

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 29TH DAY OF JANUARY 2020 / 9TH MAGHA, 1941

WP(C).No.18393 OF 2010(Y)

PETITIONER:

T.P.THOMAS, MANAGING PARTNER
M/S.VANCHINAD MATCH INDUSTRIES,
KIDANGOOR, KOTTAYAM DISTRICT.

BY ADV. SRI.JOSE THOMAS (PALA)

RESPONDENTS:

- 1 STATE OF KERALA,
REP.BY THE PRINCIPAL SECRETARY,
LAND REVENUE DEPT., SECRETARIAT,
THIRUVANANTHAPURAM.
- 2 THE COMMISSIONER OF LAND REVENUE,
GOVERNMENT OF KERALA,
PUBLIC OFFICE BUILDINGS, MUSEUM JN.,
THIRUVANANTHAPURAM.
- 3 THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR, THIRUVANANTHAPURAM.
- 4 THE DISTRICT REGISTRAR (GENERAL),
COLLECTORATE, KOTTAYAM.
- 5 THE SUB REGISTRAR,
KIDANGOOR SUB REGISTRAR OFFICE,
KIDANGOOR.P.O.

*ADDL. 6 SECRETARY (TAXES),
REGISTRATION DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

*ADDL. RESPONDENT NO.6 IMPLEADED AS PER ORDER DATED
22.12.2010 IN IA NO.17436/10.

BY ADV. SMT.A C VIDHYA, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 29th day of January 2020

One Jose Domenic was successful bidder in auction conducted by the Kerala Finance Corporation (for short 'the KFC') by exercising powers under Section 29 of the State Financial Corporations Act, 1951. As per the tender conditions, the auction purchaser has to remit 30% of the sale value within a period of 15 days of confirmation. The balance will have to be remitted within a period of 45 days of confirmation. On deposit of the balance, if it is agreed, sale deed executed in favour of the auction purchaser or his nominee.

2. Jose Domenic remitted 30% of the sale value. Thereafter, he sought execution of the sale deed in the name of his nominee T.P.Thomas.

3. Based on the terms and conditions of the tender, the KFC executed a sale deed in favour of P.P.Thomas. The recital in the sale deed would show that the consideration was paid by T.P.Thomas.

4. Treating multiple transactions, that is the transaction between the KFC and Jose Domenic and transaction between Jose Domenic and T.P. Thomas, the registering Authority demanded twice stamp duty and registration fee applicable. The petitioner-T.P. Thomas appears to have paid this amount under protest. Challenging the double stamp duty and registration fee, the petitioner approached this Court.

5. Section 5 of the Kerala Stamp Act, 1959 stipulates that any instrument comprising several distinct matters shall be chargeable with aggregate amount or the duties with which each separate instrument would be chargeable under the Act.

6. Section 5 of the Transfer of Property Act, 1882 defines transfer of property as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons, and 'to transfer property' is to perform such act. The tender conditions referable in the notice issued by the KFC are in the nature of promise of transfer. Transfer would complete

not by payment of sale consideration but only on conveying the interest or title of the vendor. Mere agreement or promise to transfer itself will not constitute transfer. Therefore, transaction between the KFC and Jose Domenic is not attracted by the Section 5 of the Transfer of Property Act.

7. Further, it is doubtful that section 5 of the Kerala Stamp Act would apply. This is not a case where one could hold, there are distinct matters dealt in a one instrument. As seen from the recital from the document, the purchaser-petitioner himself had paid the consideration. Jose Domenic might have only paid initial 30% of the payment. Though it is contented in the counter that Jose Domenic had paid the consideration to the KFC and thereafter, the petitioner had paid the consideration to Jose Domenic, nothing was available to arrive such a conclusion by the registering authority. No attempt was made by the authority to obtain details from the KFC to establish that Jose Domenic paid entire consideration before transfer made in favour of T.P.Thomas. But on the other hand, the document executed by the KFC show that the petitioner had paid the

consideration.

8. In the light of the discussions as above, charging double stamp duty as well as registration fee from the petitioner is illegal. The petitioner is liable only to pay what is normally applicable for such sale deed. The petitioner is entitled for refund of the excess amount collected by way of stamp duty and registration fee. Necessary action shall be taken to refund the excess stamp duty and proportionate registration fee to the petitioner within a period of three months.

The writ petition is disposed of as above.

sd/-

A. MUHAMED MUSTAQUE
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF TENDER DATED 20.6.2006.
- EXHIBIT P2 TRUE COPY OF SALE CONFIRMATION LETTER
DTD.6.11.2006.
- EXHIBIT P3 TRUE COPY OF LETTER DATED 21.6.2007.
- EXHIBIT P4 TRUE COPY OF SALE DEED DTD 22.8.2007.
- EXHIBIT P5 TRUE COPY OF ORDER DTD 29.5.2008 BY 4TH
RESPONDENT.
- EXHIBIT P6 TRUE COPY OF APPLICATION DTD 2.8.2008 BY
PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF LETTER DTD 15.10.2008 BY 2ND
RESPONDENT.
- EXHIBIT P8 TRUE COPY OF PETITION BEFORE THE 1ST
RESPONDENT.
- EXHIBIT P9 TRUE COPY OF LETTER DTD 9.1.2009 BY 2ND
RESPONDENT.
- EXHIBIT P10 TRUE COPY OF MEMORANDUM OF APPEAL DTD.
29.5.2008.
- EXHIBIT P11 TRUE COPY OF ARGUMENT NOTES BEFORE 2ND
RESPONDENT.
- EXHIBIT 12 TRUE COPY OF ORDER DATED 16.2.2010 BY 2ND
RESPONDENT.

RESPONDENT'S/S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE