IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 26495 of 2012 (J)

PETITIONER(S):

KOZHIKODE DISTRICT CO-OPERATIVE TRAVEL & TOURISM DEVELOPMENT SOCIETY AND CENTRE FOR PROFESSIONAL EDUCATION (KTDS) LTD. NO. 2882, REPRESENTED BY ITS HONORARY SECRETARY.

BY ADVS.SRI.T.A.SHAJI
SMT.NAMITHA JYOTHISH

RESPONDENT(S):

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1. THE DISTRICT REGISTRAR(GENERAL), KOZHIKODE DISTRICT, KOZHIKODE 673001.

2. COMMISSIONER OF LAND REVENUE, THIRUVANANTHAPURAM 695001.

3. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, THIRUVANANTHAPURAM 695001.

R2 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26495 of 2012 (J)

APPENDIX

PETITIONER(S) EXHIBITS

P1. TRUE COPY OF G.O(MS)695/60/AGRI.DTD.8.10.1960.

P2. TRUE COPY OF THE ORDER NO. 2666/2011 DATED 12.07.2011 OF THE 2ND RESPONDENT.

P3. TRUE COPY OF THE REPLY DATED 29.06.2011 OF THE PETITIONER

P4. TRUE COPY OF THE REGISTERED BY-LAW OF THE SOCIETY.

P5. TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE SOCIETY DATED 23.01.2008.

P6. TRUE COPY OF THE ORDER DT.20.1.09 IN LAR(A) 3-51702/2008.

P7. TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 26.07.2011.

P8. TRUE COPY OF THE COUNTER AFFIDAVIT DATED 6.1.12 FILED BY RESPONDENTS IN WPC NO. 129/12

P9. TRUE COPY OF THE REPLY AFFIDAVIT DATED 18.2.12 FILED BY THE PETITIONER IN WPC NO.129/2012.

P10. TRUE COPY OF THE JUDGMENT DATED 20.6.12 OF THIS COURT IN WPC NO. 129/2012.

P11. TRUE COPY OF THE ORDER OF LAND REVENUE COMMISSIONER DATED 14.8.12.

P12. TRUE COPY OF THE COMMUNICATION DATED 20.1.12 ISSUED BY THE KOZHIKODE DISTRICT CO-OPERATIVE BANK.

P13. TRUE COPY OF THE COMMUNICATION DATED 7.7.12 ISSUED BY THE KOZHIKODE DISTRICT CO-OPERATIVE BANK.

P14. TRUE COPY OF THE CHALLAN DATED 18.9.12 EVIDENCING PAYMENT OF RS.4151750/-.

P15. TRUE COPY OF THE SALE DEED (DEED OF ASSIGNMENT) DATED 13.5.2011 WITH THE ENDORSEMENT DATED 26.8.2012.

P16. TRUE COPY OF THE RESOLUTION NO.2 DTD.26.1.08 OF THE MANAGING COMMITTEE OF THE SOCIETY.

P17. TRUE COPY OF THE ORDER DT. 8.2.08 OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KOZHIKODE.

RESPONDENTS' EXHIBITS : NIL

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True copy

P.A. to Judge

K.HARILAL, J.

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W.P.(C) No.26495 of 2012

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Dated this the 20th day of November, 2015.

JUDGMENT

The petitioner is a primary co-operative society, registered under the Kerala Co-operative Societies Act, 1969. According to the petitioner, the society is formed with the object of promoting tourism potential of Malabar with the active participation of the business community, to empower every local citizen to be part of the driving force that shall spearhead the development of Malabar tourism and to set up amenities and to transform Malabar into a tourism destination. Towards the achievement of the said object, the society has decided to construct, to set up, run and conduct business ventures like hotels, restaurants, shopping complexes and to organise and conduct tours connecting tourist and pilgrim centers and to establish educational centres for promotion of professional education in the field of Travel and Tourism, Hotel Management, etc. and the said aim and object of the said society is specifically included in Clause 4(3) of the draft bye-law.

2. M/s. Common Wealth Trust (India) Limited, a member of the society, had filed a writ petition, namely, W.P(C) No.5177/05 challenging the coercive action initiated by the Provident Fund authorities against them for realising the Provident Fund dues in respect of their employees and this Court allowed the said company to sell a portion of the immovable properties for liquidating the dues. On coming to know the sale of the property, the petitioner society participated in the auction and bid the said property having an extent of 45 cents in Nagaram Desom, Nagaram Village of Kozhikode Taluk and this Court granted permission to execute the sale deed in favour of the petitioner society. Since the purchase was to be effected for and on behalf of the society, as prescribed in Clause 1(a) of Ext.P1 Government notification granting whole exemption from stamp duty, the society

has sought for whole exemption from stamp duty for registration of the sale deed. Accordingly, the sale deed was executed and tendered for registration from the concerned Sub Registrar's Office. However, it was allowed to be registered provisionally as Document No.P3/2011 before the S.R.O., Chalappuram without payment of stamp duty. Subsequently, the 2^{nd} respondent, by order dated 12.7.2011 directed to remit a sum of Rs.41,51,250/- as stamp duty. It was also directed to show cause as to why 10 times of the above amount should not be imposed as penalty, by Ext.P2.

