

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 16TH DAY OF JANUARY 2018 / 26TH POUSHA, 1939

WP(C).No. 29956 of 2015 (T)

PETITIONER

M/S CHARITABLE EDUCATION & WELFARE SOCIETY,
KADAMMANITTA, PATHANAMTHITTA DISTRICT,
PIN - 689 649, REPRESENTED BY ITS CHAIRMAN K.J.ABRAHAM.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.JOBIN JOHN
SRI.S.JUSTUS
SRI.JOHN MATHEW (THEREZHATH)

RESPONDENTS

1. SUB-REGISTRAR, VADAKKENCHERRY SUB-DISTRICT, VADAKKENCHERRY.P.O.,
PALAKKAD DISTRICT - 678 683.
2. THE REVENUE DIVISIONAL OFFICER (R..D.O.),
PALAKKAD, PALAKKAD DISTRICT - 679 534.
3. THE DISTRICT COLLECTOR, PALAKKAD,
COLLECTORATE, PALAKKAD - 679 001.
4. THE VILLAGE OFFICER,
KIZHAKKANCHERRY ii VILLAGE, ALATHUR TALUK,
PALAKKAD DISTRICT - 678 541.
5. THE INSPECTOR GENERAL OF REGISTRATION,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION, VANCHIYOOR.P.O.,
THIRUVANANTHAPURAM - 695 035.
6. THE CATHOLIC SYRIAN BANK LTD.,
HAVING ITS REGISTERED OFFICE AT CSB BHAVAN,
ST. MARY'S COLLEGE ROAD, THRISSUR - 680 020.
7. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.

R1-R5 & R7 BY STATE ATTORNEY SRI. K.V. SOHEN.
R6 BY SRI.R.S.KALKURA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-01-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Hr....

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE RESOLUTION DATED 09/08/2015 PASSED BY THE PETITIONER SOCIETY.
- EXHIBIT P2 THE TRUE COPY OF THE CERTIFICATE OF SALE SO ISSUED BY THE REVENUE RECOVERY OFFICER IN FAVOUR OF THE 6TH RESPONDENT.
- EXHIBIT P3 THE TRUE COPY OF THE LETTER DATED 11/04/2008 ISSUED TO THE PETITIONER BY THE 6TH RESPONDENT BANK.
- EXHIBIT P4 THE TRUE COPY OF THE LETTER DATED 07/07/2008 ACCORDINGLY ISSUED TO THE PETITIONER BY THE 6TH RESPONDENT BANK.
- EXHIBIT P5 THE TRUE COPY OF THE LETTER DATED 22/09/2008, ISSUED BY THE 6TH RESPONDENT BANK TO THE PETITIONER.
- EXHIBIT P6 THE TRUE COPY OF THE ORDER DATED 03/09/2013 IN W.P. (C) .NO.21897/2013.
- EXHIBIT P7 THE TRUE COPY OF THE NOTIFICATION DATED 2/11/2010 PUBLISHED BY THE 2ND RESPONDENT IN FORM A OF KERALA STAMP (FIXATION OF FAIR VALUE OF LAND) RULES, 1995.
- EXHIBIT P8 THE TRUE COPY OF THE REPORT OF THE 4TH RESPONDENT DATED 10/02/2011.
- EXHIBIT P9 THE TRUE COPY OF THE REPORT OF THE ADDITIONAL THASILDAR OF ALATHUR TALUK DATED 04/06/2011.
- EXHIBIT P10 THE TRUE COPY OF THE VALUATION CERTIFICATE OF THE PROPERTY DATED 17/10/2007 PREPARED BY AN EXPERT.
- EXHIBIT P11 THE TRUE COPY OF THE APPEAL DATED 15/11/2010 PREFERRED AGAINST THE EXHIBIT P7 NOTIFICATION OF FAIR VALUE.
- EXHIBIT P12 THE TRUE COPY OF THE ORDER BY THE 3RD RESPONDENT DISMISSING THE EXHIBIT P11 APPEAL.
- EXHIBIT P13 THE TRUE COPY OF THE APPLICATION DATED 2/4/2015 BY THE PETITIONER TO THE 5TH RESPONDENT.
- EXHIBIT P14 THE TRUE COPY OF THE ORDER DATED 30/04/2015 PASSED BY THE 5TH RESPONDENT.
- EXHIBIT P15 TRUE COPY OF THE INTERIM ORDER DATED 08-12-2015 PASSED BY THIS HON'BLE COURT.
- EXHIBIT P16 THE TRUE COPY OF THE UNREGISTERED SALE DEED DATED 15-12-2015 PREPARED ON THE STAMP PAPERS WORTH RS 9,84,000/- (RUPEES NINE LAKHS EIGHTY FOUR THOUSAND ONLY) .

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EXHIBIT P17 THE TRUE COPY OF THE LETTER DATED 15-12-2015 ISSUED TO THE
1ST RESPONDENT.

