

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 29TH DAY OF MAY 2019 / 8TH JYAISHTA, 1941

WP(C).No. 14376 of 2011

PETITIONER:

K.V.MURALEEDHARAN  
KANDATHIL VALAPPIL HOUSE, MORAZHA,  
THALIPARAMBU TALUK, KANNUR DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT/S:

- 1 THE DIST.COLLECTOR,  
KANNUR, PIN-670001.
- 2 THE SUB REGISTRAR,  
SUB REGISTRAR'S OFFICE  
KALLYASSERY, KANNUR DISTRICT, PIN-670562.
- 3 THE VILLAGE OFFICER,  
MORAZHA VILLAGE  
KANNUR DISTRICT, PIN-670331.

BY ADV.  
SMT.A.C.VIDYA, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
29.05.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

The short issue in this case is with regard to the procedure to be followed on presentation of an instrument transferring land in respect of which no fair value has been fixed under Section 28A of the Kerala Stamp Act, 1959 (hereinafter referred to as the "Act"), and suspected to have been insufficiently stamped.

2. Section 28A of the Act prescribes the procedure for fixation of fair value of land by the Revenue Divisional Officer. Section 45A of the Act prescribes the procedure to be followed by the Registrar in cases where the fair value of land has been fixed but an instrument that does not bear a stamp of sufficient amount as per the fair value of the land is presented. The Registrar can by order, direct the payment of proper stamp duty and the person aggrieved can file an appeal before the District Collector.

3. In this case, the land in question is situated in R.S.No.222/4 of the Morazha Desom. No fair value has been fixed in respect of it. However, the fair value had been fixed in respect of land in R.S.No.222/1, 222/2 and 222/3 at Rs.20,000/- per Are. When the petitioner presented an

instrument for registration of land comprised in R.S.No.222/4, the Registrar directed the petitioner to pay deficit stamp duty as though a fair value had already been fixed in respect of it. Aggrieved by the same, the petitioner filed an appeal before the District Collector. The District Collector rejected the appeal and, taking note of the importance of the locality, fixed land value at Rs.1,00,000/- per cent.

4. The question is whether the procedure adopted by the Registrar and the District Collector is correct or not. Admittedly, no fair value was fixed. If no fair value is fixed, proceedings under Section 45A of the Act cannot be initiated. The proceedings under Section 45A of the Act can be initiated only when the fixation of fair value under Section 28A of the Act has already occurred. In the absence of any fixation of fair value under Section 28A of the Act, the Sub Registrar cannot direct the petitioner to pay the stamp duty for fair value fixed by him. The District Collector also cannot fix any fair value in an appeal against such order.

5. It is to be noted that under Section 45B of the Act, the registering authority retains the power to deal with undervalued instruments, if he is of the view that the value of the property or consideration shown therein has been

undervalued for the purpose of stamp duty. Therefore, in respect of land covered by an instrument where no fair value has been fixed, no proceedings can be initiated under Section 45A of the Act. Therefore, the impugned order is set aside. This Court, in fact, passed an interim order as follows on 30.05.2012:

“ The learned Counsel for the petitioner submitted that the petitioner will make the payment for the due registration of Ext.P1 document, but subject to the outcome of the writ petition. Accordingly, there will be a direction to the 2<sup>nd</sup> respondent to receive the additional amount and to register the document, if the same is otherwise in order, and the payment will be subject to the outcome of the writ petition.”

6. If the petitioner has already paid an amount, in excess of the stamp duty payable, it shall be returned to him within three months.

The writ petition is disposed of as above.

Sd/-

A .MUHAMED MUSTAQUE  
JUDGE