

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 7TH DAY OF JANUARY 2022 / 17TH POUSHA, 1943

WP(C) NO. 19085 OF 2014

PETITIONER:

K.P.MUHAMMED ASHRAF
AGED 54 YEARS
S/O.MUHAMMED KUNHI HAJI, BUSINESS,
RESIDING AT BISMILLA HOUSE, SAYED NAGAR,
TALIPARAMBA, KANNUR DISTRICT - 670 141.

BY ADV SRI.R.SURENDRAN

RESPONDENTS:

- 1 THE TALIPARAMBA MUNICIPALITY
REPRESENTED BY TH SECRETARY,
TALIPARAMBA MUNICIPALITY, TALIPARAMBA,
KANNUR DISTRICT - 670 141.
- 2 THE SECRETARY
TALIPARAMBA MUNICIPALITY, TALIPARAMBA,
KANNUR DISTRICT - 670 141.
- 3 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT (RD) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY ADVS.
SRI.P.V.SURENDRANATH
SMT.BINDUMOL JOSEPH
SMT.K.R.DEEPA, SPL.GP (LSGD)
SRI.B.S.SYAMANTHAK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 07.01.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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N. NAGARESH, J.

.....
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.....

Dated this the 7th day of January, 2022

J U D G M E N T

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The petitioner, who is owner in possession of a building in Taliparamba Municipality, seeks to declare that Rule 9(4A) and Rule 9(4C) of the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011 which prescribes fixation of Property Tax at a minimum of 25% over and above the tax levied for the previous year even if Property Tax arrived at on computation as per the said Rules is less than the tax levied for the previous year, is *ultra vires* Section 233 of the Kerala Municipality Act, 1994. The petitioner also seeks refund of excess tax levied from the petitioner in respect of his building.

2. The petitioner is the owner of building bearing Nos.XII/559-A, D, E, F, H, I, M, N, O, R, S and U to Y of

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Taliparamba Municipality. The entire buildings were assessed to Property Tax by the Municipality prior to 01.04.2011 on the basis of annual rental value and the tax was paid by the petitioner. The Property Tax of the buildings were fixed arbitrarily and the petitioner had filed representation to re-fix the tax reasonably.

3. In the meantime, the system of taxation was substituted by the amendment of Section 233 of the Kerala Municipality Act, 1994. As per the new system, the tax is to be fixed on the plinth area basis with allowances and additions. Rules 9(4A) and 9(4C) of the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011 prescribe fixation of Property Tax at 25% over and above the existing property tax levied, denying any benefit of the amended provision of Section 233. The said Rule is *ultra vires* Section 233 of the Kerala Municipality Act, 1994 and without any authority of law.

4. As per Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law.

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Hence, the said rule is liable to be declared *ultra vires* and is liable to be quashed, contended the petitioner.

5. Respondents 1 and 2 resisted the writ petition. The respondents stated that the fixation of property tax on the basis of annual value of the building led to several complaints and objections which culminated in the substitution of Section 233 of the Kerala Municipalities Act, 1994. Prior to the substitution, the property tax was levied on the basis of annual value of the building or lands. The Government of Kerala promulgated the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011 by exercising the power conferred under Sections 230, 231, 233 read with Section 565 of the Kerala Municipality Act, 1994. The 1st respondent issued G.O.(P) No.17/2011/LSGD dated 14.01.2011 in exercise of the powers conferred under Section 233 of the Kerala Municipality Act fixing the minimum and maximum of the basic property tax per square metre in accordance with the use of the building.

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6. Thereafter, the Government issued G.O.(P) No.100/2013/LSGD dated 15.03.2013 amending the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011 inserting various provisions including Rules 9(4A) and 9(4C) of the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011. G.O.(MS) No.144/2015/LSGD dated 27.04.2015 clearly says that while determining the annual property tax of the commercial and industrial building for the first time on the basis of plinth area, and if there is any increase in annual property tax, the same shall not exceed hundred percent. The Government Order further says that necessary amendments will be brought to the Rules concerned.

7. In the light of Ext.R2(d) Government Order, the petitioner's apprehension regarding Rule 9(4C) does not subsist. The contention of the petitioner in the writ petition to the effect that the property tax collected from the petitioner for the period from 01.04.2011 is without any authority of law as the same is collected under the old provision of Section

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233, is misconceived. Exts.R2(b) to R2(f) Government Orders were issued only to reduce the tax burden. Unfortunately, due to the complexity involved in fixation of property tax, the revision could not be completed within a time frame. Hence, the 1st respondent issued G.O.(Rt.) No.540/2019/LSGD dated 06.03.2019 fixing 01.04.2016 as the effective date of revision of property tax.

8. Heard.

9. The question being raised in this writ petition is whether Rule 9(4A) and Rule 9(4C) of the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011 which prescribes fixation of Property Tax at a minimum of 25% over and above the tax levied for the previous year, is *ultra vires* Section 233 of the Kerala Municipality Act, 1994. The Municipalities were levying Property Tax on the basis of annual value of building and land till the year 2009. Section 233 of the Kerala Municipalities Act, 1994 was substituted by Act 30 of 2009 with effect from 07.10.2009. The amended Section 233 reads as follows:

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"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;

(b) The Government may by notification fix the sub-categories of each category of building from (i) to (vii) above and the minimum and the maximum limits of rates of basic property tax applicable to them.

Note-For the purpose of this section "plinth area" means in the case of a single-storeyed building, the area of its floor level (including thickness of wall) of the portion having roof and in the case of a multi-storeyed building with or without cellar-storey, the total area of such floor level (including thickness of wall but excluding the open terrace portion) of each storey of the building.

(3) The Council of the respective Municipality shall, subject to the limits fixed by the Government in accordance with the category of buildings referred to in sub-section (2), fix, after complying

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with the procedure prescribed, the rates of basic property tax (in whole number) to be made applicable to each category of building situated in the area of the Municipality on a scale of one square meter plinth area the rates of basic property tax for all buildings of same category or its sub-categories, as the case may be, shall be the same throughout the area of the Municipality.

(4) The limits of rates of basic property tax fixed by the Government under sub-section (2) and the rates of basic property tax determined by the Council subject thereto, under sub-section (3) shall have effect for five years from the date on which they came into force and thereafter on completion of every five years and before the expiry of the period, the Government and the Municipality shall revise the limits of rates of basic property tax and the rates of basic property tax respectively, so as to be in effect for the next five years. The Secretary shall, in accordance with such revision of rates, after completing the procedures revise and fix the revised property tax in respect of every building before the expiry of the period.

(5) The rates of basic property tax fixed by the Council for the first time under sub-section (3) shall come into force on such date as the Government may, by notification, appoint in this behalf.

(6) The basic property tax shall be such amount as is arrived at by multiplying the plinth area of a building with the rate of basic property tax applicable to such building which is rounded to the next higher whole number.

(7) In the basic property tax of building calculated as per sub-section (6), on the basis of the factors:-

(i) where the areas of Municipality are classified into different zones, the zone in which the building is located,

(ii) availability of road facility to the building,

(iii) variation in the plinth area of the building,

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- (iv) Construction of roof of the building,
- (v) age of the building,
- (vi) construction of floor of the building,
- (vii) construction of wall of the building,
- (viii) air conditioning facility of the building,

(ix) nature of use of the building (that is whether used for personal purpose or given on rent) the Secretary shall in accordance with the classification of factors specified in the Rules and at the rate fixed for each category, allow deductions, and make additions, as the case may be Provided that the aggregate deductions so allowed in respect of all items shall not exceed seventy-five per cent of the basic property tax.

(8) The amount so arrived at by allowing deductions and making additions on the basic property tax under sub-section (7) shall be adjusted to the next higher whole number and the amount so assessed shall be the annual property tax of the building.

