

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.32353 of 2013

The Royal Lands and Nest Cooperative Housing Society Ltd.,
Rep. by its Chairman, M.Ramu,
AP 873, Door No.II, 2nd Street,
12th Main Road, West Anna Nagar,
Chennai-600 040.

...Petitioner

-Vs-

1. The Govt. of Tamil Nadu,
Rep. by The Secretary to Govt.,
Commercial Taxes and Registration Dept.,
Fort St. George, Secretariat, Chennai-9.

2. The Inspector General of Registration,
Mylapore, Santhome, Chennai-4.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in Letter No.16495/J1/2012-5, Commercial Taxes and Registration Department, dated 21.10.2013, on the file of the 1st Respondent and the consequential proceedings of the 2nd Respondent in O.Mu.3667/C2/2012, dated 28.10.2013 and quash the same as illegal, incompetent and unconstitutional and further direct the respondents to continue the remission of stamp duty in respect of Multi State Co-

operative Societies Registered in Tamil Nadu including the petitioner Co-operative Society.

For Petitioner : Mr.Sunny
for Mrs.V.Srimathi

For Respondents : Mr.T.Arun Kumar, AGP

ORDER

The writ on hand has been instituted questioning the validity of the order dated 21.10.2013, issued by the first respondent stating that the stamp duty exemption granted to the cooperative societies by the Government in G.O.Ms.No.2179, dated 29.06.1966, in exercise of the powers conferred by Sub-Section (1) of Section 43 of the erstwhile Tamil Nadu Cooperative Societies Act, 1961, is not applicable to the cooperative society, registered under Multi-State Cooperative Societies Act, 2002.

2.The petitioner/The Royal Lands & Nest Cooperative Housing Society Ltd., is admittedly a cooperative society registered under the provisions of the Multi-State Cooperative Societies Act, 2002. The bye-laws of the petitioner society has been approved by the Registrar of Cooperative Societies.

3.The learned counsel for the petitioner mainly contended that stamp duty exemption was granted by the State of Tamil Nadu in G.O.Ms.No.2179 dated 29.06.1966, and the petitioner society had availed the said benefit of exemption from the stamp duty for long years. The applicability of the said Government Order had been considered by the Government, more specifically by the Commercial Tax and Registration Department and in its letter dated 09.04.2009, the Government clarified that the cooperative societies registered under the Multi-State Cooperative Societies Act, 2002, is also deemed to be a cooperative society under the Tamil Nadu Cooperative Societies Act. Thus, the petitioner availed the stamp duty exemption. While so, the very same Commercial Tax and Registration Department issued an impugned order in letter dated 21.10.2013, stating that the exemption granted in G.O.Ms.No.2179 dated 29.06.1996 is not applicable to the cooperative societies registered under the Multi-State Cooperative Societies Act, 2002.

4.In the context of the Tamil Nadu Cooperative Societies Act, Sub-section(22) of Section 2 of the Act defines) "registered society" means a

co-operative society registered or deemed to be registered under this Act. Therefore, a registered society under the Tamil Nadu Cooperative Societies Act means that the cooperative societies registered under the Tamil Nadu Cooperative Societies Act ,1961 or 1983 alone is a society within the definition.

5. Section 51 of the Tamil Nadu Cooperative Societies Act, 1983, indicates “*Powers to exempt from stamp duty and registration fee.--* The Government, by notification, may, in the case of any registered society or class of registered societies, remit-

(a) the stamp duty not being the stamp duty referred to in clause (a) of sub-section (2) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), with which, under any law for the time being in force, instruments executed by or on behalf of or in favour of a registered society or by an officer or member and relating to the business of such society or any class of such instruments or decisions, awards or orders of the Registrar or arbitrators under this Act are respectively chargeable; and

(b) any fee payable under the law of registration for the time being in force.”

6.The Petitioners have raised that under Section 173 of the Tamil Nadu Cooperative Societies Act, 1983, saving clause has been provided and therefore, the multi-state cooperative societies are also to be included for granting stamp duty exemption. In this regard, Section 173 of the Tamil Nadu Cooperative Societies Act, 1983, provides that certain “existing societies” at the time of inception of the state enactment have to be registered under the said act. Therefore, the cooperative societies which were registered under the Tamil Nadu Cooperative Societies Act, 1961, alone are protected under Section 173, and certainly not the cooperative societies registered under the multi-state cooperative societies act 2002.

