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N.Harikrishnan and Others Vs. the R.D.O.Alappuzha and Others

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Court : Kerala

Decided On : Nov-25-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : N.Harikrishnan and Others

Respondent : The R.D.O.Alappuzha and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE25H DAY OF NOVEMBER20144TH AGRAHAYANA, 1936 WP(C).No. 6566 of 2010 (U) -------------------------- PETITIONER(S): ------------ 1. N.HARIKRISHNAN,AGED55 S/O.P.G.NARAYANAN NAIR, "SREELAKSHMI", SANATHANAM WARD ALAPPUZHA.

2. N.SURESH KUMAR, S/O.P.G.NARAYANAN NAIR, AGED49 MAKOM, ARYAD SOUTH VILLAGE ALAPPUZHA.

3. N.JAYAKRISHNAN, S/O.P.G.NARAYANAN NAIR, AGED47YEARS, MULLACKAL WARD, ALAPPUZHA. BY ADVS.SRI.R.MURALEEDHARAN PILLAI SRI.P.V.LONACHAN RESPONDENT(S): -------------- 1. THE REVENUE DIVISIONAL OFFICER, OFFICE OF THE REVENUE DIVISIONAL OFFICER, ALAPPUZHA.

2. THE TAHSILDAR, AMBALAPUZHA TALUK OFFICE, ALAPPUZHA.

3. THE VILLAGE OFFICER, MULLACKAL VILLAGE OFFICE, ALAPPUZHA. BY GOVERNMENT PLEADERSRI. BOBBY JOHN PULICKAPARAMBIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2511-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: APPENDIX PETITIONERS'EXTS: EXT.P1: PHOTOCOPY OF THE

ORDER
NO. E3B-765/07-08 DATED221-2008 EXT.P2: COPY OF THE OCCUPANCY CERTIFICATE VIDE

ORDER
E3-16239/09 DATED248-2008 EXT.P3: COPY OF THE SPECIAL NOTICE NO. T4 DATED268-2009 EXT.P4: COPY OF THE NOTICE DATED11-2010 FROM THE2D RESPONDENT EXT.P5: PHOTOSTAT COPY AGE CERTIFCATE OF THE BUILDING IZSUED BY THE MUINICIPALITY DATED221- 2010 EXT.P6: COPY OF THE WRITTEN OBJECTION TO THE2D RESPONDENT ON291-2010 EXT.P7: PHOTOSTAT COPY OF THE ASSESSMENT

ORDER
ISSUED BY THE2D RESPONDENT EXT.P7A. COPY OF THE DEMAND NOTICE BEARING NO. BT-501/10/J2DATED29-1-2010 EXT.P8: PHOTOSTAT COPY OF THE APPEAL AND THE AFFIDAVIT DATED92-2010 EXT.P9: TRUE PHOTOSTAT COPY OF TH E

ORDER
OF THE IST RESPONDENT DATED182-2010 A.K.JAYASANKARAN NAMBIAR, J.

-------------------------- W.P.(C) No. 6566 of 2010 Dated--------------------------- 2014 this the 25th day of November,

JUDGMENT
Petitioners are joint owners of a building, said to have been constructed in 1958. It is their case that, initially, the building was in the name of their father and later on, in 1984, pursuant to a partition of the property, the building was transferred in their

names. It is stated that in December 2007, the petitioners preferred an application before the Municipal authorities for effecting repairs and extensions to the building. Although the extension initially contemplated was to an extent of 183.90 Sq.mts, and the permission sought for from the Municipal authorities for effecting the extension, was granted by Ext. P1 order, the petitioners effected an extension of only 136.19 Sq.mts. It is their case that after the renovation, the total plinth area of the ground floor was 742.82 Sq.mts and, together with the plinth area of the mezzanine floor, it would account for a total plinth area of only 770.10 Sq.mts. The petitioners have a case W.P.(C) No. 6566 of 2010 2 that the mezzanine floor could not be taken for the purpose of computation of plinth area since it was not a structure for the purposes of inclusion in the plinth area of the building. By Ext. P3 order dated 26-8-2009 the petitioners were assessed to building tax on a plinth area of 700.12 Sq.mts. While the petitioners filed objections to the said assessment, the 3rd respondent conducted an inspection and after taking measurements of the building, arrived at a plinth area of 746 Sq.mts as covering the ground floor. Thereafter, by Ext. P7 assessment order, the 2nd respondent assessed the petitioners to building tax on a plinth area of 983.83 Sq.mts. and building tax of Rs. 1,49,400/- was demanded from the petitioners. Although the petitioners filed an appeal against Ext.P7 order, the same was rejected by Ext. P9 order dated 18-2-10 for non-deposit of the first instalment of building tax. It is under these circumstances that Ext. P7 order, P7(a) demand notice and P9 order are impugned in the Writ Petition.

2. A counter affidavit has been filed on behalf of the 2nd respondent wherein it is pointed out that the plinth area, declared by the petitioners as attributable to the extension to the building that was effected after the coming into force of the Kerala Building Tax Act, is erroneous . It is pointed out that the petitioners had actually effected reconstruction of the entire building and hence the entire W.P.(C) No. 6566 of 2010 3 plinth area of 983.83 Sq.mts had to be assessed to building tax by reckoning the building as one that was put up after the coming into force of the Kerala Building Tax Act. It is further pointed out that the appeal preferred by the petitioners was rejected on account of their not paying the first instalment of the building tax assessed on them as a condition for maintaining the appeal. On a consideration of the facts and circumstances of the case as also the submissions

made on behalf of the respondents by the learned Government Pleader, I am of the view that the issue requires to be examined, with reference to the facts, by the appellate authority under the Kerala Building Tax Act & Rules. The dispute raised by the petitioners is essentially one of fact and it requires to be ascertained whether the building that was assessed to building tax under Ext. P7 order was in fact a new construction or an extension of an old one. If, as contended by the petitioners, the building is an old one and only additional constructions or extensions have been effected subsequently, then, going by the provisions of the Kerala Building Tax Act, the levy of building tax can only be in respect of such part of the building as was constructed after the cut off date under the Kerala Building Tax Act. As already noted, these are matters which require to be factually ascertained before completing the assessment. Thus, while I am not inclined to interfere with the W.P.(C) No. 6566 of 2010 4 orders passed by the respondents, in the present proceedings under Article 226 of the Constitution of India, I feel that the petitioners can be given an opportunity to prefer an appeal before the appellate authority by paying the tax assessed on them by Ext. P7 assessment order. Accordingly, the Writ Petition is disposed by permitting the petitioners to prefer an appeal before the first respondent, by depositing the tax amount confirmed on them by Ext. P7 order. If such an appeal, together with the amount indicated, is preferred within a period of one month from the date of receipt of a copy of the judgment, then the first respondent shall consider the matter on merits and pass appropriate orders thereon within a period of one month thereafter, after hearing the petitioners. With these directions, this Writ Petition is disposed of. Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE ani/ W.P.(C) No. 6566 of 2010 5 xxx

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