IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.16914 of 2014
and
MP Nos.1 and 2 of 2014

The Chennai Metropolitan
Co-operative Housing Society Ltd.,
Rep. by its Secretary /
Deputy Registrar
V. Nithyanandam.
... Petitioner

Vs

1. The Inspector General of Registration
Santhome High Road,
Santhome,
Chennai.

2. The District Registrar,
Chennai South,
Saidapet,
Chennai - 600 015.

3. The Sub - Registrar
Guduvancherry,
Chennai. .... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified calling for the records of the 3rd proceedings in pending No.154/2012, dated 03.05.2013 and quash the same and direct the respondents to release the document presented for registration and received in pending Doc. No.154/2012 dated 30.04.2012 without insisting the deficit stamp duty at an early date.

For petitioner : Mr.P.Sivamani

For respondents : Mr.B.Kannan

ORDER

This writ petition has been filed challenging the proceedings dated 03.05.2013 passed by the 3rd respondent calling upon the petitioner to pay a sum of Rs.27,02,233/- towards deficit stamp duty in respect of the sale deed dated 30.04.2012, which was admitted for Registration by the 3rd respondent assigning pending Document No.154 of 2012.

2. It is the case of the petitioner Society that they promoted a scheme at Melakotaiyur village, Chenglepet Taluk, Kancheepuram District which was named as Metro IT Residency. According to the petitioner, the said layout was approved by the DTCP vide LPDTCP No.135 of 2007. According to them, they purchased a total extent of 802279 sq. ft. of lands in various survey numbers at Melakotaiyur Village, Chenglepet Taluk, Kancheepuram District under two registered sale deeds, both dated 13.03.2008 registered as Doc. Nos.2182 and 2183 of 2008 at the office of SRO, Guduvancherry.

3. According to them being a registered Society, they are entitled for stamp duty exemption as per the Notification in G.O. Ms.No.2179 (Co-operation), dated 29.06.1966 issued under Section 51 of the Tamil Nadu Co-operative Societies Act, 1983. It is also their case that in the layout referred to above and as per the norms of the DTCP, they have provided space for community hall, School etc.

4. It is the case of the petitioner that under a Deed of sale dated 30.04.2012, they have sold the community hall measuring an extent of 25983 sq. ft. to and in favour of Mrs.Saroja and others, who are Members of the petitioner Society. According to the petitioner, the said document was admitted for registration by the third respondent by assigning pending Document No.154 of 2012. It is their case that though the said document is eligible for stamp duty exemption as per G.O. Ms. No.2179 dated 29.06.1966, the third respondent without any basis and by total non-application of mind has demanded a sum of Rs.27,02,233/- from the petitioner towards deficit stamp duty in respect of the sale deed dated 30.04.2012. According to the petitioner, since the petitioner Society and its members are exempted from payment of stamp duty, the impugned proceedings dated 03.05.2013 of the third respondent is arbitrary, illegal and not in accordance with law.

5. A counter affidavit has been filed by the third respondent stating that the pending document dated 30.04.2012 is not eligible for exemption of stamp duty as per G.O. Ms. No.2179, dated 29.06.1966, since under the sale deed, a

community hall has been agreed to be sold which provides for extra facilities to the members of the Society and hence not eligible for exemption. Therefore, according to them, the impugned proceedings of the third respondent is only in accordance with G.O. Ms. No.279, dated 29.06.1966.

6. Heard Mr. P.Sivamani, learned counsel for the petitioner and Mr.B.Kannan, learned counsel appearing for the respondents.

7. The learned counsel for the petitioner submitted that being a Co-operative Society, they and their members are entitled for exemption from payment of stamp duty as per G.O. Ms.2179 / Co-operation department dated 29.06.1966. According to him, as per G.O. Ms.2179 / Co-operation department dated 29.06.1966, it gives a blanket exemption from payment of stamp duty subject to the fulfilment of certain other conditions. According to him, the G.O. does not distinguish between lands and hence the land sold for a community hall is also entitled for stamp duty exemption.

8. Per contra, the learned Government Advocate appearing for the respondents would submit that a community hall is not entitled for exemption from payment of stamp duty as it provides extra facilities to the members. Further, it is his case that since there is an alternate efficacious appellate remedy available to the petitioner under the Indian Stamp Act, the writ petition is not maintainable without exhausting the same.

Discussion :

9. This Court has perused and examined G.O. Ms. No.2179 (Co-operation) department, dated 29.06.1966. The relevant portion of the said G.O. reads as follows :-

CO-OPERATION, FOOD AND CONSUMER PROTECTION DEPARTMENT.