(9) In the case of a building, if two or more uses or its subcategories referred to in sub-section (2) or any two or more factors referred to in sub-section (7) or two or more kinds of a factor are applicable at the same time, the aggregate of annual property tax shall be assessed by reckoning separately, the property tax as applicable to the respective part of the building Provided that, if more than one kind of anyone of the factors such as construction of roof of the building, construction of floor of the building, the construction of wall of the building are applicable to a building at the same time the annual property tax of the building shall be assessed on the basis of that kind applicable to more than half portion of the aggregate plinth area.

(10) After publishing the rate of basic property tax applicable to the area of Municipality and the notification classifying the areas of the Municipality in to different zones, the Secretary shall by a public notice, publish the general details

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helpful to the owners to assess the annual property tax of their buildings by themselves, in accordance with such details as the plinth area of the building, the permissible deductions and the additions that may be made in the basic property tax, by said notice, demand the owners of the building to submit the returns in respect of the property in the prescribed Form within sixty days from the date of publication of such public notice. The Format/copy of the Form shall be made available to the owners of the building free of cost.

(11) The owner of the building or the person authorised by him shall, within the time allowed, submit before the Secretary or the Officer authorised the attested tax return recording all the particulars necessary in connection with the assessment of tax and obtain receipt of acknowledgement.

(12) On inquiry by the Secretary if it is found that the owner of the building or the person authorised has furnished false or misleading particulars in the return or that the return has not been submitted within the stipulated time, the owner of the building shall also be liable to pay fine as prescribed in addition to the actual property tax payable for the building as per law.

(13) On the basis of the return submitted by the owner of the building and on the findings of the Secretary in the inquiry, the Secretary shall assess the annual property tax of the building and levy property tax of the building by issuing demand notice applicable five years to the owner of the building.

(14) The Secretary may, on the basis of the return submitted by the owner of the building, assess provisionally, the annual property tax of the building and levy tax as such by issuing such demand notice and subsequently after conducting inquiry in respect of the building, confirm or revise the tax assessed earlier. The assessment of tax shall be provisional until conducting inquiry in respect of the building by the Secretary assesses

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the property tax of the building.

(15) The annual property tax assessed in respect of a building shall be payable in two half yearly instalments. The instalment in respect of any half-year shall be paid on or before the last day of the said half-year and if not paid within that date penalty under sub-section (2) of section 538 shall be applicable from the next day. Provided that there is no bar for one time payment of annual property tax in the first half-year itself.

(16) The Secretary shall revise the annual property tax of the building taking into account the rate of basic property tax applicable to a building under sub-sections (2) and (3) considering the change, if any, occurs in the use of the building, variation, if any, occurs in the plinth area of the building specified in sub-section (6), the deductions and additions in conformity with the variation, if any, occurs in any factor or any kind of factor specified in sub-section (7) The owner of the building shall, within thirty days inform the Secretary in writing the changes that may occur in use, etc. and submit revised tax return under sub-section (10).

(17) The Municipality shall, in the case of land used exclusively for agricultural purposes and which is more than one hectare in extent, levy, property tax on its annual value excluding one hectare of land, at the rate as fixed by the Council of the Municipality Provided that such rate shall not exceed the maximum limit, if any rate has been fixed by the Government Explanation-For the purpose of this sub-section the annual value shall be deemed to be the rent which may reasonably be expected, if the land for which property tax is to be assessed is leased out from year to year.

(18) The Government may, at any time, inspect the accuracy of the assessment of property tax made by the Secretary in the case of a building and give appropriate direction to the Secretary in this regard and the Secretary shall be bound to comply with it.

