**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 09.11.2016**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN**

**Writ Petition(MD)No.85 of 2014**

Hindu Nadar Uravinmurai Sangam,
Mavilodai,
Registration No.67 of 2002,
Vilathikulam Taluk,
Thoothukudi District,
represented by its president. ... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Block Development Officer,
Panchayat Union, Pudur,
Vilathikulam Taluk,
Thoothukudi District.

3.The Commissioner,
Panchayat Union, Pudur,
Vilathikulam Taluk,
Thoothukudi District.

4.The Sub-Registrar,
Pudur,
Vilathikulam Taluk,
Thoothukudi District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 either to execute a registered gift cancellation deed cancelling the registered gift deed dated 13.10.2009 bearing Document No.258 of 2009 on the file of the fourth respondent bilaterally or in the alternative to execute a registered gift deed reconveying the land measuring 1,500 square feet in Survey No.259/7, Mavilodai Village, Vilathikulam Taluk, Thoothukudi District to the petitioner's Society and consequentially directing the fourth respondent to register the said deed.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.V.Muruganandham
Additional Government Pleader

**ORDER**

The petitioner has filed the present Writ Petition seeking for a direction to the respondents 1 to 3 either to execute a registered gift cancellation deed cancelling the registered gift deed, dated 13.10.2009 bearing Document No.258 of 2009 on the file of the fourth respondent or to execute a registered gift deed reconveying the land measuring 1,500 square feet in Survey No.259/7, Mavilodai Village, Vilathikulam Taluk, Thoothukudi District to the petitioner's Society..

2.The case of the petitioner in brief is as follows:-

2.1.The petitioner is a registered Society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. The Society is running a primary School in Mavilodai Village, Vilathikulam Taluk, Thoothukudi District. Earlier, the Government issued a scheme called 'Namakku Naame' scheme. Under the above said scheme, construction of public building and Schools can be undertaken and on 33% contribution from the School authorities and the remaining amount will be paid by the Government for construction of school building.

2.2.The petitioner's Society School has approached the third respondent for constructing a School building under the above said scheme and they have also paid 1/3 of the contribution amount to the Government and the Government has also contributed the remaining amount to the petitioner's Society. In the mean time, the petitioner's Society executed a registered gift deed, dated 13.09.2009 in respect of the above said property in favour of the third respondent and the same was also registered as Document No.258 of 2009 by the fourth respondent. Subsequently, the above said proposal was not favourably considered by the respondents and by an order, dated 31.03.2011, the third respondent cancelled the permission and also refunded the amount paid by the petitioner's Society. Thereafter, the petitioner's Society themselves constructed the School building on their own fund. Since the above proposal was cancelled, the petitioner's Society made an application to cancel the gift deed executed by the petitioner's Society in favour of the third respondent, but that was not favourably considered.



2.3.The petitioner's Society approached the Joint Director/Project Director of Panchayats, Thoothukudi and by an order, dated 04.02.2013, the Joint Director/Project Director of Panchayats, Thoothukudi, directed the second respondent-Block Development Officer to take steps to cancel the above gift deed executed by the petitioner's Society. Based on the above direction, the third respondent-Commissioner also made a representation to the fourth respondent-Sub Registrar to cancel the gift deed and the third respondent has issued a letter, dated 27.06.2013, stating that the fourth respondent refused to cancel the same by referring to a circular issued by the Inspector General of Registration. The above circular of Inspector General of Registration contemplates that the gift and settlement deeds executed by owners of properties in favour of the Government or local bodies cannot be allowed to cancel unilaterally. On the other hand, the petitioner's Society requested the third respondent to execute a bilateral cancellation deed to cancel the gift deed or the third respondent can execute another gift deed in favour of the petitioner's Society by re-conveying the land instead of cancelling the earlier gift deed. But the third respondent is not taking steps for re-conveying the land gifted by the petitioner's Society to the Government of Tamil Nadu. Hence, the petitioner has filed the present Writ Petition.

