IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Writ Petition No.18920 of 2015
and M.P.No.1 of 2015

1. A.V.S.Raja
2. A.V.S.Radha Raja ... Petitioners

Vs

1. The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road, Egmore,
Chennai - 600 008

2. The Sub-Registrar, Anna Nagar,
Chennai - 600 040.

3. The Chennai Metro Rail Limited,
Egmore, Chennai - 600 008 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the second respondent to register and release the document No.19 of 2015 without insisting upon stamp duty and registration charges, in the light of the letter having reference to No.TDR/9447/205 dated 06.03.2015 issued by the first respondent to the second respondent.

For Petitioners : Mr. S.Ramesh
For Respondents : Mrs. P.Rajalakshmi, Govt. Advocate

O R D E R

The petitioners have come forward to file this writ petition seeking a direction to the second respondent to register and release Document No.19 of 2015, without insisting upon the stamp duty in the light of the letter dated 06.03.2015 issued by the first respondent and basing reliance upon the letter of the Principal Secretary to Government, Commercial Registration Department, Chennai, in D.O.Letter No.19192/T1/2008-2, dated 03.12.2009.

2. A Government Order came to be passed in G.O.Ms.No.37, Housing and Urban Development (UD-5) Department, dated 24.05.2012, having found that the petitioners have violated the approved building plan and Floor Space Index (FSI) by constructing additionally the third floor. By the said Government Order, an additional construction put

up by the petitioners was regularized by relaxing the rules, subject to the condition that the petitioners transfers 60.19 sq.mts of land for the purpose of Metro Rail Project.

3. Subsequently, the petitioners had executed a document for the said extent of 60.19 sq.mts styling it as 'Gift Deed'. By the said document, the petitioners were given transfer of the development rights by increasing the FSI, which formed the basis of relaxation of the order passed by the Government. A decision was taken with respect to the similar documents by the Inspector General of Registration, by issuing orders in D.Dis.No.44699/P-1/2013 dated 31.01.2014 under Section 56 (1) of the Indian Stamp Act, 1899, ordering them as 'conveyance' under Section 2 (10) of the said Act and thus liable to pay stamp duty on the market value of the property.

4. The learned counsel for the petitioners submitted that on a conjoint reading of the letter dated 03.12.2009, the Government Order passed in G.O.Ms.No.486, Commercial Taxes and Religious Endowments Department, dated 05.11.1997 and the subsequent letter of the first respondent, dated 06.03.2015, the writ petition will have to be allowed; even at the time of execution of the document, acquisition proceedings were pending; if the acquisition proceedings are allowed to be continued, the petitioners would not be asked to pay the stamp duty and therefore, the writ petition will have to be allowed.

5. The learned Government Advocate appearing for the respondents submitted that there is no voluntary action on the part of the donor, as required under Section 122 of the Transfer of Property Act, 1882; admittedly, there is a consideration; everything has fallen from the Government Order passed in G.O.Ms.No.37 dated 24.05.2012; the petitioners, having accepted the order passed by the Government, cannot rely out of the same, by seeking benefit under the Government Order passed in G.O.Ms.No.486 dated 05.11.1997. A similar view has also been taken by the Inspector General of Registration, as per the proceedings dated 31.01.2014, in exercise of his power under Section 56 (1) of the Indian Stamp Act; what is important is the substance and not the nomenclature of the document; a strict interpretation is required, while dealing with the fiscal statutes; hence, no interference is required.

6. There is no dispute on facts. Admittedly, the decision of the petitioners to execute the document in favour of the first respondent has come into being, in pursuant to the Government Order passed in G.O.Ms.No.37 dated 24.05.2012. The said order was passed in pursuant to an unauthorized action on the part of the petitioners. Thus, it is the petitioners, who warranted the said order. The petitioners have also accepted the said order by executing a document. Therefore, being a wrong doer, he cannot expect the benefit from both ends. Had the petitioners had not executed the document, though styled as 'Gift Deed', he would not have got the benefit of the Government Order and G.O.Ms.No.37 dated 24.05.2012 would not have been passed and consequently, he would not have enjoyed the benefit.

Therefore, the letter dated 03.12.2009, followed by the Government Order, do not have any application to the facts of the present case.

7. The document has been executed by the petitioners only with the purpose to get benefit. The consideration need not be by cash, it can be by kind also. Certainly there is a consideration, by which the petitioners have been benefited. If the petitioners' lands alone have been acquired, they would not have got the benefit of the Government Order passed in G.O.Ms.No.37 dated 24.05.2012.

8. Further, the Gift Deed was also mentioned as Deed of Conveyance, which makes a mention about the application made by the petitioners as 'the Deed of Application for CMRL Project'. As rightly submitted by the learned Government Advocate, strict interpretation is required while dealing with the fiscal statutes. Therefore, this Court is of the opinion that no ground is made out by the petitioners to interfere upon the impugned order. Hence, the writ petition is dismissed. No costs. Consequently the connected MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Member Secretary,
   Chennai Metropolitan Development Authority,
   Thalamuthu Natarajan Maaligai,
   Gandhi Irwin Road, Egmore, Chennai - 600 008
2. The Sub-Registrar, Anna Nagar, Chennai - 600 040
3. The Chennai Metro Rail Limited, Egmore,
   Chennai - 600 008

+1cc to M/s. S. Ramesh, Advocate, S.R.No.52646

+1cc to the Government Pleader, S.R.No.52896

RSI(CO)
EU(12/10/2015)