
(2017) 05 CAL CK 0003
In the Calcutta High Court
Case No : 100 of 2017

Saroj Kumar Bandyopadhyay

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
West Bengal Co-operative Societies Act, 2006, Section 92, Section 76

Citation : (2017) 05 CAL CK 0003

Hon'ble Judges : DEBANGSU BASAK

Bench : SINGLE BENCH

Advocate : Jishnu Saha, Rishab Banerjee, Souvik Mazumdar, Chhama Mukherjee, Ayon Banerjee

Judgement

1. The subject matter of challenge in the present writ petition is a decision dated December 6, 2016 taken by the Deputy Inspector General of Registration by which an application of the petitioner for benefit under the notification dated January 10, 2014 has been turned down.

2. Learned Senior Advocate for the petitioner submits that, the mother of the petitioner was one of the members of the co-operative society. The mother of the petitioner had nominated the petitioner as her nominee in respect of the share held by her in the co-operative society. The mother of the petitioner had, thereafter, transferred her share to the petitioner. The co-operative society was yet to construct a building on the land allotted. With the construction of the building, the petitioner became entitled to a conveyance in respect of the flat allotted to the petitioner as a member of the co-operative society. The petitioner had applied for the benefits of the notification dated January 10, 2014. The authorities have denied the benefit to the petitioner on the ground that, the transfer of the interest of the mother of the petitioner in the cooperative society is to be taken as the first transfer and that, the conveyance between the co-operative society and the petitioner will not get the benefit of remission of stamp

duty in terms of the notification dated January 10, 2014 as it would be the second transfer. He relies upon 1977 Volume 3 Supreme Court Cases page 247 (Narandas Karsondas v. S.A. Kamtam & Anr.) and 2011 Volume 4 Calcutta High Court Notes (Cal) page 405 (Fort William Industries Ltd. v. Official Liquidator).and submits that, a transfer of the interest of the mother of the petitioner in favour of the petitioner prior to the construction of the building by the co-operative society would not mean a transfer of title in an immovable property by the mother of the petitioner. He submits that, such a transfer was not required to be compulsorily registered. Therefore, the conveyance to be executed by the co-operative society in favour of the petitioner would be the first transfer and would, therefore, come within the remission permitted by the notification dated January 10, 2014.

3. Learned Advocate appearing for the State submits that, the petitioner is the second transferee and, therefore, not entitled to the benefit of remission of stamp duty as contemplated in the notification dated January 10, 2014. Such notification permits a remission of stamp duty in respect of the transfer between the co-operative society to its member. Membership having been transferred to the petitioner, such transfer would be considered as the first transfer and, therefore, the petitioner is to be considered as the second transferee. She relies upon Section 76 and Section 92 of the West Bengal Co-operative Societies Act, 2006. She submits that, the mother had executed a deed of gift in favour of the petitioner in respect of the share held by the mother in the cooperative society. She refers to the application seeking exemption made on behalf of the petitioner and the admission made therein of the fact that, the mother of the petitioner had transferred the membership in favour of the petitioner.

4. The petitioner is a member of a co-operative society registered under the West Bengal Co-operative Societies Act, 1983. The cooperative society was incorporated on August 12, 2004. The mother of the petitioner was one of the members of the co-operative society at the time of its registration. The co-operative society had acquired an immovable property by virtue of a deed of sale dated June 25, 2008. The mother of the petitioner had withdrawn her membership from the cooperative society. She had transferred her membership to the petitioner.

5. The petitioner claims to be a Secretary of the co-operative society and to have participated in the day to day affairs of the co-operative society. This would appear from the writing of the petitioner dated November 7, 2006. The admission of the petitioner to the co-operative society was approved by the Joint Registrar of Co-operative Societies by a writing dated August 13, 2010. Subsequent to the petitioner becoming a member of the co-operative society, the society had obtained a sanctioned building plan and had constructed a building thereon. The petitioner, thereafter, had applied for the benefit under the notification dated January 10, 2014 by a writing dated November 7, 2016. Such request was considered by the Deputy Inspector General of Registration and

negated by the writing dated December 6, 2016. Such negation is under challenge in the present writ petition.

