IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 35336 of 2015 (N)

PETITIONER(S):

NOORUL ISLAM EDUCATIONAL TRUST,
NICE GARDEN, ARALUMMOODU P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM-695 123,
REPRESENTED BY ITS CHAIRMAN A.P.MAJEED KHAN.

BY ADVS.SRI.T.B.HOOD
SMT.M.ISHA
SRI.AMAL KASHA

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE (SPECIAL CELL) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. TAHSILDAR,
AND THE ASSESSING AUTHORITY UNDER THE BUILDING TAX ACT,
TALUK OFFICE, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 121.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE COPY OF THE ORDER DT. 12/8/15 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF THE BUILDING BUILDING TAX ASSESSMENT ORDER DT. 30/10/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF THE BUILDING TAX DEMAND NOTICE DT. 30/10/06 ISSUED BY THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF GOVERNMENT ORDER (RT) NO. 1619/14/RD/DT. 24/3/14.

EXT.P5: TRUE COPY OF THE JUDGMENT DT. 19/9/2014 OF THIS HON'BLE COURT IN WPC 14993/14.

EXT.P6: TRUE COPY OF THE RECEIPT DT. 29/9/14 ISSUED BY THE VILLAGE OFFICER, ATHIYANNOOR.

EXT.P7: TRUE COPY OF THE GOVERNMENT ORDER (RT)NO. 5875/14/RD/DT. 26/11/14.

EXT.P8: TRUE COPY OF THE ORDER DT. 18/12/14 ISSUED BY THE 2ND RESPONDENT.

EXT.P9: TRUE COPY OF THE BUILDING TAX ASSESSMENT ORDER DT. 18/12/14 ISSUED BY THE 2ND RESPONDENT.

EXT.P10: TRUE COPY OF THE BUILDING TAX DEMAND NOTICE DT. 18/12/14 ISSUED BY THE 2ND RESPONDENT.

EXT.P11: TRUE COPY OF THE RECEIPT DT. 9/01/15 ISSUED BY THE VILLAGE OFFICER, ATHIYANNOOR.

EXT.P12: TRUE COPY OF THE RECEIPT DT. 7/7/15 ISSUED BY THE VILLAGE OFFICER, ATHIYANNOOR.

EXT.P13: TRUE COPY OF THE RECEIPT DT. 15/9/15 ISSUED BY THE VILLAGE OFFICER ATHIYANNOOR.

EXT.P14: TRUE COPY OF THE RELEVANT PAGE OF THE AUDIT REPORT, ALONG WITH LETTER DT. 23/6/15 SENT BY THE ACCOUNTANT GENERAL (ECONOMIC AND REVENUE SECTOR AUDIT), KERALA, TO THE 2ND RESPONDENT.

EXT.P15: TRUE COPY OF THE RELEVANT PAGES OF THE FINANCE ACT, 2014.

EXT.P16: TRUE COPY OF THE BUILDING TAX ASSESSMENT ORDER DT. 12/8/25 ISSUED BY THE 2ND RESPONDENT.

EXT.P17: TRUE COPY OF THE BUILDING TAX DEMAND NOTICE DT. 12/8/15 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.35336 OF 2015 (N)

Dated this the 23rd day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P1 order passed by the 2nd respondent, and consequential assessment order and demand notice [Exts.P16 and P17] that were passed by the 2nd respondent. Ext.P1 order is one that was passed pursuant to an audit objection of the Accountant General and has the effect of revising an assessment earlier concluded against the petitioner under the Kerala Building Tax Act. Ext.P16 assessment order is one that gives effect to Ext.P1 order and Ext.P17 demand notice is one that demands the amounts confirmed against the petitioner by Ext.P16 assessment order. The case of the petitioner essentially is that he was not issued any notice prior to the passing of Ext.P1 order or Exts.P16 and P17 assessment order and demand notice respectively. The petitioner has a specific case that Ext.P1 order, which had the effect of revising an assessment that was earlier concluded against the petitioner, could not have been passed by exercising the powers under Section 15 of the Kerala Building Tax Act.

2. I have heard the learned counsel for the petitioner as 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 that Ext.P1 order, as also Ext.P16 assessment order and Ext.P17 demand notice, cannot be legally sustained inasmuch as they have been passed without hearing the petitioner or giving him prior notice. I therefore quash Exts.P1 and P16 orders and Ext.17 demand notice. I direct the 2nd respondent to pass fresh orders in the matter, after affording the petitioner an opportunity of being heard on the audit objections that have been served on him and also after considering the aspect of jurisdiction of the 2nd respondent to proceed against the petitioner afresh, when there is already an assessment completed against him under the Kerala Building Tax Act. The 2nd respondent shall also consider the objection of the petitioner with regard to the applicability of the 2014 amendment to the building of the petitioner. The 2nd respondent shall pass fresh orders, as directed, within a period of one month from the date of receipt of a copy of this judgment, after

hearing the petitioner. To enable the 2nd respondent to do so, I direct the petitioner to appear before the 2nd respondent, at his office, at 11.00 a.m. on 08.12.2015.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/23/11/15