

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 30TH DAY OF JANUARY 2017/10TH MAGHA, 1938

WP(C) .No. 41156 of 2016 (T)

PETITIONER(S) :

ELOOKKARA SERVICE CO-OPERATIVE BANK LIMITED,
KADUNGALLOOR, ELOOKKARA MUPPATHADAM (P.O.),
ERNAKULAM, PIN 683 101,
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.SHAJI CHIRAYATH
SMT.JIJI M. VARKEY
SMT.SAVITHA GANAPATHIYATAN
SRI.M.M.SHAJAHAN

RESPONDENT(S) :

1. DISTRICT REGISTRAR,
CC 40/1017, 3RD FLOOR, PERUMPILLY BUILDING,
OPP. MAHARAJAS GROUND, ERNAKULAM, PIN 682 011.
2. SUB REGISTRAR,
OFFICE OF THE SUB REGISTRY ALANGD,
KONGORPILLY (P.O.), ERNAKULAM, PIN 683 525.
3. MADHU MOHAN,
AGED 50 YEARS, SON OF MR.SUSHEELAN,
CHERUPILLIL HOUSE, EDAYAPURAM,
ERUMATHALA (P.O.), ERNAKULAM, PIN 683 101.

R1-R2 BY SENIOR GOVERNMENT PLEADER SRI. P.M. MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-01-2017, ALONG WITH WPC. 41160/2016 & CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKG

WP(C) .No. 41156 of 2016 (T)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: COPY OF THE DOCUMENT EXECUTED BY THE PETITIONER
AND 3RD RESPONDENT CONFISCATED BY THE SUB
REGISTRAR DATED 01.10.2016.

EXHIBIT-P2: COPY OF THE ORDER/SHOW CAUSE NOTICE ISSUED BY THE
DISTRICT REGISTRAR IMPOSING PENALTY AND DEMAND OF
DEFICIT STAMP DUTY DATED 20.10.2016.

RESPONDENT(S) ' EXHIBITS

NIL

/TRUE COPY/

P.S. TO JUDGE

SKG

P.B. SURESH KUMAR, J.

**W.P.(C) Nos.41156, 41160, 41163
41167, 41196 of 2016**

Dated this the 30th day of January, 2017

JUDGMENT

The common petitioner in these writ petitions is a co-operative society. They presented a few documents executed in their favour for registration before the second respondent. The second respondent took the view that the documents have not been duly stamped and consequently impounded the same under Section 33 of Kerala Stamp Act and forwarded the documents impounded to the first respondent, exercising the power of the Collector, as provided for in Section 37(2) of the Act. The first respondent, thereupon, issued communications to the petitioner directing them to remit the stamp duty and

penalty. The communications issued by the first respondent to the petitioner in this connection are under challenge in these writ petitions.

2. Heard the learned counsel for the petitioners as also the learned Government Pleader.

3. The petitioner has not remitted the stamp duty payable in respect of the documents. This fact is not in dispute. According to the petitioner, they are entitled to remit stamp duty in respect of the documents by virtue of a notification, S.R.O.No.75/1960 issued by the Government under Section 40(1)(a) of the Kerala Co-operative Societies Act. According to respondents 1 and 2, the petitioner is not entitled to the remission provided for under the said notification in respect of the documents, for, the said documents would not come within the purview of the said notification. Be that as it may, according to the learned counsel for the petitioner, in so far as the

registration of the documents was refused, the second respondent ought to have passed an order under Section 71 of the Registration Act. The limited prayer made by the learned counsel for the petitioner, in the circumstances, is for a direction to the Registering Authority to pass orders as provided for under Section 71 of the Registration Act.

4. I am afraid, the provision contained in Section 71 of the Registration Act has no application to the facts of the present case. Section 71 of the Registration Act would apply only when the registration of the document is refused by the Sub Registrar. The registration of the documents presented by the petitioner has not been refused by the Sub Registrar. Instead, the Sub Registrar has impounded the documents, in exercise of his powers under Section 33 of the Kerala Stamp Act, as it was found that the documents are not duly stamped, and forwarded to the Collector as provided for under Section 37(2) of the

Kerala Stamp Act. The communications impugned in the writ petitions are communications issued by the first respondent, exercising the power of the Collector as provided for under Section 39(1)(b) of the Kerala Stamp Act. Since Section 71 of the Registration Act has no application to the facts of the present cases, the prayer sought by the learned counsel for the petitioner cannot be granted. The writ petitions, in the circumstances, are dismissed. It is, however, made clear that this judgment will not preclude the petitioner from getting the documents registered by remitting the stamp duty and the penalty, in accordance with Section 41 of the Kerala Stamp Act.

Sd/-

P.B. SURESH KUMAR
JUDGE

bpr