IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.18362 of 2010
and
M.P.No.1 of 2010

Mrs.Girija ... Petitioner

Vs.

1. The Secretary to the Government of Tamil Nadu,
   Commercial Taxes &
   Hindu Religious Endowments Department,
   Fort St.George, Chennai - 600 009.

2. The Inspector General of Registration,
   Office of the Inspector General of Registration,
   Santhome, Chennai - 600 028.

3. The Sub Registrar,
   T.Nagar Sub Registrar Office,
   Saidapet, Chennai - 600 015. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records of the 2nd respondent ending with the order passed in letter No. 62084/C3/2007 dated 29.09.2008 and quash the same and direct the respondents to order refund of the excess stamp duty and registration charges amounting to Rs.19,42,900/-, paid in respect of the petitioner's document No.1472 of 2007 on the file of the 3rd respondent or alternately refund to the petitioner the sum of Rs.9,71,450/- being 50% of the stamp duty and registration charges paid as per letter No.12465/J1/2002-14 dated 07.04.2004 sent by the 1st respondent along with interest at 12% per annum from 04.12.2007.

For Petitioner : Mr.T.P.Sankaran

For Respondents : Mr.Pratab Sing
Government Advocate

ORDER

This Writ Petition has been filed to call for the entire records of the 2nd respondent ending with the order passed in letter No. 62084/C3/2007 dated 29.09.2008 and quash the same and direct the respondents to order refund of the excess stamp duty and registration charges amounting to Rs.19,42,900/-, paid in respect of the petitioner's document No.1472 of 2007 on the file of the 3rd respondent or alternately refund to the petitioner the sum of Rs.9,71,450/- being 50% of the stamp duty and registration charges paid as per letter No.12465/J1/2002-14 dated 07.04.2004 sent by the 1st respondent along with interest at 12% per annum from 04.12.2007.

2. The petitioner submitted that she is a devotee of Sri Venkateswaraswamy Varu, Presiding Deity of Thirumala Hills Temple, Tirupathi, under the management of the Board of Trustee, Tirumala Tirupathi Devasthanam, Thirupathi, represented by its Executive Officer. Since the petitioner wanted to dedicate her property by way of gift to the said Deity for religious and charitable purpose, she sent a letter dated 05.02.2003 to the first respondent, seeking for exemption from payment of stamp duty and registration charges, and to which, the first respondent sent a reply by Letter No.12465/J1/2002-14 dated 07.04.2004 informing the petitioner that as per G.O.Ms.No.1224 Revenue dated 28.04.1964, her gift deed is eligible for 50% exemption of stamp duty as the property is conveyed for charitable purpose. Therefore, the petitioner executed a Settlement Deed dated 20.06.2007 by way of gift in favour of Lord Sri Venkateswaraswamy Varu in respect of the immovable property of vacant land, bearing Corporation Old No.44-L, present No.44/1L, G.N.Chetty Road, T.Nagar, Chennai - 600017, measuring about 4,560 square feet, comprised in T.S.No.8580, Block No.114, T.Nagar Village, Chennai, as described in schedule to the said document and presented the said Deed of Settlement to the third respondent by paying 50% of the stamp duty amounting to Rs.9,68,500/- and the proportionate registration charges at the time of registration on 20.06.2007.

3. The petitioner further submitted that when she sought for return of the document after registration, she was advised by the third respondent by letter dated 11.07.2007 that the exemption of 50% stamp duty was only for the stamp papers and not for the registration charges and therefore, she was asked to pay the balance registration charges of Rs.1,08,300/- and also to submit the Form under Section 80-G of the Income Tax Act, 1961. Hence, the petitioner paid the said sum on 01.08.2007 towards the balance registration charges under protest. However, she again received a letter dated 01.08.2007 from the third respondent, demanding payment towards remaining stamp duty of 50% amounting to Rs.8,66,400/- for obtaining the registered document and also to produce exemption certificate under Section 80-G of the Income Tax Act. Hence, the petitioner sent a detailed reply by letter dated 02.08.2007 stating that she was asked to pay only 50% of the stamp duty for the said gift deed

dated 20.06.2007 and also that there is no necessity for production of any 80-G Tax Exemption Certificate relating to Thirumala Tirupathi Devasthanams.

4. The petitioner also submitted that reserving her right to seek her legal remedies for refund of the balance stamp duty demanded, she paid the amount of Rs.8,66,400/- by Demand Draft No.940245 dated 02.08.2007 drawn on Karnataka Bank payable at Chennai in favour of the third respondent and she received the Settlement Deed which was registered as Document No.1472 of 2007 on the file of the third respondent. As such, the petitioner had totally paid a sum of Rs.19,43,200/- towards stamp duty and registration charges as demanded by the third respondent, which is contrary to G.O.Ms.No.903 dated 04.09.1986.

5. The petitioner further submitted that even in Andhra Pradesh, the Government has exempted payment of stamp duty in full chargeable under the Indian Stamp Act, 1899 in respect of gift deed to be executed in favour of Tirumala Tirupathi Devasthanams as per G.O.Ms.No.643 of the Revenue (Registration and Mandals) Department, which is extracted hereunder:-

> "No Registration Fee shall be leviable in respect of gift deed to be executed in favour of Tirumala Tirupathi Devasthanam by way of Gifts of lands/properties etc., in the State of Andhra Pradesh"

Further, the first respondent, by G.O.Ms.903 dated 04.09.1986 of the Commercial Taxes and Religious Endowments Department, has directed that in respect of deeds of gift and settlement of lands and buildings to be executed in favour of Hind/Muslim institutions coming under the Hindu Religious and Charitable Endowments Act and Wakf, a nominal value of such properties be fixed at Rs.100/- for the purpose of levy of stamp duty and registration fee instead of such duties being calculated on the market value of the property involved. But, the second and third respondents have collected excess stamp duty without authority of law and without jurisdiction.

