

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:19/12/2014

DATED: 29/01/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13292 of 2013

and

M.P.No.1 of 2013

Mrs.Nachammal

....

Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Urban Development Department,
Fort St.George, Chennai - 600 009.

2.The Director of Land Reforms and Tamil Nadu
Bhoodan Board,
O/o Director of Land Reforms,
Ezhilagam, Chennai - 600 005.

3.The Special Officer,
Tamil Nadu Bhoodan Board,
Saidapet, Chennai - 600 015.

4.The District Collector,
Tirupur District,
Tirupur.

5.The Tahsildar,
Tirupur Taluk,
Tirupur.

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Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ , order, or direction in the nature of the Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Ref.No.L1/81/2011/(BB) dated 21.06.2012 and quash the same and further direct him to declare that the land to an extent of 6 acres in Survey No.321/1 in Veerapandi Village, Palladam Taluk, Thirupur District, not been transferred to the 2nd respondent as per

the donation made by the K.N.Ramasamy Gounder dated 15.10.1956 to the 2nd respondent.

For Petitioner : Mr.M.Raja Sekhar

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The short facts of the case are as follows:-

The petitioner submits that he is the Power of Attorney Holder of the petitioner herein who is none other than his mother. He submits that the father of the petitioner viz., K.N.Ramasamy, was originally owning seven acres of land in survey No.321/1, near Veerapandi Village, Palladam Taluk, Coimbatore District, now Tiruppur District and he was in possession and enjoyment of the above property till he donated one acre of land to the Tamil Nadu Bhoodan Board. He additionally added that the petitioner's father donated one acre out of seven acres of land in Survey No.321/1, to the Bhoodan Board which was formed by the late Vinoba Gandhi. After, the donation the petitioner's father mortgaged the remaining six acres with the Tiruppur Co-operative land mortgaged Bank Limited in the year of 1962 by way of registered mortgaged deed in document No.188 of 1962 and Document No.2227 of 1962.

2. He submits that to the great shock and surprise of the petitioner's father the 5th respondent herein by a Notification dated 19.08.1965 declared the entire extent of 7 acres land in Survey No.321/1, Veerapandi Village, Palladam Taluk, Coimbatore District as the land vest with the State Bhoodan Board. He submits that the aggrieved by the action of the 5th respondent herein declaring the entire extent of 7 acres of land in Survey No.321/1, the petitioner father submitted repeated objections to the respondents herein from the year of 1966 to 1967 stating that he had donated only one acre of land.

3. He submits that though the declaration by the 5th respondent was dated 19.08.1965, the father of the petitioner continued to be in possession and enjoyment of the property. He submits that with the bonofide intention and legitimate expectation that the 5th respondent will drop the declaration. The petitioner's father executed a settlement deed in favour of the petitioner dated 17.12.1967 settling the six acres of land comprised in Survey No.321/1, in Veerapandi Village, Palladam Taluk, Coimbatore District and he submits that the petitioner was in possession and enjoyment of the same right from the date of settlement. He submits that the petitioner and her father have jointly and severally submitted the objections pursuant to the declaration made by the 5th respondent herein and they have also requested the respondent herein not to

issue patta to third parties based on the declaration of the 5th respondent dated 19.08.1965.

4. He submits that the respondent Bhoodan Board based on the representations of the petitioner and her father sent a communication dated 19.07.1970 stating that whether the petitioner was willing to give alternative land instead of land donated which is comprised in Survey No.321/1. He submits that subsequently in receipt of the above communication the petitioner also expressed her willingness to offer alternative site to an extent of seven acres. However, the respondents herein have not responded properly for the above representations.

5. He submits that in the above said circumstances the petitioner had no other option but to make repeated representations to the respondents to exempt 6 acres of land from the notification dated 19.08.1965. He submits that the petitioner filed Writ Petition in W.P.No.5522 of 2012 for Writ of Mandamus directing the 2nd respondent herein to consider and pass orders on the representations made by the petitioner dated 06.11.2010 and 24.01.2011 in accordance with law withing in a reasonable time limit fixed by this Court and the same was disposed by this Court on 14.03.2011 directing the respondents to consider their representation. He submits that pursuant to the same on 21.06.2012 the 2nd respondent passed the impugned order thereby rejecting his representation. In this circumstances, the above writ petition is filed.

