IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.35146 & 30733 of 2013
and
M.P.Nos.1,1 & 2,2 of 2013

The Global Lands Housing Co-Operative Society Ltd.,
Rep.by its Chairman Mr.Manikandan
No:66, 'Z' Block 11th Street,
5th Avenue,
Anna Nagar West,
Chennai - 600 040.
...Petitioner in W.P.No.35146 of 2013

Hindustan Multi State Co-operative
Housing Society Ltd(MSCS CR/366/2010)
61/55, Ambika Lay Out,
New Sidhapudur, Coimbatore - 641 044
rep.by its Chairman Mr.S.N.Adhavan
..Petitioner in W.P.No.30733 of 2013

vs

1.The Government of Tamilnadu rep.by
Secretary to Government,
Commercial Taxes and Registration
Department, Fort St.George,
Chennai - 600 009.

2.The Inspector General of Registration,
Chepauk, Chennai - 600 005.
.. Respondents in both W.Ps

Prayer in W.P.No.35146 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Letter No.16495/J1/2012-5, Commercial Taxes and Registration Department, dated 21.10.2013 and the consequential order of second respondent in O.Mu.3667/C2/2012 dated 28.10.2013 and quash the said orders and direct the respondents to continue the remission of stamp duty in respect of Multi-State co-operative Societies registered in Tamil Nadu including the Petitioner Co-operative Society.

Prayer in W.P.No.30733 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Letter No.16495/J1/2012-5, Commercial Taxes and Registration Department, dated 21.10.2013 and the consequential order of second respondent in O.Mu.3667/C2/2012 dated 28.10.2013 and quash the said orders and direct the respondents to continue the remission of stamp duty in respect of Multi-State co-operative Societies registered in Tamil Nadu including the Petitioner Co-operative Society.

For Petitioners
(in W.P.No.35146 of 2013) : M/s.R.Archana, for M/s.V.Subramanian
(in W.P.No.30733 of 2013) : P.Rajendran

For Respondents
(in both W.Ps) : M/s.A.Srijayanthi, Spl GP

C O M M O N O R D E R

The Circular issued by the first respondent in Letter No.16495/J1/2012-5, Commercial Taxes and Registration Department, dated 21.10.2013 and the consequential order of second respondent in O.Mu.3667/C2/2012 dated 28.10.2013 are sought to be quashed and further, a direction is sought for to continue the remission of stamp duty in respect of the Multi-State Co-operative Societies registered in Tamil Nadu.

2.The writ petitioners are the Global Lands Housing Co-operative Society Ltd., and Hindustan Multi State Co-operative Housing Society Ltd. The writ petitioners Societies are a registered Co-operative societies under the provisions of the Multi-State Co-operative Societies Act, 2002.

3.The learned counsel appearing on behalf of the writ petitioners made a submission that the Government issued G.O.Ms.No.2179(Co-operation) dated 29.06.1966, granting exemption for all registered co-operative societies from the payment of stamp duty under the Stamp Act, in respect of the instruments executed on behalf of such co-operative societies.

4.Claiming benefit of exemption granted to these co-operative societies, the writ petitioners, are registered societies under the Multi-State Co-operative Societies Act are also claiming exemption. The respondents have denied such an exemption of payment of stamp duty to these Multi-State Co-operative Societies and therefore, the writ petitioners are constrained to move the present writ petition, challenging the very circular issued by the Government, clarifying that the co-operative societies, registered under the Multi-State Co-operative Societies are not exempted from payment of stamp duty under the Stamp Act.

5.The learned counsel for the writ petitioner is of an opinion that when an exemption is granted in respect of the Co-operative Societies registered under the Tamil Nadu Co-operative Societies Act, 1983 and then, the same benefit is to be extended to the co-operative societies, registered under the Multi-State Co-operative Societies Act also. Such an argument cannot be accepted in view of the fact that exemptions, if any, granted by the State Government must be specific and the persons, who all are exempted also must be unambiguously stated in the notification. As far as the Government of Tamil Nadu is concerned, they have issued notification under the provisions of the Tamil Nadu Act, granting exemption to the co-operative societies registered only under the provision of the Tamil Nadu Co-operative Societies Act, 1983. Thus, it is made clear that the exemption notification from payment of stamp duty is applicable to the Cooperative Societies, registered under the Tamil Nadu Cooperative Societies Act, 1983. Thus, in respect of the co-operative societies, registered under the Multi-State Co-operative Societies Act, 2002, there must be a separate exemption to be granted by the Government of Tamil Nadu.

6.Admittedly, no such exemption was granted in respect of the cooperative societies, registered under the Multi-State Co-operative Societies Act, 2002. The Multi-State Co-operative Societies Act, 2002 was enacted by Parliament(Act 39 of 2002). A Co-operative Society, which is registered under the Multi-State Co-operative Societies Act, is not confined to one State and it is applicable to all the States across the country. The Central Registrar is the controller of the Multi-State Co-operative Societies. Thus, the Constitution of the Multi-State Co-operative societies is under the provisions of the said Act and cannot be under the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

7.This being the factum of the case, the benefit of exemption from payment of stamp duty granted to the co-operative societies registered under the Tamil Nadu Co-operative Societies Act, 1983, cannot be granted to the co-operative Societies registered under the Multi-State Co-operative Societies Act, 2002, in the absence of any specific notification issued by the Government of Tamil Nadu under the provisions of the Act.

8.In this view of the matter, the relief as claimed in these writ petitions cannot be considered and it is left open to the writ petitioners to submit an application to the Government of Tamil Nadu for the purpose of granting exemption from the payment of stamp duty on par with other co-operative societies registered under the Tamil Nadu co-operative Societies Act, 1983. In the event of submitting any such application, it is left open to the Government to consider the same and take a decision, pass orders on merits and in accordance with law.

9.In this view of the matter, no further adjudication needs to be entertained in respect of the grounds raised in these writ petitions. Accordingly, both the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Government of Tamilnadu rep.by
Secretary to Government,
Commercial Taxes and Registration
Department, Fort St.George,
Chennai - 600 009.

2.The Inspector General of Registration,
Chepauk, Chennai - 600 005.

+1cc to Mr.V.Subramanian, Advocate, S.R.No.44698

W.P.Nos.35146 & 30733 of 2013

GSP(17/07/2018)