(2023) 08 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22497 Of 2023

Jaganathan C — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:
Registration Act, 1908 — Section 23

Citation : (2023) 08 KL CK 0006

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : Christine Mathew, Aiswarya E J Vettikompil, Preetha K K

Final Decision : Disposed Of

Judgement

Gopinath P., J

1. Petitioners agreed to purchase 3.32 Ares of property owned by one Justin Hendry comprised in Re-Survey Nos.192/6/34 and 192/6/35 in Block No.60 of Talanad (Poonjar Vadakkekara) Village. Ext.P2 sale deed in respect of that property was executed on 29-11-2021. The petitioners paid Rs.1,45,600/- as stamp duty and Rs.36,545/- as registration fees. According to the petitioners, though Ext.P2 document was presented for registration on 29-11-2021, registration was refused stating that the aforesaid Justin Hendry belongs to one of the Scheduled Tribes and the registration was not possible without the permission, in writing, of the District Collector under the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 (hereinafter referred to as the '1999 Act'). On the application made by the petitioners, the District Collector, through Ext.P6 order dated 03-05-2022 gave the necessary permission to purchase the land. Since Ext.P2 sale deed was not registered, on the application of the petitioners, the registration fee has already been refunded. However, their application for refund of stamp duty is pending.

2. The learned counsel for the petitioners would submit that the time limit

mentioned in Section 23 of the Registration Act, 1908, cannot be a bar to registration of Ext.P2 document as the date of presentation must be taken as 29-11-2021. It is submitted that when a document is presented for registration and for some reason the registration is denied, it cannot thereafter be said that the document was not presented for registration on the date it was so presented. It is submitted that in the facts of the present case the only impediment was that the petitioners had to take permission from the District Collector under the provisions of the 1999 Act, and that permission was given by Ext.P6 order only on 03-05-2022. It is submitted that since more than four months had passed from 29-11-2021, the Sub Registrar had refused the registration of the document.

3. The learned Senior Government Pleader refers to the provisions of Section 23 of the Registration Act, 1908, and submits that the application filed by the petitioners for refund of stamp duty in respect of spoilt/used stamp papers was filed beyond time. It is submitted that the only remedy available to the petitioners in the facts and circumstances of this case is to apply for refund of stamp duty on spoilt/used stamp papers and since the petitioners had failed to make such application within time, the only remedy open to the petitioners now is to execute a fresh sale deed by paying the requisite stamp duty on the fair value now fixed in respect of the property. It is submitted that there has been a revision of fair value after 29-11-2021 and further that the registration fee payable by the petitioners had already been refunded.

4. Having heard the learned counsel for the petitioners and the learned Senior Government Pleader appearing for the respondents, I am of the view that this is not a case where the time limit mentioned in Section 23 of the Registration Act, 1908, should act as an impediment in the registration. There is no dispute that after execution of Ext.P2 document, the same was presented for registration on 29-11-2021 or immediately thereafter. The date on which Ext.P2 was so presented is the date of presentation of the document for registration for the purposes of Section 23 of the Registration Act, 1908. The fact that registration was denied on account of the fact that there was no written permission from the District Collector and in view of the provisions contained in the 1999 Act cannot be a reason to state that the petitioners had not presented the document for registration within the time specified in Section 23 of the Registration Act, 1908. I am also of the view that in the peculiar facts and circumstances of the case the petitioners are required to pay stamp duty only on the fair value fixed for the land as on the date of presentation of the document for registration and on no other value.

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.

Writ petition is disposed of as above.

