

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 25068 of 2005(H)

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CMA.50/1998 of DISTRICT COURT, THALASSERY

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PETITIONER:

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CHANDRALEKHA REGHUNATHAN,  
W/O. REGHUNATHAN, AGED 35 YEARS, `QUITESCENCE',  
WELLESLY ROAD, BURNASSERY, KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL  
SRI.N.M.MADHU  
SMT.C.S.RAJANI

RESPONDENTS:

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THE CANTONMENT BOARD,  
REPRESENTED BY ITS EXECUTIVE OFFICER, KANNUR.

BY ADV.SRI.M.RAMESH CHANDER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX(WPC 25068/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER NO.111/3 ASSESSMENT DT. 27.3.1998.

EXT.P2: TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.1996/2001 IN CMA 50/98 FILED BY THE PETITIONER DATED 8.8.2001.

EXT.P3: TRUE COPY OF THE ORDER IN CMA 50/98 DATED 6.1.2005 PASSED BY THE DISTRICT JUDGE.

**PIUS C. KURIAKOSE,J.**

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W.P.(C) No.25068 of 2005  
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Dated: 29<sup>th</sup> June, 2007

**JUDGMENT**

In this Writ Petition under Article 227 of the Constitution the petitioner challenges Ext.P3 judgment of the District Judge, Thalassery in an appeal preferred by the petitioner under Section 84 of the Cantonment Act, 1924. The appeal was directed against Ext.P1 property tax assessment made by the respondent- the Cantonment Board, Kannur. Under Ext.P1 the petitioner's house having door No.90-E in R.S.No.539 situated within the limits Kannur Cantonment governed by the provisions of the Cantonment Act, 1924 was assessed to an annual tax of Rs.3000/- on the basis of the determination of the annual rental value as Rs.13,636/-. In fact, in the first instance annual rental value was determined as Rs.29,049/- and tax was fixed as Rs.6391/- and the fixation under Ext.P1 was actually a refixation. The case of the petitioner is that even the refixation under Ext.P1 is highly exorbitant when compared to assessment of similar buildings and that Ext.P1 was passed without considering the objections filed by the petitioner and without hearing the petitioner personally. C.M.A.No.50/98 was filed by the petitioner before the District Court, Thalassery. The court allowed an application

filed by the petitioner for a direction to the respondent to produce documents relating to the property tax assessment as well as approved plans pertaining to similar buildings. But the respondent did not produce the documents instead Ext.P2 a very vague affidavit stating that the documents are misplaced was filed by the respondent. The learned District Judge however dismissed the appeal and Ext.P3 is copy of the judgment.

2. Assailing Ext.P1 on various grounds the petitioner contends that the court below ought to have drawn adverse inference against the respondent for not producing the documents called for in spite of an order in that regard. The non-production of the documents will justify drawal of an adverse inference that if the documents are produced they will be against the respondent.

3. Referring to Section 61 of the Cantonment Act, 1924, the petitioner contends that rate of tax has to be published and it is alleged that it is not even stated that the prevailing rate was 22% of the annual rental values. It is under Section 64(a) of the Act that the assessment has been done while the correct provision under which the petitioner's building which is a residential building ought to have been assessed is Section 64(b). The learned District Judge has not

considered this aspect of the matter. Referring to Sections 68(2) and 68(3) of the Act, the petitioner urges that it was necessary that an opportunity was given to the petitioner for filing written objections in the matter of assessment and for a personal hearing. According to the petitioner, no opportunity was given for filing written objections and much less for a personal hearing. Principles of natural justice have been blatantly violated and therefore the order of the District Judge and Ext.P1 are liable to be set aside.

4. I have heard the submissions of Mr.V.R.K.Kaimal, learned counsel for the petitioner and also those of Mr.M.Ramesh Chander, Standing Counsel for the respondent.

5. In fact the hearing of this case was taken up by me along with a batch of Writ Petitions filed by the respondent-Board wherein judgments of the learned District Judge interfering with the assessment orders made by the respondent-Board were impugned. Mr.V.R.K.Kaimal would make submissions mainly on the basis of the grounds raised in the Writ Petition. According to him, unlike the cases covered by other writ petitions in the present case the disputed tax has already been paid by the petitioner and therefore the appeals preferred before the District Court was perfectly maintainable. The

petitioner will be able to produce documents which will show that the assessment made under Ext.P1 is exorbitant in comparison to assessment of similar buildings made by the respondent itself. Mr.Ramesh Chander also did not have any serious objection in the matter of the respondent being directed to take a fresh decision on the issue on the basis of documents which may be placed on record by the petitioner.

6. Under the above circumstances, the Writ Petition will stand allowed. Ext.P3 judgment of the District Judge as well as Ext.P1 order of assessment are set aside. The respondent is directed to take a fresh decision on the issue on the basis of the documents which may be placed on record before the respondent by the petitioner. Fresh decision as directed above will be taken at the earliest and at any rate within three months of receiving copy of the judgment after giving due credit to all deposits and payments which have been made by the petitioner and after hearing the petitioner.

srd

**PIUS C.KURIAKOSE, JUDGE**