IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.21677 of 2024
W.M.P.No.23649 of 2024

P.Savitha ...Petitioner

Vs

1.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalai Puram,
Chennai – 600 028.

2.The District Registrar,
Saidapet, Chennai – 600 035.

3.The Joint – 1 Sub Registrar,
Chennai Sourth, Saidapet,
Nandanam, Chennai – 600 034. ...Respondents

PRAYER :-Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus, directing the third respondent to return the registered Sale Deed dated 28.03.2023 bearing Document No. 4645 / 2023 to the petitioner.

For Petitioner : Mr.Balasubramanian,Senior counsel
for Mr.T.Mahendran

For Respondents : M/s.Meera Arumugam (For R1 to R3)
Additional Government Pleader

ORDER

The present Writ Petition has been filed seeking direction to the third respondent to return the registered Sale Deed dated 28.03.2023 bearing Document No. 4645 / 2023 to the petitioner.

2.It is the case of the petitioner that she is a retired employee of the Reserve Bank of India, Chennai. The Reserve Bank staff Co-operative House Construction Society limited had been formed with an intent to build residential flats in the land owned by them at Besant Nagar, Chennai. The Society had constructed 84 residential flats in two phases in the property situated at Door No.59, Arun Dale beach road, Besant Nagar, Chennai – 600 090 and Door No.4, Coastal Road, Besant Nagar Chennai – 600 09. To become a member of the society the person ought to be a bonafide employee of the Reserve Bank of India or its subsidiaries.

3. The society had originally allotted plot No.C-47, Second floor, to one K.R.Subramanian and due to his health issues the said Subramanian

had requested the society to cancel and transfer the same to some other person. Thereafter, flat was transferred to the petitioner for sale consideration of Rs.9,00,000/-. The petitioner was admitted as a member on 13.11.2001 and shares of the society had been allotted to her. The flat was transferred in her name with effect from 25.04.2002. She had obtained housing loan from the Reserve Bank of India and had repaid the entire loan and she was issued with a no due certificate on 21.06.2018. The petitioner would submit that due to the Covid-19 pandemic from the year 2020 and due to her other family commitment she was unable to follow up with the Society to register the sale deed. Meanwhile, the society had been wound up through an order dated 23.12.2020 and liquidator was appointed to manage the affairs of the society. On 17.09.2022, the petitioner had given a request to the liquidator to execute and register a sale deed for the said flat. The same was also executed by the liquidator on 28.03.2023 and the said sale deed was registered as document No.4645/23. The petitioner had paid a stamp duty of Rs.63,100/- and registration fee of Rs.36,000/- for the consideration of Rs.9,00,000/-. Since the petitioner is the member of the society she is entitled to the benefit of exemption in paying stamp duty and registration fees.

4.The learned counsel appearing on behalf of the petitioner would submit that under the Societies Registration Act under Section 51 of the Societies Registration Act, the company has the power to exempt societies from payment of stamp duty and registration fee.

5.Though the sale deed was registered by the second respondent however, the same was not released to the petitioner. She had lodged a complaint on 17.04.2024 to the first respondent and immediately thereafter, the third respondent's letter pre-dated as 21.02.2024 was received by the petitioner on 09.05.2024 stating that the petitioner had to pay the deficit stamp duty and registration fees for the market value for the flattened land. This decision has been arrived at unilaterally without affording an opportunity to the petitioner, the third respondent had not initiated proceedings under section 47 A (1) of the Indian Stamp Act. Therefore, the petitioner has approached this Court for a mandamus directing the third respondent to return the registered deed.

6.Counter affidavit has been filed by the third respondent interalia denying the claim of the petitioner. The respondent would submit that the property was valued at Rs.9,00,000/- and a sum of Rs.63,000/- was paid as stamp duty and Rs.36,000/-as registration fees whereas the guideline value for the land and building as on date a sum of Rs.97,67,350/- and therefore, there was a deficit stamp duty of Rs.6,20,620/- and registration fee of Rs.1,59,350/- in all totalling a sum of Rs.7,79,970/-. The respondent would submit that stamp duty in respect of instrument executed by the Co-operative Society is exempted from notification issued under G.O.M.S.No.2179 (Co-Operation) dated 29.06.1966.

7.The respondents have taken out a novel defence that when the petitioner was admitted as a member of the Reserve Bank Staff Co-operative House Construction Society limited, the flat in question was originally allotted to one Subramanian bearing membership No.106, he has to transfer the shares and title in respect of the flat to the petitioner and that request has been accepted by the Special officer by resolution dated 10.04.2002. The petitioner was admitted as a member on 13.11.2001. It is seen that the interest, share and title of the flat No.47 had been transferred to the petitioner. Therefore, the petitioner is not entitled to avail exemption and since the petitioner is not entitled to exemption, she is entitled to pay the entire amount and the deficit stamp duty.

8.In a answer to a query made by this Court, the learned Additional Government Pleader had fairly conceded that proceedings under Section 47 A (1) had not been initiated. Even as per the counter filed by the third respondent it is seen that the members of Co-operative Society are exempted from stamp duty in respect of an instrument executed by the Co-operative Society. The clause 1 and 2 of the said G.O.Ms.No.2179 (Co-operation), dated 29.06.1966, would read as follows:-

> *1)Instrument executed by or on behalf of any such society or by an officer of member thereof and relating to the business of such society:*
>
> *provided that in the case of a conveyance deed executed in respect of a house, constructed by the Co-operative House Construction Societies, the remission shall not operate unless such deed is in favour of a member to whom the property conveyed was allotted and period of not less than five years has elapsed since the date of such allotment.*

Provided further that in the case of a sale deed executed in favour of any such society the remission shall not operate unless the vendor has been a member of such society continuously for a period of not less than two years immediately before the date of the execution of the sale deed; and

2)Decisions, or orders of the Registrar or the arbitrators under the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961).

9.A mere reading of the 1st proviso to clause 1 would clearly show that remission is available in case of conveyance deed where deed is executed in favour of a member to whom the property has been allotted and such allotment has been made not less than five years from the date of the document. The second proviso further provides that the remission will operate only if the vendor is a member of the society continuously for a period of not less than two years immediately preceding the execution of sale deed. In case on hand, the petitioner had become a member of the Society on 13.11.2001 and the allotment had been made on the same day. The sale in question has been executed on 28.03.2023. Therefore, the second proviso would also apply in the case of the petitioner.

10.That apart proceedings under section 47 A of the Registration Act, 1908, for under valuation has not been initiated by the respondent to date. In a judgment of this court in W.P.No.16914 of 2014 where the Writ Petition in question was challenging the proceedings of the registering authority calling upon the petitioner to pay deficit stamp duty and registration charges in respect of the property allotted to the petitioner by Housing Society referring to G.O.Ms.No.2179 the learned judge has observed as follows:-

> *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.*

11.Therefore, there is no impediment to the release of the document. Accordingly, the Writ Petition is allowed and the third respondent is directed to release the document within a period of two weeks from the date of receipt of copy of this order without insisting on payment of additional stamp duty and registration charges. Consequently, connected miscellaneous petition is closed. No costs.

17.12.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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To

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