IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 34919 of 2015 (L)

PETITIONER(S) :
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1. E.JOSEPH SIMON
   AGED 63 YEARS, S/O. LATE JOSEPH
   ELENGICAL HOUSE
   PUTHIYA ROAD, KALOOR
   KOCHI – 682 017.

2. SABEENA SIMON
   AGED 50 YEARS, ELENGIKAL HOUSE
   PUTHIYA ROAD, KALOOR
   KOCHI – 682 017.

BY ADVS.SRI.R.SANJITH
SMT.K.JASMIN BABY
SMT.C.S.SINDHU KRISHNAH
SMT.LEKSHMI RAMAKRISHNAN
SRI.P.T.EMMANUEL TONY

RESPONDENT(S) :
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1. STATE OF KERALA
   REPRESENTED BY ITS PRINCIPAL SECRETARY
   REVENUE DEPARTMENT, SECRETARIAT
   THIRUVANANTHAPURAM – 695 001.

2. DISTRICT COLLECTOR
   ERNAKULAM DISTRICT, COLLECTORATE
   CIVIL STATION, ERNAKULAM – 682 024.

3. THAHASILDAR
   KANAYANNUR TALUK
   ERNAKULAM – 682 011.

4. SENIOR AUDIT OFFICER
   SRA PARTY 12, CAMP AT TALUK OFFICE
   KANAYANNUR, ERNAKULAM – 682 011.

R1 TO R4 BY GOVT. PLEADER SRI. R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

WP(C).No. 34919 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF NOTICE DATED 14/5/2015.
EXT.P2		COPY OF AUDIT ENQUIRY NO. 43 DATED 18/3/2015.
EXT.P3		COPY OF THE ORDER OF ASSESSMENT UNDER THE KERALA BUILDING TAX ACT, 1975 BEARING NO. B1-15796/2011 DATED 22-1-2013.
EXT.P4		COPY OF THE REPLY DATED 24/7/015.
EXT.P5		COPY OF PROCEEDING DATED 15/10/2015 BEARING NUMBER B1-15796/11.
EXT.P5(a)		COPY OF NOTICE OF DEMAND.
EXT.P5(b)		COPY OF ORDER OF ASSESSMENT UNDER THE KERALA BUILDING TAX ACT.
EXT.P6		COPY OF REPLY DATED 12/11/15 ALONG WITH THE POSTAL RECEIPT.
EXT.P7		COPY OF THE ELEVATION OF THE BUILDING OF THE PETITIONERS.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.34919 of 2015

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Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner is aggrieved by Exts.P5, P5(a) and P5(b) orders whereby the building tax assessment done on the petitioner has been reopened by the 3rd respondent and a fresh demand of Rs.15,750/- raised on the petitioner. It is the contention of the petitioner that in the said orders passed by the 3rd respondent there is no basis indicated as to why the petitioner was required to pay an amount of Rs.15,750/-, and the said orders merely referred to an audited report wherein the Accountant General had pointed out that there was a discrepancy in the plinth area that was adopted for the purposes of computing the building tax leviable on the building in question.

2. I have heard the learned counsel for the petitioner and also 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 from Exts.P5, P5(a) and P5(b) orders that the said orders have been

passed by the 3rd respondent based solely on the audit objection pointed out by the Accountant General. It is the specific case of the petitioner that on receipt of the copy of the audit objection, he had brought to the notice of the 3rd respondent that the ground floor area of the building was only in an extent of 458.54 sq.metres and that the figure of 525.34 sq.metres that was mentioned in the audit objection was a mistake. It is pointed out that, it is notwithstanding this aspect having been pointed out that the 3rd respondent proceeded to mechanically confirm the demand against the petitioner. On going through the orders impugned in the writ petition, I find that, when the 3rd respondent was appraised of a possible mistake in the measurement conducted, which formed the basis of the audit report, then the 3rd respondent ought to have caused a fresh measurement to be done in respect of the disputed area in the presence of the petitioner so as to ensure a fair assessment of the petitioner's liability to building tax under the Kerala Building Tax Act. Inasmuch as this is not been done, I quash Exts.P5, P5(a) and P5(b) orders and direct the 3rd respondent to pass fresh orders after hearing the petitioner, and after causing a measurement of the ground floor area of the building in question afresh, in the presence of the representatives of the petitioner. The 3rd respondent shall pass fresh orders as directed within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/19.11.15