IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.40638 of 2015
and MP.Nos.1 to 3 of 2015

1.Tamil Nadu Brick Industries
Rep by its Managing Partner Mr.N.D.Ramamurthy
No.47, Mangali Nagar First street,
Arumbakkam, Chennai-106.

2.N.D.Ramamurthy
3.D.Radha Bai
4.R.Suresh Babu
5.V.Saraswathi Ammal
6.N.s.Damodaran
7.D.Maheswaran
8.Dr.M.Samundeswari
petitioners 1 to 8 represented by their power of attorney holder
Mr.E.S.Senthilvel,
C/o.M/s.Brigade Enterprises Ltd.,
Floor No.29 & 30, World Trade centre
Brigade Gateway campus
26/1, Dr.Rajkumar Road, Malleswaram,
Rajaji Nagar,
Bangalore - 560 055. ... Petitioners

Vs.

State of Tamil Nadu
Rep by the Secretary to Government
Commercial Taxes and Religious endowments department
Fort St.George, Chennai-9.

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

3.The Sub Registrar
Sub Registrar Office of Konnur
Chennai-49. ... Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the records of the third respondent comprised in the extract of the Register of Impounded Documents bearing Serial Number 4/2015 in relation to Document No.P.No.135/2015 and quash the same, and consequently direct the third respondent to register and return the Gift deed dated 28.10.2015, executed by the petitioners in favour of the CMDA to the petitioners.

For Petitioner : Mr.Satish Parasaran.
For respondents : Mrs.P.Rajalakshmi, GA

O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come forward with the present Writ Petition seeking for issuance of certiorarified mandamus to call for the records of the third respondent comprised in the extract of the Register of Impounded Documents bearing Serial Number 4/2015 in relation to Document No.P.No.135/2015 and to quash the same and consequently direct the third respondent to register and return the Gift deed dated 28.10.2015, executed by the petitioners in favour of the CMDA to the petitioners.

3.The petitioners 1 to 6 are the absolute owners of the properties measuring 33acres and 65cents as per patta No.54 comprised in survey numbers mentioned in table below and situated at Nolambur village, Ambattur Taluk (presently Maduravoyal Taluk), Tiruvallur District, Chennai.

| S.No. | Survey No. | Extent in acres |
|---|---|---|
| 1. | 118/1 | 00.92 |
| 2. | 119 | 01.80 |
| 3. | 120 | 01.68 |
| 4. | 134 | 00.79 |
| 5. | 135 | 00.27 |
| 6. | 136/1 | 01.20 |
| 7. | 136/2 | 00.67 |
| 8. | 137/1 | 00.56 |
| 9. | 137/2 | 00.46 |
| 10. | 137/3 | 01.14 |

| S.No. | Survey No. | Extent in acres |
|---|---|---|
| 11. | 138 | 01.01 |
| 12. | 140 | 01.22 |
| 13. | 143/1 | 01.58 |
| 14. | 144 | 01.21 |
| 15. | 145/1 | 00.58 |
| 16. | 145/2 | 01.44 |
| 17. | 146/1 | 00.58 |
| 18. | 146/2 | 00.51 |
| 19. | 147/1 | 00.79 |
| 20. | 147/3 | 01.39 |
| 21. | 154/2 | 00.10 |
| 22. | 155 | 00.91 |
| 23. | 158/1B2 | 00.04 |
| 24. | 158/2B2 | 00.04 |
| 25. | 159 | 03.53 |
| 26. | 160 | 02.43 |
| 27. | 161 | 01.03 |
| 28. | 163/1B | 01.31 |
| 29. | 163/2 | 00.10 |
| 30. | 163/3 | 01.36 |

Similarly, the petitioners 7 and 8 are the absolute owners of the properties measuring 487.92sq.m as per patta No.1187 comprised in S.No.124/1A2A situated at Chanakyan Road, Annamalai Avenue, Nolambur village, Ambattur Taluk, Tiruvallur District, Chennai.

4.The petitioners 1 to 6 and the petitioners 7 and 8 executed power of attorney in favour of one E.S.Senthilvel in document No.604 of 2012 dated 17.09.2012 and document No.4684 of 2013 dated 07.10.2013 respectively. Both the power of attorneys are valid and still in force.

5.In order to develop the property as an apartment complex, the petitioners have entered into a joint development agreement with Brigade Enterprises in 17.09.2012. The said proposal for construction of a group development of seven blocks of combined Basement floor + ground floor + three floors residential buildings with 475 dwelling units and another one block of basement + Ground floor + two floors club house and swimming pool at terrace at Nolambur Village, Chanakyan Road, Nolambur, Chennai. The said application has also been acknowledged by the CMDA vide Acknowledgment No.BN/2013/000556-1 dated 29.05.2013 with payment of fees of Rs.3,80,000/-. The said application has been under consideration with the CMDA.

6.But the CMDA refused to consider and accord sanction to the petitioner's application for development of the property without execution of such gift deeds in its favour, with respect to the area of land earmarked for the purposes of Open Space Reservation (OSR) and for construction of the link road in the proposed construction. In view of the same, the petitioners were unable to proceed with the project. In view of finance costs, continuous and spiraling effects the cost of construction of the project. Further, the entire project of the property had to be undertaken and contemplated in a time bound manner.

