

Copy of proceedings No.D.Dis.22425/84(A)3 Dt 6.2.87
from Board of Revenue (LR), Thiruvananthapuram.

(Present: Sri.Zacharia Mathew, Member, Board of Revenue)

D.Dis.22425/84/LRA3.

Dated 6.2.1987.

Sub:- Revision petition under section 54 of the Kerala Stamp Act 1959 - against the orders of the Deputy Collector (RR) Ernakulam in respect of the document produced in R.C.P. 112/81 of the Principal Munsiff, Ernakulam - Decision communicated.

Read:-1.Revision petition dt 31.5.1984 from the Manager and Power holder Sri. P.R. Sankaran on behalf of M/S. V.C .Kumaran and Sons, Investments (P) Ltd., M.C.Road, Ernakulam.

2.Order No.B3.63377/82 Dt 13.4.84 of the District Collector, Ernakulam.

3.Report No.B3.63377/82 Dt 9.10.84 from the District Collector, Ernakulam.

4.Report No.Ins.4. 33964/84 Dt 11.1.85 from the Director of Registration, Thiruvananthapuram.

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This is a revision filed under Sec.54 of the Kerala Stamp Act, 1959 against proceedings No.B3. 63377/82 dated 13.4.84 of the Deputy Collector (LR) Ernakulam ordering to pay Rs.4282/50 towards deficit stamp duty and a penalty of Rs.43325/- on an impounded document received by him under section 54 of the stamp Act from the Principal Munsiff, Ernakulam.

An unregistered document styled as an agreement and executed on 13.1.79 by Dr.K.B. Unnithan and M/s.V.C Kumaran and Sons Investment (P)Ltd., was produced before the Principal Munsiff, Ernakulam and an evidence in R.C.P. 112/11 of the Principal Munsiff's Court, Ernakulam. The Principal Munsiff impounded the document under section 33 of the Stamp Act treating it as a lease deed and forwarded the same under section 37(2) of the Act to the District Collector, Ernakulam in original for adjudication under section 35 (b) of the Act. The Deputy Collector (RR, Ernakulam in his proceedings dated 13.4.85 held that the document is a lease deed falling under Article 33(a) (viii) and 33(c) of the schedule of the stamp Act. Accordingly the petitioners were directed to remit the stamp duty of Rs.4282.50 and penalty of Rs.43325/- within 30 days of the receipt of the order, failing which the amount will be recovered under the provisions of the R.R.Act. The revision petition is against the said order. The Board in its letter dated 4.6.84 issue interim stay on recovery proceedings till the disposal of the revision petition.

(contd.2)

Heard counsel for the revision petition:

In the document in question the land lord Dr.K.B.Unnithan and Sons and the tenant V.J.R. Kumaran and Sons Investments (Pvt) Ltd. have entered into an agreement regarding lease of the building of the landlord to the tenant on a rental for Rs.1500/-p.m. from 1.4.79. It is recited in the document that there is a provision for the payment of Rs.4500/-. According to the definition of the lease given in 2 (1) (iii) of the Stamp Act any instrument by which an agreement or other undertaking in writing not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property, is included as a lease. Article 33 of the schedule of the Stamp Act deals with stamp duty payable on lease deeds. On going through the document it can be seen that no period of lease has been mentioned. According to article 33 (a) (viii) where the lease does not purport to be for any definite term, stamp duty is payable as conveyance under Article 21 or 22, for a consideration equal to thrice times the amount or value of the average annual rent which would be paid or delivered for the first ten years, if the lease continued so long. Since no definite period has been specified for the lease by the document it is a lease for indefinite period. Since there is a provision for the payment of an advance of Rs.4500/- the document also comes within the purview of article 33 (c) of the schedule to the Act. In the circumstances the document is to be assessed as a lease falling under article 33 (a) (viii) read with article 33 (c) thereof.

Counsel for the revision petitioner argued at the time of hearing that the penalty fixed in this case is exorbitant. Board of Revenue agrees with this contention. The Board of Revenue sees no particular circumstances in this case to justify such a penalisation. The penalty is reduced to an amount equal to the stamp duty to be paid in this case. The revision petitioner will pay the stamp duty fixed by the Deputy Collector and a penalty of the same amount.

The revision petition is disposed of as above.

By order,

Sd/- SECRETARY

Forwarded/By order

Sd/- Secretary.

/True Copy/

Sd/- for Secretary.