

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 6TH DAY OF MARCH 2018 / 15TH PHALGUNA, 1939

WP(C).No. 37566 of 2017

PETITIONER:

K.C. CHERIAN,  
SON OF LATE ALEXANDER KANJOOPARAMBIL,  
AGED 58 YEARS, ROSE VILLA,  
CHANGANACHERRY-686101,  
KOTTAYAM DISTRICT.

BY ADVS.SRI.JACOB SEBASTIAN  
SRI.K.A.SIYAD  
SRI.K.V.WINSTON  
SMT.ANU JACOB

RESPONDENTS:

1. THE DEPUTY TAHSILDAR(REVENUE RECOVERY) ,  
CHANGANACHERRY,  
KOTTAYAM DISTRICT PIN - 686 101.
2. DISTRICT REGISTRAR(GENERAL) ,  
OFFICE OF THE DISTRICT REGISTRAR,  
IDUKKI PIN - 685 602.
3. THE SUB REGISTRAR,  
PEERMEDU,  
IDUKKI DISTRICT PIN - 685 531.
4. STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
DEPARTMENT OF REVENUE, SECRETARIAT,  
THIRUVANANTHAPURAM PIN - 695 001.

BY SR. GOVERNMENT PLEADER SRI.VINOD B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-03-2018, ALONG WITH WPC.38663/2017,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EL

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1            A TRUE COPY OF THE SALE DEED NUMBER 4357/2010 OF  
THE SRO, PEERMEDU.
- EXHIBIT P2            A TRUE COPY OF THE NOTIFICATION IN THE KERALA  
GAZETTE DATED MARCH 6, 2010.
- EXHIBIT P3            A TRUE COPY OF THE DEMAND NOTICE DATED  
NOVEMBER 6, 2017 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S) ' EXHIBITS

- EXHIBIT R2 (A)        A TRUE COPY OF A REPORT UNDER FORM 1A SUBMITTED THE SUB  
REGISTRAR, PEERUMADU ON 19.11.2010
- EXHIBIT R2 (B)        A TRUE COPY OF THE NOTICE ISSUED UNDER FORM II
- EXHIBIT R2 (C)        A TRUE COPY OF THE ORDER NO.UV.2/11/2010 PMD ON 25.6.2014
- EXHIBIT R2 (D)        A TRUE COPY OF THE REQUISITION NO.2017/396/06 DATED 27.10.2017

TRUE COPY

P.S. TO JUDGE

EL

2.4.2018

**A.MUHAMED MUSTAQUE, J.**

\*\*\*\*\*

**W.P.(C) No.37566 & 38663 of 2017**

\*\*\*\*\*

**Dated this the 6<sup>th</sup> day of March, 2018**

**JUDGMENT**

The petitioner purchased a property along with Smt.Ithama Joseph and Sri. P.V.Mathew in the year 2010. The proceedings were initiated under Section 45B(3) of the Stamp Act, 1959(for short, the 'Act') alleging undervaluation of an instrument. The proceedings were initiated as seen from the impugned notices as early as in the year 2011. However, it is seen that the notice was solely addressed to Smt.Ithama Joseph. No notice was issued to the petitioner. The proceedings were concluded as Smt.Ithama Joseph had not chosen to contest the matter. Based on the orders passed, the revenue recovery proceedings were initiated against him. At this juncture, the petitioner approached this Court. Admittedly, the petitioner was not served with any notice. The Rule

framed under the Kerala Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (for short, the 'Rules') would go to show that notice has to be issued on every person in whose favour, an instrument has been executed. Therefore, it is the duty of the Collector to issue a notice on every person in whose favour an instrument has been executed. Thus, without serving a notice, no orders could have been passed in the matter.

2. At this juncture, the learned counsel for the petitioner points out the limitation for initiating the proceedings against the petitioner after the period of five years. He argued that the entire proceedings will have to be dropped against the petitioner. This argument is essentially pointing out Section 45B (3) of the Act. In sub clause (3), it states about the power of the Collector and the limitation period for invoking *suo motu* proceedings as at five years from the date of registration of the

instrument. Therefore, it is argued that if fresh notice is issued, that would be barred by the period of limitation.

3. It is to be noted that proceedings had already been initiated. Section 45B(3) of the Stamp Act says that the Collector may, *suo motu*, within five years from the date of registration of any instrument, call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration. Therefore, what is required is that, the Collector 'being satisfied himself', within the period of five years, whether to initiate such proceedings for determining the correctness of the value or consideration or not. The date of issuance of notice cannot be calculated for reckoning the period of limitation. Issuance of notice is only the follow up of such proceedings. Thus, if the proceedings were already initiated within the time indicated, any notice issued even after five years will not render the

proceedings as invalid. However, as already adverted that without issuing notice to the petitioner, no determination could have been made against the petitioner. Therefore, the revenue recovery proceedings initiated against the petitioner is set aside. If the Collector wants to proceed against the petitioner, he shall issue a notice to the address shown in the writ petition within a period of one month from the date of receipt of a copy of this judgment and thereafter, appropriate orders shall be passed after affording an opportunity of hearing to the petitioner. The writ petitions are disposed of as above. The revenue recovery proceedings, thus, quashed as against the petitioner.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

ln