IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.29353 to 29357 of 2012
and
M.P.Nos.1 to 1 of 2012

The Chennai Metropolitan Co-operative
Housing Society Ltd., No.900,
No.50, Ritherdon Road,
Vepery, Chennai - 600 007,
Rep.by its special Officer. ...Petitioner in all WPs

Vs.

1. The State of Tamil Nadu
   Rep.by its principal Secretary,
   Commercial Taxes and Registration
   Department, Secretariat Buildings,
   Chennai - 600 009.

2. The Inspector General of Registration,
   100, Santhome High Road,
   Foreshore Estate, Chennai - 600 028.

3. District Revenue Officer (Stamps),
   No.32, Rajaji Road, Chennai - 600 001.

4. The Sub Registrar,
   Sub Registration District of Ambattur,
   Ambattur, Chennai. ...Respondents in all WPs

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari, to call for the records of the Third respondent made in his proceedings in Na.Ka.Ci.Pa.No.145/07, 146/07, 61/09, 147/07 & 62/09 dated Nil and quash the same as ex-facie illegal, void without authority and competency and unenforceable in law.

For Petitioner in all Wps. : Mr.A.Arumugam

For Respondents in all Wps. : Mr.P.P.Purushothaman Government Advocate (Registration)

COMMON ORDER

These writ petitions have been filed challenging the deficit stamp duty demand made by the third respondent in respect of the registration of sale deeds executed by the members of the petitioner in favour of the petitioner society in the year 2002. Separate writ petitions have been filed in respect of each of the sale deeds executed by the respective member/s in favour of the petitioner.

2.Since the issue involved is one and the same in all these writ petitions, they are disposed of by a common order.

3.It is the case of the petitioner that pursuant to G.O.Ms.No.2179, Co-operative Society Department, dated 29.06.1966, a Co-operative Society is exempt from payment of stamp duty for both purchase as well as sale. It is also the case of the petitioner that the claim for deficit stamp duty is barred by law of limitation as under Section 33-A of the Indian Stamp Act, 1899, any claim for deficit stamp duty should be made within a period of three years from the date of registration of the document. According to the petitioner, in all the cases, the claim has been made in the year 2012 in respect of documents, which were registered in the year 2002. Under such circumstances, these writ petitions have been filed.

4.Heard Mr.A.Arumugam, learned counsel for the petitioner in all these writ petitions and Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents in all these writ petitions.

5.The learned counsel for the petitioner drew the attention of this Court to the Proviso to Section 33-A of the Indian Stamp Act and submitted that the claim for deficit stamp duty is barred by law as the claim will have to be made within a period of three years from the date of registration of document. He also drew the attention of this Court to G.O.Ms.No.2179, Co-operative Society Department, dated 29.06.1966 and submitted that the petitioner society is exempt from payment of stamp duty for both purchase and sale. The learned counsel for the petitioner also drew the attention of this Court to a judgment of a learned Single Judge of this Court dated 19.06.2019 passed in W.P.No.6474 of 2018 involving in an identical matter, wherein, demand for deficit stamp duty was made after three years and this Court quashed the said demand.

6.Section 33-A of the Stamp Act reads as follows:

> "33-A. Recovery of deficit stamp duty:- (1) Notwith-standing anything contained in section 33 or in any other

> provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue:
>
> Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:
>
> Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument."

7.It is evident from the second proviso to section 33-A that proceedings for deficit stamp duty will have to be commenced within three years from the date of registration of the document. The second proviso to section 33-A makes it clear that no enquiry under Section 33-A of the Indian Stamp Act, 1899, shall be commenced after the expiry of three years from the date of registration of the instrument. In the cases on hand, all the sale deeds, were registered in the year 2002, whereas, the demand was made by the third respondent towards deficit stamp duty only in the year 2012 after lapse of almost 10 years well beyond the prescribed period as stipulated under the second proviso to section 33-A of the Indian Stamp Act. Further, G.O.Ms.No.2179, Co-operative Society Department, dated 29.06.1966, also grants exemption for the co-operative society from payment of stamp duty for sale as well as purchase, subject to fulfilment of certain conditions. In the cases on hand, admittedly, the documents were registered and returned to the petitioner without any demur by the fourth respondent. However, after the lapse of almost 10 years, the impugned demand without authority under law has been sent to the petitioner. This Court is of the considered view that the impugned demand is beyond the period of limitation prescribed under Section 33-A of the Stamp Act and is arbitrary and illegal.

8.For the foregoing reasons, the respective impugned demand in all these writ petitions are hereby quashed and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

To

1. The State of Tamil Nadu
   Rep.by its principal Secretary,
   Commercial Taxes and Registration
   Department, Secretariat Buildings,
   Chennai - 600 009.

2. The Inspector General of Registration,
   100, Santhome High Road,
   Foreshore Estate, Chennai - 600 028.

3. District Revenue Officer (Stamps),
   No.32, Rajaji Road, Chennai - 600 001.

4. The Sub Registrar,
   Sub Registration District of Ambattur,
   Ambattur, Chennai.

+1cc to Mr.A.Arumugam, Advocate, S.R.No.16572

W.P.Nos.29353 to 29357 of 2012
and
M.P.Nos.1 to 1 of 2012

JP(CO)
KKV/09/07/2020