

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.10.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

and

THE HONOURABLE MR.**JUSTICE P.VELMURUGAN**

W.A No.836 of 2017 and
C.M.P.Nos.11609 and 17430 of 2017

1.The Tahsildar,
Pollachi Taluk,
Pollachi, Coimbatore District.

2.The District Educational Officer,
Pollachi Educational District,
Pollachi, Coimbatore District.

versus

P.Bagyalakshmi

... Appellants

... Respondent

PRAYER: Writ Appeal filed under clause 15 of the Letters Patent against the order dated 08.11.2016 made in W.P.No.12989 of 2013.

For Appellants : Mr.A.Zakkir Hussain
Government Advocate

For Respondent : Mr.C.Prakasam

J U D G E M E N T

[Judgment of the Court was made by K.K.SASIDHARAN, J.]

This intra court appeal is directed against the order dated 8

<http://www.judis.nic.in> November 2016, in Writ Petition No.12989 of 2013 giving liberty to the

respondent to make an application before the first appellant for change of patta and on receipt of such application, the Tahsildar was directed to pass appropriate orders on merits.

Summary of Facts

2. The predecessor-in-interest of the respondent, by way of Gift Deed, dated 24 April 1964, gifted 2.50 acres of land in S.F.No.73/1, Sub Division 368 in Vadakkipalayam Village, Pollachi Taluk, Coimbatore District to the Education Department, for construction of school. The gift was made consequent to the decision taken by the Government to permit construction of Educational Institutions by accepting land from private individuals on condition that the school would be named after them. The land gifted by the predecessor-in-interest of the respondent on 24 April 1964 was accepted by the Education Department. However, school was not constructed by utilising the gifted land.

3. Since the land was not used for the purpose for which it was gifted and the school was established at a near by place, the respondent filed a Civil Suit in O.S.No.70 of 2007 before the Subordinate Court at Pollachi, for a declaration of revocation of gift, as it was not acted upon. The civil suit was decreed *ex parte* by judgment and decree dated 20

December 2007. Since the revenue records were not mutated, the respondent filed a writ petition before this Court in W.P.No.12989 of 2013. The learned Single Judge having found that the Civil Court has already granted a decree of declaration, directed the first appellant to consider the question of mutation of land records. The order is under challenge before this Court.

4. When this writ appeal came up for hearing on 20 October, 2017, we put a question as to how the respondent is entitled to a decree of declaration, notwithstanding the acceptance of the gift by the Government, the learned counsel for the respondent submitted that he would advise the party to submit a representation to the appellants for return of the land on the ground that it was not used for the purpose for which it was gifted. Accordingly, we have adjourned the matter.

5. When the writ appeal was taken up for hearing today, the learned counsel for the respondent produced a copy of the representation, dated 20 October 2017 submitted by the respondent to the District Education Officer, Pollachi and Coimbatore, with a request to return the land.

6. We have also heard the learned Government Advocate for the appellants and the learned counsel for the respondent.

Discussion

7. There is no dispute that a gift deed was executed by the predecessor-in-interest of the respondent to the Education Department on 24 April 1964 gifting the land in question for construction of a Government school in the name of the donor. It is also an admitted position that the Government has constructed the school at a different place and the land gifted by the predecessor-in-interest of the respondent was not used for the purpose for which it was gifted. It was only on account of this, the respondent made a claim for returning the land.

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.

11. Since representation was not given to the proper authority, we permit the respondent to submit a comprehensive representation to the Director of School Education. The Director shall consider and dispose of the matter on merits within a period of three months from the date of receipt of such representation.

**K.K.SASIDHARAN,J.,
and**

P.VELMURUGAN,J.,

(svki)

12. The intra court appeal is disposed of with the above direction.

No costs. Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN,J.) (P.VELMURUGAN,J.)
30 October 2017

Index:Yes/No

Note: 1. Issue order by 2.11.2017

2. The Registry is directed to forward a copy of this judgment to
The Director of Education Department,
Education Department, College Road, Chennai.

kv/svki



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