

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.14094 & 14160 of 2015

and

M.P.Nos.2 & 2 of 2015

|                                  |                                    |
|----------------------------------|------------------------------------|
| Orders reserved on<br>04.03.2020 | Orders pronounced on<br>12.03.2020 |
|----------------------------------|------------------------------------|

Mrs.Bhavari Kavar Chordia Trust,  
Rep., by its Trustee,  
Navaratanmull Chordia,  
Old No.1/36, New No.12,  
General Muthiah Mudali Street,  
Sowcarpet, Chennai-600 079. ... Petitioner in both W.Ps.

-vs-

1.Chief Controlling Revenue Authority  
cum Inspector General of Registration,  
Chennai-600 028.

2.The District Registrar,  
District Registrar's Office,  
Chennai Central,  
Chennai-600 014.

... Respondents in both W.Ps.

Petitions filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records from the first respondent culminating in the orders dated 23.02.2015 in proceedings bearing Reference Nos.54656/P1/2014 and 54658/P1/2014 and Consequential Orders dated 10.11.2014 passed by the 2<sup>nd</sup> respondent bearing Reference Nos.11380/AA1/2014-2 and 11380/AA1/2014-1, quash the same and direct the respondents to register the pending document bearing Nos.P15/14 and P14/2014 respectively, and return the document to the petitioner after due registration.

For Petitioner : Mr.M.Aravind Subramaniam  
(In both W.Ps.)

For Respondents: Mr.P.P.Purushothaman,  
(In both W.Ps.) Government Advocate

#### COMMON ORDER

The prayers sought for in both the writ petitions are identical and the petitioner in both the writ petitions is the very same Trust and therefore, the writ petitions were heard together and are being disposed of by this common order.

2.The petitioner-Trust challenges the orders passed by the first respondent, the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, confirming the orders passed by the second respondent demanding stamp duty at the rate of 8% of the value of the properties in respect of settlement deeds executed in favour of the petitioner-Trust dated 03.04.2014, registered and pending as document numbers P14/2014 and P152014.

3.The petitioner is a Trust registered under the provisions of the Indian Trusts Act, 1882, with its objects to render financial help to various organisations, institutions for poor and differently abled, scholarship to students, etc. The first trustees of the Trust are four in number of whom, one of the trustees has filed these writ petitions representing the Trust. The Trust has obtained exemption under Section 80G of the Income-tax Act, 1961 (hereinafter referred to as "the IT Act"). One Mrs.Ummul Faridha, daughter of (late) Mr.O.A.Abubakar, is stated to be known to the family of the trustees of the petitioner for a long time and it was her desire to settle a property in favour of the Trust and considering her good intention, the Trust agreed to accept the settlement/gift from her. The settlement deeds (two), accordingly, were drawn in favour of the petitioner-Trust by the settlor on 03.04.2014, and presented for registration before the Joint II Sub Registrar, District Registration, Chennai (Central). The registering authority impounded the documents under Section 33 of the Indian Stamp Act, 1899 and referred the same to the second respondent, who issued notice dated 30.09.2014, demanding deficit stamp duty of Rs.1,61,760/- together with penalty of Rs.1000/- calculating the stamp duty at 8%. The petitioner-Trust gave its reply dated 03.11.2014 to the said proposal stating that the petitioner is a public charitable trust enjoying the benefit of Section 80G exemption under

the IT Act and is entitled to concessional rate of stamp duty at 4%.

4. With regard to the recitals in the settlement deeds, the second respondent mentioned that the settlor had settled the property in favour of the Trust only for discharging the loan and not for the purposes of charity, and stamp duty has to be charged at 8%. Aggrieved by such order, the petitioner preferred revision petitions before the first respondent contending that the appropriate stamp duty to be collected is 4% and not 8%, as the petitioner is a public charitable trust enjoying the benefit of exemption under Section 80G of the IT Act.

