IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 24TH DAY OF MAY 2024 / 3RD JYAISHTA, 1946

WA NO. 273 OF 2024

AGAINST THE JUDGMENT DATED 10.08.2023 IN WP(C) NO.41644 OF 2017 OF HIGH COURT OF KERALA

APPELLANT:

ABDUL JABBAR,
AGED 49 YEARS
S/O.MUHAMMED, THEKKPAINKAL HOUSE,
KUTTIPPURAM AMSAM, PAINKANNUR DESOM P.O.,
PAINKANNUR, TIRUR TALUK,
MALAPPURAM DISTRICT, PIN - 676552

BY ADVS.
R.SURAJ KUMAR
SAJITH C.GEORGE
ANJANA R.S.
SUNIL J.CHAKKALACKAL
N.G.SINDHU
SUNITHA G.

RESPONDENTS:

1 **STATE OF KERALA,**
REP. BY THE SECTRTARY TO GOVT. OF KERALA,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

2 **THE DISTRICT COLLECTOR,**
MALAPPURAM-676505, PIN – 676505.

3 **THE REVENUE DIVISIONAL OFFICER,**
THIRUR, PIN - 676505

4 **THE TAHASILDAR,**
THIRUR, MALAPPURAM DISTRICT,
PIN - 676505

5 THE VILLAGE OFFICER,
KUTTIPPURAM, MALAPPURAM DISTRICT,
PIN - 676505

6 THE SECRETARY,
KUTTIPPURAM GRAMA PANCHAYATH,
MALAPPURAM DISTRICT, PIN - 676505

BY ADV.V.K.SHAMSUDHEEN, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

Dated this the 24th day of May, 2024

Syam Kumar V.M., J .

Whether a room attached to the residential house of an Advocate, which he uses as his study/office can be exempted from determination of plinth area under Section 6 of the Kerala Building Tax Act, 1975 (hereinafter referred to as 'the Act') is the short question that comes up for consideration in this Writ Appeal.

2. Brief facts relevant for disposal of this appeal are as follows :

Appellant, an Advocate by profession, is the owner of a residential building situated in the 6th respondent Panchayath. He had constructed the said building pursuant to and in accordance with Ext.P1 building permit issued to him by the Panchayath. Subsequent to the construction, an assessment was carried out by the competent authority and the appellant was served with an Order dated 21.10.2013 assessing building tax at an amount of Rs.10,000/- which had a luxury tax component of Rs.6,000/- for the period 2012-2013. The said luxury tax was computed measuring the plinth area of the building as 292.07

Sq.Mtrs. Appellant disputed the measurement of plinth area and the consequent computation of luxury tax. His principal objection to the measurement was that a room in his residential building situated on the ground floor towards the western side, which he proposes to put to use a study/office ought to have been exempted by the assessing officer while measuring the plinth area of the building. He contends that inclusion of the said room in the measurement militates against the mandates of Section 6 of the Act. Contending so, the appellant filed an appeal before the 3rd respondent challenging the measurement and consequent computation of luxury tax. The said appeal was dismissed by the 3rd respondent vide Ext.P2 Order. A revision against Ext.P2 was attempted before the 2nd respondent, which too was dismissed by Ext.P4 Order. Aggrieved by Exts.P2 and P4 Orders, appellant had filed W.P.(C) No.41644 of 2017, which was dismissed by the learned Single Judge challenging which, this appeal is filed.

3. We have heard Sri.Suraj Kumar R., the learned counsel appearing for the appellant. We have also heard the learned Government Pleader appearing on behalf of respondents 1 to 5 and the learned Standing Counsel for the 6th respondent Panchayath.

4. The learned counsel for the appellant contends that

the study/office room in the residential building of the appellant qualifies for exemption while determining the plinth area. To buttress the said contention, he points to the proviso to Section 6 of the Act. He submits that though the said provision does not specifically refer to a study/office room, the said provision, according to the counsel, has been purposefully kept open ended and nebulous by the legislature so as to subsume within it spaces or rooms within a residential building that are set apart for non residential purposes. It would be relevant to examine closely Section 6 of the Act to ascertain the tenability of the said contention. Section 6 of the Act reads as follows:

> *"6. Determination of plinth area.*
> *The plinth area of a building for the purposes of this Act, shall be the plinth area of the building as specified in the plan approved by the local authority or such other authorities as may be specified by Government in this behalf and verified by the assessing authority in such manner as may be prescribed.*
> *Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for storage of firewood or for any non-residential purpose shall not be taken into account for determining the plinth area of that building."*

5. According to the learned counsel, reference in the said proviso to *"..a garage or any other erection or structure appurtenant to a residential building used for storage of firewood or for any non-residential purpose..."* has to be so interpreted as to take in

within its sweep any space/room which is put to use for a purpose other than residential. The learned counsel deduces therefrom that any study/office room in the residential building, like the one in the house of the appellant, qualifies for exemption from the plinth area measurement for computing luxury tax.

