

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY ,THE 01ST DAY OF OCTOBER 2018 / 9TH ASWINA, 1940

WP(C).No. 31917 of 2018

PETITIONER/S:

SHEENA SEBASTIAN, AGED 41 YEARS  
PANAKKAL HOUSE, W/O.SABU, ANDIKKALAM,  
KANHIRANGAD P.O, KARIMBAM (VIA),  
KANNUR DISTRICT, PIN 670142.

BY ADVS.  
SRI.GEORGE MECHERIL  
SRI.V.C.JAMES

RESPONDENT/S:

- 1 THE STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
REGISTRATION DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM - 695001.
- 2 THE DISTRICT REGISTRAR  
KASARGODE DISTRICT, KASARGODE 670142.
- 3 THE SUB REGISTRAR  
BALAL, KASARGODE DISTRICT 670142.

OTHER PRESENT:

SRI.SAIGI JACOB PALATTY, SR.GOV'T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
01.10.2018, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

J U D G M E N T

The main prayer in this Writ Petition (Civil)

is as follows:

*"Issue a writ in the nature of certiorari or  
such other appropriate writ, order or direction  
calling for the records leading upto the issuance of  
Ext.P4 and quash the same."*

2. Heard Sri.George Mecheril, learned counsel for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. According to the petitioner she had purchased 3 acres of land comprised in Re.Sy.No.147/7A of Maloth Village, Hosdurg Taluk in Kasaragod Revenue District as per Ext.P-1 registered sale deed No.2701/2013 dated 30.12.2013 of S.R.O., Balal. The total sale consideration shown in Ext.P-1 sale deed is Rs.27,98,000/- and according to the petitioner, stamp duty was paid on Ext.P-1 registered sale deed on the basis of the actual sale consideration shown in Ext.P-1. Further it is stated that the sale consideration shown in Ext.P-1 is higher than the fair value notified for the property in question as per Ext.P-5 Gazette Notification dated 6.3.2010 wherein the notified fair value in respect of the said property is Rs.10,710/- per are.

-3-

4. Later, the 2<sup>nd</sup> respondent-District Registrar had issued Ext.P-2 notice dated 27.1.2014 taking the view that the actual stamp duty payable by the petitioner on Ext.P-1 sale deed is Rs.2,90,000 plus Rs.1,16,060/- and directed the petitioner to submit explanation, if any, within 21 days in that regard. Upon receipt Ext.P-2 notice, the petitioner had filed Ext.P-3 reply/written objections dated February, 2014 stating that the actual sale consideration has been duly shown in Ext.P-1 sale deed, which is more than 30% of the notified fair value of the property in question and that no further action in the matter is called for and requested the 2<sup>nd</sup> respondent-District Registrar to drop the further proceedings. Now the District Registrar has issued the impugned Ext.P-4 order directing the petitioner to remit Rs.1,50,000/- towards the alleged deficit stamp duty and Rs.60,000/- as registration fee in addition to the amount already paid at the time of execution of Ext.P-1

registered sale deed. The petitioner would contend that the stamp duty payable is either on the basis of notified fair value or on the basis of the actual sale consideration, whichever is higher. It is urged that the actual sale consideration covered by Ext.P-1 is much more than the fair value notified in Ext.P-5 Gazette Notification on 6.3.2010 and therefore, the 2<sup>nd</sup> respondent has no jurisdiction to hold that the petitioner is bound to pay any further stamp duty or registration fee in that regard. Further it is also stated that no objective materials or factual basis, whatsoever have been found by the 2<sup>nd</sup> respondent as required in Rule 4 of the Kerala Stamp (Prevention of Undervaluation of Instruments) Rules to hold that the actual sale consideration in respect of the transaction covered by Ext.P-1 is more than the sale consideration shown in Ext.P-1, etc. On a perusal of the impugned order as well as the pleadings and materials on record, this Court is of the view

that the matter requires serious reconsideration as none of the vital aspects as canvassed by the petitioner have not been properly considered and adverted to while rendering Ext.P-4 order. It is by now well established by decisions of this Court as in State of Kerala v. Jino Joseph, reported in 2012 (2) KLT 265 that where the actual sale consideration passed is higher than the Sec.28A fair value or the sale consideration shown in the deed, then the respondents can invoke the powers in Sec.45B of the Kerala Stamp Act, to determine such alleged Higher actual sale consideration. But that the relevant question is the actual sale consideration passed and for that, the market value of the property is irrelevant and cannot be pressed into service. It has also been held in decisions as in Jino Joseph's case (supra), reported in 2012 (2) KLT 265 and District Registrar v. Lake Paradise, reported in 2001 (3) KLT 521, that it is mandatory for the Registrar in the proceedings under Sec.45B to adhere strictly

to Rule 4 of the Kerala Stamp (Prevention of Undervaluation of Instruments) Rules by passing a formal order giving the factual and material basis of his conclusion, whether tentative or final, as to how he arrived at the figure of the alleged higher actual sale consideration, as otherwise the affected party will not be able to file an effective reply thereto. A reading of Ext.P-2 notice will show that this mandatory procedure has been flagrantly violated, as no such material basis as per Rule 4 is stated therein. So, notwithstanding the alternative remedy provided in Sec.45B(4), this Court is inclined to interfere in the matter, as the result even in such remedy cannot be otherwise. This Court in the judgment in State of Kerala v. Jino Joseph, reported in 2012 (2) KLT 265 has held in para 19 thereof as follows:

