IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

WA NO. 2085 OF 2023

AGAINST THE JUDGMENT DATED IN WP(C) NO.30044 OF 2023 OF HIGH COURT OF KERALA

APPELLANTS:

VINU KOSHY ABRAHAM, AGED 45 YEARS S/O M.K. ABRAHAM PRESENTLY RESIDING AT 20 TROPHIS STREET, KALKALO, VICTORIA 3064, AUSTRALIA, REPRESENTED BY HIS DULY AUTHORIZED POWER OF ATTORNEY HOLDER M.K. ABRAHAM, AGED 75, S/O. KOSHY VARGHESE, RESIDING AT 10B4, ABM TOWERS, KADAVANTHRA, ERNAKULAM, PIN - 682020

BY ADVS. P.G.JAYASHANKAR
P.K.RESHMA (KALARICKAL)
S.RAJEEV (K/001711/2019)
SAJANA V.H
SHAIJU GEORGE
AADERSH R.S. PANICKER

RESPONDENTS:

**1 CORPORATION OF COCHIN
ERNAKULAM, REPRESENTED BY ITS SECRETARY, PIN - 682011**

**2 DEPUTY TAHSILDAR I
KANAYANNUR TALUK, TALUK OFFICE, ERNAKULAM, PIN - 682001**

BY ADV C.N.PRABHAKARAN

OTHER PRESENT:

R2 - SMT.VINITHA.B,SENIOR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.05.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr.A.K.JAYASANKARAN NAMBIAR:

The petitioner in writ petition No.30044 of 2023 is the appellant before us aggrieved by the judgment dated 17.11.2023 of the learned Single Judge in the writ petition.

2. Since the long and chequered history of litigation between the appellant and the respondent Corporation has already been detailed by the learned Single Judge in the impugned judgment, we do not choose to reiterate the same in this judgment. The limited issue involved in the writ petition, against the backdrop of the main dispute between the parties, was essentially with regard to the liability of the appellant/writ petitioner to pay property tax for the unauthorised construction and occupancy of areas earmarked as recreational area and car park in the approved plan pertaining to the building, on the basis of which the construction was effected. It is not in dispute that the construction of the building as per the approved plan was completed in 2001 and the completion certificate was issued to the appellant as early as on 05.03.2001. The occupancy certificate with regard to the area in question

was also issued in 2001. It is also not in dispute that during the period from 2001, when the occupancy certificate was issued, upto the year 2009-10, the appellant had paid the property tax in respect of the areas aforementioned in the building in question. The grievance in the writ petition was essentially with regard to the demand of property tax made by the respondent Corporation for the periods from 2009-10 to 2021-22 when the appellant refused to pay the tax dues for the disputed areas by citing the pendency of litigation pertaining to the main dispute between the parties. The contention of the appellant before the learned Single Judge was essentially a technical one: that the respondent Corporation had not issued any demand notice seeking recovery of the property tax dues from the appellant for the years 2009-10 to 2021-22 till 12.09.2022 when the impugned notices were issued to the appellant. It was the case of the appellant that the issuance of the said notices were in violation of the provisions of Section 539 of the Kerala Municipality Act, 1994.

3. The learned Single Judge, who considered the writ petition, found that inasmuch as it was the appellant who had taken up the matter regarding alleged unauthorised construction with the statutory authorities as also before this Court in various proceedings that were initiated by it, and the deferment of issuance of recovery notices by the

respondent Corporation was on account of the pendency of the said litigation before the various adjudicatory forums, the appellant could not be heard to contend that the demand made against him by the Corporation was hit by the provisions of limitation. It was the finding of the learned Single Judge that an act of Court could not prejudice any one and since the litigation challenging the orders of the respondent Corporation, that directed a demolition of the structures put up by the appellant in the disputed premises, was pending consideration before various adjudicatory forums, it was not open to the appellant to contend that the liability to property tax did not arise merely because there was no demand for the same by the respondent Corporation. The learned Single Judge, however, noticed the lapse on the part of the Corporation in not issuing the formal demand notices and exempted the appellant from the obligation to pay penal interest on the property tax dues. The writ petition was disposed by quashing the impugned demand notices and directing the appellant to pay the tax as demanded, without the penal interest, but together with simple interest at the rate of 12% per annum from the respective due dates of payment for each financial year.

