IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WP.Nos.6181/2017 to 6184/2017 & WMP.Nos.6662 to 6665/2017

M/s.Serene Estates Private Limited,
rep. by its power of attorney agent,
M/s.NCC Urban Infrastructure Limited
rep.by its Authorised Signatory
No.41, Nagarjuna Hills, Panjagutta,
Hyderabad 500004. .. Petitioner in WP.No.6181/2017

M/s.Serene Estates Private Ltd.
Rep.by its Power of Attorney Agent
M/s.NCC Urban Infrastructure Ltd
rep.by its Authorised Signatory
No.41, Nagarjuna Hills, Panjagutta
Hyderabad 500 004. .. Petitioner in WP.No.6182/2017

M/s.Serene Estates Pvt Ltd
rep.by its Authorised Signatory
No.8-2-684/2A, Road No.12,
NSL ICON, Banjara Hills
Hyderabad 500034. .. Petitioner in WP.Nos.6183 and 6184/2017

Versus

1.The Inspector General of Registration
No.100, Santhome High Road,
Santhome, Chennai 600004.

2.The Assistant Inspector General/District Registrar
Department of Registration, Chennai South
No.9, Jones Road, Saidapet, Chennai 600015.

3.The Sub Registrar
O/o.The Neelangarai Sub Registrar
2nd Street, Kazura Garden
Neelankarai, Chennai 600 041.
.. Respondents in all WPs

Prayer in WP.No.6181/2017:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 2nd and 3rd respondents to release and return the Gift Deed dated 02.02.2017 registered as Document No.P50/2017 on the file of the 3rd respondent by assigning regular document number.

Prayer in WP.No.6182/2017:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 2nd and 3rd respondents to release and return the Gift Deed dated 02.02.2017 registered as Document No.P51/2017 on the file of the 3rd respondent by assigning regular document number.

Prayer in WP.No.6183/2017:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 2nd and 3rd respondents to release and return the Gift Deed dated 02.02.2017 registered as Document No.P52/2017 on the file of the 3rd respondent by assigning regular document number.

Prayer in WP.No.6184/2017:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 2nd and 3rd respondents to release and return the Gift Deed dated 02.02.2017 registered as Document No.P53/2017 on the file of the 3rd respondent by assigning regular document number.

For Petitioner in all WPs :Mr.Ar.L.Sundaresan, Senior Counsel for Mr.A.Thayarappan

For Respondents in all WPs :Mr.A.N.Thambidurai, Spl.GP

COMMON ORDER

By consent, all the writ petitions are taken up final disposal and a common order is passed as the issue to be adjudicated is one and the same. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

2 The petitioner in WP.No.6181/2017 is a Company incorporated under the Companies Act, 1956 and carrying on business in acquiring and developing properties and it owns a larger extent of lands at Sholinganallur Village, Kancheepuram District, for the purpose of developing it through its Power of Agent and it had applied for Building Plan Permission with the Chennai Metropolitan Development Agency [CMDA] in respect of lands admeasuring to an extent of 7.61 acres comprised in

S.Nos.553/2B1A, 552/1A1, 553/2B2A, 742 Part, 742/1 part, 743/3 Part, 744 part, 745/1 and 745/2 at Sholinganallur Village and CMDA had also approved the Building Plan Permission and directed the petitioner / Company to gift certain vacant piece of land to the Corporation of Greater Chennai for public purpose and accordingly, it gifted the lands admeasuring 2644.77 sq.m comprised in S.Nos.742/2, 743/3B and 745/2B of Sholinganallur Village, through a registered Gift Deed dated 02.02.2017, registered as Pending Doc.No.50/2017 on the file of the office of the Sub Registrar, Neelankarai and the lands gifted, are for public purposes and it is used as Open Space Reservation [OSR]. The petitioner would state that in respect of the Gift Deed executed in favour of the Local Authorities for public purposes and public use, the stamp duty is levied normally at the rate of Rs.100/- and no registration fee is required in terms of G.O.Ms.Nos.117, 359 and 486, Commercial Taxes and Religious Endowments Department dated 03.03.1982, 18.10.1993 and 05.11.1997 respectively. However, the document is kept pending registration and it has not been returned and when the representative of the petitioner/Company approached the 3rd respondent, they were informed that the said Gift Deed requires payment of stamp duty and registration fee and further informed that the document will be forwarded to the District Registrar-2nd respondent herein, for the purpose of impounding and levying stamp duty and registration.

