IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **26.10.2022**

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**Writ Petition No.29458 of 2015
and M.P.No.1 of 2015**

S.G.Gopinath
rep. by his Power of Attorney,
M/s.KGEYES Residency Private Ltd,
Rep. by its authorized Signatory,
Mr.A.Srinivasan, having office at
No.10 SRUSHTISSTHAL, 2nd Cross Street,
R.A.Puram,
Chennai – 600 028. ... Petitioner

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore,
Chennai – 600 008.

2.The Sub-Registrar,
Sub-Registrar Office,
Selayur,
Chennai. … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the Notice dated Nil issued to the petitioner's power agent namely M/s

KGEYES Residency Private Limited in respect of the Gift Deed dated 24.07.2013, registered as Doc.No.8039/2013, on the file of the second respondent and quash the same.

For Petitioner : Mr.A.E.Ravichandran

For Respondent 1 : M/s.P.Veenasuresh

For Respondent 2 : Mr.G.Krishna Raja, Additional Government Pleader

O R D E R

This writ petition has been filed for issuance of Writ of Certiorari calling for the records pertaining to the notice dated Nil issued to the petitioner's power agent namely M/s KGEYES Residency Private Limited in respect of the Gift Deed dated 24.07.2013, registered as Doc.No.8039/2013, on the file of the second respondent and quash the same.

2. The case of the petitioner is that the petitioner is the absolute owner of the property comprised in S.No.771/2B(Part), situated at Madampakkam Village, Tambaram Taluk, Kanchipuram District measuring an extent of 245.781 cents and executed a general Power of Attorney in favour of M/s

KGEYES Residency Private Ltd., to develop and deal with the above said property. Based on the said Power of Attorney, M/s KGEYES Residency Private Ltd., has submitted a plan for construction of stilt plus 4 floors of Residential building in the above said property, before the first respondent and in order to comply with the development regulations, as insisted by the first respondent, a Gift Deed dated 24.07.2013, registered as document No.8039 of 2013, was executed by the owners of the above said property, whereby an extent of 629.52 sq. mts was gifted in favour of the first respondent for the purpose of road widening and link road. After executing the Gift Deed, necessary planning approval was granted by the first respondent for putting up construction.

2.1. It is the further case of the petitioner is that all of a sudden, the second respondent has served a notice dated Nil to M/s KGEYES Residence Private Ltd., the power agent of the petitioner, stating that the Gift Deed dated 24.07.2013, registered as Doc.No.8039/2013, was undervalued and a sum of Rs.10,84,092/- was required to paid towards deficit registration charges, in total a sum of Rs.12,19,607/- has been demanded, to be paid within 10 days of receipt of the said notice. It has been stated in the said notice that if the deficit stamp duty and registration charges are not paid within 10 days, necessary action will be initiated under Section 47(A)(3) of the Stamp Act. Challenging the said notice, the petitioner has filed this writ petition with the aforesaid prayer.

3. Learned counsel for the petitioner would submit that as per the Stamp Act, before demanding the deficit stamp duty, the respondents have to initiate the proceeding under section 47(A) of the Act, without initiating the same, issuing notice to remit the registration charges and stamp duty, within a period of 10 days is not sustainable one. Hence, he prayed for allowing this writ petition.

4. Learned Additional Government Pleader appearing for the second respondent would submit that it is only a preliminary notice, however, if the petitioner has not come forward to pay the deficit stamp duty, 47(A)(3) proceeding will be initiated against the petitioner.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. The facts in the present case is not in dispute. Admittedly, the petitioner's power of attorney viz., M/s KGEYES Residency submitted a plan for construction for the above said property before the first respondent and the same was approved by the first respondent, after getting an extent of 629.52 sq.mts for road widening and link road by way of gift deed from the petitioner. All of a sudden, the second respondent served a notice to the petitioner to pay the deficit registration charges and stamp duty within a period of 10 days of receipt of the said notice.

7. As submitted by the learned Additional Government Pleader appearing for the second respondent, it is only a preliminary notice, however, as per the Stamp Act, before demanding the deficit stamp duty, the respondent has to initiate the proceeding under section 47(A) of the Act. In the present case on hand, instead of initiating the proceeding, demanding the petitioner to pay the deficit stamp duty and registration charges is not sustainable one and the same cannot be entertained. Hence, the impugned order is set aside. However, liberty is granted to the respondents to initiate the 47(A) proceedings in the manner know to law. The period during which

the case was pending before this Court shall stand excluded for the purpose of computation of limitation.

8. With the above observation, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2022

(vm)

Index : Yes/No
Speaking Order : Yes/No

To:

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore,
Chennai – 600 008.

2.The Sub-Registrar,
Sub-Registrar Office,
Selayur,
Chennai.

M.DHANDAPANI,J.

Vm

W.P.No.29458 of 2015

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