IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23801 of 2004

Um.Ravichandran ... Petitioner

Vs.

1. The Executive Engineer cum Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
Chennai 600 020.

2. The Branch Manager,
Indian Bank,
Peters Road Branch, Chennai 86.

3. The Joint Sub-Registrar I,
Sub Registrar Office,
Saidapet, Chennai 15. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 30.07.2004 in respect of the document No.4542/03 of the 3rd respondent and quash the same and direct the 3rd respondent to give effect to the G.O.Ms.No.25/01, dated 19.02.2001 without insisting for stamp duty to the building cost for the registration.

For Petitioner :Um.Ravichandran Petitioner in Person

For Respondents :Mr.R.Bharathkumar, for R1
M/s.Aiyar & Dolia, for R2
Mr.P.P.Purushothaman, G.A., for R3

O R D E R

The petitioner herein, who appears as party-in-person, was alloted a flat No. H61/T2 at Thiruvalluvar Nagar in Thiruvanmiyur Extension, Chennai by an order dated 24.04.2001. The petitioner had taken possession of the flat after he had paid the stamp duty to the first respondent herein at the rate of 30% of the sale cost with an agreement that the balance sale consideration would be paid by the petitioner in monthly installments, through the loan extended by the second respondent herein.

2. By placing reliance on G.O.Ms.No.25, Commercial Taxes (II), 19.02.2001, the petitioner herein requested for waiver of stamp duty on the land cost. However, by a notice dated 30.07.2004, the third respondent herein had demanded a sum of Rs.69,372/- towards deficit stamp duty on the ground that the sale deed has been undervalued. Challenging the notice, the present Writ Petition has been filed.

3. Apparently, the present impugned notice dated 30.07.2004 seems to have been issued under Section 33A of the Indian Stamp Act. As per the procedure contemplated therein, pursuant to the impugned notice, the third respondent is required to proceed further as per the procedures contemplated under Section 33 of the Indian Stamp Act.

4. In the instant case, though the petitioner had challenged the impugned notice dated 30.07.2004 in the year 2004 itself, the respondents have not proceeded further pursuant to the notice. There was no interim order granted by this Court, restricting the third respondent from proceeding further pursuant to the notice. In spite of the same, the third respondent had chosen to keep the matter in abeyance for almost 15 years and at this juncture, it would not be appropriate to permit the third respondent to proceed further for the purpose of determining the stamp duty.

5. Even otherwise, as rightly pointed out by the learned counsel for the petitioner herein, the stamp duty claimed by the third respondent itself cannot be sustained in view of the G.O.Ms.No.25, Commercial Taxes (II), 19.02.2001, which reduces the duty chargeable in respect of the sale deeds executed by the Tamil Nadu Housing Board, to the extent of the cost of the plot or the proportionate land share. The said G.O. reads as follows:

> "No.II(2)/CT/272/2001 - In exercise of the powers conferred by clause (a) of sub section (1) of Section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Governor of Tamil Nadu hereby reduces the duty chargeable under the said Act in respect of the sale deeds to be executed by the Tamil Nadu Housing Boad in favour of the allottees of Plots, houses or flats, to the extent of duty chargeable on the cost of the plot / proportionate land share as fixed by the said Board at the time of allotment, subject to the condition that the above reduction shall be applicable to those allottees of plots, houses or flats of the said Board remaining unsold as on the 1st February 2001."

Subsequently, this was amended by an another G.O.Ms.No.231/2001, dated 27.03.2001, by which the words "Unsold on or after 1st February 2001" was omitted. The said G.O. applies to those allottees of flats which remained unsold as on 01.02.2001.

6. The petitioner's case is that he had purchased the flat which had remained unsold. The deletion of the words "unsold on or after 1st February 2001" came into force only on 31.12.2003 whereas, the petitioner's sale deed had been executed on 08.04.2003 and presented on 11.04.2003. Therefore, the petitioner is entitled to take advantage of the exemption and the third respondent ought not to have called upon the petitioner to pay the stamp duty for the value of the superstructure. Hence, in view of G.O.Ms.No.25, Commercial Taxes (II), 19.02.2001, the impugned notice claiming the deficit stamp duty cannot be maintained.

7. For all the foregoing reasons, I am of the view that the petitioner is entitled to succeed and the impugned notice dated 30.07.2004 passed by the third respondent is set aside. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Executive Engineer cum Administrative Officer,
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Tamil Nadu Housing Board,
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2. The Branch Manager,
Indian Bank,
Peters Road Branch, Chennai 86.

3. The Joint Sub-Registrar I,
Sub Registrar Office,
Saidapet, Chennai 15.

+1cc to Mr.B.Bharath Kumar, Advocate sr.41135
+1cc to Mr.UM.Ravichandran, Advocate sr.40472
+1cc to the Government Pleader Sr.42025

W.P.No.23801 of 2004

srg 03/07/2019