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(19) The Government may, by notification in the Gazette, make rules in respect of the following-

(i) the procedure to be followed by the Council for fixing the rates of basic property tax to be made applicable to the area of the Municipality subject to the limits specified by the Government and for publishing the same,

(ii) fixing the increase in the upper limit of annual property tax,

(iii) for notification classifying the area of Municipality into different zones,

(iv) the classification of factors to be made applicable for making deductions and additions on the basic tax, their criteria and the rate of deductions or additions applicable to each kind,

(v) the procedure for submitting return containing particulars helpful for the assessment of property tax and the Form of return to be submitted to the Secretary by the tax-payer.

(vi) for imposing fine if the return is not submitted with regard to property tax or submitting the return containing false information,

(vii) the action to be taken against officers who fail to collect information or furnish false information with regard to the assessment of property tax.

(viii) procedure for assessing basic property tax and annual property tax in respect of each building,

(ix) for granting exemption and other remission from property tax,

(x) any circumstance under which and any condition subject to which it is liable to pay the entire tax or any part thereof or free from such liability to pay tax in respect of the buildings located in a place which is included in or excluded from the area of a Municipality during any half-year or in respect of buildings re-erected or demolished or lying vacant in the area of Municipality, such

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circumstances and conditions,

(xi) the procedure for recording the change in respect of the ownership of the building in the register of property tax,

(xii) other matters incidental to the assessment and realisation of property tax."

The amended Section 233 thus enables computation and levy of property tax on buildings depending on the nature of the buildings and conveniences available on the basis of the plinth area of the building.

10. The Government in exercise of its powers under Sections 230, 231, 233 read with Section 565, framed the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011. Rules 9(4A) to 9(4D) prescribes fixation of property tax to a minimum of 25% over and above the tax levied for the previous year even if the property tax arrived at on computation as per Rules is less than the tax levied during the previous year. Rules 9(4A) to 9(4D) of the Rules, 2011 read as follows:

“(4 എ) താ വിസ്തീർണ്ണത്തിന്റെ അടിസ്ഥാനത്തിൽ പാർപ്പിടാവശ്യത്തിനുള്ളതും നിലവിലുള്ളതുമായ ഒരു കെട്ടിടത്തിന്റെ വാർഷിക വസ്തു നികുതി ആദ്യമായി നിർണ്ണയിക്കുമ്പോൾ ഞാട്ട്

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മുമ്പ് നിലവിലുണ്ടായിരുന്ന വാർഷിക വസ്തു നികുതിയിൽ ഏറ്റവും കുറഞ്ഞത് ഇരുപത്തഞ്ചു ശതമാനവും വർദ്ധനവ് വരുത്തിയിരിക്കേണ്ടതാണ്.

(4 ബി) തന വിസ്തീർണ്ണത്തിന്റെ അടിസ്ഥാനത്തിൽ പാർപ്പിടാവശ്യത്തിനുള്ളതും നിലവിലുള്ളതുമായ ഒരു കെട്ടിടത്തിന്റെ വാർഷിക വസ്തു നികുതി ആദ്യമായി നിർണ്ണയിക്കുമ്പോൾ ഞാട്ട് മുമ്പ് നിലവിലുണ്ടായിരുന്ന വാർഷിക വസ്തു നികുതിയിൽ വർദ്ധനവ് ഉണ്ടാകുന്നുവെങ്കിൽ അപകാരമുള്ള വർദ്ധനവ് നിലവിലുണ്ടായിരുന്ന വാർഷിക വസ്തു നികുതിയുടെ അനുപാത ശതമാനത്തിൽ അധികരിക്കാൻ പാടില്ലാത്തതും ഈ പരിധിക്കു വിധേയമായി പ്രസ്തുത കെട്ടിടത്തിന്റെ വാർഷിക വസ്തു നികുതി നിർണ്ണയിക്കേണ്ടതുമാണ്.

