

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 9TH DAY OF JANUARY 2024 / 19TH POUSHA, 1945

RP NO. 1306 OF 2023

AGAINST THE JUDGMENT DATED 01-08-2023 IN WP(C) 22497/2023 OF HIGH
COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS 1 TO 5 IN W.P(C):

- 1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT
REGISTRATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
- 2 DISTRICT COLLECTOR
COLLECTORATE, KOTTAYAM, PIN - 686 002.
- 3 REVENUE DIVISIONAL OFFICER
REVENUE DIVISIONAL OFFICE, PALA, KOTTAYAM,
PIN - 686 575.
- 4 DISTRICT REGISTRAR (GENERAL)
COLLECTORATE, KOTTAYAM, PIN - 686 002.
- 5 SUB REGISTRAR
SUB REGISTRAR OFFICE, ERATTUPETTA, PIN - 686 121.

BY ADV SMT. RESHMI THOMAS (GP)

RESPONDENTS/PETITIONERS IN WP(C):

- 1 JAGANATHAN C
KODIYANKULATHIL HOUSE, TEEKOY P.O., KOTTAYAM,
PIN - 686 580.
- 2 REETHA K
KODIYANKULATHIL HOUSE, TEEKOY P.O., KOTTAYAM,
PIN - 686 580.

BY ADV. SRI. CHRISTINE MATHEW

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 09.01.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This review petition has been filed seeking the review of the judgment in W.P.(C)No.22497 of 2023. W.P.(C)No. 22497 of 2023 was disposed of on 01-08-2023 directing as follows:

5. *Accordingly, this writ petition will stand disposed of with the following directions:*

- i. *The 5th respondent shall accept Ext.P2 document for registration subject to compliance with usual formalities, treating the document as having been presented for registration on 29-11-2021 or immediately thereafter. The stamp duty payable by the petitioners shall be calculated with reference to the date on which the document was actually presented for registration and not on any enhanced fair value after the date of presentation.*
- ii. *The petitioners shall pay the registration fees payable as on today, as the earlier registration fee payable by the petitioners had already been refunded.*

2. The circumstances under which the aforesaid directions were issued were that the petitioners in W.P.(C)No.22497 of 2023 had paid Rs.1,45,600/- as stamp duty and Rs.36,545/- as registration fee and had presented the document produced as Ext.P2 for registration. However, the Sub Registrar refused registration of the document on the ground that, the vendor

belonged to one of the Scheduled Tribes and therefore the transfer was not possible without the permission, in writing, of the District Collector under the provisions of the the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999. On the application of the writ petitioners, the District Collector granted permission through Ext.P6 order dated 03-05-2022. However, by that time, since Ext.P2 Sale Deed had not been registered, the registration fee paid by the writ petitioners had been refunded. They therefore applied for refund of stamp duty. Before this Court it was the argument of the writ petitioners that, since the document was presented for registration and registration had been refused for the reason noted above, the Registrar could not have refused registration when registration was sought after the District Collector gave permission on the ground that considering the time that had elapsed from the date of execution of the document more than four months had passed by the time the writ petitioners had again sought for the registration of the document.

3. Learned Government Pleader had then taken the contention that the only remedy open to the writ petitioners was to prepare a fresh document, pay stamp duty again and then present

the document for registration on the basis of the permission granted by the District Collector. Such a contention was taken on the basis that the writ petitioners had failed to apply within time for refund of stamp duty. It was in the background of the aforesaid facts that after accepting the contention of the writ petitioners it was held that the date on which the document was originally presented for registration should be taken as the date of presentation for all purposes and it could not be said that the document was not presented for registration within the stipulated time.

4. When this review petition was taken up for consideration today, it is the submission of the learned Government Pleader that since there are practical difficulties in implementing the directions issued by this Court, notwithstanding the lapse of time in making an application for refund of stamp duty, if an application is made forthwith by the writ petitioners, the stamp duty paid shall be refunded.

5. Learned counsel for the writ petitioners would submit that the writ petitioners would be satisfied if the entire stamp duty is refunded on that application.

6. Though no ground is made out for review of the

judgment, considering the submissions made by the learned Government Pleader and the learned counsel appearing for the writ petitioners/respondents in the review petition, this review petition will stand disposed of directing that, if the writ petitioners make a suitable application for refund of stamp duty before the Secretary to Government, Registration Department, Government Secretariat, Thiruvananthapuram, within a period of ten days from today, the said officer shall treat the same as an application filed within time for refund of stamp duty paid on used/spoiled stamp papers and shall direct the refund of the stamp duty to the writ petitioners.

The review petition will stand disposed of as above.

**Sd/-
GOPINATH P.
JUDGE**

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R.P.No.1306 of 2023

in

W.P(C)No.22497 of 2023

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APPENDIX OF RP 1306/2023

PETITIONERS' ANNEXURES

Annexure A1 TRUE COPY OF THE LETTER VIDE NO.157/2023 DATED
16.09.2023