3 The petitioner in WP.No.6182/2017 is a Company incorporated under the Companies Act, 1956 and carrying on business in acquiring and developing properties and it owns a larger extent of lands at Sholinganallur Village, Kancheepuram District, for the purpose of developing it through its Power of Agent and it had applied for Building Plan Permission with the Chennai Metropolitan Development Agency [CMDA] in respect of lands admeasuring to an extent of 7.61 acres comprised in S.Nos.553/2B1A, 552/1A1, 553/2B2A, 742 Part, 742/1 part, 743/3 Part, 744 part, 745/1 and 745/2 at Sholinganallur Village and CMDA had also approved the Building Plan Permission and directed the petitioner / Company to gift certain vacant piece of land to the Corporation of Greater Chennai for public purpose and accordingly, it gifted the lands admeasuring 4493.70 sq.m comprised in S.Nos.744/1B, 742/1, 742/2 of Sholinganallur Village, through a registered Gift Deed dated 02.02.2017, registered as Pending Doc.No.51/2017 on the file of the office of the Sub Registrar, Neelankarai and the lands gifted, are for public purposes and it is used as a Link Road. The petitioner would state that in respect of the Gift Deed executed in favour of the Local Authorities for public purposes and public use, the stamp duty is levied normally at the rate of Rs.100/- and no registration fee is required in terms of G.O.Ms.Nos.117, 359 and 486, Commercial Taxes and Religious Endowments Department dated 03.03.1982, 18.10.1993 and 05.11.1997 respectively. However,

the document is kept pending registration and it has not been returned and when the representative of the petitioner/Company approached the 3rd respondent, they were informed that the said Gift Deed requires payment of stamp duty and registration fee and further informed that the document will be forwarded to the District Registrar-2nd respondent herein, for the purpose of impounding and levying stamp duty and registration.

4 The petitioner in WP.No.6183/2017 is a Company incorporated under the Companies Act, 1956 and carrying on business in acquiring and developing properties and it owns a larger extent of lands at Sholinganallur Village, Kancheepuram District, for the purpose of developing it through its Power of Agent and it had applied for Building Plan Permission with the Chennai Metropolitan Development Agency [CMDA] in respect of lands admeasuring to an extent of 7.61 acres comprised in S.Nos.553/2B1A, 552/1A1, 553/2B2A, 742 Part, 742/1 part, 743/3 Part, 744 part, 745/1 and 745/2 at Sholinganallur Village and CMDA had also approved the Building Plan Permission and directed the petitioner / Company to gift certain vacant piece of land to the Corporation of Greater Chennai for public purpose and accordingly, it gifted the lands admeasuring 428.63 sq.m comprised in part of S.Nos.425/1A & 1B of of Sholinganallur Village, through a registered Gift Deed dated 02.02.2017, registered as Pending Doc.No.52/2017 on the file of the office of the Sub Registrar, Neelankarai and the lands gifted, are for public purposes and it is used as Street Alignment. The petitioner would state that in respect of the Gift Deed executed in favour of the Local Authorities for public purposes and public use, the stamp duty is levied normally at the rate of Rs.100/- and no registration fee is required in terms of G.O.Ms.Nos.117, 359 and 486, Commercial Taxes and Religious Endowments Department dated 03.03.1982, 18.10.1993 and 05.11.1997 respectively. However, the document is kept pending registration and it has not been returned and when the representative of the petitioner/Company approached the 3rd respondent, they were informed that the said Gift Deed requires payment of stamp duty and registration fee and further informed that the document will be forwarded to the District Registrar-2nd respondent herein, for the purpose of impounding and levying stamp duty and registration.

5 The petitioner in WP.No.6184/2017 is a Company incorporated under the Companies Act, 1956 and carrying on business in acquiring and developing properties and it owns a larger extent of lands at Sholinganallur Village, Kancheepuram District, for the purpose of developing it through its Power of Agent and it had applied for Building Plan Permission with the Chennai Metropolitan Development Agency [CMDA] in respect of lands admeasuring to an extent of 7.61 acres comprised in S.Nos.553/2B1A, 552/1A1, 553/2B2A, 742 Part, 742/1 part, 743/3

Part, 744 part, 745/1 and 745/2 at Sholinganallur Village and CMDA had also approved the Building Plan Permission and directed the petitioner / Company to gift certain vacant piece of land to the Corporation of Greater Chennai for public purpose and accordingly, it gifted the lands admeasuring 96.82 sq.m comprised in part of S.No.742/1 of Sholinganallur Village, through a registered Gift Deed dated 02.02.2017, registered as Pending Doc.No.53/2017 on the file of the office of the Sub Registrar, Neelankarai and the lands gifted, are for public purposes and it is used as a Link Road. The petitioner would state that in respect of the Gift Deed executed in favour of the Local Authorities for public purposes and public use, the stamp duty is levied normally at the rate of Rs.100/- and no registration fee is required in terms of G.O.Ms.Nos.117, 359 and 486, Commercial Taxes and Religious Endowments Department dated 03.03.1982, 18.10.1993 and 05.11.1997 respectively. However, the document is kept pending registration and it has not been returned and when the representative of the petitioner/Company approached the 3rd respondent, they were informed that the said Gift Deed requires payment of stamp duty and registration fee and further informed that the document will be forwarded to the District Registrar-2nd respondent herein, for the purpose of impounding and levying stamp duty and registration.

