

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945

WP(C) NO. 35673 OF 2023

PETITIONER:

PAUL ALUKKA, AGED 62 YEARS
SON OF A.J.VARGHESE, ALUKKA HOUSE,
KADAVANTHARA P.O, ERNAKULAM, PIN - 682020

BY ADVS.

PEEYUS A.KOTTAM

RAGESH CHAND R.G.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT, SECRETARIAT,
MAHATHMA GANDHI ROAD, NEAR CENTRAL STADIUM,
STATUE JUNCTION, PALAYAM,
THIRUVANANTHAPURAM, KERALA, PIN - 695001
- 2 REVENUE DIVISIONAL OFFICER/SUB COLLECTOR
FORT KOCHI X69V+2HV, FIRST FLOOR, KB JACOB RD, FORT
KOCHI, KOCHI, KERALA, PIN - 682001

BY GP RIYAL DEVASSY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

.....
W.P (C) No.35673 of 2023
.....

Dated this the 31st day of October, 2023

JUDGMENT

Petitioner has approached this Court seeking a direction to the 2nd respondent to allow Ext.P5 Form 6 application filed by him without insisting for remittance of fee since petitioner's property is below 25 cents. As per Ext.P6 order petitioner was directed to remit an amount of Rs.24,20,095/- as fee for consideration of Form 6 application. Petitioner relies on Exts.P2 to P4 title deeds which clearly shows that the petitioner is entitled for exemption from payment of fee. Petitioner relies on the judgment **Sumesh U. v. Revenue Divisional Officer, Palakkad, 2023 (3) KHC 431** and also the Division Bench judgment in **Revenue Divisional Officer/Sub Collector v. Dr. A.V.Sajeev, 2023 (5) KHC 242** and contends his case is squarely covered by the declaration of law contained in the said judgments.

2. This Court in **Sumesh U.**'s case held as follows:

"5. A reading of the provisions of the Act, the Rules, the Schedule as well as Ext.R3(a) Government Order would make it amply clear that the exemption would be lost only in case there is a transaction after 30.12.2017 by which, a property having a larger

extent is fragmented to make the individual parcels of land of an extent of less than 25 cents. The contention that any property purchased after December, 2017 would loss the exemption even when the said property was less then 25 cents in extent even prior to such transaction cannot be accepted in view of the specific language of the Act, the Rule and the Schedule. In the above view of the matter, I am of the opinion that the contentions raised in the statement are completely untenable. The communications issued, which do not have the force of law, cannot stand in the way of consideration of applications in accordance with law.”

The Division Bench in **Dr.A.V.Sajeev's** case held in paragraph 5 as follows:

“5. If a person, at the time of the Government order dated 25.2.2021 has a different holding in the State in a small plot extending to more than 25 cents of land, they would be entitled to the benefit of the first clause for exemption if the land as per the holding covered by different documents is less than 25 cents. The holding as per the exemption has to be understood, to be qualified with reference to the title deeds of the party, the holder of the land. Though in practice, the property may lie contiguous and remain as a single plot, the benefit of exemption would be available to all such persons who hold the land by separate documents and the extent of land is 25 cents or less provided those purchases were prior to 30.12.2017. We also make it clear that those who are holding land beyond 25 cents of land as on 30.12.2017, based on a single title, will not be entitled for such benefit. The only possible interpretation, according to us, is that holding of the land has to be understood with the title deed of the parties concerned who claimed exemption. If the title deed of such holder of land indicates that the land is less than 25 cents of land, the holding covered by the title deed would be entitled for exemption of the fees. This is so also discernible from the circular issued by the Additional Chief Secretary, Revenue Department on 10.12.2021.”

3. This Court had considered similar cases and held that it is only when the party is holding land more than 25 cents as on 30.12.2017 then the question of payment of fee arises and based on the abovesaid dictum, petitioner will be entitled for the benefit of exemption from payment of fee. The petitioner has produced Exts.P2 to P4 title deeds which also revealed that the property in his possession was less than 25 cents. In view of the same petitioner is entitled for exemption from payment of fee in the light of the judgments cited supra.

Therefore, the above writ petition is disposed of with a direction to the 2nd respondent to consider the entitlement of the petitioner for exemption from payment of fee taking into consideration Exts.P2 to P4 title deeds and the declaration of law in the above cited judgments and a decision in this regard shall be taken within a period of six weeks from the date of receipt of a copy of the judgment. To facilitate reconsideration of the same Ext.P6 order is set aside.

With the abovesaid direction, the above writ petition is allowed.

Sd/-

VIJU ABRAHAM
JUDGE

APPENDIX OF WP(C) 35673/2023

PETITIONER EXHIBITS

- | | |
|------------|---|
| Exhibit P1 | THE TRUE COPY OF TAX RECEIPT DATED
26.04.2023 SHOWING PAYMENT OF PROPERTY
TAX FOR THE AFORESAID 9.19 ARES OF
PROPERTY FOR THE YEAR 2023-24 |
| Exhibit P2 | THE TRUE COPY OF SALE DEED NO. 7859/07
OF ERNAKULAM SRO DATED 23-11-2007 |
| Exhibit P3 | THE TRUE COPY OF SALE DEED NO.
1931/2022 OF ERNAKULAM SRO DATED
09.06.2022 |
| Exhibit P4 | THE TRUE COPY OF SALE DEED NO.
2133/2022 OF ERNAKULAM SRO DATED
25.06.2022 |
| Exhibit P5 | THE TRUE COPY OF THE FORM 6 APPLICATION
SUBMITTED BY THE PETITIONER THROUGH
ONLINE |
| Exhibit P6 | THE TRUE COPY OF THE ORDER OF THE
REVENUE DIVISIONAL OFFICER DATED
23.10.2023 |
| Exhibit P7 | TRUE COPY OF THE JUDGMENT OF THIS
HON'BLE COURT IN 2023 (3) KHC 431
(SUMESH U. VS. REVENUE DIVISIONAL
OFFICER, PALAKKAD) |