4. Before us, the contention of Sri.P.G.Jayasankar, the learned counsel for the appellant is mainly that the learned Single Judge

erred in confirming the demand of property tax that was made through notices, that had been issued in violation of the statutory periods prescribed under Section 539 of the Kerala Municipality Act. We have also heard Sri.C.N.Prabhakaran, the learned Standing Counsel for the Cochin Corporation.

5. On a consideration of the rival submissions, we find that it is not in dispute before us that the property tax dues in respect of the buildings constructed by the appellant was being paid from the date of receipt of the occupancy certificate in respect of the same upto 2009-10. It is also not in dispute that it was on account of the pending litigation between the Corporation and the appellant herein that the Corporation did not issue a formal demand notice for property tax in respect of the area under dispute, namely the portion of the building which was earmarked as recreational area and car park under the approved plan. We find, however, that merely for that reason it will not be open to the appellant to refrain from paying the property tax which was otherwise due in respect of the building in accordance with the approved plan and in respect of which he had already obtained an occupancy certificate, and in fact occupied the premises. The liability to pay the tax once assessed is on the assessee and in a situation where the assessee continuously pays the tax based on the

assessment that is conducted, the mere fact that the Corporation did not choose to issue a demand notice for a period when the assessee refrained from paying the tax on account of pending litigation between the parties, and in the absence of any order staying the demand of such tax, cannot be a reason to prevent the Corporation from collecting the tax amounts at a later stage of the proceedings. This is especially so, because it is the admitted case that in the litigation pending before the Court, both the assessee and the Corporation were parties. In our view, the non-issuance of a formal demand notice seeking recovery of the property tax dues in respect of the disputed areas can only result in deprivation of penal interest, that is due from the assessee to the Corporation. This is what the learned Single Judge has done and in our view, rightly so. As far as the principal liability of the appellant to pay the property tax dues in respect of the disputed area for the period between 2009-10 to 2021-22 is concerned, we find that there can be no valid justification for non payment of the tax by the appellant, more so, when it is not his case that the premises were not occupied by him during the said period. In fact, it would be unconscionable and inequitable for the assessee to contend to the contrary. We, therefore, affirm the impugned judgment of the learned Single Judge to the extent it directs the appellant to pay the disputed tax amount for the period from 2009-10 to 2021-22. We also affirm the

findings of the learned Single Judge that the appellant will not be liable to pay penal interest to the Corporation for the said period. We also delete that portion of the judgment of the learned Single Judge that directs the appellant to pay interest at the rate of 12% per annum since, in the light of the reasoning given by the learned Single Judge for deleting the penal interest, there cannot be a separate direction to pay interest at the rate of 12% for the alleged delayed payment of property tax. Save for this limited modification, the rest of the directions of the learned Single Judge shall stand confirmed. By way of abundant clarification, we also make it clear that along with Exts.P2, P3 and P4 notices, which are quashed by the learned Single Judge, Ext.P5 revenue recovery notice shall also stand quashed.

6. Since we note that pursuant to our interim order dated 05.12.2023, the appellant has already paid the property tax dues for the assessment years 2019 to 2022 to the respondent Corporation, the respondent Corporation shall give credit to the said payments while computing the balance amounts liable to be paid to it by the appellant pursuant to this judgment. The respondent Corporation shall furnish the appellant with a statement of outstanding dues of property tax computed in accordance with the directions in this judgment within two weeks from

the date of receipt of a certified copy of this judgment and on receiving the said statement from the Corporation, the appellant shall pay the balance amount within a further period of six weeks.

The writ appeal is disposed accordingly.

Sd/-
Dr.A.K.JAYASANKARAN NAMBIAR
JUDGE

sd/-
P.M. MANOJ
JUDGE

das
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