6. *Per contra,* the learned Government Pleader submits that the above contention of the appellant stretches the proviso to Section 6 of the Act beyond the statutory intent, thus leading to a result that militates against the express object of the said provision, which according to him is clearly discernible from its bare perusal. He submits that the learned Judge had correctly reasoned that the phrase '*for any non-residential purpose*' used in the proviso to Section 6 has to be read '*ejusdem generis*' to the preceding words, i.e., *'use for storage of firewood, garage etc.'*. Upon such reading of the proviso, which he submits is the sole and correct way of interpreting and understanding the same, that part of the residence which is used for study/office purposes falls beyond the exempted category of spaces envisaged by the proviso to Section 6 of the Act.

7. We find force in the said contention of the learned Government pleader. The rule of '*ejusdem generis*' and its employment in statutory interpretation is no longer *res integra*. The Supreme Court had occasion to revisit and affirm the same

in **K.C.Ninan v. Kerala State Electricity Board & ors.** [2023 SCC Online SC 663]. It was opined by the Hon'ble Supreme Court therein as follows:

> *"The rule of 'ejusdem generis' is a principle of construction. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified . It applies when the following ingredients are present: (i) the statute contains an enumeration of specific words; (ii) the subjects of enumeration constitute a class or category; (iii) that category is not exhausted by the enumeration; (iv) a general term follows the enumeration; and (v) there is no indication of a different legislative intent."*

Applying the said dictum laid down by the Supreme Court to Section 6 of the Act, it can be discerned that the learned Single Judge has correctly held that the words '*for any non-residential purpose*' used in the proviso has to be read '*ejusdem generis*' to the preceding words, i.e., *'use for storage of firewood, garage etc.'* and that it cannot be stretched so as to include a study or office room.

8. Further, the mischief that could occasion if contra argument is accepted has been highlighted by a Division Bench of this Court in **Ayshakunji v. Tahsildar** (2012 (4) KLT 193). The comparable question that arose for consideration in the said case was whether the use of a part of the residential building for commercial purpose justifies the exclusion of so much of the

plinth area rented out from the residential house for the purpose of determining luxury tax liability under Section 5A of the Act. This Court in the said case concluded as follows:

> *"4. After hearing both sides and on going through the orders, we do not find any justification in the contention of the appellant that part of the residential building has to be excluded while considering the liability for luxury tax under S.5A merely because the let out portion is used for commercial purpose. Liability under S.5A is only on residential building and it is essentially the nature of the structure that determines whether the building is residential or not. Ever so many residential buildings are used partly or fully and even temporarily for non residential purpose. In fact, every professional like doctor, lawyer, chartered accountant, architect etc., retains office in their own residential building. There may also be cases of partial letting of residential house for non residential purpose. However, non residential use of a portion of a residential building does not affect its identity or character as a residential building. So long as plinth area of a residential building is above the limit that attracts luxury tax under S.5A, such liability cannot exclude by letting out part of the building for non residential purpose. We, therefore, do not find any merit in this Writ Appeal and the same is accordingly dismissed."*

9. In the light of the above view of the Division Bench in **Ayshakunji**'s case (supra), the contention of the appellant that proviso to Section 6 exempts from the calculation of the plinth area of residential building, a garage or any other erection or structure appurtenant to a residential building used for storage of fire wood or for any non-residential purpose and hence the study/office of the appellant who is an Advocate in the residential building qualifies within the said exemptions in the proviso,

cannot be countenanced. The conclusion arrived at by the learned Single Judge based on the '*ejusdem generis*' rule has to be accepted. Thus we find no reason to interfere with the findings of the learned Single Judge.

The Writ Appeal is accordingly dismissed. No costs.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

csl

APPENDIX OF WA 273/2024

APPELLANT/PETITIONER'S EXHIBITS :

Exhibit P1 in W.P(C) No. 41644/2017	**TRUE COPY OF THE BUILDING PERMIT DATED 18.11.2008**
Exhibit P2 in W.P(C) No. 41644/2017	**TRUE COPY OF THE ORDER NO.4000/2014 DATED 08.09.2015**
Exhibit P3 in W.P(C) No. 41644/2017	**TRUE COPY OF THE APPEAL MEMORANDUM DATED NIL**
Exhibit P4 in W.P(C) No. 41644/2017	**TRUE COPY OF THE ORDER NO.D7/8799/16/D.DIS DATED 29.05.2017.**