*"19. Rule 4 of the Kerala Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 prescribes the procedural formalities to be followed by the District Collector while proceeding under S.45B of the Act. It is unfortunate to note that the petitioners could not produce any record to show that the procedural formalities have been complied with. In District Registrar v. Lake Paradise (2001 (3) KLT 521), it was held by this Court that it is*

*always necessary that the Registrar while proceeding under S.45B of the Act should pass a formal order giving the basis of conclusion whether tentative or final as otherwise it would not be possible for the affected parties to file an effective reply. Even after such directions from this Court, the same procedural irregularities are repeated by the authorities concerned, while exercising the powers under S.45B of the Act. The result is that innocent persons who correctly state the value or consideration in the instrument are unnecessarily dragged to litigation. It also gives sufficient elbow room to the parties who do not correctly set forth the true value or consideration in the document, to escape from the liability of paying additional stamp duty on account of the procedural irregularities committed by such authorities."*

In this regard it will also be pertinent to refer to the judgment of this Court in the case District Registrar v. Lake Paradise, reported in 2001 (3)

KLT 521, para 5, which reads as follows:

"5. It can be seen from the above procedures prescribed that the provisional order determining the value of the property should contain the basis on which the provisional value of consideration is arrived at. In the absence of the same, it is not possible for the parties to give an effective reply. The learned Government Pleader submitted that the order passed is a provisional order. In the order produced (assuming that it is a provisional order), the basis on which the provisional value or consideration was arrived at is not indicated. The order itself shows that only the figures are filled up in the printed order which shows that there was no application of mind with reference to the facts of the present case. The order also shows that notice was issued calling for explanation. It contains clauses stating that explanation was received/not received leaving it to the officer to strike off whichever is not applicable. But the order does not show which clause is not applicable as both clauses are there in the order without the unnecessary clause being struck off. In subsequent paragraphs also this is repeated. The respondent is finally directed to pay the deficit stamp duty and not to submit objections for the same. Therefore, it is not a provisional order but a final order. Though the counsel for the respondent submitted that none of the procedures prescribed under the Rules has been followed before issuing the order, the

*learned Government Pleader was not in a position to produce any record to show that the procedure was actually followed. Such a contention is contrary to the very contention raised in the second appeal that the order is only a provisional order. The appeal also shows that it is a suo motu proceedings taken by the Collector under S. 45B whereas the order refers to the report of the Sub Registrar as the basis of the action. As already noted, there are several portions of the printed order which were to be scored off if not applicable. Since it is not done it is not possible to know what exactly was intended by the order. Therefore, it is always necessary that the Registrar shall pass a formal order giving the basis of his conclusions whether tentative or final as otherwise it is not possible for the executant of the document to file an effective reply if it is provisional or the appellate authority (District Court) to know the basis of the decision."*

5. Accordingly, it is ordered that the impugned Ext.P-4 order will stand set aside and the matter in Ext.P-2 notice is remitted to the 2<sup>nd</sup> respondent for consideration afresh. The 2<sup>nd</sup> respondent will meticulously follow the procedure in Rule 4 and if he wants to proceed further, should pass and communicate a formal order giving the material basis of his conclusion in Ext.P-2 as to how he arrived at that alleged higher value. This may be done within one month from the date of receipt of a copy of this judgment. Thereafter, the petitioner may sent reply thereto within 3 weeks on receipt of such notice/order under Rule 4, along with supporting documents. Thereafter,



-9-

the 2<sup>nd</sup> respondent will hear the petitioner either in person or through authorised representative, if any, and then advert to the contentions of the petitioner and should pass fresh orders in the matter. The entire process in this regard shall be duly completed by the 2<sup>nd</sup> respondent within a period of 3 months from the date of production of a certified copy of this judgment.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS,**

**JUDGE.**

Bkn/-

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- |            |  |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF THE TITLE DEED<br>NO.2701/2013 DATED 30.12.2013.                                |
| EXHIBIT P2 | TRUE COPY OF THE NOTICE ISSUED ON<br>27.1.2014.  |
| EXHIBIT P3 | TRUE COPY OF THE WRITTEN OBJECTION.  |
| EXHIBIT P4 | TRUE COPY OF THE ORDER NO.PUB.147/13/BL<br>DATED 21.8.2018.                                  |
| EXHIBIT P5 | TRUE COPY OF THE RELEVANT PORTION OF<br>THE KERALA GAZETTE EXTRA ORGINARY DATED<br>6.3.2010. |