(2010) 04 MAD CK 0335

In the Madras High Court

Case No : Writ Petition No. 19149 of 2003 and W.M.P. No. 23946 of 2003

R. Krishnamurthy — APPELLANT

Vs

The Inspector General of Registration and Chief Revenue Control Officer, The Sub-Registrar (District Registrar Cadre) and The Allottee Service Manager, Tamil Nadu Housing Board — RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 3 LW 417 : (2010) 6 MLJ 362 : (2011) 1 RCR(Civil) 522

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Chitra Narayan, for the Appellant; C.K. Vishnu Priya Government Advocate for R1 and 2 and A. Vijaya Kumar, for R3, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The Petitioner R. Krishnamurthy was allotted the flat bearing No. 454/12, TNHB Flats, 7th Main Road, Anna Nagar, Chennai by the Tamil Nadu Housing Board, the third Respondent herein. The cost of the flat was fixed by the second Respondent at Rs. 8,27,100/-, of which the undivided land cost was apportioned at Rs. 4,06,000/- and the building cost at Rs. 4,21,100/- reading G.O. Ms. No. 231, Housing and Urban Development Department (wrongly referred as G.O. Ms. No. 238) dated 27.03.2001.

2. The Petitioner based on G.O. Ms. No. 231 dated 27.03.2001, paid the stamp duty of Rs. 52,800/- on the value of Rs. 4,06,000/- towards the cost of the undivided share of the land conveyed to him and a registration fee of Rs. 4,160/-. Though the sale deed was registered by the second Respondent, the original document was retained by him. Of course, after obtaining an interim order in this writ petition, the original sale deed was released to the Petitioner by the second Respondent. The original document was retained by the second Respondent on the ground that stamp duty towards building cost of Rs. 4,21,000/- was not paid by the Petitioner. The second Respondent passed the

impugned order on 25.06.2003 directing payment of stamp duty for the total consideration of Rs. 8,21,000/- namely a sum of Rs. 54.943/- being a shortfall of stamp duty and Rs. 557/- towards penalty aggregating to Rs. 55,280/-. The said order passed by the second Respondent is under challenge in the present writ petition.

3. The first Respondent filed counter on 12.12.2003 stating that G.O. Ms. No. 231, Housing and Urban Development Department dated 27.03.2001 does not specifically exempt stamp duty payable by the allottee towards the building cost. It is further contended that inasmuch as the aforesaid Government Order was not notified as directed therein by the Commercial Tax Department, the question of praying for exemption invoking the aforesaid un- notified Government Order does not arise for consideration.

4. The learned Counsel appearing for the Petitioner producing a copy of G.O. Ms. No. 226/Commercial Taxes (J1) Department, dated 15.12.2003 annexing therewith the Notification directed to be published in the Tamil Nadu Government Gazette, would submit that subsequent to the counter filed by the first Respondent, the Commercial Taxes Department was pleased to order publication of the aforesaid Government Order in Official Gazette on 15.12.2003. Further, he would submit that as per G.O. Ms. No. 231, Housing and Urban Development Department dated 27.03.2001 only the undivided share allotted to the Petitioner is chargeable to stamp duty by the second Respondent and not the building cost.

5. The learned Counsel appearing for the third Respondent would submit that the flat allotted to the Petitioner was constructed prior to 01.02.2001 and the same could not be sold till the allotment was made to the Petitioner. It is his further submission that the third Respondent had specifically referred to the application of G.O. Ms. No. 231, Housing and Urban Development Department dated 27.03.2001 and calculated separately the building cost and the un-divided share in the draft sale deed. The third Respondent is not concerned with the instructions of payment of stamp duty by the second Respondent for the building cost.

6. The learned Government Advocate appearing for Respondents 1 and 2 would submit that there is no specific exclusion of the building cost from the levy of stamp duty by the second Respondent in G.O. Ms. No. 231, Housing and Urban Development Department dated 27.03.2001. Therefore it is submitted that the Petitioner cannot lawfully claim exemption of stamp duty for the construction cost.

