HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.9959 of 2005

Date: 23.01.2015

Between:

Nandyal Merchants Cooperative House and Shops Construction Society Limited, rep.by its President, Sri B.Subba Laxmaiah S/o. Shri B.Polaiah, Aged about 57 years, Occu: Business, resident of Nandyal.

.. Petitioner

AND

State of Andhra Pradesh, rep.by its Special Chief Secretary to Government, Revenue Department, Secretariat Buildings, Saifabad, Hyderabad and oOthers.

.. Respondents

The Court made the following:

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ORDER:

Petitioner is a registered Cooperative Housing Society. The Society purchased Ac.12.04 ¼ cents in Nandyal town in the years 1977-80. At the time of purchase of the land, society has paid the stamp duty and registration charges. The said land was purchased for the benefit of the members of the society. After purchase of the land, the Society has applied permission for approving layout and obtained approval. Accordingly, plots were divided into individual housing units and classified into three groups namely, "A", "B" and "C" and they were given to the members of the society. Society has applied for loans from the scheduled banks for the purpose of construction of buildings and accordingly, houses were constructed by the members. The society has to register the house plots in favour of the members of the society. When deeds of conveyance consisting the lands classified as "A" group were presented before the registering authority, the registering authority raised an objection saying that though stamp duty including transfer duty was paid by the society at the time of purchase of the land, the transfer duty has to be paid on the present market value of the plot @ 5% and market value fixed was Rs.2,10,000/-. Aggrieved thereby, this writ petition is instituted.

2. No counter affidavit is filed on behalf of the respondents.

3. Learned counsel for the petitioner contends that Government issued orders in G.O.Ms.No.418, Revenue (U) Department, dated 01.03.1978 exempting payment of stamp duty and registration fee in respect of sale deeds executed by the registered Cooperative House Building Society at the time of transfer of plots in favour of individual members provided the society has to pay the stamp duty and registration fee at the time of acquisition of the land. Thereafter, detailed guidelines were formulated by the Government and notified by the Memo No.49659/Regn.I(2)/2002, dated 08.12.2003. In para-9 of the said Memo, Government clarified that orders issued in G.O.Ms.No.NO.418, dated 01.03.1978 shall apply in respect of the plots at the time of registration of plots by the society in favour of its members and value of the houses/structures raised on the plots allotted by the Cooperative House Building Society to its members should not be taken into account for the purpose of levy of registration charges at the time of registration of plots in favour of the members of the society as the houses/structures were raised by the members of the society subject to fulfilment of conditions mentioned therein. The conditions read as under:

" (1) (a) The individual members have taken loans/advances from Banks/Financial Institutions for the purpose of construction of houses and the members have paid loan instalments to the banks; (or)
(b) The Societies have taken loans/advances from Banks/ Financial Institutions for the purpose of construction of houses on behalf of members and the Societies have paid loan.

(2) (a) This is applicable only to those members who have

taken loans against the plot to which the house was constructed; (or)

(b) In case the loan has been raised by the Society from the Banks/financial Institutions, the members must have paid the instalments to the society.

(3) In case of the death of the original allottee, this is applicable to the legal heir there of the original allottee, upon production of death certificate and legal heir certificate from the competent authority;

(4) A Certificate obtained from the concerned District Cooperative Officer to the effect that the above conditions are satisfied, should be submitted along with the documents at the time of presenting the documents for registration. "

4. Learned counsel for the petitioner placed reliance on the condition Nos.1 and 2 in para-9 of the Memo dated 8.12.2013 and submits that society has obtained loans from the banks/financial institutions for the purpose of construction of houses and the instalments were paid by the society on behalf of the members. The houses were constructed on behalf of the members. Learned counsel also placed reliance on the decision of this Court in W.P.No.4316 of 1996. This Court observed that since there is exemption exempting the payment of stamp duty, the question of collection of tax on transfer of property does not arise. The tax on transfer of property is to be collected if the stamp duty is actually imposed. If the stamp duty is exempted, the question of collecting of transfer tax does not arise. This Court further observed that houses were constructed in 1955-56 and petitioners were allotted houses on hire purchase basis. The petitioner society have paid consideration in accordance with the G.O., by depositing $1/10^{th}$ of the value and balance in 20 instalments. In view of the said discussion, Court held that petitioners are not liable to pay tax on transfer of property.

5. Learned counsel, therefore, submits that in view of the clear exemption provided by the Government in G.O.Ms.No.418 dated 01.03.1978 and as clarified in Memo dated 08.12.2003, petitioner society is not required to pay transfer duty as demanded by the registering authority and such action of the registering authority is *ex facie* illegal.

6. As seen from the material enclosed to the writ material paper book, petitioner society was formed with an objective of providing house sites and building houses to the members of the society and land was purchased by the society for the purpose of developing the same into residential colony dividing the land into individual dwelling units and allocating units to the members of the society. One of the documents enclosed to the writ material papers at page no.61 would show that society has applied to the Bank to obtain loans for the purpose of construction of housing units. Para-9 of the Memo dated 8.12.2003 clearly says that the society was entitled to avail benefit of G.O.No.418 and is not required to pay transfer duty at the time of transferring the plots allotted to the members of the society in the name of the members subject to fulfilment of the conditions mentioned therein. As contended by the learned counsel for the petitioner, conditions mentioned in para-9 are fulfilled and petitioner society is entitled to seek

exemption from payment of transfer duty. The said contentions of the petitioner are not controverted. The principle decided this Court in W.P.No.4316 of 1996 applies in all fours to the facts of this case.

7. Having regard to the orders of the Government in G.O.Ms.No.418 dated 01.03.1978 as clarified in Memo dated 08.12.2003, petitioner society is not required to pay transfer duty at the time of transfer of plots in favour of the members of the society. The objection raised by the registering authority is held illegal. The registering authority is directed to register and release the deeds of conveyance executed by petitioner society in favour of its members without insisting for payment of transfer duty. If the members of the petitioner society already paid transfer duty as demanded by the registering authority, the registering authority shall refund the same to the members of the petitioner society within a period of eight (8) weeks from the date of receipt of copy of this order.

8. Accordingly the writ petition is allowed. No costs. Miscellaneous petitions if any pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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