IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19502 of 2008
and
MP.No.1 of 2008

Saroj Goenka
Chairperson & Managing Director
Express Newspapers (P) Limited
... Petitioner

Vs.

1.The Sub Registrar,
Triplicane, Pycrofts Road
Chennai -14.

2.Express Infrastructure (P) Ltd
Chennai-2

3.Chennai Metropolitan Development Authority (CMDA)
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road,
Egmore, Chennai – 8.
(R3-impleaded vide order of Court dated:28/11/2018
made in WMP.21710/18 in WP.19502/08)
... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in proceedings No.149 of 2008 dated 19.06.2008 and quash the same.

For Petitioner : Mr.S.N.Kirubanandham
for M/S.Kannaiah Naidu
For R1 : Mr.P.P.Purushothaman,GA
For R2 : M/s.Surana & Surana

For R3 : Mr.P.Tamilmani

O R D E R

Challenging the notice dated 19.06.2008 issued by the first respondent, the petitioner has come up with this writ petition.

2.According to the petitioner, she is the Chairperson and Managing Director of Express Newspapers Private Limited. The said company wanted to promote a shopping mall and a hotel in the land measuring to an extent of 10.64 Acres in S.F.No.315/1 of Triplicane Village, for which, they formed a subsidiary company viz. Express Infrastructure Private Limited, the second respondent herein, which, in turn, submitted a proposal to the Chennai Metropolitan Development Authority for approval. Subsequently, as directed by the authorities, in accordance with the rules and regulations, the second respondent executed a gift deed in respect of the land measuring to an extent of 1.05 Acres for open space reservation area in favour of the CMDA vide Document No.262 of 2007 dated 28.02.2007 on the file of the SRO, Triplicane. Thereafter, a transfer deed dated 26.03.2007 came to be executed in respect of the remaining extent of 9.59 Acres in favour of the second respondent. When the said transfer deed was presented for registration, the first respondent referred the same to the District Revenue Officer (Stamps) for valuation under Section 47A of the Indian Stamp Act. After due enquiry, the first respondent issued the impugned notice, directing the petitioner company to pay the deficit stamp duty and Registration fee. Aggrieved over the same, the petitioner is before this Court.

3.Upon notice, the first respondent filed a detailed counter affidavit stating inter alia that the order challenged in this writ petition was based on the audit objection, consequent to the recital found in the transfer deed, which clearly stated that the land conveyed is 10.64 Acres, whereas the stamp duty has been paid only for an extent of 9.59 Acres and hence, the petitioner is liable to pay the stamp duty for the remaining extent of 1.05 Acres.

4.When the matter was taken up for consideration, the learned counsel appearing for the petitioner submitted that subsequent to the filing of this writ petition, G.O.Ms.No.56, Commercial Taxes and Registration (J1) Department dated 29.06.2017 came to be passed, to modify the orders passed in G.O.Ms.No.486 Commercial Taxes and Religious Endowments Department, dated 05.11.1997 to the extent of granting stamp duty and registration fee exemption to any instrument executed for public purposes in favour of CMDA/CMRL, even when there is a consideration in the form of Transfer of Development Rights involved and the said G.O. came into force with effect from 03.12.1997. The learned counsel further submitted that in the light of the said G.O, this Court, in number of decisions, set aside the stamp duty and registration charges levied for execution of the gift deed for the public purposes and one such decision is the judgment dated 08.03.2018 rendered in CMA No.1422 of 2015 [MGM Charitable Trust v. Chief Controlling Revenue Authority-cum-Inspector General of Registration and others], the relevant portion of which, is profitably extracted hereunder:

> "4. Mr.P.Chandrasekaran, learned counsel appearing for the appellant has produced G.O.Ms.No.56, Commercial Taxes and Registration (J.1) Department dated 29.06.2017 which shows that stamp duty and registration fee exemption is given to any instrument executed for public purpose in favour of CMDA/CMRL even when there is a consideration in the form of transfer of development rights involved and the said G.O. is made retrospectively applicable from 03.12.1997. When the said G.O. is applicable from 03.12.1997 retrospectively, the appellant has to get the benefit under the said Government Order. Therefore, the appellant has to get exemption from stamp duty and registration fee as the Gift Deed was executed on 05.07.2013 and the impugned order was passed on 12.12.2014. Hence, in view of the aforesaid Government Order, the order passed by the second respondent dated 12.12.2014 demanding the appellant to pay the deficit stamp duty and confirmed by the first respondent on 08.04.2015 have to be set aside.
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> 5. Accordingly, this Civil Miscellaneous Appeal is allowed and the proceedings of the first respondent bearing No.3297/P1/2015 dated 08.04.2015, is set aside and no amount is payable by the appellant-Trust. If the Gift Deed bearing Document No.2421 of 2013 on the file of the SRO, Mylapore is held by the SRO or any other authority, the same is directed to be returned to the appellant-Trust, if the same has not already been returned. No costs. The connected miscellaneous petition is closed."

Thus, the learned counsel sought to allow this writ petition by quashing the notice impugned herein.

5.The learned counsel appearing for the respective respondents have fairly conceded the submissions so made by the learned counsel for the petitioner. According to them, the notice demanding the stamp duty and registration charges from the petitioner in respect of the gift deed executed on 28.02.2007 for open space reservation area in favour of the CMDA, is liable to be set aside, in terms of G.O.Ms.No.56

dated 29.06.2017, which came into effect retrospectively from 03.12.1997.

6.Considering the fact that the document in the form of deed, conveying the land for the purpose of open space reservation area in favour of CMDA is a gift deed and having regard to the submissions made by the learned counsel on either side and also in the light of G.O.Ms.No.56 dated 29.06.2017 and following the aforesaid order of this Court, this Court is inclined to set aside the notice impugned herein.

7.Accordingly, this writ petition stands allowed and the notice dated 19.06.2008 issued by the first respondent is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Registrar,
Triplicane, Pycrofts Road
Chennai -14.

2.Chennai Metropolitan Development Authority (CMDA)
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road,
Egmore, Chennai - 8.

+1cc to Mr.K.Kanniah Naidu, Advocate, S.R.No.86567

+1cc to Mr.Surana & Surana, Advocate, S.R.No.86805

+1cc to the Government Pleader, S.R.No.87476

W.P.No.19502 of 2008

GJII(CO)
GSP(30/01/2019)