S.F 381

Proceedings of the Chief Controlling Revenue Authority and Inspector General of Registration
Chennai – 600 028.

Present: Thiru.M.P.Sivanarul, I.A.S.,

D.Dis.No.50049/P1/2014 Dated 15.09.2022

Sub: Appeal–Document No.8401/2008–Sub Registrar Office, Guduvanchery– Appeal Petition under section 33A(3)of the Indian Stamp Act, 1899 against the order passed by District Registrar, Chennai (South) – order issued – regarding.

Ref: 1. District Registrar, Chennai (South) order No.10341/2014–2 dated 9.9.2014
2. Appeal from The Gandhi Nagar Co–operative Housing Society Ltd received on 5.11.2014

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ORDER:

An Appeal under section 33–A (3) of the Indian Stamp Act, 1899 has been filed before the Chief Controlling Revenue Authority against the recovery certificate 1st cited issued by the District Registrar, Chennai (South) under sectin 33A of the Indian Stamp Act, 1899 wherein it has been ordered to pay deficit stamp duty of Rs.56,38,062/–in respect of document No.8401/2008 on the file of Sub Registrar office, Guduvanchery.

2) Facts of the Appeal are as follows:–

Document No.	8401/2008
Office	Sub Registrar Office, Guduvanchery
Date of Execution	24.9.2008
Title	Sale Deed
Executants	1. M/s.Adarsh Private Ltd, Chennai (*Owner*) represented by its 'M.D' Mr.N.Srinivasa Babu 2. Mr.R.Ramesh S/o Mr.R.Radhakrishnan, Neyveli (*Agreement Holder In Possession*) represented by his power Agent Mr.B.Sathish Kumar
Claimant	The Gandhi Nagar Co–Operative Housing Society

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	Limited, Chennai.
Consideration mentioned in document	Rs.7,04,75,724/-
Stamp Borne by the deed	Nil
Deficit stamp duty determined by the District Registrar	Rs.56,38,062/-

As per recitals of the above document, the first executant (M/s.Adarsh Private Ltd) is the owner of the property sold under the instant sale deed. Whereas the 2nd executant is the 'Sale agreement holder in possession of the property'. After jointly developing the property in question, the first executant and 2nd executant decided to sell the property to The Gandhi Nagar Co-Operative Housing Society Limited, Chennai. Accordingly the current sale deed has been executed in favour of the said society. As the 1st executant's representative and 2nd executant's power agent were members of the claimant society, under the pretext that document in question is exempt from payment of stamp duty under G.O.Ms.No.2179, Co-operation Department, dated 29.6.1966, the document was executed without paying any stamp duty. The registering officer also allowed the stamp duty exemption and registered the document. At this juncture it would be pertinent to note that the first executant i.e., owner of the property is not a member of the said co-operative society and whereas the representative of the owner cum vendor and the 2nd executant's (an agreement holder) power agent alone are the members of the said society.

The aforesaid G.O provides for stamp duty remission in respect of any instrument (relating to business of the society) executed by a co-operative society or by its member. In view of the fact that the 1st executant who is the vendor, is not a member of the society, In the audit conducted by the Accountant General it was pointed out that loss of revenue due to incorrect grant of exemption of stamp duty

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has resulted. Consequently the registering officer referred the matter to the District Registrar, Chennai (South) under section 33A of the Indian Stamp Act, 1899 for recovery of the deficit stamp duty.

The District Registrar in his proceedings 1st cited issued a certificate under section 33-A(1) of the Act for recovery of deficit stamp duty of Rs.56,38,062/- on the ground that the document is ineligible for stamp duty concession under G.O.Ms.No.2179, Co-operation Department, dated 29.6.1966. Aggrieved over this decision of the District Registrar, present appeal has been preferred under section 33-A (3) of the said Act.

3) The Appellant was called upon for personal hearing on 13.2.2020, 27.1.2021, 5.3.2021, 18.3.2021, 22.7.2022 and on the said dates the Appellant pleaded for adjournments for various reasons and finally appeared for hearing on 3.8.2022.

Main contentions of the Revision petitioner are as follows:

i. The Managing Director of the executant company is member of purchaser cooperative society and hence the document is eligible for stamp duty exemption.

ii. Order of District Registrar dated 9.9.2014 which has been passed after a lapse of six years from the date of registration of document, 24.9.2008 is a time barred one.

iii. The underlying property has been sold as plots to the by the society to its members and hence it would be nearly impossible to collect the amount from the allottee members.

