THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

W.P.Nos.22058, 22059, 24074, 24095, 24099, 24103, 24106, and 24108 of 2007

COMMON ORDER

The flat owners of R.K. Towers, situated in R.S.No.441/7 in Amalapuram Municipality, East Godavari District, Andhra Pradesh, filed the present batch of cases challenging the proceedings dated 25.08.2007 issued by the respondent under Section 41-A of the Indian Stamp Act, 1899.

2. The petitioners state that they purchased the undivided share of land admeasuring 1/33 share out of total extent of Ac.0.17 cents of land under registered sale deed dated 24.09.2001 and got the individual pieces of land registered. Before registration of the individual pieces of land in September, 2001, the owners of land obtained building permission for construction of ground floor for parking and four upper floors in April, 2001.

3. The construction of the building was started in July, 2001 and was completed by the end of 2002. While so, on 30.05.2007, a notice was issued by the respondent on the ground of collection of deficit stamp duty and registration fee and the petitioners were asked to submit their explanations. Some of the petitioners, who were the owners of land, and the other petitioners, who were the purchasers of the undivided share of the land, submitted their individual explanations stating that the owners did not enter into an agreement for construction of flats, but the individual purchasers have entered into an agreement with the owners, who floated a

construction company, and thus, there was an arrangement among themselves for construction of the building. The building was completed by the end of 2002 and it was assessed to property tax during the year 2003-2004. It is stated that in spite of submitting the explanations, the respondent passed an order dated 25.08.2007 construing that the construction was completed by the time of registration of the undivided portion of the land on 24.09.2001 and asked the petitioners to pay deficit stamp duty and registration fee with three times penalty. Challenging the individual orders, the present writ petitions are filed.

4. A counter affidavit is filed by the respondent stating that the action was taken pursuant to the vigilance enquiry, which noticed that no construction agreement was entered by the petitioners with the builder and the undivided share of vacant land was registered in September, 2001 suppressing the fact of existence of the flat. In those circumstances, Section 41-A of the Indian Stamp Act was invoked and the petitioners were asked to pay the deficit stamp duty and penalty. It is also stated that there is a provision for appeal against the impugned order of the respondent and the petitioners have approached this Court without availing such remedy.

5. The only point that arises for consideration in the batch of these writ petitions is, whether there was any need for entering into a construction agreement and whether the flats were completed by the time of registration of the document relating to undivided share of land on 24.09.2001?

6. The notice initially issued by the respondent states as follows:

> "Please take notice that during the course of enquiry by the Vigilance Officer, Eluru, the document registered in the office of the Sub-Registrar, Amalapuram, it has been detected that in respect of Document No.2684 of 2001 for Flat No.402 to which you were a party, a stamp duty of Rs.2,805/- was paid. But basing on the facts and circumstances of the case as mentioned below work out (Plinth area 1052 sq.ft x 330=3,47,160 + site value Rs.25,500/- total Rs.3,72,660/- or 3,73,000/-.
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> "At the time of registration of the sale deed for undivided share the construction agreement has not been presented along with the sale deed as per the Commissioner and Inspector General's instructions. Hence, it is construed that the construction has been completed, to avoid stamp duty the sale deed for undivided share of site only presented for registration".
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> Thus the document is chargeable with a stamp duty of Rs.41,030/- and Registration free of Rs.2,115/-. Hence, the deficit stamp duty is provisionally determined to be Rs.38,225/- and registration fee of Rs.1855/-.

7. The petitioners were asked to appear either in person or through the counsel and they were given liberty to raise objection or representation. The petitioners submitted their representations stating that the construction was not completed by the time of presentation of the sale deed relating to undivided share of land since the building permission was obtained only in April, 2001, the actual construction was started in July, 2001 and completed by the end of 2002 and the property was assessed to tax during the year 2003-04.

8. In spite of such representations/explanations, the cause shown in the show cause notice was repeated in the final order and the petitioners were asked to pay the deficit stamp duty and registration fee along with penalty. The above facts make it clear that the construction of building was not completed as on 24.09.2001 when the document was presented for registration. There is no law

which compels the parties to enter into an agreement for construction of flats. Even otherwise also, it is the case of the petitioners that some of them who are not owners of the land submitted construction agreements along with the registration of the undivided share and there was denial of such fact. They further submitted that in the case of deficit payment of stamp duty, the period of limitation is 5 years and in the instant case, the action was taken after a period of 5 years on the ground of suppression of facts, which is not correct in view of the above narration of events. Evidently in the instant case, action was taken after 5 years of registration of land. The assumption made by the respondent that the construction was completed and the document was presented for registration to evade stamp duty, is also not borne out by record.

9. In view of the same, this Court feels that no appeal need be preferred by the petitioners. There is no dispute that the petitioners paid the requisite stamp duty and registration fee in respect of the undivided share of land. Further, the respondent did not supply the copy of the enquiry report of the vigilance officer, Eluru, to the petitioners. On this ground also, the order passed by the respondent suffers from infirmity.

10. Accordingly, the Writ Petitions are allowed, setting aside the orders impugned. No order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

A. RAMALINGESWARA RAO, J

6th July, 2017
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