

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 11TH DAY OF MARCH 2024 / 21ST PHALGUNA, 1945
WP(C) NO. 3752 OF 2024

PETITIONER:

SULOCHANA
AGED 29 YEARS
W/O.SUDHEESH, PALLICKAL HOUSE, NEDUMPURA.P.O.,,
CHERUTHURUTHY, THRISSUR DISTRICT, PIN - 679532

BY ADVS.
DINESH MATHEW J.MURICKEN
K.A.ABHILASH
VINOD S. PILLAI
MOHAMMED THAYIB N.M.
NAYANA VARGHESE
RIA VARGHESE
AHAMMAD SACHIN K.
JERRY PETER

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, ROOM
NO.606, 6TH FLOOR, ANNEXE-2, SECRETARIAT,
STATUTE JUNCTION, THIRUVANANTHAPURAM GENERAL.P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001
- 2 THE DISTRICT REGISTRAR
OFFICE OF THE DISTRICT REGISTRAR,
CHEMBUKKAVU, THRISSUR DISTRICT, PIN - 680020
- 3 THE SUB REGISTRAR
SUB REGISTRAR OFFICE, VADAKKANCHERY.P.O.,
THRISSUR DISTRICT, PIN - 678683
- 4 THE SUPERINTENDENT OF JAIL
VIYYUR JAIL, THRISSUR - SHORANUR ROAD,
VIYYUR.P.O., THRISSUR DISTRICT, PIN - 680010

AJITH VISWANATHAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of March, 2024

Petitioner has approached this Court seeking a direction to the 4th respondent to allow Sudheesh (Prisoner No.5578 at Viyyur Central Jail) to execute Exhibit P3 document in the presence of the 4th respondent and endorsing the same in Exhibit P3 document with a consequential direction to the 3rd respondent to register Exhibit P3 document after its execution by Sudheesh as per Section 38(2) of the Registration Act 1908 (hereinafter referred to as Act 1908).

2. Petitioner is the wife of one Sudheesh who is undergoing sentence in SC No.253/2015 on the file of the Special Judge, Thrissur, as prisoner No.5578 at Viyyur Central Jail. The petitioner along with her husband Sudheesh is having 1.82 ares of property comprised in Survey No.460/4-3 of Nedumpura Village, Talappilly Taluk, Thrissur District, and a house therein obtained as per Ext.P2 document registered at Sub Registrar Office, Wadakkanchery.

3. Petitioner's husband Sudheesh intends to relinquish his share in the abovementioned property in favour of the petitioner by executing a relinquishment deed to enable the petitioner to avail the benefit of a housing scheme proclaimed by the Government. Thereupon, the petitioner had prepared Ext.P3 relinquishment deed by engrossing the

same in the stamp paper for getting it executed by Sudheesh (Prisoner No.5578 of Viyyur Central Jail). Thereafter, the petitioner approached the 4th respondent, the Superintendent of Jail, who is to permit Sudheesh to execute Exhibit P3 document, but the said respondent refused the request stating that he could do so only as per an order of this Court. Petitioner relying on Chapter 56 of the Kerala Prisons and Correctional Services (Management) Rules, 2014 submits that the stand taken by the 4th respondent is absolutely arbitrary and unjust inasmuch as ample power has been given to the 4th respondent to grant permission for visitorial rights including for making arrangement for management of the property of the prisoners. Petitioner relies on Section 38 of the Act, 1908 and submits that a prisoner is exempted from appearing in person at the registration office for registration of a document.

