

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 20<sup>TH</sup> DAY OF JULY 2021 / 29TH ASHADHA, 1943

WP(C) NO. 13580 OF 2021

PETITIONER/S:

M.A. JOY,  
AGED 73 YEARS,  
S/O. MATHEW, ADATHURUTHIL HOUSE, KENNADYMUKKU,  
VAZHAKKALA VILLAGE, THRIKKAKARA, ERNAKULAM 682 021.

BY ADVS.  
S.RENJITH  
K.R.PRATHISH

RESPONDENT/S:

- 1 SUB REGISTRAR,  
EDAPPALLY SUB REGISTRAR OFFICE, RAILWAY STATION  
ROAD, NEAR EDAPPALLY RAILWAY STATION, PONEKKARA,  
EDAPPALLY, ERNAKULAM 682 024.
- 2 THE DISTRICT COLLECTOR,  
ERNAKULAM, CIVIL STATION , KAKKANAD,  
ERNAKULAM DISTRICT 682 030.

SMT. A.C. VIDHYA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 20.07.2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

“CR”

**JUDGMENT**

Can the Sub Registrar who refused to register a document presented for registration on a mistaken interpretation of the statutory provisions, which refusal was found to be erroneous by the superior authority, later refuse registration on the ground that the document was presented out of time? This is the question posed by Sri S. Renjith, the learned counsel, who appears for the petitioner in this Writ Petition.

2. The property owned by the petitioner was acquired for the setting up of a pipeline by the Kerala Water Authority. As part of rehabilitation measures, property admeasuring 1.62 Ares situated within the limits of Thrikkakara Village was assigned to him as per Exhibit P1 Sale deed. In Exhibit P1, it is equivocally stated that the entire rights over the property stood transferred to the petitioner and that he is entitled to enjoy the same without any restrictions whatsoever, and that the entire rights of the vendor will stand divested in favour of the petitioner on the execution of the deed.

3. The petitioner wanted to assign the property and for that purpose, he executed Exhibit P2 Sale deed on 15.01.2021, paid Rs.1,63,296/- by way of Stamp Duty and presented the same for registration before the 1st respondent on 16.01.2021. The 1st respondent took the view that as the property originally belonged to the Kerala Water Authority, the petitioner is required to obtain a No-

Objection certificate from the District Collector, who is the officer authorized under Section 71 (3) of the Registration Act, 1908. Exhibit P3 is the order dated 02.02.2021 refusing registration. As suggested by the 1st respondent, the petitioner approached the District Collector and filed Exhibit P4 request seeking the issuance of a NOC. The 2nd respondent obtained a report from the Executive Engineer, JNNURM Project, KWA and by Exhibit P6 order dated 26.04.2021 came to the conclusion that as per Exhibit P1, absolute rights has been transferred to the petitioner and hence there is no requirement for obtaining a NOC. The petitioner contends that a copy of Exhibit P6 order was not communicated to him. It was sent directly to the 1st respondent. Despite the receipt of Exhibit P6, the petitioner was not informed about the same by the 1st respondent. Later, in the first week of July, 2021, when the petitioner approached the 1st respondent to enquire about the status, the petitioner was informed that as the time period of four months as provided under Section 23 of the Registration Act had expired, the petitioner will have to pay fine for the delayed presentation. According to the petitioner, he cannot be asked to bear the fine under Rule 44 of the Registration Rules as there was no laches on his part. Being aggrieved, the petitioner is before this Court seeking the following reliefs.

- i) issue a Writ of mandamus or any other Writ or direction directing the first respondent to register their Exhibit P2 sale deed after accepting the registration fees finding that the deed is presented within the time period prescribed under Section 23 of the Registration Act 1908.

4. Sri S Renjith, the learned counsel appearing for the petitioner

submitted that the petitioner had presented the deed well within the time period mentioned in Section 23 of the Registration Act. By grossly misinterpreting the statutory provisions and without even perusing the prior title deed as well as the document presented for registration, the registration was refused by the 1st respondent. It is submitted by the learned counsel that the 2nd respondent has rightly interfered and has passed Exhibit P6 holding that no NOC is required from the authority concerned. Instead of intimating the petitioner about the passing of such an order, the 1st respondent has demanded that the petitioner should pay a fine for delayed presentation. The learned counsel argued that by applying the Latin maxim 'Nul prendra advantage de son tort demesne' which means that "No one shall take advantage of his own wrong", it would be clear that the demand made by the 1st respondent cannot be sustained. The learned counsel would also refer to a judgement in **OPAL Builders Private Ltd., Mumbai v State of Maharashtra** (2016 KHC 2276) wherein it was held that if the authorities take time to adjudicate the stamp duty, the applicant cannot be made to face the consequences of the same.

