THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.21435 of 2007

ORDER:

Heard the learned Counsel for the petitioners, learned Government Pleader for respondent Nos.1 to 3 and learned Counsel for respondent No.4.

The fourth respondent Society was registered in the year 1949 under the then Madras Cooperative Societies Act. It developed six colonies in the land of an extent of Acs.450.00 in and around Guntur Town. Out of the six colonies it developed, in respect of Srinivasa Nagar Colony, the Society purchased an extent of Acs.52.00 in Survey Nos.234, 236, 237, 238, 239, 241, 242, 243, 256 and 257 of Koritapadu Village under registered sale deeds between 19.06.1971 to 30.06.1971 from its original owners. A layout was prepared dividing the land into 325 plots and plots were allotted to the members of the Society. The Society availed loan from the Andhra Pradesh Cooperative Housing Societies Federation Limited and constructed houses in two phases. Some of the original allottees committed default, and in those circumstances, new members were admitted and the share of the old members was transferred to the new members and allotment was also made in their favour. The petitioners belong to that category. The Government issued G.O.Ms.No.418, Revenue (U) Department, dated 01.03.1978, exempting payment of stamp duty and registration fee on the sale deeds executed by the registered Co-operative House

Building Societies in favour of its members, provided the Society paid stamp duty at the time of purchase of land. When a doubt arose with regard to levy of stamp duty on the constructed house, this Court, by its order in W.P.No.398 of 1989, held that the stamp duty cannot be levied on the house. Pursuant to the issuance of G.O.Ms.No.418, Revenue (U) Department, dated 01.03.1978, the Government issued clarification on 08.12.2003 and one of the clarifications states that a certificate from the District Cooperative Officer should be submitted along with the documents at the time of registration of the documents in order to avail the exemption. Accordingly, the fourth respondent Society submitted a list of 48 members with a request to issue the certificate in terms of clarificatory order passed on 08.12.2003. Though the third respondent issued certificates in respect of several members, when no certificate was issued to the petitioners, the present Writ Petition was filed.

The main ground of defense taken by the Government is that the petitioners are not original allottees, and by mutual arrangement with the original allottees, they got the land. But, the learned Counsel for the petitioners submits that the letter of the fourth respondent dated 10.02.2004 makes it clear that the petitioners are genuine members, who were allotted plots, though subsequently, due to default committed by the original members, and hence, the benefit of exemption should be extended to them also.

Learned Counsel for the fourth respondent also supports the case of the petitioners stating that the petitioners are seeking exemption for the first time by submitting the document for registration and no document was submitted earlier by the original members.

The point for consideration in the present Writ Petition is whether the benefit of exemption granted by the Government in G.O.Ms.No.418, Revenue (U) Department, dated 01.03.1978, is applicable to the petitioners or not.

There is no dispute that the petitioners are not original members, but in view of the default committed by the original allottees, the petitioners were later admitted as members, the earlier allotment made to the original members was cancelled and a fresh allotment was made in favour of the petitioners. No registered transaction took place in respect of the plots allotted to the petitioners at any point of time. The petitioners presented the documents for the first time and are seeking exemption from payment of stamp duty and registration fee in terms of G.O.Ms.No.418, Revenue (U) Department, dated 01.03.1978, which reads as follows:

> "In exercise of power conferred by clause (e) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Control Act II of 1899) the Government of Andhra Pradesh hereby remits in full the stamp duty chargeable under the registered Co-Operative House Building Society in favour of its individual members at the time of transfer of plots.
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> Note:- This exemption shall not apply where any such society has not required to pay the require

stamp duty at the time of tip original acquisition of land.

…

(r) No registration fee shall be leviable in respect of any sale deed executed by registered Co-Operative House Buildings Society in favour of its members at the time of transfer of plots.

Note:- The exemption shall not apply where any such society was not required to pay the requisite to registration fee at the time of the original acquisition of the land in its favour."

A reading of the above Government Order makes it clear that the exemption from payment of stamp duty is made in favour of the members of House Building Society at the time of transfer of plots and no registration fee shall be leviable in respect of any sale deed executed by such Society in favour of its members at the time of transfer of plots. As stated above, no document for registration of plots was presented either by the Society or its members at any point of time in respect of the plots for which registration is sought by the members now. In view of the clear language of the Government Order, the said Government Order is applicable to the petitioners also.

This Court, by order dated 01.05.2009, opined that the petitioners are entitled for the benefit under the said Government Order and granted interim direction. Pursuant to the interim direction, the documents of the petitioners were accepted for registration and were registered.

In view of the entitlement of the petitioners for the benefit of the Government Order and registration of documents in favour of the petitioners, no direction need be issued to the third respondent to issue the certificate now at this stage, and recording the above fact of entitlement, the Writ Petition is closed. The miscellaneous petitions pending in this Writ Petition, if any, shall also stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

29.06.2017
vs