

HANUMAN VITAMIN FOODS PVT. LTD. AND ORS.

A

v.

THE STATE OF MAHARASHTRA AND ANR.

JULY 20, 2000

[M.B. SHAH AND S.N. VARIAVA, JJ.]

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Bombay Stamp Act, 1958: Schedule I—Article 25(b)(i) Co-operative Society—Share transfer—Instrument of—Instrument of transfer amounting to conveyance of property—Held such an instrument liable to stamp duty under Article 25 (b) (i).

C

Constitution of India, 1950

Seventh Schedule—List I—Entry 91—List II—Entry 63—Co-operative Society—Share—Transfer of—Transfer instrument conveying property—Levy of Stamp Duty—Legislative competence of State Legislature.

D

The appellant, a member of a co-operative society, was in occupation of an office premises in a building at Bombay. By an instrument dated 31st March, 1986 it transferred five shares in the co-operative society in favour of other appellants for a consideration of Rs. 9,46,900. The Superintendent of Stamps held that the document executed by the appellant was a conveyance of property and thus chargeable with Stamp Duty under Article 25 (b) (i) of the Bombay Stamp Act, 1958. A writ petition filed by the appellant was dismissed by the Bombay High Court holding that the instrument of transfer amounted to conveyance of property and was chargeable with stamp duty under Article 25(b) (i). The High Court also rejected the contention of the appellant that levy of stamp duty on transfer of shares was beyond the legislative competence of the State Legislature.

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Against the decision of High Court an appeal was preferred before this Court. A writ petition under Article 32 was also filed. In both the matters the questions which arose for consideration were:

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(a) Whether transfer of shares in a co-operative Society is subject to levy of stamp duty under the Bombay Stamp Act, 1958? and

(b) Whether the State legislature has legislative competence to levy

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A stamp duty on transfer of shares?

Dismissing the Civil Appeal as well as the Writ Petition, the Court

B HELD: The stamp duty is sought to be levied under Article 25, Schedule I of the Bombay Stamp Act. It is being levied not on transfer of shares but on the basis that the agreement is a conveyance. There is no dispute that there is legislative competence in the State Government to levy stamp duty on a conveyance of property. In view of the fact that such an instrument is not an instrument of transfer of shares, but it is, in fact a conveyance, the second question regarding legislative competence no longer survives. [626-F-G]

C *Veena Hasmukh Jain and Another v. State of Maharashtra and Ors.*, [1999] 5 SCC 725, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3707 of 1990.

D From the Judgment and Order dated 16/17.2.89 of the Bombay High Court in W.P. No. 1820 of 1986.

WITH

Writ Petition (C) No. 379 of 1995

E (Under Article 32 of the Constitution of India.)

Krishan Mahajan, Ms. Musharaff Choudhry, R.F. Nariman, P.H. Parekh and Sunil Dogra for the Appellants.

F Ashok Kumar Gupta for the Petitioners.

S.B. Wad, S.V. Deshpande and A.S. Bhasme for the Respondents.

The Judgments of the Court was delivered by

G **S.N. VARIAVA, J.** This Civil Appeal is against the Judgment dated 16/17th February, 1989. The questions raised in this Appeal are:- (a) whether transfer of shares in a Co-operative Society is subject to levy of stamp duty under the Bombay Stamp Act, 1958 and (b) whether the State Legislature has legislative competence to levy stamp duty on transfer of shares.

H Briefly stated the facts are as follows:

The 1st Appellant was a member of Dalamal Tower Promises Co-operative Society Ltd. As such member the 1st Appellant was the holder of 5 shares each bearing distinctive Nos. 711 to 715. As such member the 1st Appellant was in occupation of office premises No. 904 on the 9th floor of the building known as Dalamal Tower situated at 211, Nariman Point, Bombay 400 021. By an Instrument dated 31st March, 1986 the 1st Appellant transferred in favour of Appellants Nos. 2, 3, 4, 5 and 6 the said 5 shares for a consideration of Rs. 9,46,900/-. The said Instrument of Transfer, *inter alia*, set out that the Dalamal Tower Premises Co-operative Society Ltd. was the owner of the building Dalamal Tower; that the 1st Appellant was a member of the said society holding the said 5 shares; that one of the incidents of membership was that the member had a right to occupy specific Office premises in the building Dalamal Tower and as such the 1st Appellant had a right to occupy premises No. 904 on the 9th floor of the Dalamal Tower, which Office premises admeasured 557 Sq. ft. of built up area. The Instrument went on to state that for a consideration of Rs. 9,46,900 paid by the transferees to the transferor, the transferor transferred the said 5 shares to the transferees and that the transferees accepted the said shares.