6. The petitioner traces his right to the notification dated January 10, 2014. Such notification is as follows:- "Whereas the Governor is of the opinion that there are reasonable grounds for doing so; NOW, THEREFORE, in exercise of the power conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899 and sub-section (2) of section 78 of the Registration Act, 1908 (16 of 1908), the Governor is pleased hereby to remit the Stamp Duty and Registration fees chargeable under the above mentioned Acts, on the amount of difference, if any, between the cost of construction of the property of a Co-operative Housing Society in the State to be determined on the basis of the audit report of the Co-operative Housing Society including the additional cost incurred by the individual members towards internal works etc. as suggested by the registering authority concerned and the present market value of the property as per assessment made by the registering authority, for the purpose of execution of deed of conveyance/transfer of the property by the Co-operative Housing Society in favour of its members who purchased or otherwise acquired their plots of land and built flats/houses themselves through the said Co-operative Housing Society and not by any promoter.

7. Whereas, the Governor is also pleased to decide that the benefits under this order might be available for the flats/houses which have already been constructed through the Co-operative Housing Society on or before 31.03.2013, if the registration is done on or before 31.03.2014.

8. For the flats/houses which are constructed or to be constructed on a subsequent date i.e. after 31.03.2013 through a Co-operative Housing Society as mentioned above, the benefit under this order may be available if the registration is done within twenty four months from the date of completion of the construction work.

9. The benefit given under this order will not be applicable in case of 2nd or subsequent transfer of the property by a member of any Co-operative Housing Society."

10. The notification speaks of grant of remission in respect of a deed of conveyance/transfer of the property by the co-operative housing society in favour of its members who purchased or otherwise acquired their plots of land and built flats/houses themselves through the co-operative housing society and not by any promoter. It goes on to say that the benefit will not be applicable in case of second or subsequent transfer of the property by a member of any co-operative housing society. The benefit of the notification dated January 10, 2014 is limited to a member of a co-operative housing society who purchased or otherwise acquired a plot of land and built flats/houses themselves through the co-operative housing society. Involvement of a promoter will take the co-operative housing society and its member out of purview of such notification. The

benefit is not extended to the second or subsequent transfer of the property.

11. In the present case, the society concerned is a co-operative housing society. The society was incorporated on August 12, 2004. It acquired a land on June 25, 2008. The petitioner became a member of the cooperative housing society after the society had acquired the land. The co-operative housing society went on to construct a building therein. The notification says that, the benefit thereof is available to a member of a co-operative housing society who continues to remain as a member from the time of purchase of the land till the house or the flat is built thereon. The benefit is not available to a second or a subsequent transfer of the property by a member of such co-operative housing society. The transfer contemplated herein is a transfer inter vivos and not one by way of succession. The present case concerns a transfer inter vivos by the mother of the petitioner in favour of the petitioner. Section 92 of the West Bengal Co-operative Societies Act, 2006 deals with rights of members. It is as follows:- "92. Rights of members.- (1) Any allotment (including reallocation) of a plot of land or a house or apartment in a building made by a Co-operative housing society to its member in accordance with its by-laws shall entitle such member to hold such plot of land, house or apartment, as the case may be, with such title or interest as may be granted under the prescribed conditions, and, subject to the provisions of sub-section (1) of section 61 an instrument of transfer in accordance with the provisions of Transfer of Property Act, 1882 (4 of 1882) and the Registration Act, 1908 (16 of 1908), shall be the conclusive evidence of such title or interest in favour of such member. (2) A member of a Co-operative housing society shall not be entitled to any title or interest in any plot of land or house or apartment in a building until he has made such payment as may be prescribed towards the cost of such plot or land or construction of such house or apartment or both as the case may be, to the Co-operative housing society. (3) A plot of land or a house or an apartment in a building (including the undivided interest in the common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force :

Provided that notwithstanding anything contained in any other law for the time being in force, such heritable and transferable immovable property shall not be partitioned or subdivided for the purpose whatsoever : Provided further that notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, an heir who is a nominee in respect of a share and interest in a flat or house or plot in a Co-operative housing society shall be eligible to be admitted as a member of the Cooperative housing society irrespective of the fact whether he owns any property by his own right or inheritance or by marriage provided he declares that he has requirement for such residential accommodation : Provided also that membership of a person in a Cooperative housing society shall not cease if the member himself or any member of his family becomes owner of any land, house or flat through inheritance and if he still continues to have genuine need of accommodation in the project of the society.

