IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 38604 of 2015 (A)

PETITIONER :

CORDIAL FOUNDATION,
QUEENS TOWER, MUKKOLACKAL, KAZHAKKOOTTAM,
REPRESENTED BY ITS PARTNER,
N.AYYAPPAN UNNITHAN.

BY DR.S.GOPAKUMARAN NAIR,SENIOR ADVOCATE
ADVS. SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI. MOHAMMED SHAH
SRI.K.NANDAKUMAR
SMT. MARY RESHMA GEORGE

RESPONDENT(S):
----

1. TAHSILDAR, TALUK OFFICE,
   THIRUVANANTHAPURAM, PIN-695 001.

2. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

3. THE REVENUE DIVISIONAL OFFICER,
   THIRUVANANTHAPURAM-695 001
   THE APPELLATE AUTHORITY (UNDER THE KERALA
   BUILDING TAX ACT, 1975).

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 38604 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1(A): TRUE COPY OF SALE AGREEMENT IN FAVOUR OF APARTMENT OWNERS DATED 6.3.2009.

EXHIBIT P1(B): TRUE COPY OF SALE AGREEMENT IN FAVOUR OF APARTMENT OWNERS DATED 20.12.2008.

EXHIBIT P1(C): TRUE COPY OF SALE AGREEMENT IN FAVOUR OF APARTMENT OWNERS DATED 23.2.2011.

EXHIBIT P1(D): TRUE COPY OF SALE AGREEMENT IN FAVOUR OF APARTMENT OWNERS DATED 20.11.2008.

EXHIBIT P1(E): TRUE COPY OF SALE AGREEMENT IN FAVOUR OF APARTMENT OWNERS DATED 8.11.2008.

EXHIBIT P2(A): TRUE COPY OF THE CONSTRUCTION AGREEMENT SIGNED BY PARTY DATED 8.11.2008.

EXHIBIT P2(B): TRUE COPY OF THE CONSTRUCTION AGREEMENT SIGNED BY PARTY DATED 20.11.2008.

EXHIBIT P2(C): TRUE COPY OF THE CONSTRUCTION AGREEMENT SIGNED BY PARTY DATED 23.2.2011.

EXHIBIT P2(D): TRUE COPY OF THE CONSTRUCTION AGREEMENT SIGNED BY PARTY DATED 20.12.2008

EXHIBIT P2(E): TRUE COPY OF THE CONSTRUCTION AGREEMENT SIGNED BY PARTY DATED 6.3.2009.

EXHIBIT P3: TRUE COPY OF THE ON LINE REMITTANCE OF SERVICE TAX FOR A PERIOD FROM APRIL TO SEPTEMBER 2011.

EXHIBIT P4: TRUE COPY OF THE NOTICE NO.13125/14 DATED 6.7.2015.

EXHIBIT P5: TRUE COPY OF THE ABOVE REPLY ACKNOWLEDGED BY THE OFFICE OF THE TAHSILDAR WITH THEIR OFFICE INWARD NUMBER D4/49227/15.

EXHIBIT P6: TRUE COPY OF THE DEMAND NOTICE DATED 9.9.2015.

EXHIBIT P7: TRUE COPY OF THE PROCEEDINGS.

EXHIBIT P8: TRUE COPY OF THE PETITION.

EXHIBIT P9: TRUE COPY OF THE REPLY SENT BY THE TAHSILDAR LETTER NO.D4.59659/15 DATED 11.11.2015.

WPC.NO.38604/2015

EXHIBIT P10: **TRUE COPY OF ONE SUCH ORDER OF THE GOVERNMENT OF KERALA NO.G.O(ORDER) NO.3006/11/REVENUE DATED TRIVANDRUM 14.7.2011.**

EXHIBIT P11: **TRUE COPY OF THE ORDER NO.83652/12 DATED 15.11.2012.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

\- -

W.P.(C) No.38604 of 2015

\- -

Dated this the 18th day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 assessment order and Ext.P6 demand notice, that have been issued to the petitioner, assessing the building of the petitioner to building tax, under the Kerala Building Tax Act. The grievance of the petitioner in the writ petition is essentially that, in Ext.P7 order, the 1st respondent assessing officer has proceeded on the assumption that the petitioner, in whose favour a building permit had been issued, was the owner of the building, for the purposes of tax. It is the specific contention of the petitioner that, the construction of the building was pursuant to contracts entered into between the petitioner, on the one hand, and various customers/prospective clients, on the other. It is stated that as per the terms of the said contracts, there was a condition that the prospective buyers would advance certain amounts at periodic intervals to the petitioner, before the completion of the construction and the commencement of occupancy of the apartments in question. It is therefore contended that the individual apartments in the building had to be separately assessed in accordance with Explanation 2 to Section 2

(e) of the Kerala Building Tax Act. The petitioner also relies on Exts.P10 and P11 orders of assessment, in respect of other buildings that were constructed on the basis of similar agreements as entered into between the petitioner and his customers, and submits that Ext.P7 order is illegal in that it proceeds on an erroneous assumption of the factual situation. He would also rely on the decision of the Supreme Court in **State of Kerala & Others v. Mammikutty [2015 (3) KHC 794(SC)].**

2. I have heard the learned Senior Counsel Sri.Gopakumaran Nair, duly instructed by Sri.P.Chandrasekhar on behalf of the petitioner as also the learned Government Pleader on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, and finding that the matter requiring resolution is factual in that, the adjudicating authority would have to go into the contract entered into between the petitioner and his clients for the purposes of ascertaining whether the cost of construction of the building was met jointly by the various persons, who ultimately obtained ownership of apartments in the building, I am of the view that the petitioner must be relegated to his alternate remedy of filing an appeal against Ext.P7 order, before the 3rd respondent appellate

authority, under the Kerala Building Tax Act. Taking note of the condition in the Act with regard to the payment of the tax amount as a pre-condition for maintaining the appeal, and finding that the assessment was only in September 2015, I deem it the interests of justice to direct that the petitioner need remit only the 1st instalment of the tax assessed by Ext.P7 order and demanded in Ext.P6 notice, namely, Rs.3,64,500/-. Accordingly, if the petitioner prefers an appeal against Ext.P7 order, within a period of two weeks from the date of receipt of a copy of this judgment, accompanied by a payment of an amount of Rs.3,64,500/-, the 3rd respondent appellate authority shall consider the appeal on merits and pass orders in the appeal, after hearing the petitioner within a period of two months thereafter. I make it clear that till such time as the appellate authority passes orders as directed, and communicates the same to the petitioner, recovery steps for recovery of the balance amount confirmed against the petitioner in Ext.P7 order and demanded in Ext.P6 notice, shall be kept in abeyance.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/