6. The respondent has filed counter statement and resisted the above writ petition. The 2nd respondent submits that as per G.O.Ms.No.144, Rural Development Department, dated 11.10.2006, the subject Bhoodan Board has been transferred to this Department from the Office of the Director of Rural Development and Panchayat Raj Department. It is also submitted that there is no post of Special Officer in the Tamil Nadu Bhoodan Board functioning under the Revenue Department in the secretariat and not under Urban Development Department in the Secretariat as stated by the petitioner. The respondent submits that the brief history of the case which are as follows.:

(1) One Thiru.K.N.Ramasamy Gounder donated an extent of 7 acres of land in Veerapandi Village, Tiruppur Taluk to Bhoodan movement in the year of 1956. The notification under section 20(2) of the Bhoodan Yagna Act 1958 was published in the Tamil Nadu Government Gazette dated 08.05.1963. The Tahsildar, Tiruppur has enquired and confirmed the donation on 19.09.1967 under the above Act. The confirmation order has been registered in the office of the Sub Register, Tiruppur vide Document No.1574 of 1968 dated 23.07.1968. Therefore, the above said lands are in the name of Bhoodan Board.

(2) In his representation dated 06.11.2010 and 24.01.2011, the Power of Attorney of Tmt.Nachammal, who is the legal heir of the donor has stated that Thiru.K.N.Ramasamy Gounder had donated one acre in S.F.No.32 of Veerapandi Village and moreover, that the S.F.No. does not belong to Thiru.K.N.Ramasamy Gounder, hence the departmental official has taken 7 acres in S.F.No.321 by suo motu. The petitioner has requested to cancel 6 acres and take one acre as Bhoodan land. He also filed a writ petition and this Court, in its judgment in W.P.No.5522 of 2011 without expressing any opinion on the merit of the matter, directed the Director of Land Reforms to consider the representation and pass appropriate order after giving opportunity. He also filed a Contempt Petition vide No.721 of 2012 in this matter. As per the direction of this Court, notice was issued and enquiry was conducted on 08.06.2012 and based on the enquiry and connected records necessary order was passed by the Director of Land Reforms and Member Secretary, Tamil Nadu Bhoodan Board (Incharge) vide Ref.No.L1/81/2011 (BB) dated 20.06.2012. Aggrieved by this order the petitioner has filed this writ petition. This Court in its order in M.P.No.1 of 2013 in W.P.No.13292 of 2013 dated 04.03.2013 have granted Interim Stay.

(3) He respectfully submits that the petitioner's father K.N.Ramasamy had donated an extent of 7 acres in Survey No.321/1 in Veerapandi Village, Palladam Taluk, Coimbatore District (now Tiruppur District) in Deed No.980, on 15.10.1956. Further knowing the fact that the lands were already donated in the year of 1956, the donor fraudulently mortgaged 6 acres in Survey No.321/1 in the Tirupur Co-operative land Mortgage Bank Limited in the year of 1962. Therefore, the contention of the petitioner in these paras deserves no consideration.

(4) He respectfully submits that the village Karnam is his statement recorded on 13.07.1962 had also deposed that out of 15.97 acres of land in Survey No.321/1, Thiru.K.N.Ramasamy Gounder, S/o.Narayanasamy Gounder in Deed No.980 has donated 7 acres and that the lands were owned by him. Further in the bottom of the donation deed the donor has noted as below:

“இதில் 5 ஏக்கர் பாரதி வித்யா பீடத்தின் அமைப்புக்காக
திரு.ஆர்.சுப்ரமணியம் அவர்களுக்கு அளிக்க விரும்புகிறேன் ”

A careful verification of the donation deed reveals that the 7 acres mentioned in the deed appears to have been tampered as one acre and the survey number has been mentioned as 32. It is not known whether 321/1 has been tampered as 32 or it is a clerical error. However, as it is noted by the donor in the bottom of the deed regarding 5 acres of the above to the Bharatiya Vidya Peedam, it is logical to conclude that the total extent donated must have been above 5 acres, most likely 7 acres as seen in other documents. In response to the petitions of the donor Thiru.K.N.Ramasamy

Gounder, dated 29.12.64 and 08.02.66, then the chairman in his Ref.No.9541/62, dated 04.03.1966 has informed the donor that as per the Hindu Dharma, his request to return back the donated land is not proper and if the petitioner has yet objection, he can file an objection before the Tahsildar at the time of enquiry as per section 17 of the Bhoodan Yagna Act. Hence, the contention of the petitioner in these paras deserves no consideration.

