

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ANTONY DOMINIC  
&

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 29TH DAY OF MAY 2018 / 8TH JYAISHTA, 1940

WA.No. 419 of 2018

AGAINST THE JUDGMENT IN WP(C) 16109/2017 DATED 06/12/2017  
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APPELLANT/PETITIONER

DR.ABDUL RASHEED @ DR. A.R.BABU,  
AGED 60 YEARS, S/O. ALIYAR KUNJU, HEERA, TC 5/2527 (5), TKV  
NAGAR, OPP: GOLF CLUB, KOWDIYAR P.O., PIN-695003,  
SASTHAMANGALAM, MANAGING DIRECTOR, M/S. HEERA SUMMER  
HOLIDAY HOMES PRIVATE LIMITED, M. P. APPAN ROAD,  
VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN-695014.

BY ADVS.SRI.K.V.SADANANDA PRABHU  
SRI.SERGI JOSEPH THOMAS

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT, REVENUE  
DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
2. THE COMMISSIONER OF LAND REVENUE,  
PUBLIC OFFICE BUILDINGS, THIRUVANANTHAPURAM-695033.
3. THE DISTRICT REGISTRAR (GENERAL) ,  
THIRUVANANTHAPURAM-695023.
4. THE SUB REGISTRAR,  
OFFICE OF THE SUB REGISTRAR, POOVAR,  
THIRUVANANTHAPURAM-695525.

R1 TO R4 BY GOVERNMENT PLEADER SRI. V.TEKCHAND

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD  
ON 08-03-2018, ALONG WITH W.A.NO. 439/2018  
AND CONNECTED CASES THE COURT ON 29-05-2018  
DELIVERED THE FOLLOWING:

sdr/-  
29.5.18

C.R.

**Antony Dominic, C.J. & Dama Seshadri Naidu, J.**

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W.A. Nos. 419, 439, 498, 504,  
505, 506, and 507 of 2018  
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Dated this the 29<sup>th</sup> day of May 2018

### **JUDGMENT**

***Dama Seshadri Naidu, J:***

#### **Introduction:**

Individual property brought into a company, the company wants to settle the property on the Managing Director's children. When the MD presented the settlement deeds presented for registration, the Sub Registrar impounded them, taking a stand that the instruments have been insufficiently stamped. Even the MD's request to take the deeds back was not entertained.

2. Can the Sub Registrar impound the deeds of conveyance when they have not been pressed into service as completed documents, but presented only for registration?

#### **Case in Brief:**

3. Dr. Abdul Rasheed, also known as Dr. A. R. Babu, is the Managing Director of a company—M/s. Heera Summer Holiday Homes Private Ltd. His wife is the director. And the Company has no other stakeholder. Both brought into the Company their properties at Poovar Village, Thiruvananthapuram District.

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4. Dr. Rasheed wanted to settle those properties on his three children. But he could not do it on his own; the company could. So the company, represented by its Managing Director, executed settlement deeds, dt.13.06.2016.

5. When those deeds of settlement were presented for registration, the Sub Registrar, the 4th respondent, initially treated them as such and levied the stamp duty. But at the time of registration, on closer scrutiny, the Sub Registrar found the documents other than settlement deeds; they were treated as gift deeds. The executant is a Company, and the consideration is love and affection—incompatible.

6. With the turn of events, for want of funds, Dr. Rasheed expressed his helplessness to comply with the demand. The Sub-Registrar, then, impounded the documents and sent them to the District Registrar (General), the second respondent, for determining the stamp duty. He did pass orders, confirming the Sub Registrar's findings. Ext.P3 is one such order. Challenging Ext.P3, Dr. Rasheed filed a revision before the Land Revenue Commissioner, who treated it as an appeal. On 2nd March 2017, the Land Revenue Commissioner passed Ext.P4 order, dismissing Dr. Rasheed's plea. The documents impounded, the

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authorities refused even to return the documents when Dr. Rasheed did not want to go ahead with the registration.

