**(2014) 12 KL CK 0119**

**In the High Court Of Kerala**

**Case No :** W.P.(C). No. 10899 of 2008 (V)

M. Fathimath Zuhara APPELLANT

Vs

The Tahsildar RESPONDENT

**Date of Decision :** 02-12-2014

**Acts Referred:**
Kerala Building Tax Act, 1975 — Section 2(e)

**Citation :** (2014) 12 KL CK 0119

**Hon'ble Judges :** A.K. Jayasankaran Nambiar, J

**Bench :** Single Bench

**Advocate :** K.R. Avinash (Kunnath) and Abdul Raoof Pallipath, Advocate for the Appellant; Lilly K.T., Government Pleader, Advocate for the Respondent

## Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner constructed a building comprising of 24 individual apartments. It is stated that the apartments were constructed after assigning the ownership of the undivided interest of the land to the 24 persons who had agreed to contribute to the construction of the building. It is stated that the construction was thereafter completed and the ownership in the apartments was conveyed to the said 24 persons. In the writ petition, the petitioner is aggrieved by Ext.P1 assessment order where the building has been subjected to assessment under the Kerala Building Tax Act by treating it as a single unit for the purposes of tax. Although, the petitioner had preferred an objection to the manner in which the assessment was completed, the assessing authority did not consider the same and proceeded to issue Ext.P3 revenue recovery notice to the petitioner. In the writ petition, Exts.P1 and P3 are impugned.

2. I have heard Sri. K.R. Avinash, the learned counsel for the petitioner as also Smt. K.T. Lilly, the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that the specific case of the petitioner is

 

that the building that was put up comprised of 24 different apartments, the ownership in which was vested in 24 different persons. It is his submission that there are documents that would establish that the cost of construction of the building was separately met by the 24 persons who eventually became the owners of the apartments. In Ext.P1 assessment order, there is no consideration of the objections raised by the petitioner, or a consideration of any document in relation thereto, while completing the assessment of the building as a single unit. In my view, whenever the assessing authority is confronted with the situation where the building comprises of separate residential units and the owners of the said units come forward with a request for assessing the said units separately, by producing documents to show compliance with the requirements of Explanation 2 to Section 2(e) of the Kerala Building Tax Act, it would be incumbent upon the assessing authority to go through the said materials produced by the assessees, and pass a reasoned order referring to the said documents produced by the assessee. It would also be necessary for the assessing authority to take note of the judgments of this Court in Nelson Rozario Vs. State of Kerala, , Varghese Vs. State of Kerala, , Natarajan G. and Others Vs. State of Kerala and Others, , Pavan Kumar P. Vs. State of Kerala and Others, and The Tahsildar Vs. Soman Peter, , to arrive at a decision with regard to the manner in which the assessment is to be completed in respect of the building. To enable the 1st respondent to have a fresh look into the matter and to pass a fresh order of assessment after considering the objections of the petitioner, as also the documents produced by him to substantiate his contentions, I quash Exts.P1 order and P3 revenue recovery notice and direct the 1st respondent to pass fresh orders, as directed above, within a period of three months from the date of receipt of a copy of this judgment. The 1st respondent, while passing orders as directed in this judgment, shall specifically advert to the documents relied upon by the petitioner in support of his contentions and also state reasons for the decision arrived at by him.

The writ petition is disposed as above.