Remission of all fees in full payable by Co-operative societies under Law of registration under Tamil Nadu Co-operative Societies Act.

G.O.(4D)No.1, Co-operation, Food and Consumer Protection,

20th October 1994. Aippasi 4, Bhava, Thiruvalluvar Aandu-2025.

No.II(2)/CFCP/4957/94.--In exercise of the powers conferred clause (b) of section 51 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983), and in supersession of Co-operation, Food and Consumer Protection Department Notification No.II(2)/

CFCP/3771/91, dated the 18th June 1991, Published at page 4, of Part II-Section 2 of the Tamil Nadu Government Gazette, dated 10th July 1991, the Governor of Tamil Nadu hereby remits in full, the fees payable by on behalf of any co-operative society for the time being registered or deemed to be registered under the said Act, or in respect of any instrument executed by or on behalf of or in favour of any officer or member and relating to the business of such society subject to the condition.

(a) that fees for registration and fees for search at the full rates shall be payable in respect of documents of the value exceeding Rs.10,000 (Rupees ten thousand only) and applications for encumbrance certificates for loans exceeding Rs.10,000 (Rupees ten thousand only);

(b) that no fee shall be payable in respect of applications for encumbrance certificate for loans not exceeding Rs.10,000 (Rupees ten thousand only) made by the Co-operative Land Development Banks; and

(c)that in cases not falling under clause (b) above, the fee payable in respect of each application for encumbrance certificate applied for by a co-operative Land Development Bank in respect of properties situated in villages in one and the same registration sub-district be reduced to that chargeable for search for entries or documents relating to one and the same property or in favour of one and the same individual irrespective of the result of the search as regards the number of ownerships.

10. As seen from the aforesaid G.O., it provides for a blanket exemption from payment of stamp duty for a registered Co-operative Society in respect of instruments executed by them on its behalf or in favour of any officer or member and relating to the business of such Society subject to the fulfilment of other conditions mentioned in (a), (b) and (c) in the same G.O. The conditions (a), (b) and (c) all deal with the registration fee and other fees and do not deal with stamp duty. The G.O. also does not distinguish depending upon the nature of lands conveyed by the Co-operative Society. This being the case, a community hall is also entitled for exemption from payment of stamp duty under G.O. Ms. No.2179 (Co-operation) department, dated 29.06.1966. The By-law No.2 of the petitioner's Society also makes it clear that the objects of the Society includes to promote layouts as developed house sites for distribution amongst the members of the Society and provide for common amenities, like roads, drainage, street lights, parks, playgrounds, schools, colleges, hospitals, community halls, water works, markets, police station, post office, banks, places

of worship etc. As seen from By-law No.2, it is clear that the petitioner Society is entitled to provide a space in the layout for community halls. In the instant case, they have provided a space for community hall in the layout and sold the community hall to its members under the sale deed dated 30.04.2012. Therefore, the contention of the respondents that G.O. Ms.2179 / Co-operation department dated 29.06.1966 does not provide for exemption in respect of community hall is unsustainable.

11. Insofar as the plea of alternate appellate statutory remedy is concerned raised by the respondents, the writ petition has been filed in the year 2014. No useful purpose will be served if the petitioner is now driven after a lapse of more than five years to approach the appellate authority as the ultimate result will be the same as G.O. Ms.2179 / Co-operation department dated 29.06.1966 applies to community halls also.

12. For the foregoing reasons, this Court is of the considered view that the impugned proceedings in pending document No.154/2012 dated 03.05.2013 in respect of the sale deed dated 30.04.2012 is not in accordance with law. Hence, this Court quashes the impugned proceedings dated 03.05.2013 issued by the third respondent and the writ petition is allowed. However, it is made clear before releasing the document to the petitioner, the third respondent shall obtain an affidavit of undertaking from the petitioner as well as the purchasers under the sale deed dated 30.04.2012 that they will be utilising the property only for a community hall and in case they violate the said condition, they shall pay the deficit stamp duty of Rs.27,02,233/- together with interest at 18% p.a. from 30.04.2012, being the date of the sale deed to the third respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector General of Registration
Santhome High Road,
Santhome,
Chennai.

2. The District Registrar,
   Chennai South,
   Saidapet,
   Chennai - 600 015.

3. The Sub - Registrar
   Guduvancherry,
   Chennai.

+1cc to the Government Pleader Sr.5711
+1cc to Mr.P.Sivamani, Advocate Sr.5079

ssv[co]
srg 28/02/2020