

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2017
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.No.1448 of 2017

Umayal Ramanathan
versus

... Appellant/petitioner

1.The Secretary to the
Government of Tamil Nadu,
Municipal Administration &
Water Supply, Secretariat,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Poonamallee High Road,
Park Town,
Chennai 600 003.

..Respondents/Respondents

Appeal filed against the order passed by this Court dated 11
September 2017 passed in W.P.No.21737 of 2017.

WP.No.21737 of 2017:Writ of Mandamus directing the respondents
to take necessary action on the petitioners application dated
20/08/2008 as per the petitioners remainder dated 12/07/2017.

For appellant : Mr.R.Natarajan

For Respondents : Mr.V.Anandhamurthy,
Additional Government Pleader, for R-1
Ms.Karthikaa Ashok, for R-2

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory:-

The father of the appellant donated 30.35 acres of land in
Madampakkam Village, Tambaram Taluk, Chengalpat District to the
Corporation of Chennai, by gift deed dated 15 March 1946, for
the specific purpose of establishing a full fledged leprosy
hospital. The Corporation after a period of seventy years,
constructed a leprosy clinic using less than 12 cents of land,
after failing in its attempt to give the land to the employees

of Chennai Corporation for construction of residential houses. The appellant, aged about 89 years, is before this Court to direct the respondents to return the land to her on the ground that it was not utilized for the purpose for which her father gifted the land to the local body.

The facts:-

2. (a) The appellant is the daughter of Dr.R.M.Aalagappa Chettiar a philanthropist and educationalist, who floated Dr.Alagappa Chettiar Educational Trust for establishing educational institutions in the State of Tamil Nadu to serve the public in general and poor people in particular.

(b) It is the case of the appellant that Dr.Alagappa Chettiar, with a view to establish a Leprosy Hospital, gifted 30.35 acres of land to the Chennai Corporation. The Corporation without utilizing the land for the avowed purpose, made an attempt to distribute the land to its employees for construction of houses. The plan was dropped on account of the objection raised by the appellant. Since the land was not at all used for the specific purpose, the appellant made a request to return the land to her. The appellant failed to obtain relief from the writ court and therefore filed this intra court appeal.

(c) The Chennai Corporation in its counter affidavit in W.P.No.21737 of 2017 contended that a Leprosy Hospital was constructed in 2015 and it was inaugurated on 29 January 2016. The Corporation has put up a compound wall covering two acres of land, housing the Leprosy Hospital.

Submissions by parties :-

3. (a) The learned counsel for the appellant submitted that the land was gifted for a specific purpose. Even after a period of 70 years, the land was not used for the purpose for which it was gifted. Since leprosy was eradicated, there is no need for a full fledged leprosy hospital now in the State. According to the learned counsel, the Corporation would have given the land to its employees for housing purpose, but for the intervention of the appellant. The learned counsel placed reliance on an earlier judgment of this Court in W.A.No.836 of 2017 in support of his contentions.

(b) The learned Additional Government Pleader submitted that it is for the Government to take a decision in the matter.

(c) The learned Standing Counsel for the Chennai Corporation submitted that the Corporation has constructed a building in two grounds for the Leprosy Hospital and put up a compound wall covering two acres of land. The learned Standing counsel further submitted that there is no proposal now to give the land to the

employees.

Discussion :-

4. The predecessor-in-interest of the appellant gifted 30.35 acres of land to the Chennai Corporation by executing a registered gift deed dated 13 March 1946. The land was given for the specific purpose of constructing a leprosy sanatorium. It is the admitted case that the land was not used for the specific purpose for which it was given, till 2016. According to the Corporation, hospital building was constructed by using 4800 sq.ft. of land, equivalent to 12 cents. The Corporation contended that they have put up a compound wall surrounding two acres of land housing the hospital, which was inaugurated on 29 January 2016. Therefore, it is clear that the Corporation is still keeping 28.35 acres of land without utilizing it for the specific purpose for which it was gifted by the father of the appellant.

5. The Chennai Corporation earlier made an attempt to give this land to its employees for housing purpose by forming a layout. The proposal was later dropped on the basis of the legal opinion that it should be used only for the purpose for which it was donated. The following proceedings dated 21 September 2014 contain the proposal mooted by the Corporation for giving the land as house sites to its employees.

From	To
Commissioner,	The Secretary to Government,
Corporation of Chennai,	Municipal Administration
and	
Ripon Buildings,	Water Supply Department,
Chennai 600 003	Chief Secretariat,
	Chennai 600 009.

Ni.Ma.Voo.Thu.Na.Ka.No.LI8/959/04 dated 20.09.2004

Madam,

Sub : Chennai Corporation - Land - Madambakka
Village, Housing scheme for Corporation Staff -
distribution by way of house site plots -
permission sought - matter informed -
regarding.

Ref : Proceedings of the Special Secretary to
Government, Vide Ne.Mu.Ka.No.28894/
Ma.Na1/1998-24 dated 24.6.2004.

The Managing Director of Kerala Corporation Company Ltd., Mr.Alagappa Chettiar had donated an extent of 30.25 acres of land situated at Madambakkam Village, for the purpose of establishing Leprosy

sanatorium at Madambakkam.

With regard to the aforesaid donated land, a legal advise and opinion was sought by Corporation of Chennai for the purpose of using the aforesaid donated land for distribution of house site plots for the staffs of the Chennai Corporation, it has been informed that it is not possible to use the said donated land for the purpose of laying out house site plots and that the donated land should be used only for the purpose for which the said land was donated and not for other purposes as per judgment given by Hon'ble Supreme Court.