By a letter dated 23rd April, 1986 the Advocates of the 1st Appellant forwarded the instrument of transfer to the Superintendent of Stamps for adjudication under the provisions of Bombay Stamp Act, 1958. In the said letter the Advocates stated that, in their opinion, the instrument of transfer was wholly exempted from duty, but that it was sent for adjudication by way of abundant caution. By a reply dated 22nd May, 1986 the Superintendent of Stamps informed the Advocates for the 1st Appellant that the document for adjudication was a conveyance of property chargeable with stamp duty under Article 25(b)(i) of the Bombay Stamp Act on the present market value of the said property. By the said Letter the Superintendent of Stamps requested for details regarding premises No. 904 in Dalamal Tower and also called for a valuation report and other relevant documents.

The Appellants, therefore, filed Writ Petition 1820 of 1986 in the High Court of Judicature at Bombay to have the said letter quashed. They also sought directions against the Superintendent of Stamps and the State of Maharashtra to desist and forbear from charging, demanding or recovering stamp duty on the said form of Transfer of shares, or from proceeding on the basis that the form of Transfer of shares was not duly stamped and, thus, liable to be impounded. The Appellants contended that the instrument of transfer was a document transferring the shares held in a body corporate and

A was thus not within the purview of the Bombay Stamp Act, 1958. They also contended that the levy of stamp duty on transfer of shares in a co-operative society fell exclusively within Entry 91 of List I of the Seventh Schedule to the Constitution of India. The Appellants contended that it was beyond the legislative competence of the State as it did not fall within Entry No. 63 of List II of the Seventh Schedule to the Constitution of India.

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By the impugned Judgment dated 16/17th February, 1989, the Petition was dismissed on the ground that the instrument of transfer amounted to a conveyance of property and was chargeable with stamp duty under Article 25(b)(i) of the Bombay Stamp Act, 1958. By the said Judgment the argument regarding lack of legislative competence was also rejected.

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The question whether or not a transfer of shares in a Co-operative Society is subject to levy of stamp duty on the basis that it is a conveyance has already been answered by this Court in the case of *Veena Hasmukh Jain and Another v. State of Maharashtra and Ors.*, reported in [1999] 5 SCC 725.

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In this case it has already been held that such agreements would be covered by Article 25 of the Bombay Stamp Act, 1958. It is held that stamp duty would be leviable as if it is a conveyance. This Court has held that these are in effect agreements to sell immovable property as the possession of such property is transferred to the purchaser before or at the time of or subsequent to the execution of the agreement. It is held such an agreement to sell must be deemed to be a Conveyance. It is fairly conceded that this Judgment fully covers question (a) set out hereinabove.

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As question (a) is already answered by the above mentioned Judgment in *Veena's* case, in our view, question (b) does not survive. As seen above stamp duty is sought to be levied under Article 25, Schedule I of the Bombay Stamp Act. The stamp duty is being levied not on transfer of shares but on the basis that the agreement is a conveyance. There is no dispute that there is legislative competence in the State Government to levy stamp duty on a conveyance of property. Question No. (b) has been raised on the footing that the instrument of transfer is a form of transfer of shares. Now that it is held that such an instrument is not an instrument of transfer of shares, but it is, in fact, a conveyance question (b) no longer survives.

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In this view of the matter, the Appeal does not survive. The same stands dismissed. There will be no order as to costs.

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S.N. VARIAVA, J. All the Petitioners are nationals and citizens of India.

They are all residents of Bombay. By this Petition, under Article 32 of the Constitution of India, the Petitioners seek to challenge levy of stamp duty on a transfer of shares in a Co-operative Housing Society on the basis that such agreements are conveyances. It is contended by the Petitioners that the State Legislature has no competence to levy stamp duty on transfer of shares in a Housing Co-operative Society, where the transferee, as an incident of membership, is entitled to the use and occupation of the premises belonging to the co-operative society. The Petitioners point out that this question is already pending in Civil Appeal No. 3707 of 1990 before this Court. Thus, the questions raised in this Petition are identical to those raised in Civil Appeal No. 3707 of 1990, viz., (a) whether the transfer of shares in the Co-operative Society is subject to levy of stamp duty under the Bombay Stamp Act, 1958 and (b) whether the State Legislature has legislative competence to levy stamp duty on a transfer of shares.

By a Judgment passed today in Civil Appeal No. 3707 of 1990, that Civil Appeal stands dismissed. For the reasons set out therein, this Writ Petition also stands dismissed.

T.N.A.

Appeal/Petition dismissed.