(4 സി) തന വിസ്തീർണ്ണത്തിന്റെ അടിസ്ഥാനത്തിൽ വാണിജ്യാവശ്യത്തിനുള്ളതും നിലവിലുള്ളതുമായ ഒരു കെട്ടിടത്തിന്റെ വാർഷിക വസ്തു നികുതി ആദ്യമായി നിശ്ചയിക്കുമ്പോൾ ഞാട്ട് മുമ്പ് നിലവിലുണ്ടായിരുന്ന വാർഷിക വസ്തു നികുതിയിൽ ഏറ്റവും കുറഞ്ഞത് ഇരുപത്തഞ്ചു ശതമാനം വർദ്ധനവ് വരുത്തിയിരിക്കേണ്ടതാണ്.

(4 ഡി) തന വിസ്തീർണ്ണത്തിന്റെ അടിസ്ഥാനത്തിൽ വാണിജ്യാവശ്യത്തിനുള്ളതും നിലവിലുള്ളതുമായ ഒരു കെട്ടിടത്തിന്റെ വാർഷിക വസ്തു നികുതി ആദ്യമായി നിശ്ചയിക്കുമ്പോൾ ഞാട്ട് മുമ്പ് നിലവിലുണ്ടായിരുന്ന വാർഷിക വസ്തു നികുതിയിൽ വർദ്ധനവ് ഉണ്ടാകുന്നുവെങ്കിൽ അപകാരമുള്ള വർദ്ധനവ് നിലവിലുള്ള വാർഷിക വസ്തു നികുതിയുടെ നൂറ്റിയമ്പത് ശതമാനത്തിൽ അധികരിക്കാൻ പാടില്ലാത്തതും ഈ പരിധിക്കു വിധേയമായി നിലവിലുള്ള പ്രസ്തുത കെട്ടിടത്തിന്റെ വാർഷിക വസ്തു നികുതി നിശ്ചയിക്കേണ്ടതുമാണ്.

എന്നാൽ, ഏറ്റവും ഒടുവിൽ നടത്തിയ വാർഷിക വസ്തു നികുതി നിർണ്ണയത്തിനോ, പുനർ നിർണ്ണയത്തിനോ ശേഷം പ്രസ്തുത കെട്ടിടത്തിന് എന്തെങ്കിലും കൂട്ടിച്ചേർക്കലോ, ഘടനാപരമായ മെച്ചപ്പെടുക്കലുകളോ, ഉപയോഗക്രമത്തിൽ എന്തെങ്കിലും മാറ്റമോ വരുത്തിയിട്ടുണ്ടെങ്കിൽ മേൽപ്പറഞ്ഞ ഉപപട്ടങ്ങളിൽ പ്രതിപാദിച്ചിട്ടുള്ള പരിധിക്കു മധ്യസ്ഥമാകുന്നതല്ല."

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These Rules are *ultra vires*, contends the petitioner. Section 233 does not empower the Government and Municipalities to fix property tax at a minimum of 25% over and above the tax levied for the previous year unless the property tax so computed falls within the minimum and maximum slab prescribed, urges the petitioner.

11. This Court finds considerable force in the said argument of the petitioner. Section 233 does not give power to the authorities to make property tax fixation in such a manner. As per Section 233(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 metre plinth area of the categories of building in accordance with the use and the date on which they shall come into force. Therefore, there should be a minimum and maximum limit of rates of basic property tax.

12. Sub-section (3) to Section 233 provides that the Council of the respective Municipality shall subject to the limits fixed by the Government in accordance with the

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category of buildings referred to in Sub-section (2), fix, after complying with the procedure prescribed, the rates of Basic Property Tax (in whole number) to be made applicable to each category of building situated in the area of the Municipality on a scale of one square metre plinth area. The rates of basic property tax for all buildings of same category or its sub-categories, as the case may be, shall be the same throughout the area of the Municipality. Therefore, it is clear that the fixation of property tax by the Municipalities should be subject to the limits fixed by the Government in accordance with the category of buildings referred to in Sub-section (2). Section 233 does not permit fixation of property tax over and above the upper limit fixed by the Government.