Thus, Chennai Corporation has been instructed kindly to give up the proposal of laying out house plots for staffs of Chennai Corporation in the land belonged to Chennai Corporation measuring an extent of 30.25 acres at Madambakkam Village.

Sd/- Commissioner

6. The appellant has produced string of documents to prove that the State of Tamil Nadu has eradicated leprosy. Similarly, the appellant has produced newspaper reports indicating that anti-social elements have been using the land for unlawful purposes. The land is now full of *prosopis juliflora* (seemai karuvelam) species and it is a place of neglect.

7. The appellant has claimed return of land on the ground that it was given for a particular purpose and due to the failure to utilize the land for such a specific public purpose, a situation has arisen for giving the land back to the donor.

8. In *Tahsildar Pollachi and another vs. P.Bagyalakshmi*, judgment dated 30 October 2017, in W.A.No.836 of 2017, a similar issue regarding gift of land for constructing school building and the claim for return of the land on the ground of non utilization came up for consideration before this Court. While directing the Government to consider the request, this Court made the following observation :-

"8. The gift of the land was given for a specific purpose. The construction of school building in the name of the donor was the sole object of the gift. There is a marked difference between acquisition of land and the demand for reconveyance later on account of the failure to utilise the land for the purpose for which it was acquired and a gift of land for a particular public purpose and claim made by the donor for return of land on the ground that the land was not used for the particular purpose for which it was gifted. In case, it is a compulsory acquisition for a public purpose, the scope

of re-conveyance under Section 48-B is very limited. The Government must be satisfied that the land was not used for the specific purpose and it is not necessary for any other public purpose. Then only, the question of re-conveyance would arise. However, in a case of this nature, when the purpose of gift failed to materialise, the donor would be justified in claiming the land back. There is no right for re-conveyance under Section 48-B of the Land Acquisition Act, 1894. There is only a right to consider the request for re-conveyance. However, that is not the case in case it is a conditional gift for construction of school building, hospital, etc., and on account of subsequent events or efflux of time, the object is no more in existence. In case a request is made by the donor on account of the non-accomplishment of the purpose for which gift of land was given, the Government must consider such request giving due weight to the wishes of the donor while executing the gift deed donating the land for the purpose indicated therein.

9. Similar issue came up for adjudication before the Division Bench of the Madurai Bench of this Court in *M.Thiyagarajan v. The State of Tamil Nadu and others* [2017-2-Writ L.R. 349]. The donors gifted about 25 acres of land for establishing Karur Government Medical College at Kuppuchipalayam Village. The Government accepted the gift and issued an order sanctioning funds for construction of medical college. The public works department awarded contract to a local contractor for construction. Subsequent inspection of land by the Director of Medical Education found that the land was not fit for establishing a medical college on account of its locational disadvantages. The Government therefore decided to take another land owned by a Religious institution in exchange of the gifted land. In the mean while, Karur Municipality, resolved to allot 20 acres of its prime land in Karur Town for construction and establishment of Government Medical College. While so, the donors, the contractor and a local politician filed writ petitions before the Madurai Bench to direct

the Government to establish the medical college at the land gifted by the donor. The Writ Court granted interim stay and restrained the Government from changing the location. Another writ petition was filed in public interest to accept the municipal land. The Division Bench following the judgment of the Hon'ble Supreme Court in Abraham T.J. V. The State of Karnataka [2017 (7) Scale 641] held that it is the prerogative of the Government to select the land for establishing medical college and there is no legal right to claim that only the land gifted by the donor should be used for the public purpose. While dismissing the writ petition filed by the donors and upholding the decision taken by the Government to accept the land offered by the Karur Municipality, the Division Bench directed the Government to return the gifted land to the donors on account of the subsequent events.

10. We are therefore of the view that interest of justice would be met by directing the Government to consider the request for return of land in the light of the background facts relating to the gift and the subsequent events indicated above.

9. The appellant is similarly situated and as such, her case also should be considered in the light of the observation and the related directions given in W.A.No.836 of 2017.

10. The land was given free of cost to the Corporation for a purpose identified by the donor. However, the land was not used for the said purpose and attempt was made even to give the land to the employees. The request made by the appellant for return of land should be considered in this backdrop.

11. In the result, the order dated 11 September 2017 is set aside, and by following the judgment dated 30 October 2017 in W.A.No.836 of 2017, the Writ Petition filed by the appellant is allowed.

12. The appellant is given liberty to submit a comprehensive representation to the first respondent along with a copy of this judgment. There shall be a direction to the State to consider the representation for return of land on merits, taking into account the purpose for which the land was gifted and the subsequent events and more particularly in the light of the judgment dated 30 October 2017 in W.A.No.836 of 2017 and by giving an opportunity of hearing to the appellant. Such exercise

shall be completed within a period of three months from the date of receipt of representation. No costs. Consequently, C.M.P.Nos.19433 and 19434 of 2017 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the
Government of Tamil Nadu,
Municipal Administration &
Water Supply, Secretariat,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Poonamallee High Road,
Park Town,
Chennai 600 003.

+1 cc to Mr.R.Natarajan advocate sr 79996

+1 cc to Mrs.Karthikaa Ashok Advocate sr 80238

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W.A.No.1448 of 2017

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