7. On a careful perusal of G.O. Ms. No. 231, Housing and Urban Development Department dated 27.03.2001, it is found that the Government carefully examined the suggestion proposed by the High Level Committee in order to sell away the un-sold flats/houses/plots as on 01.02.2001. The Government also was apprised of the fact that there were no appreciable takers for the flats/houses/ plots promoted by the Housing Board, as the allotted would have to pay hefty

stamp duty towards the undivided shares of land as well as the building cost. It also examined the fact that the concession extended to the allottees in the matter of payment of stamp duty with respect to construction cost, which was withdrawn with effect from 23.06.1993, resulting in stagnation in the sale of flats / houses / plots promoted by the Housing Board. In the aforesaid background, the Government thought it fit to issue the aforesaid Government Order relaxing the stamp duty payable for the flats / houses / plots promoted by the Housing Board and remained unsold as on 01.02.2001. It has been specifically stated in the said Government Order that the stamp duty shall be imposed and collected only on the value of the undivided share of land fixed by the Tamil Nadu Housing Board as on the date of allotment, which, of course, includes the development charges incurred by the Tamil Nadu Housing Board.

8. Though the said Government Order would read that the order for publication of the said Government Order in the Official Gazette would be issued by the Commercial Taxes Department, it appears that for 2 long years the Commercial Taxes Department had not published the said Government Order in the Official Gazette. The Commercial Taxes Department issued G.O. Ms. No. 226 Commercial Taxes (J1) Department dated 15.12.2003, pursuant to the orders issued by the Government in G.O. Ms. No. 231 dated 27.03.2001, ordering publication of the Notification in the Tamil Nadu Government Gazette.

9. Inasmuch as G.O. Ms. No. 231, Housing and Urban Development Department dated 27.03.2001 was published by the Commercial Taxes Department vide G.O. Ms. No. 226 dated 15.12.2003, the aforesaid G.O. Ms. No. 231 dated 27.03.2001 has been given effect to. As per the G.O. Ms. No. 231 dated 27.03.2001, the allottees of the flats / houses / plots promoted by the Housing Board, which were not sold as on 01.02.2001, are bound to pay stamp duty only for the value of undivided share of land fixed by the Tamil Nadu Housing Board as on the date of allotment including the development charges incurred by the Tamil Nadu Housing Board. The Petitioner was admittedly allotted a flat which was promoted by the Housing Board but could not be sold as on 01.02.2001. Therefore the Petitioner is entitled to the benefits of the aforesaid Government Orders and the second Respondent cannot lawfully insist upon payment of stamp duty for the cost of construction of the flat.

10. Of course, the learned Counsel appearing for the Respondents would submit that an appeal remedy is available for the Petitioner before the first Respondent as against the impugned order passed by the second Respondent.

11. Firstly, it is found that the second Respondent insisted upon the payment of deficit stamp duty for the cost of construction, which was exempted as per the aforesaid Government Order. The Petitioner cannot be found fault with for the delay occasioned in taking steps by the Commercial Tax Department for publishing the Government Order in the Official Gazette. In fact, the concurrence of not only the Commercial Department but also the Finance Department, was obtained before the aforesaid G.O. Ms. No. 231 dated 27.03.2001 was issued by

the Government. Secondly, it would be unjust to direct the Petitioner to go before the first Respondent/Appellate Authority after a lapse of about seven long years. This Court, in fact, entertained a similar writ petition in W.P. No. 8916 of 2003 and straightway granted the relief as prayed for by the Petitioner therein. For the same set of facts, different yardstick cannot be adopted by this Court.

12. In view of the above, the impugned proceedings issued by the second Respondent stands quashed and the second Respondent is directed not to collect any stamp duty towards the cost of construction of the flat allotted to the Petitioner by the third Respondent.

13. With the above direction, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