6 Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by Mr.A.Thayarapan, learned counsel appearing for the petitioner, had invited the attention of this Court to the common order dated 12.12.2015 made in WP.Nos.2106 & 2107/2015 [Casa Grande Shelter LLP, rep. by its Assistant Manager, Tiruvanmiyur, Chennai-41 Vs. The Inspector General of Registration, Dept. of Registration, Chennai-4 and othres], and would submit that a similar issue was considered in that writ petitions and it has been held that as per the recitals, the petitioner therein, is a CMDA applicant as well as a developer and as such, there is no necessity on the part of the 3rd respondent therein to refer it to the District Registrar and it can be registered and returned to the petitioner herein and prays for appropriate orders.

7 The Court heard the submissions of Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents and also perused the materials placed before it.

8 It is relevant to extract paragraphs No.9 and 10 of the order dated 12.02.2015 made in WP.Nos.2106 & 2107/2015:-

> "....
>
> 9.The documents in question are Gift Deeds. It is to be noted that the petitioner, which is a Limited Liability Partnership Firm registered under the provision of the said Act, filed an application for planning permission before the CMDA. The CMDA, by order dated 17.12.2014,

directed the petitioner to remit Development Charges and other charges apart from imposing other conditions. As per condition No.8[a] of the said order dated 17.12.2014, the open Space Reservation Area and Link Road Portion roads are to be handed over through a registered Gift Deeds. Thus, it is clear that the petitioner has presented both the Gift Deeds, which are the subject matter of these writ petitions, pursuant to the order passed by CMDA. Therefore, the Registering Authority cannot state that the petitioner on its own volition has gifted the property.

10.Further more, the learned counsel for the petitioner pointed that the Donor in the Gift Deeds is the petitioner, who is the applicant before the CMDA and the petitioner is a Developer, and therefore, they are entitled for the benefit of the Government Order in GO.Ms.No.117. Further, it is submitted that in respect of the Open Space Reservation Area, the petitioner is entitled to the benefit under G.O.Ms.No.359 and the petitioner is not claiming any benefit under GO.Ms.No.486 dated 05.11.1997. Thus, it is clear that the Gift Deeds executed by the petitioner is pursuant to the direction issued by CMDA. The recitals also show that the petitioner is a CMDA applicant and hence, they are a Developer. The question that remains to be considered is whether the petitioner is entitled to the benefit of G.O.Ms.NO.117 and GO.Ms.No.359 and whether the Stamp Duty remitted by them is proper. However, the stage is yet to come to decide these issues since the District Registrar is yet to conduct enquiry into the matter. While on this issue, it is beneficial to refer to the decision of T.PANEER SELVAM Vs. THE INSPECTOR GENERAL OF REGISTRATION cites supra. In the said case, the petitioner therein sought for a direction to release a Deed of Dissolution of Partnership which was kept as a pending document by the concerned registering authority. This Court, after taking into consideration the provisions of the Indian Stamp Act and the Registration Act, pointed out that section 33[A] does not speak about the retention of a document after registration, in fact, the scheme of section 33[A] shows that the proceedings there under, can be initiated even after registration. Section 33-A[1] would show that it begins with a non-obstante clause and it uses the expression "after the proceedings have been initiated even after registration, but within a period of three years, there is no indication in section 33[A] about the power of the Sub Registrar to retain the documents. The aforesaid decision squarely applies to the case on hand."

9 Admittedly, in the case on hand, the petitioner is a developer and CMDA had also approved the Building Plan Permission and directed the petitioner to gift vacant pieces of lands to the Corporation of Greater Chennai through them and accordingly, the petitioner had executed four Gift Dees. It is the submission of Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents that G.O.Ms.No.486, Commercial Taxes and Religious Endowments Department dated 03.12.1997 would apply only to citizens and not to a corporate entity. However, this Court is of the view that in the light of the observations made in paragraphs 9 and 10 of the common order dated 12.02.2015 made in WP.Nos.2106 & 2107/2015, there cannot be any impediment on the part of the 3rd respondent to register the Gift Deeds and return the same to the petitioner. It is also to be pointed out at this juncture that the execution of the Gift Deeds in favour of the Corporation of Greater Chennai, was insisted by CMDA to approve the Building Plan Permission and the beneficiary is going to the Corporation of Greater Chennai-Local Body.

10 In the result, the writ petitions are disposed of and the respondents 2 and 3 are directed to register, release and return the Gift Deeds dated 02.02.2017 bearing Doc.Nos.P50, P51, P52 and P53/2017, if the papers are otherwise in order, within a period of two weeks from the date of receipt of a copy of this order and it is also made clear that release of the said documents would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act and the Indian Registration Act. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

AP

To
1.The Inspector General of Registration
No.100, Santhome High Road,
Santhome, Chennai 600004.

2.The Assistant Inspector General/District Registrar
Department of Registration, Chennai South
No.9, Jones Road, Saidapet, Chennai 600015.

3.The Sub Registrar
O/o.The Neelangarai Sub Registrar
2nd Street, Kazura Garden
Neelankarai, Chennai 600 041.

+4cc to Mr.A.Thayaparam,sr.16880,16879,16878,16877

+1cc to Government Pleader sr.17032

WP.Nos.6181 to 6184/2017

pvs(co)
ss(3/4/2017)