



2023:KER:50638

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 9TH DAY OF AUGUST 2023 / 18TH SRAVANA, 1945

WP(C) NO. 41735 OF 2018

PETITIONER/S:

M. BAIJU
AGED 50 YEARS
S/O. LATE DAMODARAN NAIR, MANDADY HOUSE, PAROPPADY,
CALICUT - 673009.
BY ADVS.
K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA
KUM.NARAYANI HARIKRISHNAN

RESPONDENT/S:

- 1 THE SECRETARY,
KOZHIKODE MUNICIPAL CORPORATION, CORPORATION BUILDING,
KOZHIKODE - 673001.
- 2 KOZHIKODE MUNICIPAL CORPORATION,
CORPORATION BUILDING, KOZHIKODE - 673001, REPRESENTED
BY ITS SECRETARY.
BY ADVS.
SMT.BINDUMOL JOSEPH
SRI.B.S.SYAMANTHAK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 9th day of August, 2023

This writ petition is filed under Section 226 of the Constitution of India impugning the demand notices, Exts.P4 to P10. The facts of the writ petition are not in dispute. The building for which the impugned demand notices have been issued is a multi storied apartment constructed by the petitioner. The completion certificate was issued in respect of the said building on 19th Feb 2015. However, the occupancy certificate was issued only on 01.02.2017 by the respondent Municipal Corporation. The impugned demand notices are in respect of the property tax for the period from 1st October 2014 to 28th February, 2017.

2. Learned Counsel for the petitioner submits that the petitioner is not liable to pay the property tax before issuance of the occupancy certificate, which is on 1st February 2017. He further submits that only on issuance



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of the occupancy certificate, the building is numbered, and electricity, water and gas connections are provided, and thereafter, the building can be used for residential purposes. He further submits that Section 233 of the Kerala Municipality Act and Rules, 1994, provide for levy of property tax by every Council of the Municipality under the provisions of the said Act and the Rules made thereunder. He further submits that Subsection (2) of Section 233 of the Kerala Municipality Act, defines the buildings on which the property tax can be levied. Subsection (2) of Section 233 of the Kerala Municipality Act says that the building should be used for residential purpose or used for industrial purpose or used for a school or hospital or other purposes as defined.

3. The case of the learned Counsel for the petitioner is that the building can be used for residential purpose only when it is numbered and water and electricity connections are provided. He also submits that this



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Section does not define the purpose for which the building is capable of being used. But subsection (2) of Section 233 would mean that the building is actually used or becomes fit for use for residential purposes or other purposes as defined in Subsection (2). He, therefore, submits that until the occupancy certificate is issued, the building does not become fit for use for residential purpose and, therefore, levying the tax prior to the issuance of the occupancy certificate defeats the scheme of the Act itself. He further submits that, the State Government itself has issued circular dated 03.05.2020 clarifying Rule 24 of the Kerala Municipality (Property Tax and Service Tax and Surcharge) Rules, 2011 to say that levy of property tax should be from the date of issuance of occupancy certificate.

4. Rule 24 of Rules, 2011 reads as under;

24. Obligation of the owner to give notice before construction, or re-construction or



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demolition of building.- (1) Notwithstanding anything contained in rule 17, in the case of construction or re-construction of any building in the area of the Municipality in accordance with the Kerala Municipality Building Rules, 1999, the owner of the building shall within 15 days from the date on which the completion of building or reconstruction or person residing in the building or the building is used for any other purpose, whichever happens earlier, shall give notice regarding it to the Secretary and furnish property tax return as per rule 11 and he shall be liable to remit revised annual property tax from the beginning of that half year onwards:

Provided, if such date comes within the last two months of a half year, the owner is entitled to get deduction of annual property tax in revised rate as to that building to that half year.

(2) The Secretary may levy an amount not exceeding rupees five hundred as fine on a



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person committing default in giving notice as per sub-rule (1).

(3) If any building is demolished or destroyed, the owner of the building shall give notice thereof to the Secretary and he shall be liable for payment of the property tax which would have been leviable had the building not been demolished or destroyed till the end of that half year.

5. In the light of Section 233 of the Act and, completion mentioned in Rule 24, would mean the building is complete and it is fit for use for the residential purposes or other purposes as defined in Subsection (2) of Section 233 of the Act. He also submits that the Government had itself issued a Government Order dated 03.05.2020 to clarify that the levy of property tax should be from the date of issuance of the occupancy certificate. Learned Counsel for the petitioner has also placed reliance on the judgments of this Court in ***Samsudeen C.A. v. Thrissur Municipal Corporation in W.P.(C) No.31151 of***



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2022, Sheela.N. v. Kollam Municipal Corporation

[2017 (5) KHC 533], in support of this submissions.