(5) It is respectfully submitted that the Tahsildar, Tiruppur has passed confirmation order on 19.09.1967 for 7 acres in S.No.321/1 and it has been registered in the Sub-Registrar Office on 23.07.1968. Tmt.Nachammal in her favour and her father (donor) had already made objection and hence the patta may be given to her for the above said lands. The donor had also made a petition on 03.02.1970. To the above petitions, in Memo No.9541/62C, dated 28.04.1977, the petitioners have been informed that the Tahsildar has confirmed the Donation before the settlement dated 07.12.1967 and hence the lands donated cannot be returned back to the petitioners. Therefore, this contention deserves no consideration.

(6) He respectfully submits that there was no provision in the Bhoodan Yagna Act 1958 at that time for exchange of lands by offering alternate land in lieu of lands already donated. An amendment to section 17 of the Bhoodan Yagna Act 1958 has been issued only in the year of 2000 by inserting a new section i.e., 17-A, enabling for exchange of lands by offering alternate land in lieu of lands already donated. Hence, this contention of the petitioner in this para deserves no consideration.

(7) He respectfully submits that this Court in its order in W.P.No.5522 of 2011 dated 14.03.2011 filed by the petitioner have directed the Director of Land Reforms/Member Secretary, Tamil Nadu Bhoodan Board to consider and pass appropriate orders on the representation made by the petitioner dated 06.11.2010 and 24.01.2011 after giving opportunity to the petitioner. Accordingly, an order in pursuance of the judgment of this Court, dated 14.03.2011 has been passed by the Director of Land Reforms/Member Secretary (incharge) on 20.06.2012 rejecting the claim of the petitioner to return the 6 acres in S.No.321/1 as devoid of merits as the donor had donated 7 acres and the donation was regularized as per the provisions contained under the Tamil Nadu Bhoodan Yagna Act, 1958. Hence, the contention of the petitioner has no force.

7. The highly competent counsel Mr.Rajasekhar, appearing for the petitioner submits that the landed property to an extent of 7 acres comprised in Survey No.321/1 at Veerapandi Village, Palladam Taluk, was originally belonging to his father Mr.K.N.Ramaswamy. He had donated one acre of land to Tamil Nadu Boodhan Board. The rest of the 6 acres mortgaged with Tiruppur Co-operative Land Development Bank in the year of 1962. The said mortgage was a registered one.

Under these circumstances, the 5th respondent herein namely Tahsildar, who is attached to the Tiruppur Taluk Office, published a notification dated 19.08.1965 and declared the entire extent of land i.e., 7 acres vested with the State Bhoodan Board. Aggrieved by the said notification of the 5th respondent the father of the petitioner made several representations to the respondents stating that he had denoted only one acre of land out of 7 acres comprised in Survey No.321/1, Veerapandi Village. Supporting his objection the mortgaged deed particulars were furnished. Further, even after notification of the 5th respondent, the petitioner carrying out cultivation over the land and enjoying the same without any interference. Thereafter, the petitioner's father executed a settlement deed in favour of the petitioner dated 17.12.1967 and settling the 6 acres of land in the said survey number.

8. The very competent counsel further submits that from the date of settlement the petitioner is in possession and enjoying the same without any interference. The petitioner and her father have made representations to the 5th respondent/Tahsildar not to issue patta to the 3rd parties on the basis of notification published by the 5th respondent/Tahsildar not to issue patta to the parties on the basis of notification published by the 5th respondent dated 19.08.1965 stating that the petitioner's lands are vested with the State Bhoodan Board. After receipt of the said representation the State Bhoodan Board sent a communication dated 19.07.1970 stating that whether the petitioner was willing to give alternative land instead of land donated which is comprised in Survey No.321/1, Veerapandi Village, the same was accepted by the petitioner. Thereafter, the petitioner moved a writ petition before this Court to dispose her representation, accordingly this Court had directed the 2nd respondent to dispose her representation, the same was rejected without assigning any valid reasons.

9. The highly competent counsel further submits that the Bhoodan Certificate clearly shows that the petitioner's father had donated one acre of dry land in the said survey number. The Bhoodan document had been executed on 15.10.1956. In the presence of two witnesses. Thereafter, the petitioner's father had mortgaged the remaining six acres of land in the same survey number with the Tiruppur Co-operative land Mortgaged Bank on 05.02.1962. The said mortgage had been registered as document Nos.188 and 2227 of 1962. under these circumstances, the 5th respondent had given a declaration in the Government Gazette as well as the District Gazette dated 08.05.1963 and 12.06.1965, which is against the Bhoodan document dated 15.10.1956. Therefore, the declaration given by the 5th respondent is not valid. Further the declaration of the 5th respondent does not disclose the exact area of the land. After knowing the said declaration the father of the petitioner had made objections on 08.02.1966 to the Special Officer, Bhoodan Board and also to the chairman of the Board. After receipt of the said

representation, the chairman of the Board had directed the Tahsildar concerned to conduct an enquiry but there was no enquiry as per the direction of the Bhoodan Board Chairman. Following the earlier representations the father of the petitioner made another representation on 22.04.1996 and requested the Special Officer, Bhoodan Board stating that he had denoted one acre of land and the respondents had obtained signature on a document.

