



WA No.496 of 2025

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2025:KER:24733

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

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THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 21<sup>ST</sup> DAY OF MARCH 2025 / 30TH PHALGUNA, 1946

WA NO. 496 OF 2025

AGAINST THE JUDGMENT DATED 16.1.2025 IN WP(C) NO.20784 OF  
2019 OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER :

- 1 R.GOPALAKRISHNA PILLAI  
AGED 59 YEARS  
THEERTHAM, VADAKKUMTHALA MEKKU,  
PANMANA, KOLLAM DISTRICT., PIN - 691583
- 2 PREETHA DEVI.S.,  
AGED 53 YEARS  
THEERTHAM, VADAKKUMTHALA MEKKU,  
PANMANA, KOLLAM DISTRICT.,  
PIN - 691583

BY ADVS.K.P.SATHEESAN (SR.)  
P.MOHANDAS (ERNAKULAM)  
K.SUDHINKUMAR  
SABU PULLAN

RESPONDENT(S)/RESPONDENT :

THE TAHSILDAR, KARUNAGAPPALLY TALUK,  
KOLLAM DISTRICT, PIN-690 538,  
(THE ASSESSING AUTHORITY,  
KERALA BUILDING TAX ACT 1975)., PIN - 690538

BY SMT.RESMITHA RAMACHANDRAN, GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21.03.2025,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## JUDGMENT

### Easwaran S. J.

This intra court appeal arises from the dismissal of the W.P.(C) No.20784 of 2019 preferred by the appellants/petitioners impugning Ext.P7 order of the assessment under the provisions of the Kerala Building Tax Act, 1975 (for short, 'the Act').

2. The brief facts necessary for the disposal of this appeal are as follows:

The petitioners are the owners of 75 cents of land in various survey numbers of the Panmana Village in Karunagappally taluk, Kollam district. Desirous of starting a business of selling metals and building materials, the petitioners constructed a building. The said building was numbered as PPXX/651. For the purpose of storing the building materials, the petitioners constructed a portable shelter using iron pipes and metallic sheets. Though the said structure was not permanent in nature, the Tahsildar proceeded to issue a notice proposing to assess the petitioners for the building tax for the additional construction. Without hearing the petitioners, the Tahsildar proceeded to pass an order of assessment which came to be challenged before this Court in W.P.(C) No.11053 of 2019 and by Ext.P6 judgment dated 22.5.2019, the learned Single Bench of this Court set aside the order of assessment and directed the Tahsildar to reconsider the issue after affording an opportunity of



hearing to the petitioners.

3. In compliance with the directions issued by this Court as above, the Tahsildar, Karunagappally proceeded to pass Ext.P7 order on 15.7.2019 and the petitioner approached this Court on 29.7.2019 with the present writ petition challenging the said order. It was contended before the learned Single Bench that the petitioner is entitled to get the benefit of Section 2(e) of the Act. The learned Single Judge, who considered the writ petition, found that the construction made by the petitioner does not fit into the provisions of Section 2(e) and accordingly dismissed the writ petition. Aggrieved by the decision, the petitioner is on appeal before us.

4. Heard Sri. K.P. Satheesan, the learned Senior counsel appearing for the appellant assisted by Sri. P. Mohandas and Smt. Resmitha Ramachandran, the learned Government Pleader appearing on behalf of the State.

5. On consideration of the rival submissions raised across the Bar, we find that the writ petition preferred by the petitioner challenging Ext.P7 order was completely misconceived. Section 11 of the Kerala Building Tax Act provides for filing of an appeal against the order of assessment. The time stipulated for preferring the appeal is thirty (30) days from the date of receipt of the copy of the order with an outer period of six months for condonation of delay. In order to exercise the power of



judicial review against the order of assessment passed by the Tahsildar, Karunagappally, this Court has to enter into a factual adjudication which is impermissible under law. Though the learned Single Judge found that the petitioner is not entitled to claim the benefit of exemption under Section 2(e) of the Act, we find that the claim of the petitioner was altogether on a different premise. Since the petitioner had an alternative remedy by preferring an appeal under Section 11 of the Act, we are of the view that the petitioner ought to have availed the alternative remedy of preferring an appeal against the order of assessment. Therefore, while we do not concur with the findings of the learned Single Judge on the merits of the case, we see no ground to interfere with the judgment of the learned Single Judge in so far as it dismisses the writ petition since the appellant ought to have been relegated to his alternate remedy of preferring a statutory appeal against the assessment order.

6. Be that as it may, we find that since the petitioners had approached this Court by preferring the writ petition on 29.7.2019, at that point of time, the limitation for preferring the statutory appeal had not expired and from 29.7.2019 till today, the petitioner was before this Court, we are of the view that while declining to interfere with the dismissal of the writ petition by the learned Single Judge, we feel that the appellant should be given an opportunity to agitate the matter before the appellate authority. Thus, while finding that no grounds to interfere



in the judgment of the learned Single Judge is made out, we permit the appellant to prefer an appeal against Ext.P7 order within a period of one month from the date of receipt of a copy of this judgment. If such appeal is preferred as directed above, the appellate authority shall exclude the period spent by the appellant before this Court and treat the appeal as filed within time and proceed to consider the contentions raised by the appellant untrammelled by any of the observations made by the learned Single Judge in the judgment impugned in the appeal. It would also be open for the petitioners to point out the fact that the petitioners has stopped the business and has also removed the portable shelter which was in existence at the time when the assessment was made. Once such appeal is preferred as above, the appellate authority shall consider and pass orders on the appeal after hearing the petitioners within a period of six months thereafter. Till such time the appellate authority decides the appeal as directed by us, above, all proceedings for recovery of the amount covered under Ext.P7 order shall be kept in abeyance.

Sd/-

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

Sd/-

**EASWARAN S.**  
**JUDGE**

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**APPENDIX OF WA 496/2025**

**PETITIONER ANNEXURES**

**Annexure-1**

**TRUE COPY OF THE LETTER GIVEN BY THE PANMANA  
GRAMA PANCHAYATH TO THE APPELLANT DATED  
12-03-2024**