3. The petitioner society has filed Ext.P3 reply and thereafter Ext.P7 appeal before the 2^{nd} respondent. Since there was no action on Ext.P7 appeal, the petitioner filed W.P.(C) No.129/12 before this Court and this Court by Ext.P10 judgment directed the 2^{nd} respondent herein to dispose Ext.P7 appeal within a time frame. Subsequently, Ext.P7 appeal was heard and rejected on the ground that the purchase of land would not come within the object of the society. Since the petitioner society has availed a huge loan from the

District Bank, that Bank, by Ext.P13 directed the petitioner society to produce the sale deed and in that contingency the petitioner society was constrained to remit the entire stamp duty of Rs.41,51,750/- by Ext.P14 and the said payment has been endorsed on the deed of assignment. According to the petitioner, Ext.P11 order is palpably wrong and unsustainable under law, in view of the exemption from payment of stamp duty granted to the petitioner society under Clause 1(a) of Ext.P1. Hence this writ petition is filed with the following prayers:-

i. Issue a writ of certiorari quashing the originals of Exts.P2 and P11.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent to refund the amount of Rs.41,51,750/- constrained to be paid by the petitioner society as deficit stamp duty and penalty as evidenced by Exts.P14 and P15 with interest from 18.9.2012 forthwith;

iii. Issue such other writ, order or directions as this Hon'ble Court deems fit to be granted in the circumstance of the case including the cost of the petitioner.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that the petitioner society is a co-operative society constituted and registered under the Co-operative Societies Act, 1969 (for short, 'the Act') and functioning in accordance with Ext.P4 bye-law. As per Clause-3 of the bye-law, one of the objectives of the society is to purchase or take long lease land for providing infrastructure facilities for establishing educational institutions and tourism centres and to construct buildings wherever necessary. In order to achieve the said objective, the society decided to purchase the aforesaid property, having an extent of 45 cents from a member of the society by name M/s. Common Wealth Trust (India) Ltd. According to Clause 1(a) of Ext.P1, the whole stamp duty under the Kerala Stamp Act, 1959, is exempted to the co-operative society, if the instrument to be executed is one by or on behalf of a registered co-operative society and

relating to the business thereof and decisions, awards or orders of the Registrar or Arbitrator. So, in the instant case, the sale deed is executed for and on behalf of the registered society and relating to the business of the society and the same is approved by the orders passed by the Joint Registrar. So also, it is contended that the vendor who sold away the property is also a member of the society. Therefore, all the ingredients constituting exemption under Clause 1(a) of Ext.P1 are present in the aforesaid sale. Therefore, the petitioner is entitled to get the benefit under Clause 1(a) of Ext.P1.

6. Per contra, the learned Government Pleader vehemently contended that the said purchase is intended for profit making of the society and therefore the society is liable to pay in full the stamp duty effected for the purchase.

7. In view of the rival submissions made at the Bar, the short question that arises for consideration is, whether the 2nd respondent is justified in denying the benefit of Clause 1(a) of Ext.P1 to the petitioner

society.

8. Going by Ext.P4, Clause 4(3) of the bye-law, it reads as follows:-

> "To purchase or take on long lease land for providing infrastructure facilities for establishing educational institutions and tourism centers and to construct buildings wherever necessary."

It is apposite and profitable to extract Clause 1(a) of Ext.P1, which reads as follows:

> "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 of such society or member in his own capacity or/and in the capacity of a Guardian of minor" and relating to the business thereof and decisions, award or orders of the Registrar of the Arbitrators under the said Co-operative Societies Act."

9. On an analysis of the above Clause, indisputably, one of the objectives of the society is to purchase land for providing infrastructural facilities

for establishing educational institutions and tourism centres and construct building wherever it is necessary. Going by Ext.P17, it is seen that the petitioner society has applied for sanction to purchase the aforesaid property and in the application the petitioner has specifically stated that the said purchase is intended to fulfill the objectives of the society as contemplated under Clause 4(3) of the bye-law and the same is seen referred to in Ext.P17 order granting permission to purchase the said land issued by the Joint Registrar of Co-operative Societies. On a close reading of Clause 4(3), it is discernible that the functioning of the society itself would come within the expression "business purpose" contemplated under Clause 1(a) of Ext.P1. The mandate under Clause 1(a) is that the purchase must be related to the business of the society. Thus, on a conjoint reading of Clause 1(a) of Ext.P1 and Clause 4(3) of Ext.P4, there is no room for doubt that the nature of the activity contemplated under Clause 4(3) of Ext.P4 would fall under the expression "related to the business" provided under

Clause 1(a) of Ext.P1. If that be so, the petitioner is entitled to get exemption from payment of stamp duty as provided under Clause 1(a) of Ext.P1 Government Notification. Going by the order passed in appeal by the 2nd respondent, it is seen that the 2nd respondent has considered neither Clause 1(a) of Ext.P1 nor Clause 4(3) of Ext.P4. In short, the 2nd respondent has not applied his mind over the matters which are required to be considered for granting exemption under Clause 1(a) of Ext.P1.

10. In this analysis, Exts.P2 and P11 will stand quashed. It is declared that the petitioner society is entitled to get exemption from payment of stamp duty under Clause 1(a) of Ext.P1. The amount paid by the petitioner society towards stamp duty as per Ext.P14 shall be refunded at the earliest, at any rate, within six months from today.

This writ petition is disposed of accordingly.

K. HARILAL, JUDGE

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