IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.24080 of 2014
and
M.P.No.1 of 2014

1. T.K.Natarajan (died)

2. T.R.Ashwin Kumar (HUF)
   rep by its Kartha
   T.R.Ashwin Kumar,
   New No.213 (Old No.98),
   Kutcheri Road, Mylapore,
   Chennai-600 004.

3. Sumathi Sivakumar

4. Badri

(P3 & P4 are substituted as Lrs of the 1st petitioner
vide order dated 14.06.2022 made in W.M.P.No.14031 of 2022
in W.P.No.24080 of 2014) . . Petitioners

Vs.

1. The Sub Registrar,
   Mylapore,
   Chennai-600 028.

2. The Assistat Inspector General of Registration
   (Additional Charge),
   Chennai Zone,
   Chennai-600 028.

3. Arulmigu Sri Kapaleeswarar Devasthanam
   Rep by its Executive Officer,
   North Mada Street, Mylapore,
   Chennai-600 004.
4. Toppur Raghu Natarajan

   (R4 substituted as LR of the 1st petitioner vide
   order dated 14.06.2022 made in W.M.P.No.14031 of 2022
   in W.P.No.24080 of 2014) . . Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other Writ or order or direction in the nature of Writ of Certiorarified Mandamus calling for the records of the first respondent comprised in his letter in Na.Ka.No.493/2013 dated 03.07.2014 (signed on 07.07.2014) and quash the same as illegal, arbitrary and contrary to the provisions contained in Section 29 of the Indian Stamp Act, 1899 and G.O.Ms.No.903 Commercial Taxes and Religious Endowment Department dated 04.09.1986 and consequently direct the first and second respondents to refund the amount paid by the petitioners in excess of the amount payable towards stamp duty and registration fee in respect of Document No.1308/2013 registered in the first respondent office, by fixing the nominal value of Rs.100/- for the subject property, within the time as may be fixed by this Hon'ble Court .

For Petitioner : M/s.Satish Parasaran

For Respondents : Mr.Yogesh Kanndasan,
Special Government Pleader for R1 & R2.
: Mr.Arun Natarajan,
Special Government Pleader for R3.

ORDER

The present petition has been filed seeking to quash the impugned order dated 03.07.2014 passed by the 1st Respondent and direct respondents 1 & 2 to refund the amount paid by the petitioners in excess of the amount payable towards stamp duty and registration fee in respect of Document No.1308/2013 registered in the first respondent office, by fixing the nominal value of Rs.100/- for the subject property, within the time frame that may be stipulated by this Court.

2. It is the case of the petitioner that originally one C.Srinivasan was the lessee of the subject property, who had sold his leasehold rights in the aforesaid property in favour of the 1st Petitioner vide the sale deed dated 20.07.1964, which property belongs to the 3rd Respondent. In the said property, a superstructure had been put up by the 1st petitioner's father and the 2nd Petitioner's grandfather, of which, one part of the superstructure belongs to the 1st petitioner and the other part belongs to the 2nd petitioner. The 1st petitioner, in turn had sold his leasehold rights in respect of certain

portion of the property, in favour of one D.R.Doraisamy Chettiyar vide sale deed executed in the year 1966, however, the 1st petitioner is the owner of the leasehold rights of the balance extent of the above said property. However, the lease of the said land expired in the year 1997 and the 1st petitioner has been making requests to the 3rd respondent for extension of the lease period. While being so, the 3rd respondent had issued notices to the tenants in the buildings belonging to the petitioners questioning the continuous possession of the aforesaid property.

3. It is the further case of the petitioners that, having entered into a mutual discussion with the 3rd Respondent, they executed a deed of surrender of lease and the deed of gift, in favour of the 3rd respondent/temple and presented the same for registration before the 1st respondent. In so far as the deed of gift is concerned, a sum of Rs.3,12,000/- and Rs.9000/- was demanded by the 1st respondent towards the stamp duty and registration fee respectively. Despite the said amounts having been paid by the petitioners, the 1st Respondent issued a letter dated 18.06.2013 demanding the petitioners to pay a sum of Rs.10,98,700/- which

is contrary to the G.O.Ms.No.93, Commercial Taxes and Religious Endowments Department dated 04.09.1986 which states that nominal value of the properties in favour of Hindu/Muslim Institutions be fixed at Rs.100/- towards the stamp duty and registration fee. Aggrieved by the same, the 1st petitioner had sent a letter to the 1st respondent and also addressed a separate petition to the Inspector General of Registration, pursuant to which, the Inspector General of Registration had sought for certain particulars with regard to the subject documents from the 1st respondent. However, without considering the aforesaid petition, the 1st respondent had passed the impugned order. Challenging the said order, the petitioners have filed the present petition.

4. Learned counsel for the petitioners submits that alreadysimilar issue has been considered by this Court in W.P.No.27185 of 2014 vide its order dated 20.10.2014 and this Court may grant the very same relief to the petitioners herein as well and this Writ Petition may be allowed.

5. Learned Special Government Pleader appearing for respondents did not disputed the submissions made by the learned counsel for the petitioners.