7. Ext.P3 order passed by the Sub Registrar treats the deed as gift and levies stamp duty @6% under Art.31 (ii). The stamp duty on all the seven deeds comes to Rs.9,31,25,520/-.

8. Dr. Rasheed filed seven writ petitions--WP (C) Nos.16061, 16062, 16063, 16091, 16093, 16098, and 16109 of 2017—assailing seven orders similar to Exts.P3 and P4.

9. In the writ petitions, Dr. Rasheed sought these reliefs: (i) to quash Exts.P3 and P4 orders; (ii) to command the Sub Registrar to register the documents, treating them as deeds of settlement; (iii) to direct the CLR, DR, and Sub Registrar to consider the settlement deeds, in the light of section 71 of the Registration Act, and to further direct the Sub Registrar to pass orders under section 71 of the Registration Act, so Dr. Rasheed could challenge them in appropriate proceedings; (iv) in the alternative, to direct these officials to return deeds to Dr. Rasheed.

10. A learned Single Judge dismissed all the writ petitions through a common judgment, dt.06.12.2017.<sup>[1]</sup> Aggrieved, Dr. Rasheed filed these intra-court appeals.

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<sup>1</sup> 2018 (1) KLT 334

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**Submissions:**

**Appellant's:**

11. Sri K. V. Sadananda Prabhu, the learned counsel for the appellant, has submitted that the facts are not in dispute, and only a question of law has to be decided: whether the Sub Registrar has the power to impound a document presented for registration. He contends that impounding could be possible only if the document is presented in evidence.

12. The learned Single Judge, according to Sri Prabhu, has relied on decisions which have no bearing on the issue on hand. He has submitted that *Assanaru Khan v Sub Registrar*<sup>[2]</sup> relied on by the appellant, squarely answers the issue. He has also contended that a coequal Bench ought not to have taken a different stand.

13. Sri Prabhu has further submitted that under section 33 of the Act the Registrar is not a public officer. To hold that the presenter cannot withdraw the document or insist on its return is arbitrary, offending Article 14 of the Constitution. The learned counsel has also reminded that if a fiscal provision is ambiguous, the ambiguity must be resolved in the tax payer's favour.

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<sup>2</sup> 2017 (3) KLT 68

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14. In the end, Sri Prabhu has submitted that *Tirupati Developers v. State of Uttarakhand*<sup>[3]</sup>, on which the learned Single Judge, does not apply here, for that case has been decided under Uttarakhand Stamp Act. So, he urges us to allow the writ appeal.

**Respondents’:**

15. The learned Government Pleader has submitted that the impugned judgment suffers from no legal infirmities. According to him, under the Stamp Act, the registering authorities have ample powers to impound the document.

16. Meticulous was the learned Government Pleader’s presentation on the scope of the Stamp Act, contradistinguished from the Registration Act. After taking us through salient provisions of both the enactments, he has submitted that the appellant cannot escape the statutory rigour of the Kerala Stamp Act.

17. In the end, the learned Government Pleader has submitted that *Triupati Developers* squarely covers the issue. So, the learned Single Judge’s disregarding Assanaru Khan cannot be found fault with. So he urges us dismiss the writ appeal.

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<sup>3</sup> (2013) 9 SCC 332

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18. Heard Sri K. V. Sadananda Prabhu, the learned counsel for the appellant, and the learned Government Pleader for the respondents, besides perusing the record.

**Discussion:**

*Can an artificial person, say a company, execute a deed of settlement?*

**(a) Some Definitions:**

19. Section 2(q) of the Kerala Stamp Act, 1959 (“the Act”) defines *settlement* to mean any “non-testamentary disposition in writing, of movable or immovable property made (i) in consideration of marriage, (ii) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or (iii) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition (and where any such disposition has not been made in writing, any instrument recording whether by way of declaration, of trust or otherwise, the terms of any such disposition)”

20. Section 2(j) of the Act defines "instrument" to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded, but does not

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include a bill of exchange, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture proxy and, receipt.

