

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF JANUARY 2017/22ND POUSHA, 1938

WP(C).No. 37213 of 2016 (B)

PETITIONER(S) :

MOHAMMED ASHRAF,
AGED 68 YEARS, S/O. HYDROSE KUTTY,
PUTHEN PURACKAL,
ERUVA, PATHIYOOR,
KAYAMKULAM.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHPAURAM.
2. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF PUBLIC WORKS,
SECRETARIAT, THIRUVANANTHPURAM.
3. REVENUE DIVISIONAL OFFICER,
REVENUE DIVISIONAL OFFICE,
CHENGANNUR.
4. THE THASILDAR,
TALUK OFFICE,
KARTHIKAPPALLY.

R1-R4 BY ADV. GOVERNMENT PLEADER V.K. SHAMSUDDIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-01-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED FROM THE ASSISTANT ENGINEER KAYAMKULAM MUNICIPALITY.
- P2 TRUE COPY OF THE ORDER OF ASSESSMENT.
- P3 TRUE COPY OF THE ORDER OF THE REVENUE DIVISIONAL OFFICER.
- P4 TRUE COPY OF THE ORDER ISSUED BY THE DISTRICT COLLECTOR.
- P5 TRUE COPY OF THE ORDER OF REJECTION OF THE REVISION.
- P6 TRUE COPY OF THE ORDER ISSUED THROUGH THE VILLAGE OFFICER.

RESPONDENT(S) ' EXHIBITS

NIL

TRUE COPY

P.S. TO JUDGE

EL

K. VINOD CHANDRAN, J.

W.P.(C) No. 37213 of 2016 (B)

Dated: 12th January, 2017

J U D G M E N T

The petitioner is aggrieved with the revisional order passed at Ext.P5. The petitioner challenges the assessment made of the building constructed by the petitioner, under Section 5A of the Kerala Building Tax Act, 1975 ('Act' for short).

2. The petitioner had constructed a building, for which Occupancy Certificate was issued by the local authority, as seen from Ext.P1. As per the Occupancy Certificate, the petitioner's building only has a total area of 265.26 square meters. The petitioner's building was assessed on the basis of a measurement conducted by the Village Officer, as seen from Ext.P2. The measurement revealed a plinth area of 288.26 square

meters and hence luxury tax was levied. An appeal was filed before the Revenue Divisional Officer, which was disposed of by Ext.P3. At the time of Ext.P3 also, there was a measurement made by the Tahsildar, which revealed a plinth area of 290.99 square meters, of which the Tahsildar found that an area of 2.73 square meters is entitled to be exempted as the open space of the stair case area. The learned Counsel for the petitioner was unable to point out any specific exemption granted to such staircase area in the statute.

3. Be that as it may, even after granting such an exemption, the plinth area exceeded the limit as provided under Section 5A of the Act. In such circumstances, the assessment was affirmed by the Appellate Authority. In a revision filed, it was found that at the original stage and at the appellate stage, measurements were conducted and the levy was made

in accordance with such measurement and the revision was dismissed.

4. The learned Counsel for the petitioner submits that the measurement has to be conducted in accordance with the Kerala Municipality Building Rules, 1999 ('Building Rules' for short), which view is supported by the decision of this Court in **Nehrad Naina v. District Collector, Ernakulam - 2011 (2) KHC 623**. The learned Government Pleader, however, points out an unreported decision of a Division Bench dated 29.06.2012 in **W.A.No.1177/2012 [Unnikrishnan K.K. v. State of Kerala & Others]**; in which the exclusion of 50% of open space for fixing the limit of construction in accordance with the Floor Area Rules under the Building Rules was found to be not relevant for assessment of building tax.

5. The learned Counsel for the petitioner also submits that there is no procedure by which the plinth area can be assessed under the Act. A reading of the Act specifically indicates that the plinth area has been defined as the entire plinth area of the building and the exemption provided, is available in the proviso to sub section (5) of Section 5. The determination of the plinth area, as per Section 7 has to be the plinth area of the building as specified by the local authority and verified by the assessing authority in the manner prescribed. There is no manner prescribed and hence there cannot be any assessment is the contention. In the absence of any prescription and the Act providing for verification of the plinth area specified in the plan, what is to be done is the actual measurement. There is hence no requirement of any guide lines and the plinth area as commonly understood; which is the total area of the

building, has to be taken. There is also no warrant for distinguishing the usable and unusable area for reason of no such categorisation having been made under the Act. The exemption provided has also been specified in the Act itself in the proviso to the charging section. The tax imposed under the statute, as brought out by the legislature, cannot also be regulated by the statutory rules issued under the Municipality or the Panchayath Raj Act.

6. In such circumstance, especially considering the fact that a Division Bench has found the Building Rules inapplicable to assessment under the Act, this Court does not find any reason to interfere with the assessment made, especially when three lower authorities have considered the issue and the measurements have also been done twice, at the original and appellate stage.

7. The further contention taken is of the direction in Ext.P4 order of the District Collector, wherein the District Collector noticed the direction from the Chief Minister to conduct the assessment by a P.W.D. Engineer. The Chief Minister is not an authority as prescribed under the Act and neither is the P.W.D. Engineer an authority competent to make measurements under the Act. Ext.P4 is, hence, unenforceable.

8. Reliance is also placed on the decision of another Division Bench, reported as **Lillykutty v. District Collector and Others - 2012 (3) KHC 1571** to urge that the plinth area has to be determined on the basis of Rule 8 of the Kerala Municipality Building Rules, 1999 which provide for exclusion of 50% of floor area of open spaces. The Division Bench merely referred to the provision in the Building Rules to

calculate the floor area and the definition of plinth area in the Building Tax Act and directed a re-verification. There is no binding declaration made in **Lillykutty**. In **Unnikrishnan**, the Division Bench categorically found that the exclusion of 50% open space in the Building Rules is for fixing the floor area; while the definition of plinth area in the Building Tax Act takes in the entire built up area. Further, later to the Division Bench decisions, in W.P.(C) No.32190 of 2016 vide judgment dated 05.10.2016 a learned Single Judge of this Court, who was part of the Division Bench which decided **Lillykutty** held that the only exemption that could be granted, in the determination of plinth area and levy of luxury tax as per the Building Tax Act, is with reference to the garage or any other erection or structure appurtenant to a residential building used for storage of firewood or for any non-residential purpose as has been

specifically provided for in the proviso to sub-section (5) of Section 5. The learned Single Judge has also placed reliance on the judgment in **Unnikrishnan**. There is hence no cause for interference.

The writ petition would stand dismissed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE