

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942

WP(C).No.17471 OF 2020(H)

PETITIONER:

AMOSE
AGED 42 YEARS
S/O.RAJEENAMARY, PUTHANPARAMBIL HOUSE,
MATHAIPPARA P.O., UPPUTHARA VILLAGE,
PEERMADE TALUK, IDUKKI DISTRICT - 685 505.

BY ADVS.
SRI.LIJI.J.VADAKEDOM
SMT.REXY ELIZABETH THOMAS
SRI.RAJEEV JYOTHISH GEORGE

RESPONDENT:

THE SUB REGISTRAR - MEENACHIL
OFFICE OF THE SUB REGISTRAR, PALA, RAMAPURAM ROAD,
PALA, KOTTAYAM - 686 575.

SRI BIMAL K NATH, SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner states that he is the power of attorney holder of a certain Manoj Mullackal Varkey and his wife, Smt Lovina Manoj Varkey. As the petitioner is employed and settled at Kuwait, the power of attorney was attested on 27.7.2020 at the Consular Office, Embassy of India, Kuwait.

2. It appears that Manoj and his wife are the owners of certain items of immovable property situated at Puliyanor Village, and they wanted to avail a property loan from the Federal Bank Ltd., for the purpose of constructing a building. On the strength of the Power of Attorney, the petitioner has been authorised to execute necessary loan documents with the bank for and on behalf of his principal; to enter into agreements/ contracts for purchase of immovable properties/flats in their name; to make payments or advance as may be required; to submit necessary applications before the revenue authorities or local bodies; to hypothecate or mortgage the immovable properties; to compromise or withdraw cases; grant leases of immovable properties and to prosecute litigations among other things.

3. As per Section 17 (g) of the Registration Act, 1908, a Power of attorney which creates any power or right of management, administration, development, transfer or any other transaction relating to immovable property of the value of one hundred rupees and upwards other than those executed in favour of father, mother, wife, husband, son, adopted son, daughter, adopted daughter, brother, sister, son-in-law or daughter-in-law of the executant is compulsorily registrable. The petitioner presented the document before the respondent for registration. However by Exhibit P 2 communication, the respondent refused to register the power of attorney stating the following reasons:-

- a) The petitioner is not a person authorised under Section 32 of the Registration Act 1908 read with Rule 191 (vii) of the Registration Rules(Kerala).

- b) As Exhibit P1 authorises the petitioner to avail loan for carrying out construction activities, execute documents for the purpose of purchasing property, execute agreements, lease deeds, mortgage deeds etc., stamp duty needs to be paid in accordance with Article 5 (c) to the Schedule of the Stamp Act, 1959.

4. The respondent has filed a statement wherein it is stated that since the relationship between the petitioner and the power of

attorney does not come within the exempted categories of relationships mentioned in Section 17 (1) (g), the document is compulsorily registrable. It is further stated that since the power-of-attorney is executed by the owner of the property and as it enables the agent to transfer by way of lease immovable property, the petitioner will have to pay stamp as per article 44 (f) of the Stamp Act.

5. I have heard Sri. Liji J Vadakedom, the learned counsel appearing for the petitioner and Sri Bimal K. Nath the learned senior Government Pleader.

6. Section 32 of the Registration Act, 1908 enumerates the persons who are entitled to present documents for registration. Section 33 provides for the Power-of- Attorney recognisable for the purpose of Section 32. It would be profitable to extract the statutory provisions.

32. Persons to present documents for registration.—Except in the cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,

(a) by some person executing or claiming under the same, or, in the

case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. Power-of-attorney recognisable for purposes of section 32.

(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—

1. if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
2. if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of-attorney executed before and authenticated by any Magistrate;
3. if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

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7. Under Section 33(c) of Act 16 of 1908, in cases where the principal at the time of execution of the power of attorney is not residing in India, what the principal is required to do is to get the document executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government. From Exhibit P1 it is apparent that the power-of-attorney has been authenticated at the embassy of India in Kuwait. It eminently satisfies the requirement under the Act and the same is recognisable for the purpose of Section 32.

8. Section 32 (c) states that the agent of the principal duly authorised by power-of-attorney executed and authenticated in accordance with the manner stipulated in the Act can present the document for registration. Going by the aforesaid provisions, the petitioner is competent to present the document for registration and the respondent is bound to register the document if it is otherwise in order. In that view of the matter, the first ground for refusal cannot be sustained.

9. The second ground for refusal is that the stamp paid is insufficient. From Exhibit P1 it is apparent that the power of attorney is typed on non-judicial stamp paper worth Rs 1000/-. It is the case of the

petitioner that the power-of-attorney is required to be stamped only under article 44 (g) as per which the stamp duty payable is Rs. 600/-. However, registration was refused on the ground that the stamp is to be paid in accordance with Article 5 (c) of the Schedule to the Stamp Act, 1959.

Article 5(c) is extracted below for easy reference

“5. Agreement or memorandum of an agreement

a)If relating to the sale of a bill of exchange	One rupee
b)If relating to the sale of Government security or share in an incorporated company or other body corporates	One rupee for every Rs.1000 or part thereof of the value of the security or share.
c)if relating to giving authority or power to a promoter or developer, by whatsoever name called, for construction, development or sale or transfer (in any manner whatsoever)	The same duty as a conveyance under 21 or 22 as the case may be on the value or the estimated cost of proposed construction/development of such property as the case may be.

10. Apparently Exhibit P 1 is a power-of-attorney and the relevant Article would be 44 (f) to the Schedule of the Stamp Act. The said Article is extracted below for easy reference.

(f) When authorising a person other	The same duty as a conveyance
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than his father, mother, wife, husband, son, daughter, brother or sister to sell immovable property or giving authority or power to a promoter or a developer, by whatsoever name called, to make constructions or develop, sell or transfer (in any manner whatsoever) any immovable property situated in Kerala. (No.21 or 22, as the case may be) for the fair value of land or for the amount of the consideration whichever is higher or the estimated cost as certified by a Chartered Engineer of proposed construction or development of such property as the case may be.

11. Article 44 (f) has two parts. The first part gives authorization to certain persons not being a relative, as mentioned in the Article, to sell immovable property. The second part provides for giving authority or power to a promoter or developer, by whatsoever name called, to make constructions or develop, sell or transfer, in any manner whatsoever, in immovable property situated in Kerala. In both the instances, stamp duty to be paid is the same duty as a conveyance (No. 21 or 22 as the case may be) for the fair value of the land or for the amount of the consideration whichever is higher, or the estimated cost as certified by a chartered engineer of proposed construction or development of such property has to be paid.

12. Clause (10) of the lease deed grants power to the petitioner to grant leases of the properties of the principal for agricultural and such other purposes. It is this clause which is relied on by the respondents to contend that Article 44(f) would be attracted. However, on an anxious consideration of Article 44(f), it is evident that to attract the first part, authorisation will have to be given to a person not being a relative as mentioned in the Article to sell immovable property. Nowhere in Exhibit P1 has any power been conferred to the petitioner to sell immovable property. All that he has been authorised is to avail loans, purchase properties/apartments, submit applications before the revenue authorities, hypothecate the property compromise and withdraw cases etc. To attract the second part of Article 44(f), authority should be granted to a promoter or a developer to make constructions or develop, sell or transfer (in any manner whatsoever) any immovable property situated in Kerala. The respondent has no case that the petitioner is a promoter or a developer and that in that capacity authority has been granted to make constructions, develop, sell or transfer the property. In that view of the matter, neither of the limbs of Article 44(f) would apply in the instant case. I am of the considered opinion that Article 44 (g) of the Act would be attracted and as the petitioner has affixed stamp in excess of Rs 600/- as required therein,

no further amount is required to be remitted by way of stamp duty.

Resultantly, the petitioner is entitled to succeed in this Writ petition. Exhibit P2 order by which registration was refused will stand quashed. On the petitioner presenting the power-of-attorney before the respondent within a period of three weeks from today, the respondent shall register the same if the same is otherwise in order.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

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