IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

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THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.2303 of 2015 &
M.P.No.1 of 2015

P.K.Sivasubramaniam ... Appellant

vs

1. The Chief Controlling Revenue Authority
   -cum-Inspector General of Registration,
   No.120, Santhome High Road,
   Santhome, Chennai-600 028.

2. The Joint Registrar/District Registrar(Admn)
   Central Chennai (Joint Admn)
   No.182, Bharathi Salai,
   Royapettah, Chennai-600 014.

3. The Sub-Registrar Kodambakkam,
   No.36/7, Alagiri Nagar, 5th Street,
   Vadapalani, Chennai-600 026.

4. The Chennai Metropolitan Development Authority,
   rep.by its Member Secretary,
   Thalamuthu Natarajan Building,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai-600 008. ...Respondents

Prayer: Civil Miscellaneous Petition filed under Sub Section 47 A (10) of Indian Stamp Act 1899 as amended by the Indian Stamp (Tamil Nadu Amendment) Act of 2004, against the order of the Chief Controlling Revenue Authority-Cum-Inspector General of Registration, Chennai-600 028 in proceedings No.5734/P1/2015 dated 22.06.2015 confirming the order of the Joint Registrar/District Registrar (Admn) Central Chennai (Joint Admn) Chennai-600 014 in No.12892/B1/2014 dated 22.12.2014. in respect of the Gift Deed dated 20/9/2013 registered as document No.3653/2013 interprecting the Gift Deed as Exchange Deed.

For Appellant : Mr.K.S.Sundar

For Respondents : Mr.Venugopal
Special Government Pleader for R1 to R3

Mr.C.Johnson for R4

J U D G M E N T

Challenging the order dated 22.06.2015 passed by the Chief Controlling Revenue Authority-Cum-Inspector General of Registration, Chennai-600 028 / 1st respondent, the appellant has filed the above appeal.

2. According to the appellant, he is the owner of the vacant site in the premises bearing Old Door No.38, New Door No.165, Arcot Road, Kodambakkam, Chennai-600 024 and he applied to the 4th respondent for a planning permit for construction of a building as required in Clause 9 of CMDA Rules Annexure XVI requiring a Gift Deed for a front portion of land measuring 284.17 square feet = 26.40 square metre to be surrendered for public purpose for street alignment to CMDA along with his application for planning permission.

3. The appellant also executed the registered Gift Deed dated 20.09.2013 in favour of the CMDA with a Stamp Duty of Rs.100/- being the nominal value as per G.O.Ms.No.359/CT and RE Department / Dated 18.10.1993 providing the remission of stamp duty and the Gift Deed was registered as Document No.3653 of 2013 in the office of the 3rd respondent and the same was returned for completion of registration. The said Gift Deed dated 20.09.2013 was enclosed with the appellant application for sanction and submitted before the 4th respondent. According to the appellant, the Audit Registrar interpreted the Gift Deed as conveyance and required deficit stamp duty of Rs.2,27,236/- by valuing the land gifted at Rs.10,000/- per square feet as per guideline value and fixed the total value gifted to CMDA at Rs.28,41,700/- under Article 23 of Stamp Act interpreting it as a Sale Deed. The appeal filed by the appellant to the 2nd respondent was also dismissed on 15.10.2014, directing payment of the deficit stamp duty of Rs.2,27,236/-. Thereafter, the appellant filed an appeal before the 1st respondent and the 1st respondent by the impugned order modified by interpreting the document as a Gift Deed of exchange and required the deficit stamp duty of Rs.1,98,819/- under Article 31 of Stamp Act.

4. On perusal of the relevant Government orders in G.O.Ms.359/CT and RE Dept/Dated 18.10.1993, it is clear that in the case of the Gift Deed executed in favour of the 4th respondent, CMDA, the State Government is empowered to provide remission of stamp duty under Section 9(i) (a) of Stamp Act, since there is no consideration or benefit of transfer of development rights under the Gift Deed in favour of the appellant. The Government also by subsequent order in G.O.Ms.No.56 dated 29.06.2017, Commercial Taxes and Registration (J1) Department, decided to modify the orders issued in the Government Order in G.O.Ms.No.486 dated 05.11.1997 for grant of stamp duty and registration for exemption to any instrument executed in favour of the Government or any local authority in the State of Tamil Nadu wherein properties are given for any public purpose and to omit the term of 'Citizen' appearing in the notifications issued therewith. Further in the said Government Order, it has been stated that the fee exemption can be extended to the instruments executed for public purpose in favour of the CMDA/CMRL even when there is an 'Consideration' in the form of Transfer of Development Rights involved. Further, in the Government Order, it has been stated that the notification shall be deemed to have come into force with effect from 12.03.1998 giving a retrospective effect to the Government Order.

5. In view of the above referred Government Orders, the respondents should not have levied the stamp duty on the Gift Deed executed by the appellant in favour of the 4th respondent. The respondents erroneously treated the document as Gift Deed and levied the stamp duty of Rs.1,98,819/-.

6. For the reasons stated above and in view of the Government Orders in G.O.Ms.No.486 dated 05.11.1997, G.O.Ms.No.359/CT and RE Dept/ dated 18.10.1993 and G.O.Ms.No.56 dated 29.06.2017, the Gift Deed executed by the appellant in favour of the 4th respondent, viz., CMDA, the appellant is exempted from paying the usual stamp duty. The appellant has rightly paid a sum of Rs.100/- as nominal stamp duty by virtue of G.O.Ms.No.359/CT and RE Dept/dated 18.10.1993.

7. In these circumstances, the order passed by the respondents 1 and 2 are liable to be set aside and accordingly the same are set aside. It is brought to the notice of this Court by the learned counsel for the appellant that pending appeal, the appellant had paid a total sum of Rs.2,27,329/- towards the deficit stamp duty as demanded by the respondents. Since this Court has set-aside the order passed by the respondents 1 and 2, I direct the respondents 1 to 3 to refund the sum of Rs.2,27,329/- to the appellant within a period of

four weeks from the date of receipt of copy of this judgment.

8. With these observations, the appeal is allowed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Controlling Revenue Authority
   -cum-Inspector General of Registration,
   No.120, Santhome High Road,
   Santhome, Chennai-600 028.

2. The Joint Registrar/District Registrar(Admn)
   Central Chennai (Joint Admn)
   No.182, Bharathi Salai,
   Royapettah, Chennai-600 014.

3. The Sub-Registrar Kodambakkam,
   No.36/7, Alagiri Nagar, 5th Street,
   Vadapalani, Chennai-600 026.

4. The Member Secretary,
   The Chennai Metropolitan Development Authority,
   Thalamuthu Natarajan Building,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai-600 008.

5. The Section officer,
   VR section,
   High Court Madras.

+1cc to Mr.C.Johnson, Advocate, S.R.No.85511
+1cc to Mr.K.S.Sundar, Advocate, S.R.No.85485

CMA.No.2303 of 2015

RRK(05/12/2017)