4) Contents of appeal, connected records, the arguments advanced by the Appellant during the personal hearing have been carefully examined by me.

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a) At the outset the point raised by the Appellant that 'the proceedings under section 33A is a time barred one' is adverted at first. In this regard the following court verdicts are noteworthy:

Constitution Bench of Supreme Court in Dattatraya Moreshwar v. State of Bombay 23 held that "*Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative.*"

In Shiveshwar Prasad Sinha vs The District Magistrate AIR 1966 Pat 144 it has been held that time limit prescribed under an enactment for performance of a thing by a public officer, the same would be directory and whereas such time limit is to be performed by private individuals should generally be considered as Mandatory.

In In P.T. Rajan vs. T.P.M. Sahir and others, Apex court held that "*it is a well settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory.*"

Hence in view of the aforesaid judicial pronouncements, the contention of the Appellant that proceeding under section 33A of the Indian Stamp Act, 1899 is a time barred one is not sustainable.

(ii) Secondly while adverting to the claim of the Appellant that although the owner (Company) of the property is not a member of the co-operative society but as the Managing Director of the executant company (owner of property) is a member of claimant cooperative society, the document in question is eligible for stamp duty exemption under G.O.Ms.No.2179, Cooperation Department, dated 29.6.1966, the following provisions of law and Apex Court verdict are noteworthy:

Section 182 of the Indian Contract Act, 1872 provides as follows:

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182. "Agent" and "principal" defined.—An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Section 2 of the Powers-Of-Attorney Act, 1882 provides as follows:

2. Execution under power-of-attorney.—The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

In State of Rajasthan vs. Basant Nehata – 2005 (12) SCC 77, Apex Court held that

"*A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.*

From the combined reading of aforesaid provisions of law and Apex Court verdict, it becomes clear that in the eye of law, any act done by the agent or

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representative has to be construed as an act of the principal only. Likewise any eligibility conditions, stipulations laid down in any enactment or notifications are to be necessarily satisfied by the Principal and not by the power agent or representative.

In the above backdrop, G.O.Ms.No.2179, Cooperation Department, dated 29.6.1966, which provides that '*instrument executed by or on behalf of any such society or by an officer or member thereof and relating to the business of such society*' is exempt from stamp duty should be understood in a manner that where a principal is not a member of the society and whereas his agent alone is member of the society, any document executed by the agent/representative representing the principal will not be eligible for stamp duty exemption. If the view of the appellant is accepted as such, it would defeat the very object of the said G.O.

At this juncture it would be pertinent to note that the Hon'ble Supreme Court in Union of India and Ors. Vs. Wood Papers Ltd. and Anr. (AIR 1991 SC 2049 also in AIR 2000 SC 66) held that "*It is settled position of law that exemption notification particularly in a fiscal matters has to be strictly construed and the person claiming its benefit is obliged to satisfy the court that his claim was covered by the exemption notification. The notification has to be read in its entirety and not in parts.*"

Further Hon'ble Supreme Court of India in Appeal (civil) 3556 of 1984, Novopan India Ltd., Hyderabad Vs Collector Of Central Excise, has held that '*The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound – does not apply to the construction of an exception or an exemption provision; they have to be construed strictly. A person invoking an exception or an exemption provision to*

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relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State.'

Moreover in a similar instance where the aforesaid society purchased lands from a partnership firm and when it was found that the partner's of the firm were alone member of the society and the partnership firm was not at all member of the society, in the the proceedings under section 33A of the Indian Stamp Act, 1899, the District Registrar and the Inspector General of Registration held that the sale document in that instance is ineligible for stamp duty exemption. This decision when challenged by the society before the Hon'ble High Court, the same was confirmed in W.P.No.2496/2009 dated 16.8.2011 and also in W.A.No.1978/2011 dated 2.2.2011 by holding that *'.....Even as per the admission of the petitioner, that it is not a member'.....it is immaterial whether partners were individual members of the petitioner society*".

Hence the case on hand is squarely covered by the aforesaid Hon'ble High Court order.

In view of the aforesaid legal position, the appeal is hereby dismissed and the order of the District Registrar is upheld.

(Sd)/– M.P.Sivanarul/15.9.2022
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

15.9.22

To

1. The Secretary,
   The Gandhi Nagar Co–operative Housing Society Ltd.,
   New No.22 (79), Pumping Station Road, (abutting 4th Main Road),
   Gandhi Nagar, Adyar,Chennai – 600 020.

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2. The District Registrar,
   Chennai (South).

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