

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 31658 of 2014 (F)

PETITIONER :

**FR.(DR.) P.T.THOMAS,
PATOMOS FARM, KUDAPPANAKUNNU,
THIRUVANANTHAPURAM-695 043,
REPRESENTED BY POWER OF ATTORNEY GEORGY XAVIER,
VALAMPARAMBIL HOUSE, CHANGAMKARY P.O., EDATHUA,
ALAPPUZHA-689 573.**

**BY ADVS.SRI.B.RAGUNATHAN
SRI.M.SALIM
SRI.R.SRINATH
SRI.V.M.JACOB**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
FINANCE (TAXES) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. SUB REGISTRAR,
PATTOM SRO, PATTOM, THIRUVANANTHAPURAM-695 004.**

BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 31658 of 2014 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF JUDGMENT DTD. 21.5.2014 IN SA NO.576 OF 2002.

**P2 : COPY OF THE SALE DEED DTD. 30.5.2014 SIGNED BY THE SUB JUDGE,
THIRUVANANTHAPURAM AND PRESENTED BEFORE THE SUB REGISTRAR
2ND RESPONDENT.**

**P3 : COPY OF THE NOTIFICATION IN KERALA GAZETTE EXTRA ORDINARY NO.515
(1) DTD. 6.3.2010 (RELEVANT PORTION).**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.31658 OF 2014
.....

Dated this the 6th April, 2015

J U D G M E N T

The grievance of the petitioner is mainly with regard to the stand taken by the registering authority to satisfy the stamp duty **as on date** so as to cause registration of the original of Ext.P2 sale deed dated 30.05.2014 signed by the Sub Judge, Thiruvananthapuram.

2. The sequence of events as narrated in the writ petition shows that the petitioner entered into an agreement for sale with the erstwhile owner, way back in April, 1980 for effecting conveyance of the property concerned. Since the said person did not honour the commitment, the petitioner was constrained to move the Addl. Sub Court, Thiruvananthapuram by filing O.S.No.508 of 1986. The trial Court passed a judgment and decree on 29.07.1991, which was taken up in appeal before the District Court, Thiruvananthapuram by way of A.S.No. 496 of 1993. Judgment was rendered in the A.S. on 20.10.2001; which was proceeded with further by way of S.A.No. 576 of 2002. It was disposed of as per the verdict dated 21.05.2013, whereby the right of the petitioner to have specific performance of the

contract and to have the property conveyed by the erstwhile owner was upheld. However, the petitioner was required to satisfy an additional sum of Rs.30000/- over and above the amount covered by the agreement, which in turn was satisfied by the petitioner. But still, the document was not executed by the erstwhile owner, which made the petitioner to approach the Sub Court for appropriate reliefs. Accordingly, the matter was considered and Ext.P2 sale deed was executed by the learned Sub Judge on 30.05.2014. When the same was taken up for registration before the second respondent/Sub Registrar, satisfying the stamp duty, based on the value shown in the agreement and the additional amount of Rs.30000/- (pursuant to the verdict passed by this Court), it was refused to be registered by the second respondent/Sub Registrar stating that the petitioner had to pay stamp duty, reckoning the 'fair value' already declared by the competent authority, which made the petitioner to approach this Court by filing this writ petition.

3. Heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

4. The sum and substance of the arguments on behalf of

the petitioner is that, the cause of action originated decades back and as such, the petitioner, in favour of whom the sale deed has been executed by the Sub Judge vide Ext.P2, cannot be made to suffer by directing to satisfy something more than the liability with regard to the value shown in Ext.P2. This is obviously for the reason that, it is not a question of under valuation nor is there any attempt of evasion of stamp duty on the part of the petitioner. The sale consideration paid is transparent, as borne out from the records and covered by the verdicts passed by this Court and also the sale deed executed by the Sub Judge .

5. After hearing both the sides, this Court finds that registration of a document has to be done in accordance with the provisions of the Registration Act/Rules and the requisite amount of stamp duty payable is governed by the Stamp Act/Rules. It is also brought to the notice of this Court that the the Stamp Act was amended by the State, incorporating Section 28A, stipulating fixation of 'Fair Value' for different properties; also providing a remedy to challenge the same by way of appeal, if anybody is aggrieved. The proceedings are notified in the

concerned Gazette and once the proceedings are finalised , the parties concerned having property in the area are liable to satisfy Stamp Duty treating the Fair Value as aforesaid, irrespective of the lesser value/consideration shown in the concerned document/conveyance deed. Even otherwise, it is to be noted that, there may be compelling circumstances when parties may be constrained to execute conveyance deed without getting adequate/desired/proper value/consideration for arrangement of funds for marriage of children, for educational purposes or for unforeseen circumstances in relation to medical reasons. The property may be sold for throwaway prices, which need not reflect the actual price and as such, fixation of fair value by the Government with specific intent, (which is not under challenge in the writ petition), has definitely to be adverted to and there is nothing wrong on the part of the concerned authority in requiring the petitioner to satisfy the stamp duty in terms of the fair value.

6. During the course of hearing, it is also brought to the notice of this Court that there is a recent amendment of the stamp duty payable by ordering the fair value already fixed, to

be enhanced by the given percentage and to have the same reckoned accordingly.

7. This Court finds that there is absolutely no merit or bonafides in the writ petition. Interference is declined and the petitioner is required to satisfy the stamp duty payable reckoning the fair value of the property as on date. On satisfying the requirement as above, the original of Ext.P2 shall be registered by the second respondent /Sub Registrar in terms of the relevant provisions of the Registration Act/Rules. The original Power of the Attorney presented by the petitioner, pursuant to the proceedings before this Court, shall be returned to the petitioner.

The Writ Petition stands disposed of.

P.R.RAMACHANDRA MENON
JUDGE

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