EXHIBIT P18 THE TRUE COPY OF THE MEMO BEARING NO C-254/15 DATED 15-12-
2015 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P19 THE TRUE COPY OF THE RESOLUTION DATED 01-07-2017 AUTHORIZING
THE NEWLY ELECTED SECRETARY MR. A.I. POTHAN TO REPRESENT THE
PETITIONER SOCIETY IN THE ABOVE CASE BEFORE THIS HON'BLE
COURT.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY//

P.S TO JUDGE.

Hr.....

A. MUHAMED MUSTAQUE, J.

.....
W.P.(C).No.29956 of 2015
.....

Dated this the 16th day of January, 2018.

JUDGMENT

The petitioner purchased an immovable property from the Catholic Syrian Bank, in a public auction. The sale was conducted by invoking the power under the SARFAESI Act. The petitioner, after purchasing the property from the Catholic Syrian Bank, presented the instrument for registration. The Sub Registrar finding that the petitioner had not paid the stamp duty in accordance with the fair value, directed the petitioner to pay proper stamp duty. The petitioner approached the District Collector. The District Collector noting that the petitioner has no *locus standi*, rejected the petitioner's appeal. Challenging that, the petitioner approached this Court.

2. Heard the learned Senior Counsel Sri. N.N. Sugunapalan, ably assisted by Sri. John Mathew Therezhath and the learned State Attorney.

3. The petitioner urged the following grounds of challenge. The first ground urged by the petitioner is that, the sale in public auction in this case will have to be treated as a sale as referred in Article 16 of the Schedule of Kerala Stamp Act, 1959 read with Article 18 of Schedule 1 of Indian Stamp Act, 1899 and therefore, stamp duty is payable in accordance with consideration.

4. The second argument is on the ground that the transfer is effected by a juridical entity of a banking company and therefore such transfer cannot be treated as a transfer of inter-vivos as defined under Section 2(d) of the Kerala Stamp Act, 1959.

5. The third argument urged is on the ground that rejection of appeal by the District Collector is without understanding the scope of Section 45A(4) of the Kerala Stamp Act.

6. Insofar as the first ground, the petitioner's case is that when a property is sold in public auction, the stamp duty has to be paid in accordance with the consideration set forth in the instrument. Admittedly, in this case, consideration set forth in the instrument is less than the fair value fixed in the area. To buttress the argument that it is a public auction, the petitioner referred to Ext.P3, nature of deed executed by the Catholic Syrian Bank and communication issued in this matter. The petitioner also referred to Section 9 of the Banking Regulation Act. The above provision mandates that non productive assets have to be liquidated in a time bound manner. Therefore, the argument is that sale would come within the ambit of Article 16 of Schedule of Kerala Stamp Act and 18 of Schedule 1 of the Indian Stamp Act.

7. In this context the petitioner's case is that, the sale will come within the ambit of Article 18 of Schedule 1 of Indian Stamp Act. The petitioner also referred to Article 16 of Schedule of Kerala

Stamp Act. It is appropriate to refer both Article 18 of Schedule 1A of Indian Stamp Act as well as Article 16 of Kerala Stamp Act.

Article 18 of Indian Stamp Act:

Description of Instrument	Proper Stamp-duty
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18. CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-Officer-	
(a) where the purchase-money does not Rs.10;	Two annas
(b) where the purchase-money exceeds Rs.10 but does not exceed Rs.25;	Four annas
(c) in any other case	The same duty as a Conveyance (No.23) for a consideration equal to the amount of the purchase-money only.

Article 16 of Kerala Stamp Act:-

Certificate of sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or by the Government, Collector or other Revenue Officer	The same duty as on a conveyance (No.21 or 22, as the case may be for a consideration equal to the amount of the purchase money only
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8. According to the petitioner, the sale would not come within the ambit of Article 16 as it was not a sale by civil, revenue, Government, Collector or other revenue officials referred therein, however, it will come within the ambit of Article 18 for the simple reason that there is a residuary clause under Article 18(c) which save all other public auctions other than enumerated one under the main part of Article 18. Therefore the question is whether the sale would come within the ambit of Article 18 of the Indian Stamp Act, 1859. The sale by public auction referred to in Article 18 is the presuppose exercise of a power conferred under a statutory provision or by law. An action emanates from such power conferred by law enable the authority to exercise the power for the sale of property. The emphasis is not with reference to public auction, but to the power that could be exercised by such an authority. Public auction is only a manner and mode of exercising such power. Any person including a private individual can put his/her own property for sale by public auction. The private entities resort to public auction to sell his property will not come within the ambit of Article 18 of Schedule. As already adverted, the sale as referred under Article 18 is only by exercising the power under law and not by own act of an individual or an entity. Article 18 recognize only such sale conducted by the authorities enumerated therein, the Bank will not come within the purview of Article 18.

That be so, Section 18 cannot be attracted when such public auction is conducted not in exercise of power under law. Therefore, the petitioner's argument on this ground is to be repelled. Accordingly, I repel.

