IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.09.2022**

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.29546 of 2016
and W.M.P.No.25559 of 2016

M/s.VGN Developers Pvt. Ltd.,
Rep. by its Authorized Signatory and Legal Officer,
D.Mahadevan ... Petitioner

Vs.

1.The Secretary to Government,
Commercial Taxes and Religious Endowment Department,
Secretariat,
Chennai – 9.

2.The Chief Controlling Revenue Authority – cum -
Inspector General of Registration,
Department of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

3.The Sub – Registrar (In – Charge),
Joint – II, The Sub – Registrar Office,
Thousand Lights,
Chennai – 600 014. … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent herein in respect of the impugned demand notice dated 14.10.2015 issued by the third respondent herein, the Sub-Registrar (In-Charge), Joint-II, The Sub-Registrar Office, Thousand Lights, Chennai – 600 014, to the petitioner herein, quash the same, as the proceedings of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, proceedings No.3297/P1/2015 dated 08.04.2015 is not applicable to the petitioner insofar as it relates to the execution of Gift Deed by the petitioner, Doc.No.224 of 2015 dated 27.02.2015 in the office of the Sub-Registrar (In-Charge), Joint-II, The Sub-Registrar Office, Thousand Lights, Chennai – 600 014, the 3rd respondent herein, along with the direction to the respondents herein to refund the amount of Rs.9,60,139/- (Rupees nine lakhs sixty thousand one hundred and thirty nine only) received from the petitioner towards deficit of stamp duty, and Rs.1,37,080/- (Rupees one lakh thirty seven thousand and eighty only) received from the petitioner towards deficit of registration fees on 16.10.2015 with simple interest at the rate of 12% per annum from the date of payment, i.e., from 16.10.2015 till the refund of the same to the petitioner by the respondents herein.

For Petitioner : Mr.T.R.Rajagopalan,
Senior Counsel
for Mr.C.V.Vijayakumar

For Respondents : Mr.Vijay Anand,
Additional Government Pleader

<u>O R D E R</u>

The petitioner has filed this writ petition, seeking for issuance of writ of Certiorarified Mandamus, calling for the records of the third respondent herein in respect of the impugned demand notice dated 14.10.2015 issued by the third respondent herein, the Sub-Registrar (In-Charge), Joint-II, The Sub-Registrar Office, Thousand Lights, Chennai – 600 014, to the petitioner herein, quash the same, as the proceedings of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, proceedings No.3297/P1/2015 dated 08.04.2015 is not applicable to the petitioner insofar as it relates to the execution of Gift Deed by the petitioner, Doc.No.224 of 2015 dated 27.02.2015 in the office of the Sub-Registrar (In-Charge), Joint-II, The Sub-Registrar Office, Thousand Lights, Chennai – 600 014, the 3rd respondent herein, along with the direction to the respondents herein to refund the amount of Rs.9,60,139/- (Rupees nine lakhs sixty thousand one hundred and thirty nine only) received from the petitioner towards deficit of stamp duty, and Rs.1,37,080/- (Rupees one lakh thirty seven thousand and eighty only) received from the petitioner towards deficit of registration fees on 16.10.2015 with simple interest at the rate of 12% per annum from the date of payment, i.e., from 16.10.2015 till the refund of the same to the petitioner by the respondents herein.

2. The case of the petitioner is that the petitioner's company is the developer of lay out and carrying out construction in respect of residential apartments, group housing, gated communities and complexes. Moreover, the petitioner is the owner of the property measuring to an extent of 5716.60 sq.mt, comprised in Old S.No.314 and Re-survey No.123/2, Block No.21 of Nungambakkam Village, Egmore-Nungambakkam Taluk, Chennai District, located at Old Door No.2/6, New Door No.21, Nungambakkam High Road, Chennai 600 006. The petitioner has submitted a proposal for constructing multi-stored building in the above survey number for the purpose of construction of triple basement (Automated Mechanical parking pro. With car lift 4 Nos) + stilt + 1 st floor to 13th floor + 14th floor (part) residential building with 166 dwelling units with Gym, Health Club and swimming pool at 1 st floor level. In compliance of the development control rules and regulation of construction of multi-stored building prevailing at present in respect of Open Space Reservation (OSR) and in the interest of public at large had voluntarily gifted a portion of the land required for street alignment notified by the Government and the petitioner had executed the gift deed dated 27.02.2015 bearing document Reg. No.224 of 2015 in favour of the

Chennai Metropolitan Development Authority to an extent of 63.72 sq.mts in the above mentioned property in Old S.No.314, Re-survey No.123/2, Block No.21 of Nungambakkam village, Egmore – Nungambakkam Taluk, Chennai, situated within the corporation of Chennai.

2.1. The said gift deed was executed in the Non-Judicial Stamp Paper of Rs.100/- as such gift deeds are exempted towards payment of stamp duty and registration fees in terms of G.O.Ms.No.359 Commercial Taxes and Religious Endowment Department, dated 18.10.1993. However, the third respondent demanded a sum of Rs.9,60,139/- towards stamp duty and a sum of Rs.1,37,080/- towards registration charges, which required to be collected in terms of G.O.Ms.No.486 C.T. & R.E. Department dated 05.11.1997. The petitioner in order to avoid any confrontation with registration department had remitted the entire amount of Rs.10,97,219/- to the third respondent on 16.10.2015 by way of demand draft, as against the illegal collection of stamp duty and registration fee, the present writ petition is filed with the aforesaid prayer.

