

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 14056 of 2015 (F)

PETITIONER :

**M/S.POPULAR VEHICLES & SERVICES PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT KUTTUKKARAN CENTRE,
MAMANGALAM, KOCHI - 682 025
REPRESENTED BY ITS PRINCIPAL OFFICER AND
SENIOR MANAGER - LEGAL, MR.PRAMOD JAIJI.**

**BY ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN: 695 001.**
- 2. THE DISTRICT COLLECTOR,
DISTRICT COLLECTORATE, TALAP, KANNUR,
PIN: 670 002.**
- 3. THE SUB COLLECTOR/REVENUE DIVISIONAL OFFICER,
THALASSERRY, KANNUR, PIN: 670 101.**
- 4. THE DISTRICT REGISTRAR,
PUZHATHI HOUSING COLONY, KANNUR, PIN: 670 002.**
- 5. THE SUB REGISTRAR,
SUB REGISTRAR OFFICE, KADACHIRA, KANNUR,
PIN: 670 621**

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

WP(C).No. 14056 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE CERTIFICATE OF INCORPORATION DATED 24/3/2015

P2: TRUE COPY OF THE AGREEMENT OF LEASE DATED 7/10/14.

P3: TRUE COPY OF THE APPLICATION DATED 23/1/2015.

P4: TRUE COPY OF THE ORDER NO.D 1075/2015 DATED 12/3/2015

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 14056 of 2015

Dated this the 07th day of October, 2015

JUDGMENT

The petitioner invoked under Section 31 of the Kerala Stamp Act to adjudicate upon as to the proper stamp duty payable on a lease deed. The lease deed was executed on 07/10/2014. The petitioner approached the Sub Collector after four months as per Ext.P3 on 23/01/2015.

2. The Sub Collector finding that this application is filed after one month of execution, impounded the document by resorting to Section 33 of the Stamp Act stating that it is sufficiently stamped. The action of the Collector is called in challenge in this writ petition.

3. Section 31 of the Kerala Stamp Act enables the Sub Collector to determine proper stamp duty payable in respect of instrument by an adjudication. Section 31 provides as follows :

“31. Adjudication as to proper Stamps-

(1) When any instrument, whether executed or not and whether previously stamped or not is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to duty, if any, with which it is chargeable and pays a fee of such amount (not exceeding ten rupees and not less than one rupee) as the Collector may in each case direct, the Collector shall determine the duty, if any, with which, his judgment, the instrument is chargeable.”

4. It is apparent that the Sub Collector refused to act upon this request for the reason that the application has been filed by the petitioner after one month and finding that the petitioner's lease deed is insufficient stamp invoked the power of impounding and imposed a penalty of ten times of the stamp duty payable.

5. This Court is of the view that the action of the Sub Collector is unsustainable. If the petitioner has invoked the power of adjudication, the Sub Collector either to exercise the power of adjudication or refused to have exercise the power of adjudication. The Sub Collector cannot determine the instrument is insufficiently

stamped for the purpose of impounding. The impounding would arise when the parties want to act upon that instrument. Since it is a lease deed, it is always open for the parties to discard that lease deed and execute a fresh lease deed.

6. The impounding under the Kerala Stamp Act would arise only when the instrument is produced in performance of a public duty. It is clear from Section 33 of the Kerala Stamp Act itself. Section 33(1) provides as follows :

33. Examination and impounding of instruments - (1) Every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an Officer of Police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

7. The Hon'ble Supreme Court in **Govt. of Uttar Pradesh and others V. Raja Mohammad Amir Ahmad Khan [AIR 1961 Supreme Court 787]** held as follows :

“The words “every person before whom any instrument is produced or comes in the performance of his functions” in S. 33 refer, firstly, to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly, to other officers who have to perform any function in regard to those instruments when they come before them, e.g. registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of S. 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector.”

In the light of above judgment, and also taking note of the nature the instrument being a lease deed, this Court is of the view that the impugned order is unsustainable. Accordingly, the impugned order is set aside.

Sd/-
A. MUHAMED MUSTAQUE,
JUDGE