5. Smt A.C. Vidya, the learned Government pleader submitted that the petitioner ought to have been vigilant and he should have enquired with the 2nd respondent, the consequence of the order passed on Exhibit P4 representation submitted by him. However, it is fairly submitted that no copy of the order was served on the petitioner and that he was never intimated by the 1st respondent about the order passed by the District Collector.

6. I have anxiously considered the submissions advanced and have perused the entire records.

7. Exhibit P1 is the sale deed executed in favour of the petitioner by the Executive Engineer, Kerala Water Authority for and on behalf of the State Government. As per the said deed, the petitioner was assigned the entire rights, title and interest over 1.62 Ares of property. No right whatsoever was reserved for the Government or the Kerala water authority. The petitioner had every right to assign the property to any person he chooses. Later, the petitioner entered into an agreement to sell the property to a certain Shasil Mohammed. Exhibit P2 sale deed was executed on 15.01.2021 and the same was presented before the 1st respondent on the next day itself. Relying on Section 71 (3), the 1st respondent proceeded to refuse registration and demanded that the petitioner should obtain an NOC from the District Collector. It would be profitable to refer to Section 71 of the Registration Act which reads as follows:

71. Reasons for refusal to register to be recorded.—(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

(3) No registering officer shall accept for registration any document involving transfer of property including contract for sale of immovable property belonging to or vested in the Government of Kerala or public sector undertakings operating in the State or local self-Government institutions unless it is accompanied by a no objection Certificate issued by an officer authorised by the State Government in this behalf.

8. Section 71 (3) places an embargo on the registering officer and he is interdicted from accepting any document for registration involving transfer including a contract for the sale of immovable property if the property involved therein is vested in the Government of Kerala or public sector undertakings operating in the State or local self-government institutions unless it is accompanied by a no-objection certificate issued by an officer authorised by the State Government. It is evident from Exhibit P1 and P2 that the entire rights over the property were vested with the petitioner and neither the State or the KWA had any rights over the same. He had absolute authority to transfer the same free of all encumbrances. This was what was noted by the 2nd respondent while passing Exhibit P6. I have no doubt in my mind that the 1st respondent has misinterpreted the statutory provisions and has refused registration. As rightly argued by the learned Counsel, this is where the maxim "Nul prendra advantage de son tort demesne" comes in. The 1st respondent cannot be permitted to take advantage of his own wrong. The petitioner cannot be asked to pay a fine for delayed presentation of the document as it was owing to the wrongs committed by the 1st respondent that registration was delayed.

The petitioner is entitled to succeed. There will be a direction to the petitioner to present Exhibit P2 for registration before the 1st respondent within a period of 10

days from 20.7.2021. If the same is done, the 1st respondent shall register the same in strict adherence to the relevant statutory provisions taking that the document was presented well within time.

Sd/-

**RAJA VIJAYARAGHAVAN V  
JUDGE**

ps

APPENDIX OF WP(C) 13580/2021

PETITIONER(S) EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE SALE DEED BEARING NO. 1002/2018 IN THE NAME OF THE PETITIONER DATED 21.03.2018.
- EXHIBIT P2 TRUE COPY OF THE SALE DEED EXECUTED BY THE PETITIONER AND FASIL PRESENTED BEFORE THE 1ST RESPONDENT FOR REGISTRATION DATED 16.01.2021.
- EXHIBIT P3 TRUE COPY OF THE REJECTION LETTER DATED 02.02.2021 ISSUED BY THE 1ST RESPONDENT TO THE PURCHASER FASIL MUHAMMED.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 04.02.2021 BEFORE THE 2ND RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE LETTER DATED 05.03.2021 ISSUED BY THE 2ND RESPONDENT TO EXECUTIVE ENGINEER KERALA WATER AUTHORITY.
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 24.06.2021 ISSUED BY THE DISTRICT COLLECTOR TO THE 1ST RESPONDENT.

RESPONDENT(S) EXHIBITS : NIL