

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 28TH DAY OF NOVEMBER 2014/7TH AGRAHAYANA, 1936

WP(C) .No. 7454 of 2009 (B)

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PETITIONER(S) :

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GEORGE STEPHAN,  
PROPRIETOR, CHIRAKKAL SPICES, STEPHAN COMPLEX  
KIDANGOOR, ANGAMALY, ALUVA TALUK  
ERNAKULAM DISTRICT.

BY ADVS.SRI.G.HARIHARAN  
SRI.PRAVEEN.H.

RESPONDENT(S) :

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THE TAHSILDAR,  
ALUVA, ERNAKULAM DISTRICT.

BY ADV. GOVERNMENT PLEADER SMT.LILLY K.T

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
28-11-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:A TRUE COPY OF THE RECEIPT ISSUED BY THE THURAVOOR  
GRAMAPANCHAYATH FOR RS.320

EXT.P2: A TRUE COPY OF THE RECEIPT ISSUED BY THE THURAVOOR  
GRAMAPANCHAYATH FOR BUILDING NO.7/519 FOR A SUM OF RS.2042 ON ACCOUNT  
OF BUILDING TAX

EXT.P3:A TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE RESPONDENT  
UNDER SECTION 9 OF THE BUILDING TAX ACT 975

EXT.P4: TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER  
AND M/S KANCOR INGREDIENTS LTD.

EXT.P5: TRUE COPY OF THE RECEIPT DATED 22.2.2009 ISSUED FROM THE  
THURAVOOR GRAMAPANCHAYATH

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
W.P.(C).No.7454 of 2009

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Dated this the 28<sup>th</sup> day of November, 2014

**J U D G M E N T**

The petitioner, who is engaged in the business of manufacture of spice powders, constructed a building in the year 1996. As the building was used exclusively as a factory in connection with the manufacture of spice powder, he was under the impression that there was no liability under the provisions of the Kerala Building Tax Act. It is stated that while, initially, the building had a plinth area of 2500 sq.feet it has been increased over the years to more than 20000 sq.feet and the petitioner has been assessed to property tax in respect of the said building. Thereafter, the petitioner was assessed to building tax by an order dated 19.02.2009, and an amount of Rs.1,71,000/- was demanded from the petitioner by Ext.P3 order. In the writ petition, Ext.P3 order is impugned primarily on the ground that before passing Ext.P3 order, the petitioner was not served with any notice or heard in the matter.

2. A counter affidavit has been filed on behalf of the respondent wherein it is pointed out that the petitioner had in fact been served with a notice asking him to appear for a hearing before the respondent on 18.02.2009 It is submitted that, pursuant to the

notice the petitioner's wife, who had received the notice, did not appear and therefore the respondent had no option but to pass an order of assessment.

3. I have heard Sri.G.Hariharan the learned counsel for the petitioner as also the learned Government Pleader Smt.K.T.Lilly, appearing on behalf of the respondent.

4. On a consideration of the facts and circumstances of the case, as also the submissions made across the Bar, I find that this is a case where the building owned by the petitioner appears to have been used as a factory for the manufacture of spice powders. If in fact, it is so, then it is apparent that the petitioners building qualified for an exemption in terms of Section 3 (1) (b) of the Kerala Building Tax Act 1975. The fact, as to whether the building is in fact used as a factory or principally used as such has, however, to be ascertained by a verification to be done by the assessing authority. In view of this, and also taking into account the submission of the petitioner that he was not afforded an opportunity of hearing before passing Ext.P3 order, I am inclined to quash Ext.P3 assessment order and I do so. The respondent is directed to consider the matter afresh, in the light of the return filed by the petitioner, together with the supporting documents to

substantiate the claim for exemption, and forward the claim for exemption, if any preferred by the petitioner, to the Government for a decision in the matter and, thereafter, pass a consequential order of assessment based on the decision of the Government on the claim for exemption. To enable the respondent to do so, I direct the petitioner to file the necessary returns and supporting documents before the respondent within a period of three weeks from the date of receipt of a copy of this judgment.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

mns