7.The CMDA demanded for execution of these gift deeds as a precondition for approval of the petitioner's planning permission application itself is an en expropriatory action which is unreasonable, arbitrary and illegal. On account of the aforesaid factors contributing to the urgency of the development, the petitioners were constrained to execute the gift deeds as demanded by the CMDA.

8.The company, in its capacity as a power agent of the land owners was constrained to forward signed gift deeds to the CMDA on 07.10.2015, for the CMDA's acknowledgement and to proceed with the registration. Thereafter, the CMDA signed the gift deeds dated 28.10.2015 for the OSR and Link Road areas, the value of the lands gifted to CMDA is nearly Rs.163crores. No stamp duty was chargeable upon these documents as the gift deeds were exempted from stamp duty and registration charges as per the notification of the first respondent in GO.Ms.No.486 CT & RE Department dated 05.11.1997 granting exemption in respect of gift deeds executed by person in favour of the Government and any local authority in the State of Tamil Nadu. Therefore, the company executed the deeds in its capacity as a power agent on stamp paper of a nominal value and handed over the originals of the same to the CMDA for expediting registration and processing of its application.



9.Both the gift deeds were presented for registration on 05.11.2015 in the Sub Registrar office, Konnur. The gift deed pertaining to OSR has been duly returned after registration, the gift deed for transfer of link road was not returned. The company received intimation, in the form of an extract of the Register of Impounded documents bearing S.No.4/2015 that the 3rd respondent impounded the link road gift deed for payment of deficit stamp duty on 09.11.2015.

10.The said register of impounded documents records that stamp used ought to have a value of Rs.5,11,61,465/-, which would give rise to additional cost of Rs.73,08,975/- towards registration charges, in respect of the link road gift deed. The action of the respondent is arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. Hence, the petitioner filed the present writ petition for stay of operation of the extract of the Register of impounded documents bearing Sl.No.4/2015 relating to document No.P.135/2015; interim direction to the third respondent to register and return the gift deed dated 28.10.2015 executed by the petitioners in favour of the CMDA and to call for the records of the third respondent comprised in the extract of the Register of Impounded Documents bearing Serial Number 4/2015 relating to Document No.P.No.135/2015 and to quash the same.

11.The third respondent has filed his counter, interalia stating that the petitioners executed a gift deed dated 28.10.2015 in favour of CMDA for the proposed link road. The petitioners instead of mentioning the market value of the property, the petitioner mentioned nominal value of property at Rs.100/- and the gift deed borne by the stamp duty of Rs.100/- only. The third respondent kept the said gift deed pending as P.No.135 of 2015 and impounded the same under Section 33 of the Indian Stamp Act, 1899 and referred to the Registrar of District, Chennai North, Chennai-1, for further action.

12.The gift deed in question is liable to be charged with the stamp duty under Article 33 of the Schedule-I of the Indian Stamp Act, 1899 at the rate of 5% on the market value of the property besides 2% on such value as Transfer duty under the Local Bodies Act.

13.The respondent in his counter denies the averments of the petitioners that the third respondent has demanded the payment of stamp duty, the third respondent has no authority to demand the deficit stamp duty unless the registrants pays the same voluntarily, under Section 41 of the Indian Stamp Act. Hence, the respondents sought for dismissal of the writ petition.

14.Heard the submissions of learned counsel appearing for the petitioners and the learned Government Advocate Pleader who accepts notice on behalf of the respondents.

15.At the time of hearing, the learned counsel for the petitioner submitted that the petitioners are not pressing the prayer for certiorarified mandamus to quash the impugned order. It is suffice, if a direction is issued to the third respondent to return the gift deed executed by the petitioner in favour of the CMDA, impounded document in Serial Number 4/2015 relating to document No.P.135/2015 dated 05.11.2015.

16.The learned counsel for the petitioners has also relied upon the order of this Court reported in 2015 SCC online Mad 6199 - A.A.Thameem Ansari and another Vs. The Sub Registrar, South Joint, Saidapet, Chennai. Paragraph 12 of the said order is extracted hereunder :

> "12.Be that as it may, there is no jurisdiction for the third respondent to retain the documents after registration. The decisions relied on by the learned Government Advocate for the proposition that when there is alternative remedy provided under the Act, the petitioner should avail the same and not to file these writ petitions cannot be applied to the cases on hand at this stage, since the proceedings are yet to commence and the documents have been registered and yet to be released. Under such circumstances, question of availing alternative remedy does not arise when the original authority has not passed any orders. The decisions relied on by the learned Government Advocate in this regard does not render any support to the case of the respondents."

17.Following the order of this Court and in the identical circumstances, this Court directs the third respondent to release and return the impounded document in Serial Number 4/2015 relating to document No.P.135/2015 dated 05.11.2015, within a period of two weeks from the date of receipt of a copy of this order, with an endorsement that release of document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act read with Registration Act.

18.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



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To
The Secretary to Government
State of Tamil Nadu
Commercial Taxes and Religious endowments department
Fort St.George, Chennai-9.

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

3.The Sub Registrar
Sub Registrar Office of Konnur
Chennai-49.
+1 cc to Mr.Satish Parasaran Advocate sr.13042
+1 cc to the Government Pleader sr.13234

W.P.No.40638 of 2015

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