HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.37026 of 2017

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner has filed this Writ Petition challenging the action of the 3rd respondent in directing the petitioner to pay stamp duty of Rs.20,000/- under Article 6 (B) of the Indian Stamp Act, 1899 and penalty of four times of the said amount on a reference made to him vide proceedings dt.15-03-2017 of the Family Court-cum-VII Additional District and Sessions Judge, Medak at Sangareddy in regard to unregistered Memorandum of Understanding dt.05-09-2007.

3. It is not in dispute that when the said document was presented during the course of the proceedings before the said Court, it impounded the same and forwarded the same to 3rd respondent for the purpose of determining and collecting the deficit stamp duty and penalty.

4. The 3rd respondent then issued the impugned Notice dt.31-07-2017 to the petitioner directing the petitioner to pay stamp duty of Rs.20,000/- and penalty of four times to the said amount by interpreting Article 6 of the Indian Stamp Act, 1899 contained in Schedule 1A of the said Act.

5. Learned counsel for the petitioner contends that a reading of the Memorandum of Understanding presented before the Court, and which was forwarded to 3rd respondent, shows that it does not relate to construction of a house or building or apartment, flat or portion of a multistoried building, or for development of immovable property, and as clause (B) of Article 6 will have no application and only clause (A) would apply. He also placed reliance on the judgments of this Court in **Pechitti Ramakrishna Vs. Nekkanti Venkata Manohara Rao and others**[1] and **Sardar Ram Singh Vs. Sardar Ram Singh and another**[2].

6. Counter affidavit is filed by 3rd respondent referring to the fact that in clause (B) of Article 6 at the end the words "sale of any other immovable property" is included to justify the levy of the mortgage stamp duty on Rs.20000/- as per Note-I thereto. It is contended that 6 (A) would apply to simple agreement not involving sale of immovable property and 6 (B) relates to agreements of sale to immovable property.

7. Article 6 is as under:

Article 6. Agreement of Memorandum of an Agreement:

(A)	Where the value i) does not exceed Rs.5000/-	Ten Rupees
	ii) Exceeds Rs.5000/- but does not exceed Rs.20,000/-	Twenty Rupees
	iii) Exceeds Rs.20,000/- but does not exceed Rs.50,000/-	Fifty Rupees
	iv) Exceeds Rs.50,000/-	One Hundred Rupees

[1] 2004 (1) ALD 557
[2] 2004 (4) ALD 735

(B)	If relating to construction of a house or building including a multi-unit or apartment/ flat/ portion of multi-storied building or for development/**sale of any other immovable property.**	Five rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities whichever is higher.
Note I:-	Stamp duty is reduced to 1% on the sale consideration or estimated cost of construction/development as declared by the parties subject to a maximum of Rs.20,000/- (w.e.f. 01-08-2005) in respect of Agreements or Memorandum of Agreements. Note II:- Stamp duty is reduced to 1% on the sale consideration shown in the document or the market value of the property as per the basic value guidelines or the estimated market value for land and complete construction made or to be made in accordance with schedule of rates approved by C&IG whichever is higher which shall not adjustable in respect of document relating to Construction/development of immovable properties combined with GPA w.e.f. 03-12-2007. Vide G.O.Ms.No.1481 Rev (Regn-I) Dept. dt.30-11-2007).	
(C)	In any other case	One Hundred Rupees

8. This Court in **Pechitti Ramakrishna** (1 supra), interpreted the above article and held as under:

"4. A careful reading of Article 6(B) of Schedule 1-A of the Act goes to show that it is applicable if the agreement relates to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property. A further reading of the stamp duty payable specified in column No. 2 also makes it clear that this provision was introduced in relation to the construction agreements or agreements of the like nature. No doubt, emphasis was laid on the language "sale of any other immovable property". These words "sale of any other immovable property" in Article 6(B) of Schedule I-A of the Act may have to be read along with the rest of the provision and also with column No. 2. As far as any other case specified in Article 6(C) of Schedule I-A of the Act is concerned, it should be construed to be a case not falling under either A or B of Schedule I-A of the Act. It is needles to say that Article 6(A) of Schedule I-A of the Act is a

general provision. It is no doubt true that in the present case, the sale consideration recited in the agreement of sale is Rs. 42,500/- and it is in relation to the sale of a vacant site. On a careful reading of the language employed in Article 6(A, B & C) of Schedule I-A of the Act and also the stamp duty payable specified in column No. 2 and taking into consideration the object of introducing B by A.P. Act 21 of 1995, I am of the considered opinion that Article 6(B) of Schedule I-A of the Act would be applicable only in such specified cases and the same cannot override the general provision of Article 6(A) of Schedule I-A of the Act and agreement in question would definitely fall under the general provision of Article 6(A)(iii) of Schedule 1-A of the Act and hence, the stamp duty already paid is sufficient. It is also clarified that in the light of the nature of the document Article 6(B) of Schedule-I-A of the Act is not applicable to the present case. Hence, the impugned order holding that the stamp duty and penalty relating to the document in question is liable to be paid under Article 6(B) of Schedule I-A of the Act cannot be sustained."

9. Similar view is expressed in **Sardar Ram Singh** (2 supra) as under:

"5. A perusal of the said provision, in my considered view, pertains to the transaction of construction of a house or building or flat or development/sale of any other immovable property. The purpose is the same is either case. Therefore, it must pertain to a transaction of sale of a house, or sale of any other immovable property for the purpose of development for constructing any multi-unit house or building or unit of apartment/flat/portion of a multi-storied building. That transaction is entirely different from a simple transaction of agreement pertaining to an immovable property. Be it a house or any other immovable property, in my considered view, Clause (B) has no application to the present transaction as rightly held by the learned lower Court."

10. Therefore, this Court has already interpreted the Article 6 to mean that both clauses (A), (B) and (C) relate to immovable

property. Therefore, the interpretation placed by 3rd respondent in the counter affidavit that 6 (A) is applicable to simple agreement not involving sale of immovable property, cannot be accepted. It is accordingly rejected.

11. This Court has also held in the above judgments that the words “sale of any other immovable property” in Article 6 (B) will have to be read along with the rest of the provision, and also with Column No.2, that Article 6 (B) would be applicable only in specified cases mentioned therein, and will not override the general provision of Article 6 (A). It has also been held that the said words would apply only in respect of sale of any other immovable property for the purpose of development or for construction of any multi-unit house or building or unit of apartment/portion of multi storied building. Therefore, Article 6 (B) will not apply to a transaction of an agreement belonging to immovable property other than one for the above purpose, particularly one relating to immovable property which does not deal with such activity which is mentioned in clause (B) of Article 6.

12. Therefore interpretation placed by third respondent cannot be accepted and it is accordingly rejected.

13. Therefore, the Writ Petition is allowed; the impugned notice dt.31-07-2017 of 3rd respondent is set aside; and 3rd respondent is directed to collect stamp duty and penalty in accordance with clause

(A) of Article 6 of Schedule 1A of the Indian Stamp Act, 1899 on the Memorandum of Understanding forwarded to him by the above referred Court within four weeks; and communicate the amount of stamp duty and penalty payable thereon to the petitioner. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-11-2017
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