? If the building is legally and functionally separated from the original building, necessarily, that plinth area has to be separated from the original assessment. The Tahsildar, in fact, apparently did not proceed to decide this issue in this perspective. This has to be verified by the Tahsildar by conducting a site inspection. Therefore, the following directions are issued:

a) The Tahsildar is directed to conduct a site inspection of the building and find out the total plinth area of the building.

b) It is open for the Tahsidar to take action as per the directions of this Court in O.P.28466/2002 and connected cases (Ext.P1), if it is found that the building is of plinth area 315.97sq.m. The Tahsildar is free to implement the directions in the aforesaid judgment.

c) The Tahsildar shall find out whether the building is separated legally and functionally. If it is separated legally and functionally, necessarily, plinth area after the year 2002 shall be taken separately for the purpose of assessment.

d) However, till the execution of the sale deed, the building has to be taken as a single unit for the purpose of luxury tax.

e) The petitioner shall appear before the Tahasildar on 02.09.2015 at 11am.

f) The petitioner shall make available all the relevant materials before the Tahsildar.

g) The Tahsildar shall after conducting site inspection, hearing of the petitioner and recording the same, take a decision within an outer limit of two months thereof.

h) The impugned order is accordingly set aside.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

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