7.Let us now consider the provisions of the Multi-State Cooperative Societies Act, 2002. Section 3 provides definitions, section 3(B) defines “multi state cooperative society” means a society registered or deemed to be registered under this Act and includes a national cooperative society and a federal cooperative. Therefore, a cooperative society registered under the Multi State Cooperative Societies Act 2002 is a multi-state cooperative society within the provisions of the Act and

thus, the said multi state cooperative societies cannot be construed as a cooperative society or deemed to be a cooperative society under the provisions of the Tamil Nadu Cooperative Societies Act, 1983.

8.Tamil Nadu Cooperative Societies Act is a state enactment, Multi-State Cooperative Societies Act is a central enactment. The procedure for registration and the competent authorities are different and therefore, exemption from stamp duty is to be granted independently under the provisions of the acts concerned. Unlike Section 51 of the Tamil Nadu Cooperative Societies Act, wherein powers to exempt from stamp duty and registration fee is granted, there is no such specific provisions under the Multi-State Cooperative Societies Act, 2002 for grant of stamp duty exemption.

9.In the present case, the Government of Tamil Nadu, by invoking the powers under Section 51 of the Tamil Nadu Cooperative Societies Act granted exemption from stamp duty and registration fees to the cooperative societies registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. Such exemption cannot be expanded under the provisions of the Tamil Nadu Cooperative Societies Act and

more so, the petitioner society is a multi-state cooperative society registered under the central enactment. Thus, the Government letter, first issued in letter no.18639/J1/08-5, dated 09.04.2009, is in violation of the provisions of the Tamil Nadu Cooperative Societies Act since there cannot be any deemed registration of a central cooperative society as state cooperative society, since the registrations are independent and separate under both the central and state acts. That exactly is the reason why the government issued further clarification through impugned order in letter dated 21.10.2013 stating that the exemption from payment of stamp duty granted under Section 51 of the Tamil Nadu Cooperative Societies Act is not applicable to the cooperative societies registered under the Multi-State Cooperative Societies Act, 2002.

10.The cooperative movement or area of operation, business transactions are well defined under the central act and the state act. While so, a multi state cooperative society registered under the central act cannot be considered as a cooperative society under the state act for the purpose of granting exemption from payment of stamp duty and registration fees. Thus, the clarificatory letter issued through the impugned order dated 21.10.2013 is in consonance with the principles of

law and in accordance with the provisions of the Tamil Nadu Cooperative Societies Act. Therefore, the cooperative societies registered under the provisions of the Tamil Nadu Cooperative Societies Act alone are entitled to avail the benefit of stamp duty exemption and registration fees which was granted by invoking the powers under Section 51 of the Tamil Nadu Cooperative Societies Act. Consequently, the Multi-State Cooperative Societies Act, 2002 are not entitled to get the benefit of the exemption from payment of stamp duty and registration fees and if at all, such exemption is to be granted it must be granted by the Government of India.

11.The petitioner is admittedly a cooperative society registered under the provisions of the Multi-State Cooperative Societies Act, 2002, which is a central act and therefore, they are not entitled to avail the benefit of the stamp duty exemption and registration fee granted by the Government of Tamil Nadu in exercise of the powers under Section 51 of the Tamil Nadu Cooperative Societies Act, 1983. The original government order granting exemption in G.O.Ms.No.2179, dated 29.06.1966, was issued in exercise of the powers conferred by Sub-section (1) of Section 43 of the erstwhile Tamil Nadu Cooperative Societies Act, 1961, which corresponds to Section 51 of the Tamil Nadu

Cooperative Societies Act, 1983.

12.This being the factum established , the petitioner is not entitled for the relief as such sought for in the present writ petition and the order impugned is in consonance with the provisions of the state act. Accordingly, the writ petition is devoid of merits and stands **dismissed**.

No costs.

07.03.2023

Index:Yes
Speaking order
Neutral Citation:Yes
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