

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

WEDNESDAY, THE TWENTY FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

WRIT PETITION NO: 9231 OF 2009

Between:

M/S SRI THIRUMALA CO-OPERATIVE HOUSING SOCIETY,
(T.A.B.No.292), Having its registered office at 6/T, Saraswathi Nagar,
Saidabad, Hyderabad, Being rep by its Vice President G.Sudarshan Reddy,
S/o. G.Krishna Reddy, aged 52, Occ Business,

...PETITIONER

AND

1. THE UNION OF INDIA, Rep by its Secretary, Ministry of Defence, New Delhi.
2. The Director General, Defence Estates, Palem road, New Delhi,
3. The Principal Director, Defence Estates, Southern Command, Pune,
4. The Defence Estate Officer, Andhra Pradesh Circle, Secunderabad.
5. The Government of A.P., Department, of Stamps and, Registration, Rep by District Registrar, Hyderabad District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the proceedings No.12023/1/87/D(Lands)V-II Dated 16.2.2009 of the 1st Respondent in refusing to bear the TPT (Transfer of Property Tax) along with the petitioner society in the ratio of 50-50 as agreed under the letter dated 26.8.2005, as illegal, arbitrary and unconstitutional contrary to the provisions of Indian Stamp Act, 1899 apart from being in gross violation of principles of natural justice and set aside the same consequently direct the 1st Respondent to bear the TPT charges on the Exchange Deed bearing document No.142/2008 Dt. 29-1-2008, as mandated under SEc. 29(e) of Indian Stamp Act and reimburse the petitioner society 50% of the said charges accordingly

I.A. NO: 1 OF 2009(WPMP. NO: 12090 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 1st respondent to deposit 50% of TPT charges to the credit of the petitioner account, pending disposal of the above Writ petition

**Counsel for the Petitioner: SRI A.ABHINANDHAN REDDY FOR SRI. V
RAMAKRISHNA REDDY**

Counsel for the Respondent Nos.1 to 3: SMT. PRANATHI REDDY

Counsel for the Respondent No.5: GP FOR STAMPS AND REGISTRATION

The Court made the following: ORDER

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

WRIT PETITION NO. 9231 OF 2009

ORDER: *(per the Hon'ble Sri Justice J.Sreenivas Rao)*

This writ petition is filed for the following relief:

“to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the proceedings No 12023/1/87/D(Lands) V-II, Dated 16-02-2009 of the 1st Respondent in refusing to bear the TPT (Transfer of Property Tax) along with the petitioner society in the ratio of 50:50 as agreed under the letter dated 26.08.2005 as illegal, arbitrary and unconstitutional, contrary to the provisions of Indian Stamp Act 1899 apart from being in gross violation of principles of natural justice and set aside the same consequently direct the 1st Respondent to bear the TPT charges on the Exchange Deed bearing document No.142/2008 Dt 29.01.2008, as mandated under Sec 29(e) of Indian Stamp Act and reimburse the petitioner society 50% of the said charges accordingly and to pass”

2. Heard Sri A.Abhinandhan Reddy, learned counsel, representing, Sri V.Ramakrishna Reddy, learned counsel for the petitioner Society and Smt.Pranathi Reddy, learned counsel appearing on behalf of respondent Nos.1 to 3.

3. **Brief facts of the case:**

3.1 The petitioner Society namely M/s. Sri Thirumala Co-operative Housing Society (hereinafter called as 'Society') was registered under the Andhra Pradesh Co-operative Societies Act, 1964 and the aim and object of the said Society is to purchase the

land and develop the same into plots and allot the same to its members. The petitioner Society purchased the land to an extent of Acs.4-50 cents comprising of GLR Sy.No.104/A situated at Cariappa Road, Bolarum, Secunderabad Cantonment, from its original owners. In the year 2000, the petitioner Society submitted layout plan to the Cantonment Board, for approval. Pursuant to the same, the Cantonment Board through its resolution dated 11.12.2000 granted layout permission subject to the decision of the General Officer Commanding-in-Chief. However, Cantonment Board has not released the layout plan without any reasons. At that stage, petitioner Society had approached this Court and filed Writ Petition No.5888 of 2001 questioning the action of the respondents for not releasing the sanctioned approved plan and the said writ petition was disposed on 11.04.2001 directing respondent No.1, to take a decision. Pursuant to the same, respondent No.1 had passed an order on 07.05.2001 raising several objections.