4. A detailed statement has been filed by the 3rd respondent wherein it is admitted that going by Section 38 (1) of the Act, 1908 a person in jail under civil or criminal process is exempted from personal appearance before the registering officer for registering a document which is executed by them and as per Section 38(2) of the Act 1908, the Sub Registrar is vested with ample power to go to the jail in which the executant is confined and examine him or issue a commission for his examination for the purpose of registration. It is further stated that the petitioner's husband is undergoing imprisonment in Viyyur Central Jail, Thrissur, and the jurisdiction of the 3rd respondent is confined only to

Talappilly Taluk and Viyyur Central Jail is situated in Viyyur Village which falls within the jurisdiction of the amalgamated Sub Registrar Office, Thrissur. The 3rd respondent relying on Section 30(1) of the Act 1908 submits that any Registrar may in his discretion receive and register any document which might be registered by any Sub Registrar subordinate to him. It is further stated that once sanction of the 4th respondent is obtained, the amalgamated Sub Registrar, Thrissur who can exercise the authority of the District Registrar can attend the jail and complete the registration process. It is further stated that the presence of the executant before the Registrar shall be in accordance with law and subject to the sanction by the 4th respondent Jail Superintendent.

5. A statement has also been filed by the 4th respondent wherein it is stated that a deed was produced before the jail authorities to obtain the signature of the prisoner in the absence of the registering officer. The prisoner was not willing to sign the document. Later, Shri. Sudheesh, the prisoner has submitted Ext R4(a) letter expressing his intention to execute the release deed prepared by the petitioner and in view of the same the 4th respondent has no objection to register the document in accordance with law.

6. I have heard the learned counsel for the petitioner and the learned Government Pleader.

7. Section 38 of the Registration Act 1908 deals with the persons exempted from appearance at the registration office. The said section

reads as follows:

*"38. Persons exempt from appearance at registration office
(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration office, or
(b) a person in jail under civil or criminal process, or
(c) persons exempt by law from personal appearance in court, and who would but for the provision next hereinafter contained be required to appear in person at the registration office, shall not be required so to appear.
(2) In the case of every such person the Registering Officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination."*

(underline supplied)

Going by Section 38 of the Act 1908, a person who is in jail is exempted from appearing at the registration office for registration and in the case of such a person, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined and examine him or issue a commission for his examination. Therefore, the 2nd respondent is duty bound to comply with the said provision on being informed of the same.

7. The 3rd respondent submits that his jurisdiction is confined only to Thalappilly Taluk and the Viyyur Central Jail is situated in Viyyur Village which falls within the jurisdiction of the amalgamated Sub Registrar Office, Thrissur. Section 30(1) of the Registration Act 1908 empowers the registrar, the 2nd respondent herein to receive and register any document which might be registered by any Sub-Registrar subordinate to him. Therefore, even though the 3rd respondent does not have power to execute a document in Viyyur Village as he has not been confined with any jurisdiction in respect of the said area, going by Section 30(1) of the

Act, the 2nd respondent registrar can receive and register the document since 3rd respondent Sub-Registrar is subordinate to him. In view of the above facts and circumstances, the writ petition is disposed of as follows:

1. The 4th respondent as per the request made by Sudheesh (prisoner no. 5578 at Viyyur Central Jail) in Ext R4 (a), shall make necessary request to the 2nd respondent within a period of 1 week from the date of receipt of a copy of the judgment, for his presence at the Viyyur Central Jail so as to execute Ext P3 release deed.
2. The 2nd respondent shall on getting such intimation from the 4th respondent be present before the 4th respondent, Superintendent of Jail for registration of Ext P3 document and shall receive and register the document as provided in the Act 1908, especially Sections 30 and 38.

sd/-

**VIJU ABRAHAM
JUDGE**

APPENDIX OF WP(C) 3752/2024

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE JUDGEMENT IN
S.C.NO.253/2015 PASSED BY THE
SPECIAL JUDGE, THRISSUR DATED
26/04/2021

Exhibit P2 TRUE COPY OF THE SALE DEED
NO.5420/10 OF S.R.O VADAKANCHERY
EXECUTED BY MOHANDAS IN FAVOUR OF
THE PETITIONER AND HER HUSBAND DATED
30.12.2010

Exhibit P3 TRUE COPY OF THE RELINQUISHMENT DEED
TO BE EXECUTED BY SUDHEESH IN FAVOUR
OF THE PETITIONER DATED 29.09.2023