IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 30837 of 2012 (D)

PETITIONER(S):

M/S. XAVIER INSTITUTE OF MANAGEMENT AND
ENTREPRENEURSHIP (XIME)
ELECTRONICS CITY, PHASE-II,
HOSUR ROAD, BANGALORE, REPRESENTED BY ITS SECRETARY
C.J.KUNCHERIA.

BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS

RESPONDENT(S):

1. SUB REGISTRAR,
SUB REGISTRAR'S OFFICE, EDAPPALLY,
ERNAKULAM DISTRICT-682 024.

2. DISTRICT REGISTRAR, ERNAKULAM 682 011.

3. INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM- 695 001.

4. KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT
CORPORATION, KINFRA HOUSE, T.C.NO.31/2312,
SASTHAMANGALAM, THIRUVANANTHAPURAM-695 001.

5. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001

R2 BY SR. GOVERNMENT PLEADER SRI.T.J.MICHAEL
R4 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R4 BY ADV. SRI.P.GOPINATH
R4 BY ADV. SRI.P.BENNY THOMAS
R4 BY ADV. SRI.K.JOHN MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30837 of 2012 (D)

APPENDIX

PETITIONER(S) EXHIBITS :

EXT.P1-	THE INTRODUCTORY BROCHURE OF THE PETITIONER'S INSTITUTE AT KOCHI.
EXT.P2 -	TRUE COPY OF THE LEASE DEED EXECUTED BY THE PETITIONER INSTITUTE WITH THE 4TH RESPONDENT.
EXT.P3-	TRUE COPY OF THE GOVERNMENT ORDER NO.108/2004 DATED 8.7.2004 ISSUED BY THE 5TH RESPONDENT.
EXT.P4-	TRUE COPY OF G.O 109/2004 DATED 8.7.2004
EXT.P5-	TRUE COPY OF THE LETTER DATED 5.11.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT.
EXT.P6-	TRUE COPY OF THE LEASE DEED DT.25.6.2012 EXECUTED BY THE 4TH RESPONDENT IN FAVOUR OF THE SCHIFFLIES INDIA LTD.
EXT.P7-	TRUE COPY OF THE LEASE DEED DT.25.1.08 EXECUTED BY THE 4TH RESPONDENT IN FAVOUR OF THE AERENS GOLD SOUK INTERNATIONAL LTD.
EXT.P8-	TRUE COPY OF THE LICENCE DEED ALONG WITH ITS SCHEDULES

RESPONDENTS' EXHIBITS :NIL

OKB

// True copy //

P.A. to Judge

K.HARILAL, J.

W.P. (C) No.30837 of 2012

Dated this the 30th day of October, 2015

JUDGMENT

~ ~ ~ ~ ~

The petitioner is a society registered under the Karnataka Societies Registration Act, 1960, which established a Management and Entrepreneurship Development School, by name M/s. Xavier Institute of Management and Entrepreneurship (XIME), Bangalore. Recognizing the merits of the petitioner institution, the Government of Kerala, through the 4th respondent, as a part of providing and developing infrastructure facilities for Hi-tech park at Kalamassery, has granted lease for 2 Acres of land for 90 years for establishing a Management and Entrepreneurship Development School of international standard. The total consideration for the lease was fixed to Rs.25,47,500/-. Ext.P2 is the copy of the lease deed executed by the petitioner institute with the 4th respondent. The Government of Kerala, by Ext.P3 order, exempted the petitioner from remitting stamp duty and by Ext.P4 order exempted the petitioner from remitting registration fee, in exercise of power under clause (a) of sub-section (1) of Section 9 of the Kerala Stamp Act, 1959, and sub-section(2) of Section 78 of the Registration Act, 1908, respectively. So, the 4th respondent, by Ext.P5 letter, intimated the 1st respondent that the lease deed is exempted from remittance of registration fee and stamp duty. The copy of Exts.P3 and P4 were sent along with Ext.P5. But, when the petitioner presented Ext.P2 lease deed for registration, it was refused by the 1st respondent stating that the petitioner institute has to pay registration charge and stamp duty as ordinarily required in the case of registration of other lease deeds. Thus, the 1st respondent refused to grant exemption under Exts.P3 and P4. According to the petitioner, the refusal to grant exemption under Exts.P3 & P4 is arbitrary and illegal. Hence, this writ petition is filed seeking a direction to the 1st respondent to register Ext.P2 lease deed forthwith, without insisting on payment of registration and stamp duty.