9. The petitioner also have a case that Section 9 of Banking Regulation Act mandates the bank to liquidate non productive assets. It is true, under the command of Banking Regulation Act, the Bank has to liquidate such assets. However, that is only in relation to the banking business of a bank and that is being regulated through the statutory provisions. It has nothing to do with any mode of sale to be conducted as referred in Article 18 of the Indian Stamp Act. The regulatory regime that would bind the bank and mode, that be adopted by the bank by observing the regulation, are two distinct features and cannot be clubbed together for the purpose of Article 18 of the Stamp Act. Therefore, this argument also has to be repelled. Accordingly, I do so.

10. The next ground the petitioner argued is that in terms of Section 2(d) the transaction cannot be treated as conveyance. Conveyance as defined under Section 2(d) is a transaction between two living persons. It is appropriate to refer Section 2(d) of Kerala Stamp Act, which reads as follows:

"Conveyance" includes a conveyance on sale and every instrument by which property, whether movable, or immovable is transferred *inter vivos* and which is not otherwise specifically provided for by the Schedule.

11. The petitioner referred to Black's Law Dictionary defining inter-vivos and also relied upon the judgement of this Court reported in ***Parreekkutty and others v. Sub Registrar, Perumbavoor and others*** (2010(3) KHC 793), wherein this Court held that inter-vivos means a transaction between two living persons. The definition according to the Stamp Act has to be understood in contextual and text of the scheme of the Act. The Court need not travel beyond the textual context of a legislation to find out the meaning of a particular term or norm. The conveyance as understood in the Stamp Act is only for the purpose of levying stamp on a particular instrument. That means it is not intended to define a particular nature of transaction, but for the purpose of levying the amount of stamp, conveyance is defined. Therefore textual interpretation required in the context only intended to mean that conveyance is a transaction between two persons acting bilaterally. The person can be a living person or a juridical entity. If conveyance has to be understood in a narrow meaning of transaction of two living persons, there cannot be stamp duty leviable in respect of conveyance executed in which

one of the party is a juridical entity. Considering the scheme of Act, it can be very well concluded that the scheme of Act never intended to exclude juridical entity outside the purview of meaning of conveyance. This argument is also repelled.

12. The third argument is essentially based on the rejection of appeal filed by the petitioner before the District Collector. Aggrieved by the order passed by the Registering Officer, the petitioner approached the District Collector in appeal. Section 45A alienate the procedure to deal with instrument not bearing sufficient stamp duty as per the fair value of the land. Section 45A(2) says on verification, the registering officer is satisfied that consideration set forth in the instrument is not less than fair value, he shall duly register the instrument. In Section 45A(3) it is stated that on verification the registering officer finds that if the value of the land or the consideration set forth in the instrument is less than fair value, that is fixed under Section 28A, he shall by an order direct payment of proper stamp duty on fair value of the land fixed under Section 28A within seven days from the date of the order and on payment of such deficit stamp duty, the instrument shall be registered. Section 45A(4) says that any aggrieved person by an order under subsection (3), within 30 days the person can approach the District Collector. That means if an order was issued directing the person to pay stamp duty at par

with fair value, that person can straight away approach the District Collector with an appeal even before the registration of the instrument.

13. In exercise of the power conferred under Section 69 of the Kerala Stamp Act, Government had formulated the Kerala Stamp (Fixation of Minimum Fair Value of Land) Rules 1988. Rules 7 and 8 set out the procedure for disposal of the appeal filed in terms of section 45A(4). Rule 8 clearly states that the District Collector had to examine the factual factors to find out the fair value fixed as proper or not. That means an enquiry that is contemplated pursuant to an appeal under section 28A will have to be followed in the appeal that is preferred under section 45A(4). In fact, an appeal under Section 28A can be preferred only by an aggrieved person. Section 45A(4) is a departure from Section 28 A for the simple reason that a person would be aggrieved only when his instrument is sought to be registered, though he may not be aggrieved at the time of notification issued under Section 28A as he at that time had intention to purchase the property. In that sense, the vendee become really aggrieved only when he proposed to purchase the land. Therefore, the petitioner is really an aggrieved when he submitted the instrument for registration and when he was asked to pay the fair value, in that sense, the District Collector could not have rejected the appeal filed by the petitioner

stating that he has no locus standi. Therefore, this Court is of the view that the order passed by the District Collector has to be set aside and the District Collector has to reconsider the appeal afresh. The District Collector shall consider the objection raised by the petitioner in regard to the fair value fixed in the matter and decide the appeal in accordance with the procedure set out in Rules 7 and 8 referred to in the Kerala Stamp (Fixation of Minimum Fair Value of Land) Rules, 1988. Appropriate decision shall be taken within a period of two months after hearing the petitioner.

This writ petition is allowed to that extent. No order as to costs.

Sd/-

**A. MUHAMED MUSTAQUE,
JUDGE.**

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