(2007) 03 KL CK 0001

In the High Court Of Kerala

Case No : OP No. 3500 of 2001

The Kerala State Co-op. Consumers Federation Ltd. — APPELLANT

Vs

The Sub-Registrar — RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:
Kerala Stamp Act, 1959 — Section 30, 31, 33(1), 39, 54(2)

Citation : (2008) 1 KLJ 809 : (2007) 1 KLJ 809

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : M. Pathrose Mathai, Saji Varghese and Mariam Mathai, for the Appellant; Remani, G.P., for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Petitioner, a registered co-operative society under the control of the Government, purchased immovable property from another co-op. society by name Palakkad Wholesale Co-op. Consumer Stores Ltd., which was under liquidation. The purchase was in public auction conducted by the Liquidator which was confirmed by High Court by it''s orders dated 20-1-1998. (sic) Ext. P1 Govt. Order grants exemption from stamp duty, for documents including inter-Co-operative Societies sale deeds, sale deed in white paper was presented for registration. The Sub Registrar, however, expressed doubt about the eligibility for exemption from stamp duty under the Kerala Stamp Act, 1959 based on the above notification, and therefore he impounded the document and forwarded the same to the District Registrar, Palakkad u/s 33(1) of the Stamp Act for adjudication. Since the District Registrar acting in exercise of power under Sections 31 and 39 of the Stamp Act himself felt doubt about the chargeablity of the instrument, he referred the matter for opinion of the Government u/s 54(2) of the Act. Pursuant to reference the Government heard the petitioner and held that instrument is not entitled to exemption from stamp duty under Ext.P1 notification claimed by the petitioner, and consequently stamp duty was ordered to be recovered vide Ext. P3 proceedings against which this W.P.C. is filed.

2. I have heard senior counsel Sri. Pathrose Mathai appearing for the petitioner and Government Pleader appearing for the respondents. The relevant clause in the notification MS. 795/60/Agri. dated 8-10-1960, produced as Ext.P1 in the O.P., which was published in the gazette dated 18-10-1960, is extracted hereunder for easy reference:

1. The stamp duty registration fees and fees for encumbrance certificate payable under the stamp act and the Registration Act in force in the state shall be remitted to the co-operative societies in the following cases to the extent indicated in each case.

(a). The whole stamp duty with which under the Kerala Stamp Act, 1959 (Act 17 of 1959) instruments executed by or on behalf of any registered co-operative society or instruments executed by any officer or member of such society and relating to the business thereof and decisions, awards, or orders of the Registrar of the Arbitrators under the said co-operative Societies Act, provided that in the case of sale deeds, the Vendors have been continuously the members of such society for a period of two years immediately prior to execution of the instrument.

In exercise of delegated powers u/s 54(2) of the Stamp Act, the Land Revenue commissioner vide Ext. P3 held that petitioner is not entitled to exemption from stamp duty under the above Govt. order for the reason that sale is not for the purpose of business of the society. Government Pleader during hearing also highlighted this argument and contended that exemption is available only when transfer of property is for the purpose of business of the society and not when co-operative society sells property in liquidation proceedings. Senior counsel appearing for the petitioner on the other hand contended that any deed executed on behalf of the registered co-operative society is entitled to full exemption from stamp duty and registration charges as provided in the notification. According to him, the qualification of the deed as one for the purpose of business applies only in respect of instruments executed by any officer or member of such society.

3. On going through the above notification and after hearing both sides, I am unable to agree with the reasoning in Ext.P3 for denying exemption from stamp duty for more than one reason. In the first place eligibility for exemption under Ext.P1 G.O. has to be considered with reference to the person who is liable for stamp duty under the Act. Section 30(b) of the Stamp Act provides that stamp duty is payable in the case of conveyance by the grantee. Therefore petitioner being the purchaser is liable to pay stamp duty under the Act for the instrument and department has also no case to the contrary because stamp duty is demanded from the petitioner. If the petitioner is liable, then the question to be considered is whether the purchase is for the purpose of business of the petitioner which is also not dirputed by the Government as petitioner, a Co-operative Society, is admittedly a going concern engaged in business and is under the control of the Government. Therefore, purchase is admittedly for

business purpose of the petitioner and so much so the condition in the notification is satisfied. Secondly, the exemption Clause 1(a) refers to several types of instruments. Under the first category, documents executed on behalf of any registered society are exempted from stamp duty. The seller in this case is a registered co-operative society, though under liquidation. The Liquidator effected sale in public auction and High Court confirmed the same. In fact it is admitted that cancellation of registration of the seller society is not effected by the Registrar u/s 74 of the Co-op. Societies Act and so much so the society, property of which was sold by the Liquidator after confirmation by the High Court, continues to be a registered society. Draft sale deed produced in this Court also contains a recital that the sale is on behalf of the registered co-op. society by the Liquidator acting in his capacity as such. Since the sale by the Liquidator is on behalf of the Registered society, the sale deed to be executed is entitled to exemption under the first part of Clause 1(a) of Ext.P1 G.O. The later part which deals with exemption with additional condition that such exemption will be available only when instruments are executed for the purpose of business applies to cases where instruments are executed by any officer or a member of such society which obviously can be instruments executed for and on behalf of the society by the employees or even documents executed in favour of the society by members. Besides these two categories, exemption is also available for any document executed pursuant to awards, or orders of the Registrar or Arbitrators under the Co-op. Societies Act. Since petitioner''s case is purchase of property from another co-op. society in liquidation proceedings, exemption from stamp duty is available under this limb of Ext.P1 notification also.

4. Therefore the interpretation given by the Commissioner of Land Revenue in Ext.P3 on Ext.P1 notification is wrong and unsustainable. In the circumstances, O.P. is allowed vacating Ext.P2 with direction to respondents to release the (sic) document after registration to me petitioner immediately on production of a copy of this judgment.

