**(2009) 10 KL CK 0009**

**In the High Court Of Kerala**

**Case No :** W.A. No. 2356 of 2009

Surendran APPELLANT

Vs

Distirct Collector RESPONDENT

**Date of Decision :** 28-10-2009

**Acts Referred:**

**Citation :** (2010) 1 KLT 434

**Hon'ble Judges :** V.K.Mohanan, J;C.N. Ramachandran Nair, J

**Bench :** Division Bench

**Advocate :** Rajit and Ranjith Babu, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

## Judgement

C.N. Ramachandran Nair, J.—This appeal is filed against the judgment of the learned single Judge holding that there is no bona fides in appellant''s dispute against the plinth area assessed for the purpose of luxury tax because the appellant, without contest, remitted the building tax for the entire plinth area assessed.

2. We have heard learned Counsel appearing for the appellant and the Government Pleader appearing for the respondents.

3. While building tax is a one time liability, luxury tax is a liability payablee very year if the residential building, constructed after 1.4.1999, has a plintharea of 278.7 Sq.metres and above. A little difference in plinth area assessed for payment of one time building tax may not be contested by the building owner because compared to the cost of dispute, the disputed tax may be less. However, this should not stand in the way of the building owner contesting recurring liability for luxury tax if he is otherwise not liable. Therefore, in our view, when demand on luxury tax is raised, the building owner is free to contest the liability if the plinth area assessed is excess over the actual, no matter he has without contest paid the building tax on such wrong plinth area originally assessed.

4. Government Pleader submits that on appellant''s complaint against

measurement by the Village Officer, the building was re-measured by the Junior Superintendent attached to the Tahsildar and he has also confirmed the plinth area of the building at 290 Sq.metres which certainly attracts luxury tax. Counsel for the appellant contended that measurement was made by the Junior Superintendent without notice to him and therefore, the measurement is not proper. We do not know, whether the appellant''s contest against the plinth area determined is on account of a misconception about the legal provisions with regard to the area to be assessed which includes outhouses, annexes etc. which forms part of the plinth area. We are, therefore, of the view that one more opportunity should be granted to the appellant, to have the plinth area measured by a qualified Engineer, who should do it, with reference to the definition of ''plinth area'' under the Act and prepare a sketch showing the area included under the plinth area and area, if any, excluded from the plinth area. If the appellant gets the measurement and the plan prepared by a qualified Engineer and produces the same before the Tahsildar, along with a copy of this judgment, and if the plinth area so determined is less than 278.7 Sq.metres, then the Tahsildar will get the plinth area measured by the Assistant Executive Engineer, P.W.D., who will measure the plinth area in the presence of an official nominated by the Tahsildar and the appellant and his decision will be final. If, on remeasurement of plinth area by the Assistant Executive Engineer, appellant is found liable for luxury tax, then in addition to the arrears of luxury tax, the appellant will remit a further sum of Rs. 10,000/- (Rupees Ten Thousand Only) towards cost, in addition to the arrears of tax, within three weeks from the date of communication of the order by the Tahsildar and on default, the Tahsildar will recover the said amount along with tax arrears by coercive steps. Recovery of luxury tax will remain stayed for a period of four months from today and in between, the matter will be finalised as above. If the appellant, on measurement of plinth area by the Engineer engaged by him, is satisfied about liability for luxury tax, he will inform the same to the Tahsildar and clear arrears with interest. The Writ Appeal is disposed of as above.

 