

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

WP(C) NO. 3075 OF 2025

PETITIONER :

VEERANKUTTY
AGED 59 YEARS
S/O MOITHEENKUTTY, THOPPILTHODI HOUSE,
PAZHAYANNUR, THRISSUR,
PIN - 687587

BY ADVS.
MADHU RADHAKRISHNAN
NELSON JOSEPH
M.D.JOSEPH
DEEPAK ASHOK KUMAR
JESWIN JACOB

RESPONDENTS :

- 1 DISTRICT COLLECTOR , THRISSUR
CIVIL STATION, AYYANTHOLE THRISSUR,
PIN - 680003
- 2 THE REVENUE DIVISIONAL OFFICER
THRISSUR, CIVIL STATION, AYYANTHOLE,
THRISSUR, PIN - 680003
- 3 THE TAHASILDAR, THALAPPILLY TALUK
THALAPPILLY TALUK OFFICE, THRISSUR,
PIN - 680 623
- 4 STATE OF KERALA
REPRESENTED BY SECRETARY,
HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001

WP(C) NO. 3075 OF 2025



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BY SMT.JASMIN M.M., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



BECHU KURIAN THOMAS, J.

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W.P.(C).No.3075 of 2025

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Dated this the 11th day of February, 2025

JUDGMENT

Petitioner challenges inter alia an order of assessment under the Kerala Building Tax Act, 1975 (for short 'the Act').

2. Petitioner is constructing a commercial building in Survey No.1085/2, 1083/2 and 1086/1 of Pazhayannur Village, Thalappally Taluk. One of the rooms in the said building under construction has been completed and a building number has been allotted. Subsequently, the 3rd respondent by Ext.P2 order dated 24.05.2018, assessed the building to tax under the Act. Petitioner alleges that, while carrying out assessment as per Ext.P2, the 3rd respondent had arbitrarily assessed the entire building, including those portions which remain incomplete and failed to apply his mind to the relevant factors. Challenging the said order, an appeal was preferred by the petitioner which was dismissed as per Ext.P3 order dated 18.02.2022. While dismissing the appeal, the Appellate Authority noted that the first instalment of the tax assessed as per Ext.P2 amounting to Rs.43,200/- had already been deposited, but observed that the appeal was not submitted in the prescribed form and within the prescribed time limit as well.



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3. In the meantime, since the building which was subjected to assessment was not a completed structure and only one room alone was completed, petitioner filed a complaint before the District Collector on 05.05.2022. However, the said complaint was wrongly treated by the first respondent as a revision petition preferred against the appellate order and without even granting an opportunity of hearing, dismissed the said revision, pointing out that there was no court fee stamp affixed on the revision memorandum and also that the tax had not been deposited. It is in the above circumstances that petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India challenging the order of assessment as well as the appellate and the revisional orders.

4. I have heard Sri.Madhu Radhakrishnan, the learned counsel for the petitioner as well as Smt.Jasmin M.M., the learned Government Pleader.

5. On a perusal of the impugned order of assessment, it is evident that the Assessing Authority had merely filled in the blanks, while passing the order of assessment. There is no independent application of mind to the circumstances of the particular case. This Court has time and again observed that an order of assessment must be issued as a speaking order after applying mind to the relevant circumstances. Reference to the



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decisions in **Abraham Thomas and Others v. State of Kerala and Others [2012 (2) KHC 792]** and that in **Chairman and Managing Trustee v. Revenue Divisional Officer [2022 KHC OnLine 384]** are relevant. There is nothing on record in the instant case to indicate that the Assessing Officer had considered the vital factors like whether the building is a completed structure or not, the area that has been completed and also whether any return was filed by the petitioner apart from any completion certificate obtained in respect of the entire building. These pertinent factors ought to have been considered by the Assessing Authority while passing the order of assessment. None of these facts have been considered by the Assessing Authority and therefore the assessment order is perverse and is liable to be interfered with.

6. In this context, this Court bears in mind the submission of the learned counsel for the petitioner that even till date, the entire building has not been completed and only one room alone has been completed for which the building number has been allotted. Needless to mention that, if only a portion of the building has been completed and building number has been allotted only to that portion, the said area alone can be subjected to an assessment under the Act. The charge of tax under the Act falls on the completion of building. Therefore, an incomplete part of a building cannot be exigible to tax under the Act.



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7. Having regard to the above circumstances, I am of the view that the order of assessment is liable to be interfered with and a reconsideration be directed.

8. Accordingly I set aside Ext.P2, Ext.P3 as well as Ext.P4 orders and direct the 3rd respondent to reconsider the matter afresh after granting an opportunity to the petitioner of filing objection/ return and after granting an opportunity of being heard. The quantum of tax already deposited by the petitioner before the Appellate Authority will have to be deducted from the total tax liability ultimately assessed.

The writ petition is allowed as above.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM



APPENDIX OF WP(C) 3075/2025

PETITIONER'S EXHIBITS :

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| Exhibit P1 | THE FINAL REPORT SUBMITTED BY THE THRISSUR EAST TOWN POLICE DATED 19/12/2022 |
| Exhibit P2 | TRUE COPY OF THE DEMAND NOTICE DATED 24/5/2018 ISSUED UNDER SECTION 10 OF THE KERALA BUILDING TAX ACT 1975 BY THE 3RD RESPONDENT |
| Exhibit P3 | THE TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT AND RECEIVED BY THE PETITIONER ON 31/3/2022 |
| Exhibit P4 | THE TRUE COPY OF THE REQUEST LETTER ISSUED BY THE PETITIONER DATED 5/5/2022 ALONG WITH THE RECEIPT |
| Exhibit P5 | THE TRUE COPY OF THE ORDER DATED 23/5/2022 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT |
| Exhibit P6 | TRUE COPY OF THE ORDER DATED 26/9/2024 PASSED BY THE 1ST RESPONDENT |
| Exhibit P7 | THE TRUE COPY OF THE NOTICE DATED 8/10/2024 ISSUED BY THE 3RD RESPONDENT |