3.The second respondent has filed a counter-affidavit admitting the factual position and stated that once a gift deed was accepted by the donee, the gift deed cannot be cancelled to the donee, whereas, as per the circular issued by the Director of Registration, the gift deed executed in favour of the Government cannot be cancelled subsequently and it is purely civil in nature. If the petitioner has any grievance in respect of the registration of the gift deed, dated 13.10.2009, he can approach the competent civil Court for appropriate remedy.

4.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5.The learned counsel appearing for the petitioner submitted that admittedly, the proposal to construct the School building has been cancelled by the authorities and the amount deposited by the petitioner's Society was also refunded and the petitioner's Society constructed the building on their own funds in the above site. Once the proposal has been cancelled, the authority has no right to retain the land. In the above circumstances, the Joint Director cum Project Director of Panchayats, Thoothukudi, also send a communication to the second respondent to take steps to cancel the gift deed, by an order dated 04.02.2013. Pursuant to the same, the third respondent also approached the fourth respondent seeking for cancellation of gift deed, but the fourth respondent refused referring to a circular issued by the Inspector General of Registration. The circular of Inspector General of Registration only contemplates that the gift and settlement deeds executed by owners of properties in favour of the Government or local bodies cannot be allowed to cancel unilaterally. On the other hand, the petitioner's Society requested the third respondent to execute a bilateral cancellation deed to cancel the gift deed. Moreover, the third respondent can execute another gift deed in favour of the petitioner's Society by re-conveying the land instead of cancelling the earlier gift deed. But the authorities cannot deny that the petitioner's Society is not having any right to seek cancellation of the registered gift deed and the respondents cannot allow to say it is purely a civil dispute. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that once the gift deed has been executed by the respondents, it cannot be cancelled and if the petitioner' Society has any grievance, the petitioner's Society can approach the civil Court to cancel the gift deed.

6.I have considered the rival submissions.

7.As rightly pointed out by the learned counsel for the petitioner, already the proposal has been cancelled and the amount deposited by the petitioner's Society has also refunded later and the petitioner's Society put up a building on their own fund, once, the proposal issued by the Government under the 'Namakku Naame' scheme has been cancelled the respondents cannot have any right over the property in which the building has been constructed. Apart from that, the Joint Director/Project Director of Panchayats, Thoothukudi, also recommended the second and third respondents to cancel the gift deed and based on that, the third respondent has also approached the fourth respondent for cancellation, but the fourth respondent refused to register the cancellation of gift deed, in view of the circular issued by the Inspector General of Registration, now at this stage, the second respondent cannot say it is a civil dispute and requesting the petitioner's Society to approach the civil forum as there is no dispute at all.

8.In the above circumstances, the second and third respondents are directed to take steps to cancel the gift deed executed by the petitioner's Society. So far as the order passed by the fourth respondent refusing to register the sale deed is concerned, the circular issued by the Inspector General of Registration, dated 27.04.2013, only relates to unilateral cancellation of settlement deed, but it is not applicable to the facts and circumstances of the present case and the fourth respondent cannot refuse to register cancellation of gift deed.

9.In view of the above, the petitioner's Society and the third respondent are directed to approach the fourth respondent and file a document for cancellation of gift deed and the fourth respondent is directed to register the same.

10.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Block Development Officer,
Panchayat Union, Pudur,
Vilathikulam Taluk,
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3.The Commissioner,
Panchayat Union, Pudur,
Vilathikulam Taluk,
Thoothukudi District.

4.The Sub-Registrar,
Pudur,
Vilathikulam Taluk,
Thoothukudi District.

+1 cc to MR.T.JEYAPALAN, Advocate SR.No.67355

+1 cc to Special Government Pleader Sr.No.67441

**W.P(MD)No.85 of 2014**
**09.11.2016**

**SMA/EM-MPA/08.12.2016:5p/7c**