IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.A.No. 404 of 2019
&
C.M.P.No.3766 of 2019

Hindustan Multi State Co-operative
Housing Society Ltd.,
61/55, Ambika Lay Out,
New Sidhapudur, Coimbatore - 641 044.
Rep by its Chairman Mr.S.N.Adhavan

...Appellant

Vs.

1. The Government of Tamil Nadu,
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

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the Order dated 06.07.2018 in W.P.No.30733 of 2013.

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 relating to the impugned order of 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 and quash the said orders and direct the respondents to continue the remission of stamp duty in respect of Multi-State Cooperative Societies Registered in Tamilnadu including the petitioner Co-operative Society.

For Appellant	:	Mr.P.Rajendran
For Respondents	:	Mr.Pappiah Special Government Pleader

JUDGMENT

Judgment of the Court was delivered by T.S.SIVAGNANAM, J.

This Writ Appeal is directed against the order in the Writ Petition No.30733 of 2018 dated 06.07.2018 filed by the appellant.

2. Heard Mr.P.Rajendran, learned counsel for the appellant and Mr.Pappiah, learned Special Government Pleader respondents. With the consent of either side, the appeal is itself taken up for dismissal.

3. The appellant is a society registered under the Provisions of the Multi State Cooperative Societies Act, 2002. The appellant challenged the proceedings of the first respondent dated 21.10.2013 where under the first respondent stated that the benefit of the exemption notification issued by the Government of Tamil Nadu, Agriculture Department in G.O.Ms.No.2179 (Co-operation), dated 29.06.1966 cannot be applied to the appellant society and therefore, the appellant society is not entitled for any exemption from payment of stamp duty in respect of sale deeds executed by them in favor of the purchasers of plots/houses promoted/developed by the appellant society.

4. The first submission of the learned counsel for the appellant is that the appellant had no opportunity to contest the matter, as the name of the counsel was not printed in the cause list, though the case number was mentioned. In this regard, the learned counsel has drawn the attention of this Court to the cause list dated 06.07.2018 and on the said date, the writ petition was listed as item No.14. On a perusal of the cause list, we find that the short cause title reflects the name of Global Land Housing Vs. The Government of Tamil Nadu and another two writ petition numbers are given namely W.P.Nos. 35146, 30733 of 2013. The names of Mr.V.Subramanian and Mr.D.Kumaralingam have been mentioned for the petitioners and learned Additional Government Pleader (W) for R.R.1 and 2. Thus, the learned counsel for the appellant is right in his submission that the name of the counsel for the petitioner in W.P.No.30733 of 2013 was not printed in the cause list.

5. Further, we find that the other connected writ petitions were filed by the Global Lands Housing Co-Operative Society Limited and the name of the appellant namely Hindustan Multi State Co-operative Housing Society Limited has not been printed in the cause list and the name of the counsel has also not been printed. Therefore, we find that the appellant had no opportunity to put forth their submissions before the learned

Writ Court. The respondents also did not file any counter affidavit, though the writ petition was pending since the year 2013 and the order of interim stay was in force ever since the writ petition was entertained.

6. It is argued by the learned counsel for the appellant that the learned Writ Court while dismissing the writ petition was of the opinion that the benefit of exemption is available only to the Co-operative societies registered under the Tamil Nadu Co-operative Societies Act, 1983, whereas the exemption which was extended in favour of the appellant prior to the passing of the impugned order in the writ petition was under the Tamil Nadu Co-Operative Societies Act, 1961 and this notification has not been rescinded till date and is deemed to continue though the 1961 Act is repealed and replaced by the 1983 Act in terms of Section 24 of the General Clauses Act.

7. The learned counsel by referring to Section 114(1) of the Tamil Nadu Co-operative Societies Act 1961, submitted that every society existing on the said date which has been registered under the Co-operative Credit Societies Act, 1904 [Central Act X of 1904] or under the Co-operative Societies Act 1912 [Central Act XI of 1912] or under the Madras Co-operative Societies Act, 1932 shall be deemed to be registered under the 1961 Act and its by-laws shall so far as the same are not inconsistent with the express provisions of the 1961 Act, continue in force until altered or rescinded. Further, by referring to Section 2(9) of the 1961 Act, it is submitted that the said section defines the registered society to mean, the society registered or deemed to be registered under the said Act. Therefore, it is the submission of the learned counsel that the above mentioned categories of societies registered under the Central Acts were deemed to be societies registered under the Tamil Nadu Act 53 of 1961.

8. Furthermore, between 1961 and 1984, the Co-operative societies having area of operation in Tamil Nadu and other states were also registered under the 1961 Act. Thus, the appellant's contention is that when the Government issued exemption notification dated 29.06.1966, they were fully conscious of the fact that the exemption would apply to Multi State Co-operative Societies also. The learned counsel has invited our attention to the proceedings of the Secretary to Government Commercial Taxes and Registration Department dated 09.04.2009, wherein the identical issue came up for consideration before the Government at the instance of a Society which was registered under the Multi-State Co-operative Societies Act, 2002 as that of the appellant and they have submitted a representation to the Government stating that the benefit of the exemption notification dated 29.06.1966 should be extended to him. Then, the Government by the said proceedings

clarified that there is no limitation that the society should be a registered one under the Tamil Nadu Co-operative Societies Act, 1961, and therefore the said society registered under the Multi-State Co-operative Society Act, 2002 is deemed to be a society registered under the Tamil Nadu Act 53 of 1961 and therefore eligible for the stamp Duty exemption granted in G.O.M.S. No.2179, Cooperation, dated 29.06.1966.

9. In our considered view, the writ petition should be heard on the merits since an important legal issue has been raised by the appellant in the writ petition. It is not clearly known as to why the respondent department has not filled counter affidavit though the writ petition was pending for over five years. Hence, we are of the considered view that the writ petition should be restored to the file of the learned Single Bench to be heard and disposed on merits, after the respondents file counter affidavit. We make it clear that the above mentioned observations made by us is to demonstrate that the appellant has made out the prima facie case to enable them to argue the writ petition on merits and moreover, when the appellant had no opportunity to advance their submissions since the name of the counsel was not printed in the cause list.

10. Thus, for the above reasons the writ appeal is allowed and the order passed in the writ petition is set aside the writ petition is restored to the file of the learned Single Bench and the order of interim stay granted in M.P.Nos.1 & 1 of 2013 stands restored. No costs. Consequently, connected civil miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mrm/ssb

To

1. The Government of Tamil Nadu,
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.

+1 CC to Mr.P.Rajendran, Advocate sr 15445.
+1 CC to The Govt. Pleader sr 15600.

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SP(25/03/2019)