21. The word "executed" is also defined in the Act under Section 2(0): "executed" and "execution" used referring to instruments means "signed" and "signature".

22. Section 2(b) of the Act defines "chargeable" thus: "chargeable" means, chargeable under the Act.

**(b) Substantive Provisions:**

23. Article 51 (1) determines the stamp duty on a deed settlement, a deed of dower. A settlement deed, according to the Registration Department, must have been executed in favour of the members of a family: father, mother, grandfather, grandmother, husband, wife, son, daughter, brother, sister or grandchildren. On the other hand, the Department has held that it is a gift deed and must fall under Art.31 (2) of the Act. Indeed, a person—not defined under the Kerala Stamp Act, but defined under the General Clauses Act—may as well be a company.

24. To begin with, the Act does not define "gift". But section 122 of the Transfer of Property Act defines it: Gift is the transfer of certain existing movable or immovable property made voluntarily and without

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consideration, by one person called the donor, to another, the donee, and accepted by or on behalf of the donee.

25. If we examine the Articles, both Article 31 and Article 51 are identically worded, the only difference being exclusionary clause in the former. That is, Art. 31 terms “Gift” residually: an instrument not being a settlement, will, or transfer. Otherwise both Articles are identically worded, save the difference in stamp duty.

26. The Act recognises “gift” in two forms with different rates of stamp duty. If the gift is between the members of a family, the rate of stamp duty is concessional. In other cases, that is between non-relatives, no concessional rate is available.

27. Settlement of property predominantly takes place among the members of a family, though it can be “for some person dependent” on the settlor. Unless we read down “some person dependent” to mean only a relative, a settlement can be between non-relatives, too. But gift poses no such problems. It can be either between the members of the family or between strangers as well. As seen from section 126 of the Transfer of Property Act, a gift can be suspended or revoked: it can be conditional. And it needs acceptance, too. Yet the settlement does not seem to have these advantages or limitations, as we may call them.

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28. If the deed cannot be a settlement, we fail to understand how it can be a gift. Besides mentioning near relatives, both the Articles mention “in any other case”. This expression in either article permits both the settlement and gift to be a device for inter-vivos transfer beyond the family and, for that matter, covering even artificial personalities, such as corporate entities.

*Can the executant ask the registering authorities for the return of the document if he does not desire to complete the transaction?*

*Or once a document, incomplete, is presented for registration, should the executant be compelled to complete the transaction or face the consequences of impounding?*

29. Section 33 of the Stamp Act deals with impounding of a document. Much turns upon whether the registering authority can impound a document presented for registration but not intended to be proceeded with. So let us examine this provision.

“Section 33 - Examination and impounding of instruments

(1) Every person having by law or consent of parties authority to receive, evidence and every person in charge of a public office, except an Officer of Police, before whom any instrument, chargeable in his opinion, with duty, *is produced or comes in the performance of his functions*, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument to chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State when such instrument was executed or first executed.

Provided that --

x x x

(italics added)

30. Among other authorities, “every person in charge of a public office,” before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, will impound that instrument if “it appears to him that such instrument is not duly stamped.” Indeed, a registering authority, say a Sub Registrar, is a person in charge of a public office. Has the “instrument” been produced or come before him while he is performing his duties?

31. Section 51 of the Registration Act provides for Register-Books to be kept in the several offices, which includes Book 2 "Record of reasons for refusals to register". Section 71 of the Registration Act also mandates the reasons for refusal to record in such Book.

32. Section 34 mandates that an instrument not duly stamped is inadmissible in evidence for any purpose. A public officer cannot act upon it, cannot register, cannot authenticate it. Clause (a) prescribes the procedure for penalty payment on insufficiently stamped instrument so that the defect be cured, and it is made acceptable.

33. Clause (b) of section 34 matters for us:

(b) any such instrument, when presented to a Registering Officer for registration, shall be registered, if the party agrees *to pay the duty any penalty due thereon* as decided by the Registering Officer and pays the same within seven days from the date of such decision.