5. Further, it was contended that a settlement burdened with an obligation can be treated as a settlement alone and in this regard, referred to an order passed by the first respondent in the year 1984. The first respondent rejected the revision petitions by proceeding to interpret the nature of the settlement deeds itself and observed that they are sale deeds in terms of Section 54 of the Transfer of Property Act, 1882 and therefore, the petitioner is not entitled to the benefit of concessional stamp duty in terms of G.O.Ms.No.1224/Revenue, dated 24.04.1964.

6. The learned counsel for the petitioner contended that the primary reason for which second respondent rejected the petitioner's prayer was on the ground that the original trust deed was not produced and no proof to show that the petitioner had the benefit of exemption under Section 80G of the IT Act. However, the first respondent, on revision, proceeded entirely on a different premise and interpreted the document and came to a different conclusion.

7. The learned counsel submitted that as early as in the year 1984, the first respondent has considered as to what is the nature of a document, which is a settlement burdened with obligation and it was held that it shall be treated as a settlement. The learned counsel relied upon a recent order passed by the first respondent dated 28.09.2018, which is also to the same effect. Further, it is submitted keeping these aside if it is not in dispute that the petitioner has the benefit of exemption under Section 80G of the IT Act, then automatically concessional rate of stamp duty has to be applied. To support such contention, reliance was placed on Manidhaneyam Charitable Trust vs. Government of Tamil Nadu and others., W.P.No.8616 of 2007, dated 28.08.2007.

8. Further, it is submitted that there are several types of gifts and one such type is onerous gift, which means that

he, who receives advantage, must bear the burden also. Therefore, merely because there is a covenant stating that the settlee (petitioner) has to discharge the loan, the document cannot be treated as a sale because, the document is in the nature of an onerous gift, which is burdened with an obligation.

9. Further, it is submitted that if in the opinion of the first respondent, there arises a substantial question of law to be decided and he does not propose to follow two of the orders passed by his predecessors dated 12.11.1984 and 28.09.2018, he should have referred the matter to the High Court under Section 57(1) of the Indian Stamp Act. In support of such contention, reliance was placed on the decision in *Sarojini Muthusamy and Ors. vs. District Registrar and Anr.*, (1999) 1 MLJ 113.

10. The learned Government Advocate seeks to sustain the impugned proceedings by contending that the settlor has directed the petitioner-Trust to discharge the loan of Rs.85,00,000/- borrowed by her from none other than one of the trustees of the petitioner-Trust, who in fact, represents the petitioner in these writ petitions and the petitioner is bound by the condition, as they have accepted the settlement. Therefore, the first respondent was right in concluding that the transaction has to be treated as a sale and stamp duty is liable to be paid at 8%.

11. Heard the learned counsels for the parties and carefully perused the materials placed on record.

12. The undisputed fact is that Mrs. Ummul Faridha executed the settlement deeds in favour of the petitioner-Trust settling the undivided share in the property in favour of the petitioner-Trust. One of the conditions in the deed of settlement is that the petitioner-Trust has to discharge the loan obtained by the settlor from one of the trustees of the petitioner. The question is if such a condition is contained in the settlement deed, would it make a difference to the tenor of the settlement/gift warranting it to be treated as a deed of conveyance.

13. To be noted that the settlement has been accepted by the petitioner-Trust and consequently, bound by the terms. Before the registering authority, the petitioner sought for concessional stamp duty on the ground that they are a public charitable trust and in terms of the Government Order in G.O.Ms.No.1224, they are entitled for concessional stamp duty. The registering authority did not agree with the petitioner, impounded the document and forwarded the same to the second respondent for valuation.

14.The second respondent rejected the contention of the petitioner primarily on the ground that trust deed was not produced, no proof produced to establish that the petitioner has obtained the exemption under Section 80G of the IT Act. However, while referring to the condition to discharge the loan, the second respondent opined that the settlement is not for charitable purpose. Therefore, granting concession in the stamp duty payable does not arise. The fundamental error committed by the second respondent is in not deciding the matter in a proper manner.

