



2023/KER/74050

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945

WP(C) NO. 6372 OF 2023

PETITIONER/S:

P.N.SASEENDRAN, AGED 65 YEARS



BY ADV T.RAJASEKHARAN NAIR

RESPONDENT/S:

- 1 KALAMASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KALAMASSERY. P. O,
ERNAKULAM-683104.
- 2 SECRETARY, KALAMASSERY MUNICIPALITY, KALAMASSERY P.O.
ERNAKULAM, PIN - 683104

BY ADV M.K.ABOOBACKER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

The present writ petition under Article 226 of the Constitution of India has been filed questioning the Ext.P9 order passed by the Secretary of Kalamassery Municipality on 13.02.2023, whereby the petitioner's application in Ext.P4 for waiving the property tax has been rejected.

2. The petitioner claims to be the owner of building no.XVI/227 A, B, C-C1 situated in Ward No.XVI of the Kalamassery Municipality. This building is a commercial building. The petitioner had paid the property tax of the said building for the year 2016-17 to the respondent Municipality. According to the petitioner, the petitioner could not conduct any business from the said building, and the building remained vacant from the date of its construction. The petitioner had informed the Municipality about the building lying vacant. The petitioner had submitted an application in



2020 before the Secretary, Kalamassery Municipality, requesting to relax the property tax on the building for the reason that the building was lying vacant. No decision was taken on the said application, and thereafter, the petitioner filed an application in Ext.P4 requesting the respondents to allow the petitioner to pay the property tax for the current half-year so that the petitioner would conduct the business from the premises of the said building. It was also said that the concerned Ward Councillor had also submitted a request to the 2nd respondent to accept the building tax for the current half-year so that the petitioner could start his business from the said building.

2.1 When no decision was taken to grant remission of property tax and the request for acceptance of the property tax for the current half-year was not accepted, the petitioner approached this Court by filing W.P.(C) No.36965/2022. This Court, *vide* judgment dated 29.11.2022, disposed of the said



writ petition with direction to the Secretary of the Municipality to consider and pass necessary orders on Exts.P3 and P4 after taking note of any record that could be submitted by the petitioner and after affording the petitioner an opportunity of being heard.

2.2 In compliance with the directions issued by this Court in the aforesaid judgment, the impugned order has been passed. It has been stated that the petitioner's application was considered by the Standing Committee on 28.10.2022 and waived off the half-yearly building tax of Rs.13,226/- for the financial year 2020-21, as the application was filed in the half-year of that financial year. In the Ext.P4 application, it was held that the petitioner was the owner of the said building No.XVI/227 A,B, C-C1 and the same was not used after paying the initial tax. The petitioner requested that for the use of the said building for his business purposes, the half-yearly tax should be allowed to be paid, but the petitioner did not



produce the relevant documents in support of the said submission.

3. Section 239 of the Kerala Municipality Act entitles the owner of the building to claim remission of property tax if the building has been vacant or unlet for a half-year and if the owner has already paid the tax for the half-year in which the building has remained vacant, he would be entitled to get a refund or the tax amount paid would be adjusted in the succeeding year.

3.1 The procedure to claim remission of property tax is provided in sub-section (3) of Section 239, which reads as under:

“239.VACANCY REMISSION.—

.....

.....

(3) (a) No such remission shall be admissible unless the owner of the building or his agent has previously thereto delivered notice to the Secretary-

(i) that the building is vacant and unlet, or



(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half-year.

(b) Every notice under clause (a) shall expire with the half-year succeeding the half-year during which it is so delivered and shall have no effect thereafter.”

3.2 From considering the provision of sub-section (3) of Section 239 of the Kerala Municipality Act, it is evident that to claim remission of property tax on a building, the owner is required to deliver a notice to the Secretary that the building is vacant and unlet or the building will be vacant and unlet from a particular date either in the half-year in which notice is delivered or in the succeeding half-year. Every such notice would expire with the half-year succeeding the half-year during which it is to be delivered and shall have no effect thereafter. Thus, it is mandatory to serve a notice to the Secretary claiming remission of property tax in respect of the building that is vacant or which would be vacant from a



particular date. If the notice is not delivered in the half-year claiming remission for the succeeding half-year, no remission could be granted. Thus, advance notice is required to be served regarding the vacancy of the building to claim remission of the property tax.

4. In the present case, it is evident that after 2020-21, no valid notice has been delivered as is required under subsection (3) of Section 239 of the Kerala Municipality Act. In the absence of the notice, there arises no occasion for the Municipality to grant remission of the property tax as claimed by the petitioner. Delivery of notice by the owner in advance to claim remission in the succeeding half-year of the financial year is *sine qua non* to claim remission. Therefore, I do not find that the impugned order suffers from any illegality or jurisdictional error. The writ petition has no merit or substance, which is hereby dismissed.

4.1 The petitioner should pay the arrears of the



property tax and should also pay future property tax to use the building for commercial purposes. Unless the petitioner clears the arrears of property tax, he cannot be allowed to make payment of the current half-yearly tax. The respondent Municipality is, therefore, directed to issue a notice to the petitioner within a period of ten days from today intimating to the petitioner the arrears of property tax to be paid by him. On receipt of such notice, the petitioner should remit the property tax and should also make payment of the future half-yearly property tax so that the petitioner is able to use the building for commercial purposes.

With the aforesaid directions, the writ petition stands dismissed.

Sd/-

DINESH KUMAR SINGH

JUDGE



APPENDIX OF WP(C) 6372/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE PHOTOCOPY OF THE BUILDING TAX RECEIPT ISSUED BY THE RESPONDENT DATED 9.6.2016
- Exhibit P2 A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED BY THE RESPONDENT DATED 23.11.2018
- Exhibit P3 A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT 07.05.2020
- Exhibit P4 A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 10.11.2022
- Exhibit P5 A TRUE COPY OF THE RECEIPT SHOWING ACCEPTANCE OF EXHIBIT P-4 APPLICATION ISSUED BY THE 2ND RESPONDENT
- Exhibit P6 A TRUE COPY OF THE REQUEST SUBMITTED BY THE WARD COUNCILOR OF WARD NO.16 BEFORE THE 2ND RESPONDENT DATED 11.11.2022
- Exhibit P7 A TRUE COPY OF THE ACKNOWLEDGMENT CARD OBTAINED BY THE PETITIONER
- Exhibit P8 A TRUE COPY OF THE JUDGMENT IN WP(C). NO.36965/2022 PASSED BY THIS COURT DATED 29.11.2022
- Exhibit P9 A TRUE COPY OF THE ORDER DATED 13.2.2023 PASSED BY THE 2ND RESPONDENT