(italics supplied)

34. If an insufficiently stamped instrument is presented before a registering officer, he will register on the presenter agreeing to pay the duty and penalty due on it.

35. Section 37 of the Act, on the other hand, concerns how an impounded instrument should be dealt with. If the presenter pays the duty and penalty as mandated under section 34 or section 36, the impounding authority will send to the Collector an authenticated copy of the instrument, together with a certificate in writing, stating the amount of duty and penalty levied on the document.

36. Section 39 empowers the Collector to stamp instruments impounded. When the Collector impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of section 37, he will require the presenter to pay proper duty, together with a penalty. First, he must conclude that the instrument does not bear sufficient stamp. Second, the penalty should not exceed ten times the amount due on the instrument. On the other hand, if the Collector concludes that the instrument has been duly stamped, he will certify so.

37. The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 27, as declared by Section 54 of the Act, will in all cases be subject to the

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control of the Government. If any Collector acting under section 31, section 39 or section 40, doubts the duty to be charged on an instrument, he may refer the issue, with his own opinion, to the Government. The Government, then, will consider the case and send its decision to the Collector, who will act in conformity with such decision.

38. The impugned judgment does observe that once duty and penalty are determined under Section 39, the aggrieved party can challenge the decision in a revision under Section 54(1) of the Act, before the Government. If we examine Sub-Section (1), it only declares that the Collector's powers under Chapter IV (Sections 33 to 46), Chapter V (Sections 47 to 53), and those under clause (a) of the first proviso to section 27 will always be subject to the Government's control. The provision enables the Government to have a supervisory jurisdiction over the Collector under those provisions. It need not be a judicial—that is, revisional—power compelling an affected person take recourse to.

39. The Registration Rules (Kerala) provide for Rule 207 which reads as under:

"It is for the Registering Officer, who is responsible for levying the fee, to determine in the first instance what fee should be paid. After it has been paid the presenting party may, if he is dissatisfied, apply to the Inspector General of registration who shall if he thinks there has been an overcharge order the Sub Registrar to refund any excess. The Inspector General shall not take any notice of any such

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application, if presented after six months from the date of the levy of fees or fine."

40. Interpreting both section 33 of the Stamp Act and Rule 207 of the Registration Rules (Kerala), a learned Single Judge in *Assanaru Khan* has observed that section 33 of the Act relates to instruments produced "as evidence or for such purposes before public authorities" and which are not sufficiently stamped. The presentation of a document for registration stands on a different footing. Rule 207 provides, the learned Judge reasons, that the Registering Authority must first determine the fee; "it would then be upon the person presenting the document either to pay that fee or to seek return of the document without getting it registered."

41. In the end, the learned Single Judge has held that "when a document was presented before the registering Officer, he ought to have determined the fee payable and intimated the presenting party that he should remit that fee. It would have been, then, up to the presenting person to either remit the fee or to have the document returned without registration.

42. We must, nevertheless, observe that the document to be impounded need not have been presented only "in evidence or in such related proceedings." In fact, Section 33 employs the expression "is produced or comes in the performance of his functions". Even Section 34

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goes beyond admitting a document in evidence. Insufficiently stamped instrument shall not “be acted upon, registered or authenticated” by any such person or by any public officer, unless such instrument is duly stamped.

43. Indeed, even the Proviso (b) to Section 34 mandates that when a document with deficit stamp duty is presented to a Registering Authority for registration, it shall be registered, if the party agrees to pay duty and penalty thereon, within seven days.

44. As for Rule 207, it is under the Registration Act; it deals with registration “fee” rather than stamp “duty.” And Rule 207 comes into play only when the presenter agrees to pay the deficit stamp duty. Further, it does not explicitly deal with the presenter getting it back without paying the stamp duty.

45. In fact, the impugned judgment observes that here the issue of refusal under the Registration Act and Rules does not arise. The Registration Act or the Rules cannot affect the exigibility of stamp duty.

