

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 31ST OCTOBER 2008 / 9TH KARTHIKA 1930

WP(C).No. 31135 of 2005(F)

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PETITIONER(S):

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MATHEW FRANCIS, PAYAPPILLY HOUSE,  
MANGALASSERY, KORATTY SOUTH,  
CHALAKKUDY.

BY ADV. SRI.S.EASWARAN

RESPONDENT(S):

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1. TAHSILDAR, MUKUNDAPURAM TALUK,  
IRINJALAKUDA.
2. THE REVENUE DIVISIONAL OFFICER,  
THRISSUR.
3. DISTRICT COLLECTOR,  
THRISSUR DISTRICT,  
THRISSUR.

BY G.P. SRI.TEKCHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31/10/2008, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## APPENDIX

### PETITIONER'S EXHIBITS:

P1: TRUE COPY OF NOTICE DT.23.7.2004 ISSUED BY R1.

P2: TRUE COPY OF NOTICE DT.18.9.2004 BY R1.

P3: TRUE COPY OF APPEAL FILED BY THE PETITIONER BEFORE R2.

P4: TRUE COPY OF PLAN SUBMITTED ALONG WITH THE APPEAL.

P5: TRUE COPY OF ORDER PASSED BY R2.

P6: TRUE COPY OF ORDER PASSED BY R1.

P7: TRUE COPY OF DEMAND NOTICE ISSUED BY R1.

P8: .DO. .DO.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.31135 of 2005  
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Dated this the 31st day of October, 2008.

JUDGMENT

The W.P.(C) is filed challenging demand of luxury tax in respect of petitioner's residential building. The total plinth area of the building assessed by applying Section 5(5) is 280.30 sq. metres. The building consists of a two storied main building and along with it an appurtenant structure which is an outhouse with a plinth area of 30.20 sq. metres. The Tahsildar assessed the building after adding the plinth area of the outhouse in terms of Section 5(5) of the Building Tax Act. The petitioner filed an appeal against assessment before the RDO. However, the RDO directed the Tahsildar to reconsider the matter after inspection and verification of the building. During pendency of the matter before the Tahsildar, the petitioner sold the outhouse with 1.9 cents of land to his wife. Since the sale of outhouse to petitioner's wife was after filing and disposal of the appeal by the RDO, he had no occasion to consider the effect of transfer of outhouse made by the petitioner. The Tahsildar though conducted inspection, again made assessment taking the plinth area of the building as 280.30 sq. metres. It is against this order the petitioner has filed this W.P.

2. Two questions arise for consideration, one is whether the plinth area of the outhouse is to be added to the plinth area of the house for the purpose of assessment of building tax and luxury tax. Even though counsel contended that plinth area of the outhouse should be excluded because it is only a storage room mainly to store firewood, it is admitted and it is clear from the diagram produced in court that the petitioner has no chimney and fuel used in the house is not firewood. Therefore, the claim that the outhouse which has a plinth area of 30.20 sq. metres is a storage place for keeping firewood is unacceptable. Whatever else is the use of the outhouse, the plinth area of it has to be added to the plinth area of the main building, if it is constructed for more convenient enjoyment of the main building i.e. house. An outhouse is either a place for storage of articles or to provide accommodation to guests, employees etc. In either case, the purpose is to get unwanted things outside the main building and the outhouse serves for better enjoyment of the main building. So much so, it is to be added to the plinth area of the main building for making assessment of building tax as required under Section 5(5) of the Act. The sale of outhouse to his wife by petitioner to reduce plinth area itself indicates that but for the transfer, it's plinth area is to be added to the plinth area of the main building as required under Section 5(5) of the Act. Therefore, the contention of the petitioner that the plinth area of the outhouse should not

be added to the plinth area of the main building is only to be rejected and I do so.

3. The next question to be considered is whether after date of transfer of the outhouse to his wife, the petitioner can press for revision of assessment or for fresh assessment for the purpose of levy of luxury tax for subsequent years. I do not think petitioner can be granted the benefit by his own fraud. The transaction is obviously a dubious one to reduce the tax liability. The Supreme Court has in MCDOWELL'S case held that court should not recognise dubious transactions entered into by parties to avoid tax liability otherwise due to the State. Going by the principle laid down by the Supreme Court, the respondents are entitled to ignore the sham transaction of sale of 1.9 cents of land and the outhouse thereon by petitioner to his wife and assess the building to tax in accordance with the statute. Consequently the claim for exclusion of plinth area of the outhouse based on the sham sale deed executed by the petitioner to his wife is only to be rejected. In view of the above findings, the writ petition is devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR  
Judge

pms