IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 02ND DAY OF DECEMBER 2019 / 11TH AGRAHAYANA, 1941

WP(C).No.12548 OF 2013(P)

PETITIONER:

JOJI JACOB
15 A4, KENT GLASS HOUSE, VYTTILA, KOCHI - 682 019.

BY ADV. SMT.NISHA JOHN

RESPONDENTS:

1 **CORPORATION OF COCHIN**
COCHIN, REPRESENTED BY ITS SECRETARY.

2 **STATE OF KERALA**
REPRESENTED BY THE SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

R1 BY SRI.K.ANAND, SC, COCHIN CORPN.

G.P. SMT. POOJA SURENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court alleging that an Apartment purchased by him in the year 2010 is being assessed to property tax, by the respondent Corporation, illegally on the basis of the annual rental value, though, as per the applicable Government Orders and provisions of law, such tax can be assessed only on the basis of plinth area of the building. The petitioner, therefore, prays that the Corporation be directed to redo the assessment of his Apartment, on the basis of the plinth area and issue him an appropriate order, so as to enable him to pay the tax without any further delay.

2. The petitioner further submits that, in fact, the Apartment became "occupiable" only in the year 2011, as is evident from Ext.P4 letter issued by the Kerala State Electricity Board, wherein electric connection it is stated to have been granted only on 23.07.2011 and therefore, that the assessment of the building prior to that is untenable.

3. In response, the learned Standing Counsel for the Corporation submitted that the Apartment in question was

completed by its builder on 27.04.2009 and that hence tax had been levied with effect from 01.04.2009. He says that the builder had challenged this assessment by filing a revision petition on 09.03.2010, but that the same was dismissed, thus leading to a further Appeal before the Tax Appeal Committee of the Corporation of Kochi, wherein, the half yearly tax was reduced by 3%. He says that the Apartment was then sold by the builder to a certain Smt.Latha Raju on 30.03.2010; and that the petitioner, thereafter purchased it from her on 11.03.2011. He says that the petitioner, thereafter, waited for more than two years to file this writ petition seeking a reduction of the property tax; and that this conduct of the petitioner would disentitle him to any relief from this Court. He, however, then added that steps for revision of the property tax based on the plinth area has been initiated by the Corporation as early as in the year 2013 and that a revised tax demand will be made with effect from 01.04.2013. He, therefore, prays that this writ petition be dismissed.

4. I have considered the afore submissions and have also examined the pleadings available on record, including the

counter affidavit filed on behalf of the 1st respondent. As seen above, the specific stand of the Corporation is that the Apartment in question has been assessed to tax as early as in the year 2009 and that all statutory remedies against the same have been exhausted by the builder, who was its original owner. Further, they say that the petitioner is only a subsequent purchaser and that he was aware of the amount of tax when he purchased the Apartment; and therefore, that he cannot be now allowed to turn around and say that he will not pay it or seek that it be reduced. Even though I find some force in these submissions, I am certainly of the view that, since the Corporation has admitted in their counter affidavit, in paragraph 12 thereof, that the steps for the revision of property tax based on the plinth area has been initiated by the Corporation and it will be with effect from 01.04.2013" (sic), its Secretary must now hear the petitioner and take a decision as to the revised property tax based, on the afore averments.

5. That said, however, as regards the contention of the petitioner regarding the "occupiability" of the building is concerned, I am afraid that I cannot accede to it because the

original owner of the Apartment, namely the builder, had admittedly approached the Corporation with a certificate saying that the building had been completed in the year 2009 and had invited an assessment over it, which was then challenged by them, finally ending with the order of the Tax Appeal Committee of the Corporation. Obviously, therefore, the contentions of the petitioner, that the Apartment became "occupiable" only after electricity connection was given to it, is not tenable or acceptable. I, therefore, repel this contention, particularly, because there is nothing on record to show how the building was used prior to 2011 and since the builder had submitted a letter of completion and occupancy as early as in the year 2009.

In the afore perspective, I order this writ petition to a limited extent and direct the Secretary or such other competent Authority of the Corporation to hear the petitioner within a period of one month from the date of receipt of a copy of this judgment and then decide upon the property tax with respect to the Apartment in question, adverting to the afore averments in the counter affidavit; and to thereafter, issue

appropriate orders thereon appropriately revising the property tax based on the plinth area.

The afore exercise shall be completed by the competent Authority not later than one month after the hearing of the petitioner is completed in terms of these directions.

This writ is thus ordered.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF CERTIFICATE DATED 15.07.2010 ISSUED BY REVENUE OFFICER OF THE 1STR RESPONDENT ON THE COMPLETION OF THE BUILDING.**
EXHIBIT P2	**TRUE COPY OF THE LETTER DATED 17.03.2011 ADDRESSED TO SECRETARY OF 1ST RESPONDENT REQUESTING HIM TO REDUCE THE TAX LEVIED.**
EXHIBIT P3	**TRUE COPY OF THE LETTER DATED 26TH SEPTEMBER 2011 ADDRESSED TO SECRETARY OF 1ST RESPONDENT REQUESTING HIM TO RESPOND TO THE GRIEVANCE.**
EXHIBIT P3(A).	**TRUE COPY OF THE ACKNOWLEDGEMENT OF RECEIPT OF EXHIBIT P3 LETTER.**
ADDL. EXHIBIT P4	**TRUE COPY OF THE LETTER CONTAINING INFORMATION REGARDING THE DATE OF ELECTRIFICATION OF PREMISES BY ASSISTANT ENGINEER, ELECTRICAL SECTION, VYTTILA DATED 25/10/2013**

//TRUE COPY//
P.A TO JUDGE