6. The issue raised in the Writ Petition is no longer *res integra* as the same issue has been considered by this Court in W.P.No.27185 of 2014, wherein this Court has held as under:-

> *"7. Therefore, the petitioners filed a writ petition in W.P.No.24080 of 2014, challenging the demand made by the first Respondent in his letter dated 03.07.2014. Notice was ordered in the said writ petition.*
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> *8. When the writ petition is pending, the petitioners received the original order of the second Respondent dated 02.07.2014, on the basis of which the first Respondent had issued a notice dated 03.07.2014. Therefore, challenging the order of the second Respondent dated 02.07.2014, the petitioners have come up with the present writ petition.*
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> *9. The Respondents 1 & 2 have filed a common counter affidavit. In the commo counter affidavit, the Respondents 1 & 2 have conceded the fact that the Government had granted remission of duty for the instrument of Gift executed for the benefit of charitable Endowments. But the Respondents 1 & 2 have contended that unless the Gift Deed contains a recital to the effect that the Donee is an institution coming under the control of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, the benefit of the Government Order granting remission cannot be extended.*

10. The stand taken by the Respondent 1 & 2 cat be best appreciated, if we have loot at para 9 of the counter affidavit. Hence, para 9 of the counter affidavit is extracted as follows:-

> *"9) Further, it is also sbmitted that in G.O.Ms.No.903 C.T & R.S.Department dated 04.09.1986, relied on by the petitioner seeking remission of stamp duty, at para 3 of the said G.O the following condition was also impossed for granting the remission of stamp duty ordered therein:- s*
>
> *Para 3 of the G.O.: "The Government have carefully examined the request of the Commissioner Hindu Religious and Charitable Endowments (Administration) Department and the Recommendation of the Inspector General of Registration . They accordingly, direct that in respect of deeds of gifts and settlement of lands and building to be executed in favour of Hindu/Muslim Institutions coming under Hindu Religious and Charitable Endowments Act and Wakf a nominal value of such properties be fixed at Rs.100/- only for the purpose of levy of stamp duty and registration fee instead of such duties being calculated on the market value of the property involved".*
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> *A close reading of the above para would indicate that the donee institution must be either under the control of Hindu Religious and Charitable Endowments Act or Wakf. There is no recital made available in the Gift deed relating to this case to confirm that the above condition was fulfilled. Further, the petitioner has not given any proof to prove that the above condition is satisfied in the present case."*

11. But th stand taken by the respondents 1 & 2 is quite unfortunate. The fact that the third Respondent is a temple coming under the control of the Hindu Religious and Charitable Endownments Department, is so well known. The temple is a

> *very famous temple coming within the purview of the Act. Therefore, the stand taken by the Respondents 1 & 2 is hyper technical. Even the learned counsel for the third Respondent concedes the fact that the temple comes within the purview of the Act. Therefore, merely because on the absence of this formal recitals the substantial nature of the document cannot be ignored."*

7. From the aforesaid decision, it is evident that the issue that has fell for consideration in the present case has already been decided by this Court in W.P.No.27185 of 2014 in favour of the petitioners therein. What is more curious to point out is the fact that the petitioners and respondents therein are the petitioners and respondents herein. The issue being similar in nature and the petitioners and respondents being one and the same, the act of the 1st respondent in once again passing the impugned order, which is not in consonance with the ratio laid down by this Court is nothing but an act of sheer disrespect to the orders of this Court, which could be treated to be a contempt. However, with due respect to judicial decorum, this Court is not proceeding any further.

8. As already held in the aforesaid decision, the 3rd respondent is a temple coming under the control of the Hindu Religious and Charitable Endowments Department and the temple comes within the purview of the Act. The stand taken by the 1st respondent is not an one off incident, but is a recursive incident, which has come to the notice of this Court even in the earlier writ petition in W.P.No.27185 of 2014. Therefore, necessarily the 1st respondent ought to have given the benefit of the aforesaid order to the present petitioners as well. But without following the said order, passing the impugned order is wholly impermissible and unsustainable.

9. For the reasons aforesaid, this Court is of the considered view that the relief granted to the petitioners in W.P.no.21785 of 2014 deserves to be granted in this petition as well. Accordingly, this Writ Petition is allowed and the impugned order passed by the 1st respondent is set aside. Respondents 1 & 2 are directed to treat the Gift Deed in favour of the temple and charge a nominal valur of Rs.100/-, which has been fixed towards stamp duty and registration fee as per G.O.Ms.No.8903, C.T. &

R.S. Department dated 04.09.1986 and not calculate the duties on the market value of the property and register the Gift Deed in favour of the 3rd respondent temple forthwith. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

07.07.2022

NHS

Index : Yes / No
Internet : Yes / No

To

1. The Sub Registrar,
   Mylapore,
   Chennai-600 028.

2. The Assistat Inspector General of Registration
   (Additional Charge),
   Chennai Zone,
   Chennai-600 028.

M.DHANDAPANI, J.

NHS

W.P.No.24080 of 2014

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