*Can the rejection be under Section 71 of the Registration Act?*

46. To answer this question, we must first answer a collateral question: Do the Kerala Stamp Act and the Registration Act operate in watertight divisions?

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47. Here, Dr. Rasheed has not used an insufficiently stamped document for any purpose. He does not want to rely on the document to prove any transaction or to derive any advantage out of that document. He wants to complete that document, so he could gain from it: convey some property. And no conveyance is effective involving property, as Section 54 of the Transfer of Property Act mandates, worth more than Rs.100/- if it is not registered. So he wanted to register the document. Up to here the march of events is clear. We can view the case in the perspective of either the presenter or the registering authority. The presenter's perspective, the Sub Registrar refused to register the document; from the registrar's perspective, the document contained deficit stamp—so the refusal.

48. If we pin on deficit stamp, the Stamp Act governs the issue; if we pin on the refusal to register, the Registration Act does.

49. We reckon the whole concept of deficit stamp duty and the stringent—almost draconian—penalty clause play a deterrent role: to discourage persons from evading stamp duty. Even in the grossest of crimes, mere preparation is no offence. A civil transaction cannot be much worse. Here, a person wants to settle property on his children. Or a company wants to gift property to some persons, as is held by the

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registering authorities. Let us remove the veil, for our narrative purpose. After executing the deed, that person *contemporaneously* presents the document for registration.

50. Important it is to note that the registering authority has not unearthed or discovered an insufficiently stamped document when it is sought to be used for its intended purpose—a purpose it could serve only as a completed document. In *Tirupati Developers*, the petitioner wanted a sale transaction on the strength of an insufficiently stamped agreement of sale. In other words, the agreement of sale formed the basis for the next transaction. Here, we are afraid, no such contingency arises.

51. If we hold that any document presented for registration cannot be taken back, and if the transaction cannot be resiled from, it destroys a person's contractual freedom, and his decisional independence. A person can opt out of a transaction any time before the transaction is completed and his act becomes irrevocable—hat is he acted on it for his benefit.

52. We may reiterate that All the provisions bearing upon impounding spring into action only when the document is sought to be used as if it had been duly stamped. When the authorities have received the document for the primary purpose—that is, registration—but find that the stamp is insufficient, they can point it out. The party can decide either

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to go ahead with the transaction or to withdraw from it. Better sense may prevail.

53. Sometimes, as is common, people may assume lesser stamp duty and wish to enter into a transaction. The document presented, the authorities, the experts in the field, may notice that the stamp duty is more. It is for the party either to complete the transaction or to cancel it. We do not see how ten times penalty (possibly) imposed on innocuous transaction just because the party has bona fide acted and, then, realised that his estimate is wrong.

54. To dispel the notion that these two enactments—the Stamp Act and the Registration Act—are cognate enactments, complementing each other. Under both acts, the same set of officers function. Granted, both the enactments aim at achieving different objectives: the Stamp Act is fiscal and the Registration Act social. The latter notifies the society at large about a transaction.

*Which Provision Applies - Section 33 or 34 of the Stamp Act?*

55. Impounding is under Section 33. A person authorized to receive evidence or a person in charge of a public office receives a document not duly stamped, he must impound it. That *a public officer receiving a document not duly stamped* may cover even a registering authority, and

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so, in the first blush, a document presented for registration also gets caught in this dragnet.

56. Let us examine the next provision, Section 34. No instrument chargeable with duty shall be admitted in evidence or shall be acted upon, *registered*, or authenticated unless the instrument is duly stamped. A statutory proscription. Then what follows?

57. Section 34 (b) provides the answer. Any such instrument, *when presented to a Registering Officer for registration, shall be registered, if the party agrees to pay the duty any penalty due thereon as decided by the Registering Officer and pays the same within seven days from the date of such decision.* The document can be registered once the presenter agrees to pay the duty due along the penalty prescribed by the registering officer. The expression used in this provision is “if the party agrees.” When impounding leads to compulsory exaction, the question of the party agreeing does not arise.