6. On the other hand, learned Counsel for the respondent has submitted that the petitioner himself delayed issuance of the occupancy certificate; the construction of the building was completed in the year 2015, but the fire NOC was submitted by the petitioner in the year 2016. Thereafter, the occupancy certificate could be issued only on 01.02.2017. He further submits that the building became fit for use after completion of its construction and the completion certificate was issued. The petitioner cannot take advantage of his own wrong and complain about receiving occupancy certificate with delay as he did not submit the fire NOC on time. Therefore, the Municipality cannot be denied of its tax due on the building constructed by the petitioner.

7. I have considered the submissions. Subsection(2) of Section 233 of the Kerala Municipality Act, 1994 reads as



under;

233. Property Tax.- (1) Every Council of the Municipality shall, in accordance with the provisions of this Act and the rules as may be prescribed, levy property tax on every building (including the land appurtenant thereto) situated within the area of the respective Municipality and not exempted as per the provisions of the Act.

(2) (a) For the purpose of levying property tax, the Government shall, by notification, fix the minimum and maximum limits of rates of basic property tax applicable to one square meter plinth area of the following categories of building in accordance with the use and the date on which they shall come into force, namely:-

- (i) used for residential purpose;
- (ii) used for industrial purpose;
- (iii) used for Schools and Hospitals;
- (iv) used for amusement parks, mobile telephone tower etc;
- (v) used for commercial purpose;
- (vi) used for other purposes;
- (vii) Any other category of building notified by the Government.



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If subsection 2 (a) of Section 233 is read in proper perspective, it could mean that the tax can be levied on the building which becomes capable of use for residential purposes or other purposes which is defined under Subsection 2(a). It is not in dispute that without occupancy certificate, the building would not get numbered and electricity, water and gas connections would not be provided to such building. If these facilities are not provided, the building does not become capable of being used for residential purposes or other purposes as defined in Subsection 2(a). Except for the bald allegation that the petitioner himself was responsible for the delayed issuance of the occupancy certificate, no proper pleadings have been made on behalf of the respondent Municipality. Whether the fire NOC was issued without any delay by the Fire and Safety department or it was the Fire and Safety Department, who were responsible for the delayed issuance of the fire NOC. If the Government department



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itself is responsible for the delayed issuance of the Fire NOC, they cannot put the blame on the petitioner for the late submission of the Fire NOC. The learned Counsel for the respondent Municipal Corporation does not give factual submission that what was the date of the fire NOC and when was it submitted before the Municipality for issuance of the occupancy certificate. Further the learned Counsel for the Municipality also cannot dispute the government order dated 03.05.2020 and the two judgments cited by the learned Counsel for the petitioner.

In view thereof, I am of the opinion that the petitioner is liable to pay the tax for the period after issuance of the occupancy certificate and not prior to the said date, the present writ petition to that extent is allowed. The Municipality is entitled to recover the tax from the date of issuance of the occupancy certificate.

With the aforesaid observations, the writ petition stands allowed. The impugned demand notices, Exts.P4 to



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P10 are hereby set aside consequently. Respondent Municipality should issue demand notices for property tax for the date of completion certificate, if the tax has now already been paid and may levy interest etc as per law.

Sd/ -

**DINESH KUMAR SINGH
JUDGE**

RK



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APPENDIX OF WP(C) 41735/2018

PETITIONER EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE BUILDING PERMIT OBTAINED BY THE PETITIONER DATED 12/06/2012.
- EXHIBIT P2** TRUE COPY OF THE RECEIPT EVIDENCING THE SUBMISSION OF APPLICATION FOR OCCUPANCY CERTIFICATE DATED 25/02/2015.
- EXHIBIT P3** TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE 2ND RESPONDENT DATED 01/02/2017.
- EXHIBIT P4** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(A)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(B)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(C)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(D)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(E)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(F)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(G)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(H)** TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.



- EXHIBIT P4(I) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P4(J) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE A) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(A) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(B) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(C) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(D) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(E) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(F) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(G) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(H) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(I) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P5(J) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE B) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6 TRUE COPY OF THE DEMAND NOTICE ISSUED



- BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(A) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(B) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(C) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(D) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(E) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(F) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(G) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(H) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(I) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P6(J) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE C) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(A) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(B) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND



- EXHIBIT P7(C) ENGLISH TRANSLATION DATED 28/02/2017. TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(D) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(E) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(F) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(G) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(H) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(I) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P7(J) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE D) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(A) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(B) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(C) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(D) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.



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- EXHIBIT P8(E) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(F) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(G) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(H) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P8(I) TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE E) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P9 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE F) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P10 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT (TYPE G) AND ENGLISH TRANSLATION DATED 28/02/2017.
- EXHIBIT P11 TRUE COPY OF THE JUDGMENT IN WPC 26637/2017 OF THIS HON'BLE COURT DATED 02/11/2017.
- EXHIBIT P12 TRUE COPY OF THE INTERIM ORDER IN WPC NO.14173/2018 OF THIS HON'BLE COURT DATED 09/07/2018.