

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

Crl.Rev.Pet.No. 1483 of 2014 ()

AGAINST THE ORDER IN CRMP 350/2013 of ENQUIRY COMMISSIONER & SPECIAL
JUDGE,TRIVANDRUM DATED 03-08-2013

REVISION PETITIONER/COMPLAINANT:

NEYYATTINKARA P. NAGARAJ
S/O. S.P. THYAGARAJAN, AYYAPPA NIVAS
OPP. COURT COMPLEX, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADVS.SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

RESPONDENTS/ACCUSED & STATE:

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1. K.J. SARATHCHANDRAN NAIR
JOINT SUB REGISTRAR, SUB-REGISTRAR OFFICE, PATTOM
THIRUVANANTHAPURAM-695004.
 2. V. KRISHNANKUTTY NAIR,
DOCUMENT WRITER, TDA 521 LICENSEE, DWARAKA
PANAYARA, MUKKOLA.P.O., THIRUVANANTHAPURAM-695145.
 3. J.W. GLADSTON,
S/O. WILSON, VISRANT, V.P. IX/555
URIAKKODE.P.O, THIRUVANANTHAPURAM-695543.
 4. D. LAWRENCE, S/O. DEVADASAN,
SECRETARY, SOUTH KERALA DIOCESE
(FORMER TREASURER) MORNING STAR, MARKET JUNCTION
V.P. XIV/461, PEYAD.P.O., THIRUVANANTHAPURAM-695573.
 5. N. SELVARAJ, S/O. NESAMONI,
SECRETARY, SOCIETY FOR TECHNICAL TRAINING,
SEETHAL, PARANIYAM
POOVAR.P.O., THIRUVANANTHAPURAM-695525.
 6. D. SUMARAN, S/O. DENNISON,
RATHISH BHAVAN, P.P. III/677
ALUMKUZHI, URIYAKKODE.P.O., THIRUVANANTHAPURAM-695543.

7. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R3 -R6 BY ADV. SRI.SUMAN CHAKRAVARTHY
R3 -R6 BY ADV. SRI.SANDEEP T.GEORGE
R7 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A - TRUE COPY OF THE QUESTIONS AND ANSWER GIVEN BY THE VILLAGE OFFICER, PATTOM WITH RESPECT TO THE ROAD ACCESS TO THE PROPERTY COVERED IN ANNEXURE-P1 SETTLEMENT DEED.

ANNEXURE-B: TRUE COPY OF THE COMPLAINT IN CRIMINAL M.P.NO.350/2013 TOGETHER WITH ANNEXURES FILED BEOFRE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.1483 of 2014

Dated 20th January, 2015

ORDER

This revision petition is filed against the order dated 3.8.2013 passed by the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram in Crl.M.P.No.350 of 2013. The revisionist was the complainant therein and he filed Annexure-B complaint alleging commission of offences punishable under Sections 7, 13(2) read with Section 13(d) of the Prevention of Corruption Act, 1988 and under Sections 120B & 34 of the Indian Penal Code against respondents 1 to 6 herein. The revision petitioner filed the said petition in respect of transaction of the property having an extent of 6 acres and 22 cents covered by settlement deed No.638/2009 dated 2.3.2009. The contention was that the first respondent entered into a criminal conspiracy with respondents 2 to 6 and in pursuance of the said conspiracy the aforesaid property was described wrongly as a property having no vehicular access and thereby the actual value of the property was concealed causing loss to the State Exchequer. It is the further contention that the first respondent accepted bribe and gratification from respondents 3 to 6 and thereby abused his official position and

registered the document as a 'settlement deed' which ought to have been registered as a 'sale deed'. In support of the allegation the petitioner has produced Annexures P1 and P2. Annexure-P1 is the settlement deed and Annexure-P2 series is the Gazette notification regarding fair value in respect of residential plots in the area. The first respondent herein/the first accused in the complaint is the Joint Sub Registrar attached to the Sub Registrar's Office, Pattom, Thiruvananthapuram who registered Annexure-P1 settlement deed. The learned Special Judge obviously perused the copy of the settlement deed viz., Annexure-P1 and found that the Church of South India Trust Association is a society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955. Going by Annexure-P1 the consideration shown in the settlement deed is ₹ 2,18,00,000/- that is, ₹ 86,570/- per Are. The complaint of the revision petitioner is that the document (Annexure-P1) should have been registered as a sale deed and in fact, it was registered as a settlement deed solely for the purpose of evading stamp duty. The learned Special Judge further observed that the recital in the document itself would make it clear that the society is functioning under the Church of South India Trust Association. The property in question which was belonging to the Church of South India Trust Association was conveyed as per Annexure-P1 to a society functioning under it. No material whatsoever to show

that the society is not functioning under the Church of South India Trust Association which is the owner of the property was produced before the learned Special Judge along with the complaint. In such a situation, the learned Special Judge found that the petitioner has not made out any prima facie case to show that the document in question should have been registered as a sale deed instead of a settlement deed. As noticed hereinbefore, after perusing Annexure-P2 series of Gazette notifications relating the fair value fixed in relation to the residential plots in the area in question the learned Special Judge found that a perusal of the recital in Annexure-P1 settlement deed and the schedule of property attached to the said deed would reveal that no road is situated abutting the property in question. The learned Special Judge also took note of the fact that the deed was registered prior to the issuance of Annexure-P2 Gazette notification showing the fair value. The learned Special Judge also observed that if there is any undervaluation in respect of the registration of the document in question the concerned authority viz., The District Registrar could take action. It is after such consideration that the learned Special Judge found that no prima facie case was made out by the petitioner and no material whatsoever is available to substantiate the criminal conspiracy and in such circumstances held that the materials available on record are not sufficient to establish a prima

facie case. Consequently, Annexure-B complaint was rejected. This revision petition has been filed challenging the aforesaid order passed by the learned Special Judge based on a document. As noticed hereinbefore, the learned Special Judge rejected the complaint on arriving at the conclusion that no material whatsoever is available to constitute a prima facie case. There cannot be any doubt with respect to the position that a prima facie case means a case where prima facie evidence is available to substantiate the allegations, if they stand un rebutted. That alone is the question to be considered at the time of deciding whether to proceed with a complaint. The petitioner obtained a document under the Right to Information Act viz., Annexure-A subsequent to the passing of the order. Evidently, the document was not available for the perusal of the learned Special Judge. Annexure-A is dated 6.11.2013 and the impugned order was passed on 3.8.2013. Annexure-P1 would reveal that it is dated 2.3.2009. In such circumstances, the value of the property mentioned in a document after about four years cannot be looked into by this Court to consider the correctness of the order passed by the learned Special Judge. The photocopies of the documents produced before the learned Special Judge are all produced along with the revision petition. Having considered the case carefully and scanning the documents produced by the petitioner I

do not find any reason to interfere with, the order passed by the learned Special Judge upon arriving at a conclusion that the materials available on record are insufficient to establish a prima facie case. This revision petition has to fail and accordingly, it is dismissed. In this context, it is also to be noted that the learned Special Judge has made an observation that in a case of undervaluation the District Registrar is the authority to look into the document to see whether there is any undervaluation and to take appropriate action in accordance with law. Certainly, in such circumstances, it is made clear that the dismissal of this revision petition will not stand in the way of the revision petitioner to bring the undervaluation, if any, before the appropriate authority in accordance with law, if so advised.

Sd/-
C.T.RAVIKUMAR
Judge

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