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W.P.No.27936 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.27936 of 2019

Mousumi Dey
W/o.Tanaji Dey

... Petitioner

Vs.

The Sub-Registrar,
Puducherry.
Office of the District Registrar,
Government of Puducherry,
Puducherry.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned communication No.1630/RD/SR-Pdy/Audit/2019/1293 dated 28.08.2019 passed by the respondent and quash the same.

For Petitioner : Mr.R.Mugundhan

For Respondents : Mr.J.Kumaran
Additional Government Pleader
[Pondicherry]



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W.P.No.27936 of 2019

ORDER

This writ petition has been filed challenging the order dated 28.08.2018 passed by the respondent.

2. The case of the petitioner is that she is a resident of Puducherry and the Government of Puducherry, in order to encourage property holding by women, had granted 50% concession in stamp duty for women members acquiring property through deed of sale, exchange or gift, vide its notification No.8834/Rev.C3/2004 dated 17.12.2004 and this is popularly known as “Women Purchaser Concession”. This was amended, vide notification dated 31.08.2009 so as to restrict the concession to the women residents of Puducherry only. On 21.02.2018, the petitioner had purchased a house property situated at Louie Prakasam Street at Puducherry, vide Sale deed registered as Document No.3533 of 2018, valued at Rs.90,00,000/- and the petitioner had paid the required stamp duty of Rs.4,50,000/- payable by a women purchaser in Puducherry. The petitioner had purchased the property through housing loan obtained from ICICI Bank Limited, Puducherry for an amount of



W.P.No.27936 of 2019

Rs.86,99,925/- and as per the RBI norms, she had executed a Memorandum of Deposit of title deeds on the same day of the purchase of the property i.e on 21.02.2018, which has been registered before the office of the District Registrar, Puducherry, vide Document No.3538 of 2018. Suddenly, on 30.09.2019, the petitioner had received a communication from respondent, bearing No.1630/RD/SR-Pdy/Audit/2019/1293 dated 28.08.2018 stating that she had mortgaged the property to a private bank and she has to remit the women purchaser concession availed by her within 10 days, failing which, the amount would be recovered by attaching the property. Challenging the said communication, the present writ petition has been filed before this Court.

3. The learned counsel for the petitioner submitted that the petitioner purchased the property in her name and also registered the same at that time as per Notification No.8834/Rev.C3/2004 dated 17.12.2004 and if any property is purchased in the name of a female, the same will have to be registered with a concession on stamp duty in the Union Territory of Puducherry. Though as per the above notification, the



W.P.No.27936 of 2019

petitioner had purchased the property by availing a loan from the ICICI Bank and also after availing the loan, she purchased the property and registered the property in the name of the petitioner, the respondent also executed the sale deed and granted the concession and subsequently, after one year from the date of registration, the impugned order was passed by the respondent, which is against their own Government Order. Though in the impugned order, they referred about the amendment issued by the Department of Revenue, wherein the amendment was only with regard to the residents of the Puducherry and not other than that, the impugned order is against the notification and the same is liable to be quashed.

4. The learned Additional Government Pleader (Pondicherry) appearing for the respondent submitted that the concession granted is only to the female members, with a condition that the female member should not alienate the property within five years, whereas the petitioner, soon after the purchase of the property, registered the sale deed and availed the concession and she deposited the documents before the ICICI



W.P.No.27936 of 2019

Bank, which is against the above said Notification. The mortgage also amounts to alienation, since she mortgaged the property and violated the conditions and therefore, the impugned order passed directing the petitioner to pay the stamp duty, which was availed by way of concession at the time of registration of documents.

5. Heard both sides and also perused the materials available on record.

6. Admittedly, the petitioner purchased the property in her name and also registered the documents. As per the said notification, she availed the concession on payment of stamp duty and the documents were also registered and subsequently, one year later, the impugned order was passed by the respondent on the ground that the petitioner had deposited the title deed before the ICICI bank and there should not be any mortgage in favour of any private bank, as per the amendment. There is no such amendment placed by the respondent and further the Notification clearly shows that the property should be purchased by a



W.P.No.27936 of 2019

female member and after purchase, the female member should not alienate the property to a male member within 5 years. In this case, there is no such violation. The only violation pointed out by the respondent is that they mortgaged the property to the ICICI bank i.e a private bank which is in violation of relevant Rules. There is no such condition imposed in the Notification and therefore, even in the sale deed itself, there is a recital about the availing of loan from the ICICI bank and there was an agreement between the petitioner and the ICICI bank regarding the financial assistance and also the purchase of the property. Therefore, nothing has been suppressed by the petitioner in the sale deed in this regard and the respondent had also provided the concession. On reading the entire materials on record, it is seen that there is no violation of the conditions imposed in the Notification and further, the respondent has not produced any material to show that subsequent to the purchase of the property, the petitioner had mortgaged the property by way of depositing the title deeds with the ICICI bank, which amounts to alienation and also the ICICI bank falls under the nomenclature of male member and therefore, in the absence of the same, the contention of the respondent is



W.P.No.27936 of 2019

not sustainable and therefore the impugned order passed by the respondent is hereby quashed and the same is set aside.

7. This writ petition is accordingly allowed. However there shall be no order as to costs.

12.12.2023

Index : Yes
Internet : Yes/No
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W.P.No.27936 of 2019

P.VELMURUGAN, J.

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To
The Sub-Registrar,
Puducherry.
Office of the District Registrar,
Government of Puducherry,
Puducherry.

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