58. So we hold that here Section 34 applies, not Section 33.

59. We have already accepted that Section 33, too, takes into fold a transaction like registering a document, for the registering officer is in charge of a public office and a document comes to him, by whatever means.

60. If there is a conflict between a general provision and a specific provision, the specific provision prevails. Thus says the time-honoured canon of construction: *generalia specialibus non derogant*.

61. Under this canon, the specific provision is treated, according Scalia, et al.,<sup>[4]</sup> as an exception to the general rule. Jeremy Bentham supplied the rationale: “[T]he particular provision is established upon a nearer and more exact view of the subject than the general, of which it may be regarded as a correction”.

62. The most common example of irreconcilable conflict—and the easiest to deal with—involves a general prohibition that is contradicted by a specific permission, or a general permission that is contradicted by a specific prohibition. Imagine, for example, a sign at the entrance to a park that reads: “No wheeled vehicles. Bicycles and baby carriages may be walked along the paths.” The second sentence, which flatly contradicts the first, governs when a bicycle or baby carriage is in the park—a specific exception to the general prohibition. The same effect ordinarily occurs even when the contradictory provisions are separated by intervening text.<sup>[5]</sup>

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<sup>4</sup> Reding Law, Antonin Scalia & Bryan A. Garner, Thomas/West, 2012 (ebook)

<sup>5</sup> Id.

63. Note that the general/specific canon does not mean, Scalia et al., warns, that the existence of a contradictory specific provision voids the general provision. Only its application to cases covered by the specific provision is suspended; it continues to govern all other cases.

64. So we find little difficulty in holding that Section 33 presents, in general, how the authorities act to impound the documents. But Section 34 specifically deals with singular instances of deficit stamp. Among other such instances, it specifically deals with registering an insufficiently stamped instrument.

65. Before proceeding further, we may observe that Section 45 B, referred to in the impugned judgment, concerns itself only with undervalued instruments.

66. In *M. Manohar Kammath vs. M. Ram Mohan Kammath*,<sup>[6]</sup> a Division Bench of this Court, dealing with a deed of lease, has held that “once the transaction is defined in the Act itself, it is not permissible to go outside the provisions of the Act and search for a definition of the very same term in some other statute.” The Stamp Act being a taxing statute, the Bench further observes, if a particular transaction is hit by the statute, the person concerned cannot escape liability by pressing into service provisions of other statutes. To conclude thus, the Division Bench has

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<sup>6</sup> 1991 (2) KLT 714

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quoted with approval this Court's earlier decision in *Kochunarayanan v. Aravindakshan*, 1974 KLT 301.

67. In *Tirupati Developers*, the petitioner had eleven agreements of sale executed in his favour. The Deputy Registrar concerned impounded all these documents as he felt that the documents were not sufficiently stamped. After the initial statutory departmental-challenge, the petitioner unsuccessfully took the matter to the High Court of Uttarakhand and later to the Supreme Court. Concurrently it is held that Deputy Registrar's action is unassailable.

68. The Supreme Court has considered the issue in the light of Section 28, read with Article 5 (b-1) of Schedule 1B, of the Indian Stamps Act. Indeed, we are called upon to decide the issue under the Kerala Stamp Act, which, for instance, has no analogous provision to Section 28. Further, Article 5 of the Central enactment and that of State enactment conform substantially.

69. To determine the precedential value of *Tirupati Developers*, we have read the judgment rendered by the Uttarakhand High Court, delivered on 29th September, 2011.<sup>[7]</sup> Though it does not explicitly emerge from the judgments, we reckon that the petitioner in *Tirupati Developers* approached the registering authorities to have sale deeds on

<sup>7</sup> 2011 SCC OnLine Utt 2539

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the strength of the agreements of sale. As these agreements of sale formed the base for the next transaction, the Sub Registrar impounded them.