(4) Every member of a Co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or house or apartment allotted to him.

(5) Every member of a Co-operative housing society in whose favour a plot of land or a house or an apartment in a building has been allotted shall have the right to use the common areas and facilities as aforesaid for the purpose for which they are intended without interfering with or encroaching upon the lawful rights of other members in whose favour similar allotment has been made.

(6) The work relating to the maintenance, repair and replacement of the common areas and facilities (including additions or improvements thereto) shall be carried out in accordance with the by-laws of the co-operative housing society and the building rules of the concerned municipality, notified area authority or competent authority, as the case may be, and the costs thereof shall be apportioned amongst the members of the Co-operative housing society in such a manner as may be prescribed." Under Sub-section (2) of Section 92, the right of a member of a cooperative housing society to receive any title or interest in any plot of land or house or apartment in a building will not come into being until such member made such payment as may be prescribed towards the cost of such plot or land or construction of such house or apartment or both, as the case may be, to the co-operative housing society. It is contended on behalf of the petitioner that, till such time Subsection (2) of Section 92 is fulfilled and in the present case the same gets fulfilled subsequent to the petitioner becoming a member of the cooperative housing society, the existing member prior thereto does not acquire any title to the flat or the land in question. Such member is, therefor, entitled to assign his rights of membership in the co-operative society to another person. Such assignment does not require a registration. Such assignment is not a transfer of title in an immovable property requiring registration under the provisions of the Transfer of Property Act or the Registration Act. Therefore, such assignment cannot be construed to be a transfer for the purpose of the notification dated January 10, 2014.

12. Fort William Industries Ltd. (supra) recognizes that, a purchaser of assets of a company in liquidation is entitled to have the conveyance executed in favour of its nominee. It is not a case of remission of stamp duty. Present case concerns the benefits of a notification of the State Government which was not in consideration in Fort William Industries Ltd. (supra). Narandas Karsondas (supra) concerns the right of redemption of a mortgagor. It considers the word "transfer" and the word "convey". It says that the word transfer in English Law in its narrower and more usual sense refers to the transfer of an estate in land. The word "conveys" in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership. Again the notification in consideration in the present case was not in consideration therein. In the facts of the present case, while the mother of the petitioner was a member, she had become entitled to receive an allotment of the land. The co-operative housing society, however, did

not allot the same at that point of time and had proceeded to construct a building thereon. After completion of the construction of building it had proceeded to decide to convey the flat to the existing members. By such time the petitioner had become a member of the co-operative housing society. Emphasis is placed on the words "second or subsequent transfer of property by a member" used in the subject notification. According to the petitioner, the transfer of share from the mother to the petitioner is not a transfer of property as such transfer is not compulsorily registrable and does not relate to an immovable property. The notification relates to transfer of property. It does not say transfer of immovable property. By property one understands it to be anything that can be owned by a person or a legal entity. A share in a co-operative housing society would, therefore, be a property. It is transferable subject to the by-laws governing to the co-operative society. The Registration Act may not require the deed of transfer of a share held in a co-operative society to be compulsorily registrable. The subject notification dated January 10, 2014 does not contemplate a transfer of property within the meaning of such notification. The government has taken a view that, an inter vivos transfer of membership will be construed to be a transfer which denies the benefits of the subject notification. Such a view is a probable view of the notification. I find no material irregularity in such a view warranting an interference under Article 226 of the Constitution of India. W.P. No. 100 of 2017 is dismissed. No order as to costs.