15.The petitioner's specific case is that they are a public charitable trust, not a private trust and they have exemption under Section 80G of the IT Act. All that was required to be done by the second respondent is to issue notice to the petitioner and direct them to place the documents to establish their case. However, it appears the same was not done. Therefore, there is serious error in the decision-making process.

16.The second error committed by the second respondent is by reading a clause in the settlement deed, which provides for discharge of a loan obtained by the settlor, the second respondent interprets the same to be a sale, because there cannot be any charity while discharging a loan. This interpretation is wholly incorrect because, to be entitled for exemption and to fall within the public charitable trust, the test is whether the deed of trust contains such objectives and the test has been fulfilled once the Income-tax Department grants exemption under Section 80G of the IT Act. In other words, if exemption under Section 80G of the IT Act has been granted, then it is deemed that the said organisation is a public charitable organisation. Thus, the second respondent wholly misdirected himself in coming to the conclusion that the petitioner is liable to pay stamp duty at 8%.

17.The first respondent, on the other hand, did not test the correctness of the decision taken by the second respondent and the reasons assigned by him in the impugned order, but proceeded to consider the case in a different perspective and treated the transaction as a sale. The only reason for coming to such conclusion is by referring to the condition in the settlement deed, which provides for the Trust to settle the loan availed by the settlor.

18.The question is whether if there is such a loan to be discharged and the same is incorporated as a condition in the settlement/gift deed, will it change the character of the transaction. The answer to the question should be a

definite no because, the settlement is in the nature of an onerous gift, which is based upon the maxim 'qui sentit commodum sentire debet et onus', which means he, who receives advantage, must bear the burden also. Therefore, a gift will not be always purely beneficial in character, but may be burdened with an obligation. Thus, once a person accepts a gift, he cannot state that he will accept only the beneficial part of it and not the obligation imposed in the gift. The beneficiary of the gift having accepted the gift as such, cannot turn around and state that the obligation cast upon him cannot be enforced. In fact, this view has been taken by the predecessors in office of the first respondent in their orders dated 12.11.1984 and 28.09.2018.

19. In this regard, the learned Government Advocate is not able to readily inform this Court as to whether any appeal was filed by the State against the order dated 28.09.2018. The learned Government Advocate seeks to distinguish the decision taken by the first respondent dated 28.09.2018 stating that the settlement deed is within the family. However, that is not the right test to be applied to see whether the decision of the earlier incumbent in the office of the Inspector General would apply to the facts of the present case.

20. The question would be whether in the settlement deed, was there an obligation imposed on the settlee and accepted by the settlee. In the said case also, there was an obligation on the part of the settlee to clear the loan borrowed, after considering the document as well as Section 122, Section 127 and Section 128 of the Transfer of Property Act, 1882, wherein it was held that the transaction cannot be treated as a sale, but a gift.

21. Apart from the above position, the petitioner, being a charitable institution, is entitled to the benefit of concessional rate of stamp duty, because they have been granted exemption under Section 80G of the IT Act, which would be sufficient to establish that the petitioner is a public charitable trust and the respondents would have no jurisdiction to sit in judgment over the order of the Income-tax Department, which has examined the trust deed and concluded that the petitioner is a public charitable trust during the relevant time. Thus, for all the above reasons, the petitioner is entitled to succeed.

22. Accordingly, the writ petitions are allowed, the impugned orders are quashed and the respondents are directed to collect stamp duty at 4% of the market value of the property as set out in the settlement deeds and proportionate registration charges, which are stated to have

been remitted by the petitioner and register and release the documents within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Chief Controlling Revenue Authority cum  
Inspector General of Registration,  
Chennai-600 028.

2.The District Registrar,  
District Registrar's Office,  
Chennai Central, Chennai-600 014.

+1cc to Mr.Aravind Subramanian, Advocate, S.R.No.22642

+1cc to the Government Pleader, S.R.No.22648

Pre-delivery common order made in  
Writ Petition Nos.14094 & 14160 of 2015

NR(CO)

CB(28/07/2020)

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