2. The 2nd respondent filed a counter affidavit denying the illegality and arbitrariness alleged against the respondents. According to the 2nd respondent, the petitioner institution will not come under the direct control of the Government or its joint venture companies as declared by the State Government or Central Government. It is only a private institution and the lease is an ordinary lease between two parties. So also, the Government have no direct control over the said institute, which is being controlled by the people whose names are shown as Directors. So, the benefits provided in Exts.P3 and P4 cannot be granted to the petitioner institution. As per Exts.P3 and P4, if the institute is run under the control of the 4th respondent or its joint venture companies, or declared as such by the State Government or the Central Government, the exemption can be granted. So,

there is no illegality or arbitrariness in the denial of exemption under Exts.P3 & P4, in the absence of requirements under them.

3. The petitioner filed a reply affidavit pointing out various instances where exemption was granted under Exts.P3 & P4 to other companies, which are on equal footing.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. The learned counsel for the petitioner advanced arguments in extenso challenging the denial of exemption under Exts.P3 & P4 to the petitioner. According to the learned counsel, the respondents miserably failed to understand the status of the parties and the nature of transaction in its correct perspective. So also, the respondents have exceeded the jurisdiction and power granted to them under the Registration Act. The respondents unnecessarily ventured to embark an enquiry as to the nature of transaction between the petitioner and the 4^{th}

respondent, without jurisdiction and power.

6. The learned Government Pleader advanced arguments to justify the reasons whereby the exemption was denied to the petitioner.

7. The question to be considered is whether the 1st respondent is justified in denying exemption under Exts.P3 and P4 to the petitioner. Put it differently, whether the petitioner was entitled to get exemption from registration fee and stamp duty under Exts.P3 and P4. The point is, what are the requisites to get exemption under Exts.P3 and P4. On an analysis of Exts.P3 and P4, the requirements are; (1) the lease deed must be one executed by KINFRA. (2) the lease must be for establishing units/parks/infrastructure facilities under KINFRA or its subsidiary or its joint venture company and declared as such by the State Government or the Central Government.

8. Going by paragraphs 4 & 5 of the counter affidavit, it is seen that the exemption under Exts.P3 and P4 are denied on two reasons; (1) The petitioner

institute will not come under the direct control of the Government or its joint venture companies as declared by the State Government or Central Government. (2). The petitioner institute is being run by people whose names are shown as Directors and the lease is an ordinary lease as lease between private parties.

9. In fact, I am afraid that the direct Government control over the companies, which entered into a joint venture with the 4th respondent, is not a requisite under Exts.P3 and P4. Thus, direct Government control over the petitioner society is not required under Exts.P3 and P4; but, the respondents have ventured to embark an unnecessary enquiry and thereby exceeded their power.

10. Going by Ext.P2 lease deed, it is seen that the lessor in the deed of lease is the Kerala Industrial Infrastructure Development Corporation. It is a statutory body corporate duly constituted under the Kerala Industrial Infrastructure Development Act, 1993. Needless to say, the lessor is a statutory body

corporate constituted by the legislature for the industrial infrastructure development of the State. The respondents ought to have borne in mind that the Government is functioning through such corporate bodies, agencies and instrumentalities constituted under various enactments, by the legislature and the acts done by such bodies, agencies and instrumentalities shall be deemed to have been done for and on behalf of the Government. But, the respondents miserably failed to understand the status of the 4th respondent, in its correct perspective.

11. The next point to be considered is, what is the purpose of the lease? The establishment and running of a business school of international standard, as part of infrastructure facilities, in the Hi-tech park, Kalamassery, is the purpose of lease. More over, as per clause (8), the lessee shall not, at any time, without the previous consent in writing of the lessor, use the said land or building thereon or permit the same to be used for any purposes other than that of establishment

and running a school for educational purposes (Institute of Management and Entrepreneurship Development), as part of infrastructure facilities in Hi-tech park, Kalamassery. Indisputably, it is discernible that the sole purpose of lease is infrastructural development by establishing the institute and it is not a transfer of property for any other purpose. The lease arrangement was entered into consequent on the execution of Ext.P8 licence agreement dated 11.8.2011 entered into between the petitioner and the 4th respondent. Thus, the lease arrangement is an incident corollary to Ext.P8 licence agreement dated 11.8.2011. The terms and conditions in Ext.P8 licence agreement show that the licence agreement is also intended for infrastructural development of the Hi-tech park at Kalamassery. In short, the 1st respondent arbitrarily denied the exemption on the bald observations, which are insignificant and irrelevant, in view of Exts.P3 and Ext.P4.

12. In the above analysis, I find that Ext.P2 lease deed, which was made under Ext.P8 licence agreement, satisfies the requisites under Exts.P3 and P4 orders for getting benefit of exemption from stamp duty and registration fee and thereby the petitioner is entitled to get the benefit of exemption from the same. In the result, the 1^{st} respondent is directed to register Ext.P2 lease deed without insisting payment of registration fee and stamp duty, if not registered. If registered under interim order dated 20.12.2012 the petitioner is allowed to revoke the bank guarantee, if furnished, in accordance with the said interim order.

This writ petition is allowed.

Sd/-
K. HARILAL, JUDGE

okb.