10. The father of the petitioner had executed a settlement deed on 07.12.1967 in favour of the petitioner, the same was registered on the file of the Sub Registrar. The father of the petitioner also informed the petitioner regarding the settlement. However, the petitioner is still in possession and enjoying the same. However, the claim of the respondents stating that the father of the petitioner had denoted seven acres in the said survey number. The highly competent counsel further submits that the respondents are the beneficiaries but never took the physical possession for their enjoyment, hence the highly competent counsel entreats the Court to allow the above writ petition.

11. The highly competent counsel Mr.M.S.Ramesh, appearing for the state submits that one Ramaswamy Gounder had denoted to an extent of seven acres of land in Survey No.321/1 at Veerapandi Village. regarding the donation of the Bhoodan Board it was published in the State Gazette, thereafter the donation document had been registered on the file of the Sub Registrar as document number 1574 of 1968 dated 23.07.1968, as such the petitioner's claim is not maintainable. However, the petitioner made a representation and requested the 2nd respondent to cancel the donated land. However, the petitioner had tampered the document as one acre instead of seven acres. The petitioner's father had freely donated the said land to the Bhoodan Board. As per the direction of this Court a comprehensive enquiry was conducted by the 2nd respondent after affording sufficient opportunities and rejected the petitioner's claim. Now the subject matter of the property under Civil Disputes before the Civil Courts, Tiruppur among the family members on the same cause of action. Therefore, the above writ petition is not maintainable on the same cause of action. The original suit in O.S.No.408 of 2007 has been filed by the petitioner against the Bhoodan Board and three others on the file of District Munsif Court, Tiruppur, which is pending. Therefore, the above writ petition is not maintainable. The impugned order had been passed after recording oral statements and on scrutinizing of the relevant documents regarding the properties and passed the impugned order which is appropriate for operation.

12. Per contra, the highly competent counsel Mr.Rajasekhar, submits that the Civil Suit in O.S.No.331 of 2006 and O.S.No.408 of 2007 on the file of District Munsif, Tiruppur had revealed the entire facts of the case especially the physical possession, which

is a title suit. The above writ petition has been filed on the impugned order passed by the 2nd respondent, since the said order is an arbitrary one, therefore, the above writ is maintainable.

13. From the above discussions, this Court is of the view that:

(i) As per Bhoodan Document dated 15.10.1956 disclosed that the father of the petitioner one Ramaswamy had donated one acre in Survey No.321/1, Veerapandi Village, Palladam Taluk, copy of the documents also available on the file of the respondents but the same was not produced before this Court for verification. As such, this Court duly accepts the Bhoodan donated document dated 15.10.1956;

(ii) The father of the petitioner had mortgaged to an extent of six acres to and in favour of the Tiruppur Co-operative Land Mortgaged Bank Limited, on 05.02.1962, the same was registered as Document No.188 of 1962, on the file of Tiruppur Registrar's Office. The said mortgage was a registered one and it was affected, since the father of the petitioner was possessing marketable title deeds over the said landed property;

(iii) After donating the said land the petitioner and her father made several representations and disclosed their views that the father of the petitioner had donated only one acre and not seven acres. Therefore, the respondents are bound to accept the father of the petitioner's representation, that too also made in the year of 1962 after knowing the gazette notification of the respondents dated 19.08.1965. Therefore, the father of the petitioner's representation is bonofide;

(iv) The respondents had not disclosed the current position of the lands i.e., who is in occupation and enjoying the same especially the beneficiaries besides during the relevant period i.e., at the time of denoting the lands, there is no details regarding the area of the lands belonging to the father of the petitioner herein to determine approximately the landed property of the donar;

(v) Donation indicates a philanthropic motive but in the instant case the father of the petitioner/Donar made a representation on 08.02.1956 and disclosed that he had given one acre of land to the Bhoodhan Board and this should have been accepted by the respondents for then only the donation becomes ethical, otherwise the said transaction becomes tantamount to receiving a donation through compulsion. On receiving any kind of donation from a donar it is imperative to receive the same with gratefulness and appreciation, with no comments on the said donation, for that would be the equivalent of looking a gift horse in the teeth. Let us atleast appreciate the donars who gift for a cause;