3. Learned Senior counsel appearing for the petitioner would submit

that the petitioner is exempted from stamp duty and registration, as such gift deeds executed in favour of the public authorities are exempted towards payment of stamp duty and registration fee, which was also granted by the Government of Tamil Nadu by way of G.O.Ms.No.359, Commercial Taxes and Religious Endowment Department, dated 18.10.1993 and similarly G.O.Ms.No.486, Commercial Taxes and Religious Endowment Department, dated 05.11.1997 did not authorize the department to collect the registration fee and states that the Indian citizens are neglected from payment of same. In the present case, the petitioner company is an Indian owned company and it is run by Indian citizen. Hence, the petitioner company is entitled for exemption from the stamp duty and registration fee in terms of aforesaid G.O.Ms.No.486, Commercial Taxes and Religious Endowment Department, dated 05.11.1997.

4. Learned senior counsel appearing for the petitioner further submitted that even assuming without admitting the case, the stamp duty and the registration fee should be collected only after initiating the proceeding either under section 33-A of the Indian Stamp Act, 1899 and Section 80-A of the Registration Act, 1908, without following the procedure contemplated under

the Registration Act, forcibly, the respondents collected the amount from the petitioner is not sustainable one. Hence, the petitioner is entitled for the refund of the amount and prayed for allowing this writ petition.

5. Learned Additional Government Pleader appearing for the respondents would submit that though value of the property was not put forth in the gift deed, the deed was engrossed in the N.J.Stamp of the value of Rs.100/-. The Government have issued a notification under G.O.Ms.No.359 Commercial Taxes and Religious Endowment Department dated 18.10.1993 reducing the stamp duty payable in respect of gift deeds to be executed by the developer while handing over the open space reservation areas in Madras Metropolitan Area to Madras Metropolitan Development Authority as per Development Control Rules, to the extent the stamp duty is chargeable on the gift deed to a nominal value of Rs.100/- (Rupees one hundred only). This respondent considered that the said G.O.Ms.No.359 will apply to the gift deed dated 27.02.2015 as it has been made as per Development Control Rules and the stamp duty of Rs.7/- alone is leviable and as the gift deed is executed

on N.J.Stamp of Rs.100/- this respondent has registered the gift deed as duly stamped. But Subsequently, the departmental audit raised on objection that G.O.Ms.No.486 CT & RE dated 05.11.1997 providing exemption from payment of stamp duty and registration when executed by a citizen will not apply to the gift deed dated 27.02.2015. It has been executed by a company which is not a citizen and hence stamp duty of Rs.9,60,139/- and registration fee of Rs.1,37,080/- shall be levied considering the gift deed chargeable under Article 33. Based on the departmental audit report, this respondent has issued a notice to the petitioner to remit the deficit stamp duty of Rs.9,60,139/- and deficit registration fee of Rs.1,37,080/- under letter dated 14.10.2015.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The facts in the present case is not in dispute. Admittedly, the petitioner in order to develop the multi-stored building, executed a gift deed in favour of CMDA. As per G.O.Ms.No.359, Commercial and Taxes Department dated 18.10.1993, the stamp duty in respect of gift was

exempted. However, the respondents collected the amount in terms of G.O.Ms.No.486 Commercial Taxes & Religious Endowment Department, dated 05.11.1997. For better appreciation, the said Government Order is extracted hereunder:

> *In the said Table of Fees, in Article 1, in clause (k), after item (C 91), the following item shall be added, namely:-*
>
> *" (C 92) – No registration fee shall be payable in respect of deeds of gifts or settlement of lands donated by citizens to be executed in favour of Government or any local authorities in the State of Tamil Nadu for any public purpose."*

8. On perusal of the aforesaid Government Order makes it clear that no registration fee shall be payable in respect of deeds of gifts or settlement of lands donated by citizens to be executed in favour of Government or any local authority in the State of Tamil Nadu for any public purpose. In the present case on hand, the company and the person filed this writ petition are citizens of India. Already, the stamp duty is exempted in G.O.Ms.No.359 dated 18.10.1993 and the respondents also not claimed that they are not citizens of India.

9. As rightly submitted by the learned counsel for the petitioner, without initiated the proceedings either under 33-A of the Indian Stamp Act, 1899 or 80-A of Registration Act, 1908, demanded the petitioner to remit the entire stamp duty and registration charges is not sustainable one and the petitioner is entitled to get an exemption in terms of G.O.Ms.No.486 Commercial Taxes & Religious Endowment Department dated 05.11.1997. Hence, this Court is inclined to issue a direction to the respondents to refund the stamp duty and registration charges to the petitioner without any interest, within a period of 12 weeks from the date of receipt of a copy of this order.

10. With the aforesaid direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.09.2022

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Index : Yes/No
Speaking Order : Yes/No

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M.DHANDAPANI,J.

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