6. The petitioner also submitted that she filed an appeal to the second respondent on 04.12.2007 raising her objections and seeking refund of the excess stamp duty collected in respect of her Document No.1472/2007 on the file of the third respondent. To which, the second respondent sent a reply by letter No.62084/C3/2007 dated 29.09.2008 (signed on 07.10.2008) stating that there is no provision in the rules of the Indian Stamp Act, to refund the amount which was paid. Therefore, the petitioner with no other alternative has filed this Writ

Petition.

7. In support of her case, the learned counsel for the petitioner has relied upon item No.47 in G.O.Ms.No.1224 dated 25.04.1964, which reads as follows:-

> "47. All gifts or settlements for charitable or religious purposes - duty reduced to one half of the duty leviable on
> such instruments"

8. Denying the allegations of the petitioner, the respondents have filed a counter affidavit, wherein, it has been stated that by G.O.Ms.No.224 Commercial Taxes Department dated 11.12.2003, the Government has amended the G.O.Ms.No.1224 dated 25.04.1964 as follows:-

> "Provided that the above concession will apply only in cases where the Donee Society or Trust is approved under Section 80-G of the Income Tax Act, 1961 (Central Act 43 of 1961)"

As the petitioner has not produced the certificate of approval granted to the donee under Section 80-G of the Income Tax Act 1961, the 50% remission granted under G.O.Ms.No.1224 is not applicable in view of the amendment to G.O.Ms.No.1224 made in G.O.Ms.No.224.

9. It has been further stated in the counter affidavit that it is true that a notification has been issued by the Government of Tamil Nadu under G.O.Ms.No.903 Commercial Taxes and Registration Department dated 04.09.1983 which reads as follows:

> "In exercise of the powers conferred by clause (a) of Sub Section (i) of Section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Governor of Tamil Nadu hereby remits the duty chargeable under the said Act in respect of instrument of deed of gift or settlement of lands or buildings donated for the purpose of Charitable Endowments as defined in clause (5) of Section 6 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act, 22 of 1959) or wakf as defined in clause (1) of Section 3 of Wakf Act, 1954 (Central Act 29 of 1954) to the extent that duty is chargeable on the instrument of deed of gift or settlement to a nominal value of Rs.100/-"

According to the said notification and the operative portion of the G.O., the concession would be applicable if the gift or settlement is made for the purpose of charitable endowments as defined in clause (5) which reads as follows:

"5. Charitable Endowments" means all property given or endowed for the benefit of, or used as of right by, the Hindu or the jain community or any section thereof, for the support or maintenance of objects of utility to the said community or section, such as rest - houses, choultries patasalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature; and includes the institution concerned"

The respondents' contention that from the above provision, it is clear that the remission is applicable only to the Charitable Endowments which are within the State of Tamil Nadu as the Act being a State Act has no binding on the Charitable Endowments situate outside Tamil Nadu. Hence, the petitioner is not eligible for remission under G.O.Ms.No.903, dated 04.09.1986.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

11. It is seen that the petitioner is a devotee of Sri Venkateswaraswamy Varu and she dedicated her property which is situated at G.N.Chetty Road, T.Nagar, Chennai - 600 017, by way of gift to the said Deity for religious and charitable purposes. Since the third respondent had collected excess stamp duty and registration charges amounting to Rs.19,43,200/- from the petitioner for releasing the Settlement Deed which was registered by her on 20.06.2007 for charitable purpose, the petitioner is before this Court.

12. In view of Section 80-G of the Income Tax Act, it is clear that it only deals with cash or cheque in respect of donations towards charitable institutions and it does not deal with immovable property. Therefore, the said Section would not be applicable to the present case, as the petitioner had gifted a property to the Temple.

13. The temple, to which the petitioner had dedicated her property is a statutory body enacted by the State of Andhra Pradesh and therefore, the notification issued by the Government in G.O.Ms.No.224 dated 11.12.2003, amending G.O.Ms.No.1224 dated 25.04.1964 would not be applicable to the present case, as it applies only for Donee society or trust and not for statutory body. However, in item No.47 of the said G.O.Ms.No.1224 dated 25.04.1964, there is exemption granted from payment of stamp duty up to 50% for all gifts or settlements towards charitable or religious purposes and as per which, the petitioner is entitled for refund of 50% of the stamp duty paid in excess. The respondent has originally directed the petitioner to pay only 50% and later on demanded 100% which is not proper as per Item

47 of G.O.Ms.No.1224 dated 25.04.1964 and the respondents are liable to refund the said amount as the petitioner has been challenging the same from the date of demand. The respondents' contention that the TTD is situate at Andhra Pradesh and the petitioner is not entitled for exemption, is not accepted as the property is situated in T.Nagar, Chennai, Tamilnadu and the G.O. passed granting exemption is applicable to the property gifted by the petitioner which is situated in Chennai. Therefore, this Court is inclined to direct the respondents to refund the said amount to the petitioner.

14. Accordingly, the impugned order is quashed and the respondents are directed to refund the excess stamp duty and registration charges paid i.e. Rs.9,71,450/- with interest at 6% per annum from 04.12.2007 to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order.

15. The Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Secretary,
Government of Tamil Nadu,
Commercial Taxes & Hindu Religious
Endowments Department,
Fort St.George, Chennai - 600 009.

2. The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai - 600 028.

3. The Sub Registrar,
T.Nagar Sub Registrar Office,
Saidapet, Chennai - 600 015.

+1cc to the Government Pleader, S.R.No. 32680

W.P.No.18362 of 2010
and
M.P.No.1 of 2010

SV(CO)
GN(22/05/2019)