(vi) The petitioner had mortgaged the said properties with the Tiruppur Co-operative Mortgage and Loan Ltd., Bank and received Rs.3,000/- and Rs.5,000/- respectively after executing a registered simple mortgage deed which clearly proves that he is not capable of donating an extent of seven acres. Now, the respondents being a state machinery compulsorily raising rights over the said property which is belonging to the private individual and who is also carrying out cultivation over the land. Therefore, it is not fair on the side of the respondents/Government to exercise their power on compulsion.

14. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers and perusing the impugned order besides the views of this Court as mentioned in (i) to (vi), the above writ petition is allowed. Consequently, the order of the 2nd respondent in Ref.No.L1/81/2011/(BB) dated 21.06.2012 to quash the same and further direct him to declare that the land to an extent of 6 acres in Survey No.321/1 in Veerapandi Village, Palladam Taluk, Thirupur District, had not been transferred to the 2nd respondent as per the donation made by the K.N.Ramasamy Gounder dated 15.10.1956 to the 2nd respondent.

15. In the result, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The State of Tamil Nadu,
Rep. By its Secretary,
Urban Development Department,
Fort St.George, Chennai - 600 009.

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2.The Director of Land Reforms and Tamil Nadu
Bhoodan Board,
O/o Director of Land Reforms,
Ezhilagam, Chennai - 600 005.

3.The Special Officer,
Tamil Nadu Bhoodan Board,
Saidapet, Chennai - 600 015.

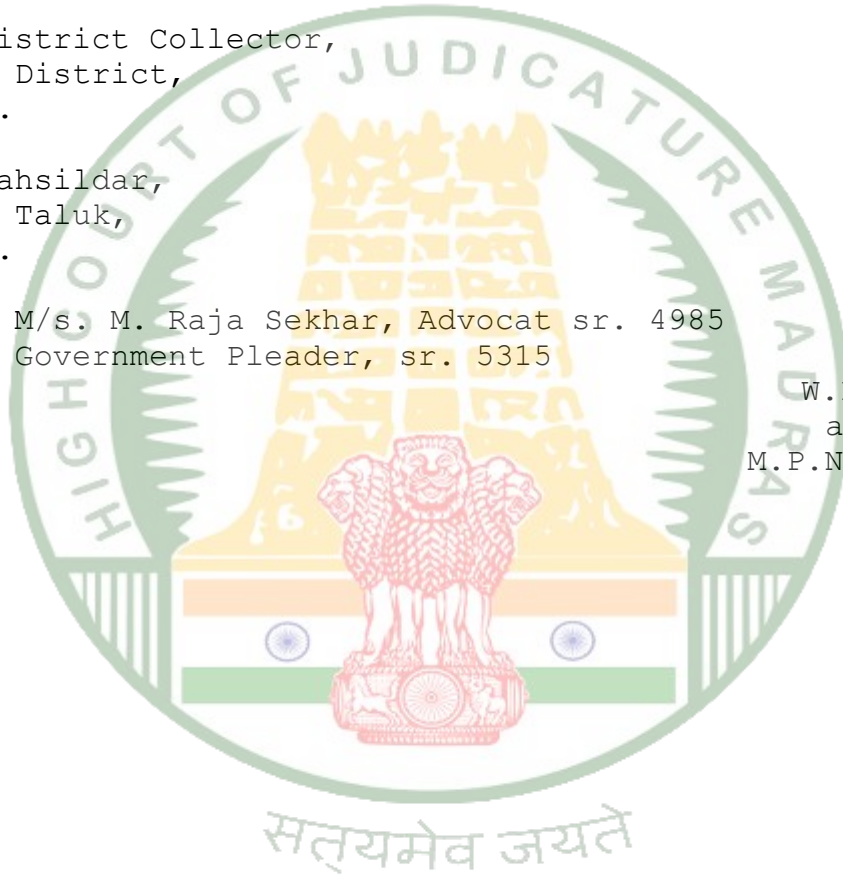
4.The District Collector,
Tirupur District,
Tirupur.

5.The Tahsildar,
Tirupur Taluk,
Tirupur.

1 cc to M/s. M. Raja Sekhar, Advocat sr. 4985
1 cc to Government Pleader, sr. 5315

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and
M.P.No.1 of 2013

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