3.2 Thereafter, respondent No.1 proposed to exchange the land in GLR Sy.No.104/A with defence land admeasuring Ac.4-50 cents comprising of Ac.3-05 in GLR Sy.No.452/A situated at Kakaguda Village and Ac.1-45 in GLR Sy.No.368/A situated at Trimulgherry Village, Secunderabad Cantonment, Hyderabad

District. Accordingly, the petitioner Society had accepted the offer made by respondent No.1 through letter dated 27.10.2001. Subsequently, respondent No.1 addressed a letter on 26.08.2005 sanctioning the exchange of Ac.4-50 cents of Defence land with that of the land admeasuring Ac.4-50 cents of the petitioner Society bearing GLR Sy.No.104/A, subject to the condition that the Society shall bear the additional land value of Rs.4.43 Crores and share other charges i.e., stamp duty and registration fees etc. on a 50:50 basis and the petitioner Society accepted the said conditions. Thereafter, respondent No.1 delivered the possession of the land under exchange deed in favour of the petitioner Society on 06.09.2006 and handed over the physical possession. Respondent No.1 has also taken possession of the land from the petitioner Society.

3.3 However, respondent No.1 refused to bear the statutory duties particularly TPT (Transfer of Property Tax) in the ratio of 50:50, on the ground that respondent No.1 while according sanction for exchange of properties did not agree for sharing payment of TPT and respondent No.1 is exempted from payment of stamp duty. When the petitioner Society submitted a representation to respondent No.1 to pay TPT charges, respondent No.1 without properly considering the said representation passed

the impugned order dated 16.02.2009 rejecting the request made by the petitioner Society for payment of TPT charges. Aggrieved by the said rejection order, the petitioner Society filed the present writ petition.

Submission of the learned counsel for the petitioner:

4. Learned counsel for the petitioner Society vehemently contended that as per the provisions of Section 29(e) of the Indian Stamp Act, 1899, (for brevity 'the Act') the Exchange Deed also comes within the purview of the instrument and respondent No.1 has to pay 50% of TPT charges. He further contended that respondent authorities through letter dated 04.02.2004 accepted to pay the stamp duty and registration charges/TPT in equal ratio. On the other hand, respondent No.1 rejected the claim of the petitioner Society through impugned order dated 16.02.2009 and the same is contrary to law.

Submission of the learned counsel for the respondent Nos.1 to 3:

5. Learned counsel appearing on behalf of the respondents submits that the TPT charges are totally different from the stamp duty and registration charges. She further submits that respondents have issued letter dated 26.08.2005, wherein specifically stated that TPT charges have to be borne by the

petitioner Society only and the respondents are not liable to pay the same. In so far as payment of stamp duty is concerned, the Government of India is exempted for payment of stamp duty. She further contended that respondent No.1 after considering the representation made by the petitioner-Society and also the provisions of the Act, had rightly passed the impugned order dated 16.02.2009 and the petitioner is not entitled to the relief sought in the writ petition.

Analysis:

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that the petitioner Society is claiming TPT charges pursuant to the Exchange Deed entered by the petitioner Society as well as respondents.

7. It is pertinent to mention the provisions of sub-section (26) of Section 2 of the Act, which reads as follows:

“Stamp’ means any mark, seal or endorsement by any agency or person duly authorized by the State Government, and includes an adhesive or impressed stamp, for the purposes of the duty chargeable under this Act ”

8. As per the provisions of sub-section (26) of Section 2 of the Act, the TPT is different from the stamp duty or the registration fee. It is pertinent to mention that the TPT is a tax which should be paid to the person in whose name the property is being transferred or has been transferred and enjoying the same. Hence, the respondents are not liable to pay TPT as claimed by the petitioner

9. It is pertinent to mention here that Section 29(e) of Stamps and Registration Act prescribes that in case of all instrument of exchange, both the parties to the deed have to bear the stamp duty and other expenses in equal shares. But as per the provisions of sub-section (26) of Section 2 of the Act, Exchange Deed does not come within the purview of TPT charges and not included in the sub section (26) of Section 2 of the Act. The TPT charges are totally different from the stamp duty and the registration fee and the contention of the learned counsel for the petitioner that as per the provisions of Section 29(e) of the Act, respondent No.1 is liable to pay 50% of TPT charges, is not tenable under law.

10. Hence, this Court is of the considered view that the respondent No.1 has rightly rejected the claim of the petitioner for payment of TPT charges at 50:50 through impugned order dated

16.02.2009 and this Court does not find any illegality and irregularity in the impugned order passed by respondent No.1.

11. Accordingly, the writ petition is dismissed. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

SD/-P. PADMANABHA REDDY
ASSISTANT REGISTRAR

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Sta
SECTION OFFICER

To,

1. One CC to SRI. V RAMAKRISHNA REDDY Advocate [OPUC]
2. One CC to SMT. PRANATHI REDDY Advocate [OPUC]
3. Two CCs to GP for Stamps and Registrations, High Court for the State of Telangana at Hyderabad. [OUT]
4. Two CD Copies

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HIGH COURT

DATED:25/09/2024

ORDER

WP.No.9231 of 2009



**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

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7Copies