70. First, there was no occasion for the petitioner to present agreements of sale for registration, for they are not compulsory registrable documents unless they witness part-performance. Then, once parties have acted on the agreements of sale and wanted to take the transaction to a fruition, by completing the conveyance, the insufficiently stamped agreements of sale are exigible to impounding and penalty proceedings. Later cancellation hardly alters the position. Trite to observe, a decision will have precedential value based on its holding according with the issue on hand, under identical statutory setting. Facts varied or statutory scheme changed, a decision, based on its conclusion, cannot be a precedent.

71. *Government of Uttar Pradesh v. Raja Mohammad Amir Ahmad Khan*<sup>[8]</sup> is a decision rendered by a three-Judge Bench. It concerns Section 31. Whether executed or not and whether previously stamped or not, when a person brings an instrument to the Collector to have the Collector's opinion on the duty (if any) payable on the instrument, the Collector shall determine the duty (if any) with which the instrument is chargeable.

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<sup>8</sup> AIR 1961 SC 787

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72. Interpreting this provision, *Raja Mohammad Amir Ahmad Khan* holds that impounding process does not apply to the acts which fall within the scope of s. 31, because that section is complete by itself. And it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. But what happens when the instrument has been executed more than a month before its being brought before the Collector? *Raja Mohammad Amir Ahmad Khan* answers that Section 31 places no limitation regarding the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable.

73. Therefore, in the alternative, the District Registrar's role in determining the stamp duty, in the first instance, will amount to his exercising powers under Section 31. Nothing more.

### **The Role of Registration Act:**

74. Now, we will examine the Registration Act. If we consider Section 33 of the Stamp Act and conclude, as we have done, that a party can refuse to pay the deficit stamp duty to complete the registration, what follows? The Sub Registrar refuses to register the instrument. Here comes Section 71 of the Registration Act in to play. And it reads:

(1) Every Sub-Registrar refusing to register a document, *except on the ground that the property to which it relates is not situate*

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*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."*

75. The provision perused, we realise that every Sub-Registrar refusing to register a document must make an order of refusal and record his reasons in his Book No. 2, and endorse the words "registration refused" on the document. Sub-Section (2) unravels the confusion, if any, we have about many seemingly conflicting provisions. No registering officer shall accept for registration a document so endorsed unless the document is directed to be registered.

76. First, the objections need not be confined to those arising out of the Registration Act; at least, the provision does not take such a parochial approach. Every objection against registering a document, save the one that concerns the property location, must be recorded. And it is common

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knowledge that most objections relate to the value of the property or the value of the stamp; sometime they concern the nature of the document.

77. Sub-Section (2) paves the way for representation; it says that registration must be refused unless there is a direction to do so. But, noticeably, Section 71 does not say that on representation, it must be impounded if, for instance, it relates to deficit stamp duty.

78. So Section 71 speaks about refusal to register and what should happen on representation. Representation, we may observe, presumes the return of the document, in the first place.

**Conclusion:**

79. We hold that Exts.P3 and P4 orders passed by the District Registrar and the Commissioner of Land Revenue cannot be sustained. When a document is presented for the first time for registration, the presenter does not intend to present it for any other person than for mere registration, to complete the transaction and to use the document later.

80. Execution and presentation for registration are contemporaneous, within the period provided under the Registration Act for presentation. So the presenter producing the document for registration does not amount to his using insufficiently stamped document for a purpose not attainable without sufficient stamp on the instrument.

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81. The presentation falls under Section 31 or Section 34 of the Stamp Act. Deficit stamp pointed out, if the presenter refuses to pay the due amount, the Sub Registrar shall refuse to register the instrument, record the reasons under Section 71 of the Registration Act, and return the document to the presenter.

Therefore, we allow the Writ Appeals W.A. Nos. 419, 439, 498, 504, 505, 506, and 507 of 2018. The impugned judgments are set aside. Consequently, the Sub Registrar and the District Registrar (General) are directed to return the insufficiently stamped instruments to the presenter after following the procedure under Section 71 of the Registration Act. No order on costs.

**Sd/-Antony Dominic**  
**Chief Justice**

**sd/- Dama Seshadri Naidu**  
**Judge**

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