13. Again Sub-section (19)(i) of Section 233 empowers the Government to make rules in respect of the procedure to be followed by the Council for fixing the rates of Basic Property Tax to be made applicable to the area of the Municipality, subject to the limits specified by the

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Government. Here, again the term “subject to the limits specified by the Government” would only mean the minimum and maximum limits specified by the Government.

14. Section 233(4) provides that the property tax fixed for the first time under Sub-section (3) shall be in force for a period of 5 years and the 25% increase provided is applicable only after the expiry of first five years period, during revision. There is nothing in Section 233(4) to assume that a 25% increase on the pre-existing tax levied on annual value of building is provided while fixing the property tax under Section 233(3) of the Act.

15. For all the above reasons, it is declared that Rules 9(4A) and 9(4C) of the Kerala Municipality (Property Tax, Service Tax and Surcharge) Rules, 2011, which prescribe fixation of property tax at a minimum of 25% over and above the tax levied for the previous year, if property tax arrived at on computation as per the Rules, 2011 is less than the tax levied for the previous year, is *ultra vires* the Kerala Municipality Act, 1994. Rule 9(4A) and Rule 9(4C) are

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therefore set aside to that extent. The petitioner will be entitled to all consequential benefits.

The writ petition is allowed as above.

Sd/-

N. NAGARESH, JUDGE

aks/06.01.2022

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APPENDIX OF WP (C) 19085/2014

PETITIONER'S EXHIBITS

P1 - TRUE COPY OF THE REPLY DT. 25.7.12 ISSUED BY TH PUBLIC INFORMATION OFFICER, TALIPARAMBA MUNICIPALITY.

P2 - TRUE COPY OF THE REPLY DT.21.4.12 ISSUED BY THE PUBLIC INFORMATION OFFICER, TALIPARAMBA MUNICIPALITY.

P3 - TRUE COPY OF THE PROPERTY TAX RECEIPT DT. 03.3.14 ISSUED BY THE FIRST RESPONDENT IN RESPECT OF THE BUILDINGS NO. NO. XIII/559-R.

P3(A) - TRUE COPY OF THE PROPERTY TAX RECEIPTS DT. 23.6.14 ISSUED BY THE FIRST RESPONDENT IN RESPECT OF THE BUILDINGS NO. NO. XIII/559-S AND U

P3(B) - TRUE COPY OF THE PROPERTY TAX RECEIPTS DT. 23.6.14 ISSUED BY THE FIRST RESPONDENT IN RESPECT OF THE BUILDINGS NO. NO. XIII/559 V AND W

P3(C) - TRUE COPY OF THE PROPERTY TAX RECEIPTS DT. 23.6.14 ISSUED BY THE FIRST RESPONDENT IN RESPECT OF THE BUILDINGS NO. NO. XIII/559 X AND Y

P4 - TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER ON 19.12.12 BEFORE THE SECOND RESPONDENT.

P5 - TRUE COPY OF THE LETTER DT. 01.1.13 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

RESPONDENT EXHIBITS

EXHIBIT R2 (a) : A TRUE COPY OF THE G.O. (P) NO.17/2011/LSGD DATED 14/01/2011.

EXHIBIT R2 (b) : A TRUE COPY OF THE G.O. (P) NO.1100/2013/LSGD DATED 15/03/2013.

EXHIBIT R2 (c) : A TRUE COPY OF THE G.O. (P) NO.36/2015/LSGD DATED 24/02/2015.

EXHIBIT R2 (d) : A TRUE COPY OF THE G.O. (MS) NO.144/2015/LSGD DATED 27/04/2015.

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EXHIBIT R2 (e) : A TRUE COPY OF THE G.O. (MS)
NO.358/2015/LSGD DATED 16/12/2015.

EXHIBITB R2 (f) : A TRUE COPY OF THE G.O. (MS)
NO.371/2013/LSGD DATED 02/12/2013.

EXHIBIT R2 (g) : A TRUE COPY OF THE GOVERNMENT ORDER GO
(RT) NO.540/2019/LSGD DATED
06/03/2019.