IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 34192 of 2015 (Y)

PETITIONER(S):

ELSAMMA JOSEPH, W/O.GEORGE,
NEDUMKALLEL HOUSE, KALLOORKKAD VILLAGE,
KALLOORKKAD.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZHY

RESPONDENT(S):
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1. THE VILLAGE OFFICER,
KALLOORKKAD - 686 668.

2. THE TAHSILDAR, TALUK OFFICE,
MUVATTUPUZHA - 686 661.

3. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA - 686 661.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 34192 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 5.5.2014.

P2 - A TRUE COPY OF THE REPLY BY THE 2ND RESPONDENT DATED 23.6.2014 TO THE PETITIONER.

P3 - A TRUE COPY OF THE LETTER BY THE 2ND RESPONDENT TO THE PETITIONER DATED 11.7.2014.

P4 - A TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 17.4.2015.

P5 - A TRUE COPY OF THE NOTICE DATED 31.8.2015 BY THE 2ND RESPONDENT TO THE PETITIONER.

P6 - A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 28.9.2015.

P7 - A TRUE COPY OF THE REPORT OF THE CIVIL ENGINEER.

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF THE NOTICE WITH ENDORSEMENT “RECEIVED FOR ELSAMMA GEORGE WITH SIGNATURE OF PETITIONER'S HUSBAND.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 34192 of 2015

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Dated this the 3rd day of December 2015

<u>JUDGMENT</u>

The challenge in the writ petition is against Ext.P6 order of the 2nd respondent, that assesses the petitioner's liability to luxury tax under the Kerala Building Tax Act. In the writ petition, the petitioner contends that before passing Ext.P6 order, he was not afforded an opportunity of hearing and that there were no notice given to him before the 2nd respondent conducted a measurement of the plinth area of the building. It is therefore contended that Ext.P6 order is vitiated by a non-compliance with the rules of natural justice. A statement has been filed by the 2nd respondent, wherein, it is stated that a notice proposing a site inspection was issued to the petitioner through the Village Officer, Kalloorkkad. The said notice was received on 07.09.2015 by the petitioner's husband, and a copy of the notice with the endorsement is produced as Annexure R2A. The said facts are pointed out in the statement only to rebut the contention of the petitioner that she was not aware of the date of inspection at the premises. It is stated in the statement that, based on the inspection and a measurement of the building, it was found that there was no variation in the measurement of the building earlier done by the village officer, Kalloorkkad and hence the earlier assessment order that imposed luxury tax on the petitioner was confirmed.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that Ext.P6 order was passed by the 2nd respondent, after affording the petitioner an opportunity of being present at the time of site inspection, when a re-measurement was done on the basis of the remand order passed by the appellate authority, in the previous round of litigation. It was found on site inspection that, the measurement of the building was the same as was earlier determined, and it was under those circumstances, that Ext.P6 order was passed, confirming the levy of luxury tax on the petitioner. Inasmuch as I do not find Ext.P6 order to be vitiated by any non-compliance with the rules of natural justice or any jurisdictional error, I am of the view that if the petitioner is aggrieved by Ext.P6 order, he must approach the appellate authority under the Kerala Building Tax Act, against Ext.P6 order. I, therefore, dismiss the writ petition in its challenge against Ext.P6 order and

relegate the petitioner to his alternate remedy of filing an appeal against Ext.P6 order before the appellate authority, under the Kerala Building Tax Act.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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