

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No.1767 of 2015 (U)

PETITIONER:

**KERALA LAND REFORMS & DEVELOPMENT
CO-OPERATIVE SOCIETY LTD.NO.4482,
CITY BANK BUILDING,CHALAPPURAM.P.O.
KOZHIKODE-673 002,REPRESENTED BY ITS SECRETARY.**

**BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.A.K.RAJESH
SRI.VENKATESH GOPI**

RESPONDENTS:

- 1. THE DISTRICT REGISTRAR (GENERAL)
KALPETTA,WAYANAD. PIN-673 121.**
- 2. THE SUB REGISTRAR,OFFICE OF THE SUB REGISTRAR,
SULTHAN BATHERY,WAYANAD,PIN-673 592.**

R1 & R2 BY GOVERNMENT PLEADER SRI.JIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-03-2015, ALONG WITH WPC.1768/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

pk

WP(C).No.1767 of 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1-TRUE COPY OF THE RELEVANT PORTION OF THE BYE-LAW OF THE
PETITIONERS SOCIETY.**

**EXT.P2-TRUE COPY OF THE SALE DEED DATED 26.9.2014 IN FAVOUR OF THE
PETITIONER.**

EXT.P3-TRUE COPY OF THE CHALAN RECEIPT NO.720193 DATED 26.9.2014.

EXT.P4-TRUE COPY OF THE G.O.MS 795/60/AGRL. DATED 8.10.1960.

**EXT.P5-TRUE COPY OF THE ORDER NO.255/14 DATED 10.11.2014 OF THE 2ND
RESPONDENT.**

EXT.P6-TRUE COPY OF THE ORDER NO.INS.1/2328/2014 DATED 14.10.2014.

**EXT.P7-TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE
1ST RESPONDENT DATED 2.12.2014.**

**EXT.P8-TRUE COPY OF THE ORDER NO.255/14 DATED 8.1.2015 OF THE 2ND
RESPONDENT.**

EXT.P9-TRUE COPY OF THE ORDER NO.INS.1.2328/2014 DATED 31.12.2014.

**EXT.P10-TRUE COPY OF THE ORDER IN W.P [C] NO.23688/2013
DATED 13.12.2013.**

EXT.P11-TRUE COPY OF THE ORDER IN W.P [C] NO.29644/2014 DATED 11.11.2014.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S TO JUDGE

pk

V. CHITAMBARESH, J

W.P.(C). Nos. 1767 & 1768 OF 2015

Dated this the 13th day of March, 2015

JUDGMENT

Clause 1(a) of S.R.O.No.75/60 relied on by the petitioner reads as follows:-

“S.R.O. No. 75/60.- In exercise of the powers conferred by sub-section (1) and (a) of Section 35 of the Travancore Cochin Co-operative Societies Act, 1951 (Act X of 1952) and by Sub-sections (2)(a) and (2)(b), Section 30 of the Madras Co-operative Societies Act, (VI of 1932) and in supersession of all notifications issued on the subject, the Government of Kerala direct in respect of Co-operative Societies registered in the State as follows:-

1. The stamp duty, registration fees and fees for encumbrance certificate payable under the Stamp Act and the Registration Act, in force in the State shall be remitted to the Co-operative Societies, in the following cases to the extent indicated in each case.

(a) The whole stamp duty with which under the Kerala Stamp Act, 1959 (Act 17 of 1959) instruments executed by or on behalf of any registered Co-operative Society or instruments executed by “any officer or member of such society and relating to the business there of and

decisions, awards or orders of the Registrar or the Arbitrators under the said Co-operative Societies Act; provided that in the case of sale deeds the vendors have been continuously the members of such society for a period of two years immediately prior to execution of the instrument.”

2. Para 21 of the judgment in **Sub Registrar v. Kerala State Co-operative Consumers Federation Ltd. [2015(1) KLT 443 (F.B.)]** reads as follows:-

“21. However, both under S.40(1)(a) of the Kerala Act and clause 1(a) of S.R.O. No. 75/60, the benefit of remission is allowed only in respect of documents executed by or on behalf of the society or by its officer or member. In cases where societies purchase properties, in view of S.55 of the Transfer of Property Act, since the executant of the instrument is not the society but the vendor of the property, the requirement of execution of the instrument by or on behalf of the society as provided in S.40(1)(a) of the Kerala Act and clause 1(a) of SRO. No. 75/60 is not satisfied.” (emphasis supplied)

3. The instant case is one where the sale deed is not executed by or on behalf of any registered Co-operative

Society and is instead executed by a stranger in favour of the petitioner society. The petitioner is neither entitled to the benefit of S.R.O. No. 75/60 nor to the benefit of the dictum laid down by the Full Bench of this Court aforequoted. Ext. P9 order saddling the petitioner society (which is the vendee) to pay stamp duty required for the sale deed calls for no interference.

4. The very registration of the petitioner as a miscellaneous society under the Kerala Co-operative Societies Act, 1969 also raises many an eyebrow. The Government Pleader points out that the bye laws of the petitioner society do not indicate that any deposits have been accepted from its members for the purpose of its business activities. The only business activity according to the Government Pleader is to dodge the payment of stamp duty by forming housing societies like the petitioner. It is the further case of the Government that the petitioner is a primary co-operative society whose area of operation cannot spread in excess of a revenue district as per Section 2(od) of the Kerala Co-operative Societies Act. But Clause 3 of the bye laws of the petitioner society shows that the area of operation extends to the 'entire State of

Kerala'. The petitioner on the other hand maintains that it is a miscellaneous society falling under Rule 15(12) of the Kerala Co-operative Societies Rules, 1969. It is further stated that the object of the society is to make available parcels of land to its members at reasonable rates. The petitioner society even though classified as a miscellaneous society is nevertheless a primary co-operative society and is not a central society or an apex society. The registration of the society and the claim for exemption from stamp duty does not inspire the confidence of this Court to grant any equitable relief.

The writ petitions are dismissed. No costs.

**V. CHITAMBARESH
JUDGE**

DCS