

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.43814 of 2016

N.Vijayakumar

.. Petitioner

Vs

The Commissioner,
Panchayat Union,
Thali Panchayat Union,
Thali, Krishnagiri District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondent to execute and register a Deed of Consent in favour of the petitioner or his predecessors in title giving consent in respect of the Deed of Cancellation of Gift Registered document No.25 of 1995, in respect of petitioner's agricultural lands comprised in S.Nos.252/3, 252/4, 252/5, 275/1, 275/2 and 275/3 and lands comprised in S.Nos.276/1, 276/3A, 276/3B, 292/1A and 292/1B, situated in Kelukondapallai Village, Thenkanikottai Taluk, Krishnagiri District, to enable the petitioner to implement the Floricultural operations in the said lands.

For petitioner : Mr.S.Jayakumar

For Respondent : Mr.I.Arokiasamy

O R D E R

By way of filing this writ petition, the petitioner seeks a direction to the respondent / the Commissioner, Panchayat Union, Thally, to execute and register a Deed of Consent in his favour or his predecessors in title giving consent in respect of the Deed of Cancellation of Gift Registered in Document No.25 of 1995, in respect of his agricultural lands comprised in S.Nos.252/3, 252/4, 252/5, 275/1, 275/2 and 275/3 and lands comprised in S.Nos.276/1, 276/3A, 276/3B, 292/1A and 292/1B, situated in Kelukondapallai Village, Thenkanikottai Taluk, Krishnagiri District, to enable him to implement the Floricultural operations in the said lands.

2. Heard the learned counsel appearing on either side.

3. According to the petitioner, the entire lands comprised in the above said survey numbers were belonged to one Mrs. Erramma @ Pappamma, wife of Mr. Narayana Reddy. Originally, the said Mrs. Erramma executed a power of attorney in favour of her husband as per the Registered Document No. 225 of 1991, empowering him to form a layout of such lands. Thereafter, he had submitted layout plans for sanction to the respondent herein and thereby he had also executed a Gift Deed in favour of the respondent by Registered Document No. 2065 of 1991 on the file of the Sub-Registrar, Kelamangalam, gifting a portion of the lands in the above said survey numbers for the purpose of laying the road, park etc. However, the said layout plan was not approved by the respondent in time, therefore, he had dropped the said proposal and to that effect, he had also executed a Deed of Cancellation annulling the Gift Deed gifting portion of the lands to the respondent under Registered Document No. 25 of 1995, dated 06.01.1995. Thus, after the cancellation of such Gift Deed, entire lands comprised in the above said survey numbers were vested with the said Mr. T. Narayana Reddy and his wife Mrs. Erramma @ Pappamma. Thereafter, the petitioner had purchased the above said lands from those persons vide Registered Sale Deed Document Nos. 4304/2006, 4305/2006 and 4306/2006 on the file of the Sub Registrar, Kelamangalam, and subsequent to the said purchase, he has been enjoying absolute possession and enjoyment of the aforesaid lands.

4. Now, the only grievance of the petitioner is that after his purchase, when he had approached the State Bank of India, Agricultural Development Branch, to borrow a loan for the purpose of constructing a Green House for Floricultural purpose, the panel advocates of the said Bank directed the petitioner to obtain the consent of the Panchayat Union for cancellation of the Gift Deed as the portion of the said lands was admittedly gifted by his predecessor to the respondent Panchayat Union. To rectify the same, it is stated, though he made a representation dated 08.11.2016 followed by several reminders, he did not receive any reply from the respondent Panchayat Union. Hence, this writ petition with a prayer cited supra.

5. It is stated by the learned counsel for the respondent, by bringing to the notice of this Court a No Objection Certificate dated 29.07.2016 issued by the Block Development Officer, Thally, that since the Gift Deed in Document No. 2065/1991 was already cancelled by the petitioner's predecessor by way of registering Cancellation of Gift Deed vide Document No. 25 of 1995, dated 06.01.1995, on the file of the Sub-Registrar Office, Kelamangalam, and thereby No Objection Certificate was also issued permitting the land owners to sell the aforesaid properties to whomsoever they like, the question of seeking a direction to the respondent once again to execute a Deed of Consent in favour of the petitioner or his predecessor

for the very same survey numbers does not arise. In this context, for better appreciation of the case in hand, relevant portions of the No Objection Certificate, dated 29.07.2016, issued by the Block Development Officer, Thally, are extracted below:

" NO OBJECTION CERTIFICATE

The Gift Settlement Deed has not been accepted by the panchayat and the panchayat has also not taken any steps to accept the Gift Deed. The owners are also not converted into a layout and Road is also not formed by the owners of the property and it is still in agricultural lands only. The delivery of possession was also not taken by the Panchayat and the present owner is in legal and lawful possession of the above property.

In view of not accepting the gift deed, the above said land owners also cancelled the above said registered Gift Deed in Document 2065/1991 by virtue of a registered cancellation of gift deed dated 06.01.1995 (Registered as Document Number 25 of 1995, Sub Registrar Officer, Kelamangalam) and hence, the panchayat also no objection whatsoever for the cancellation of gift deed and the panchayat also no objection to sell the above properties to whomsoever they like."

From the above, it is clear that the respondent has also admitted the Cancellation of Gift Deed and they have further categorically stated that since the possession of the aforesaid lands was not taken by the Panchayat, the present owner / the petitioner herein is in legal and lawful possession of the above said properties. Therefore, the petitioner cannot insist the respondent to issue the Deed of Consent as that would unnecessarily cause additional financial burden on the respondent towards purchase of stamp duty for the said Deed of Consent, Registration Fees, etc. Since the respondent cannot make out these financial burdens and that there is no provision therefor for such payment, the said prayer of the petitioner seeking Deed of Consent accepting the issuance of Deed of Cancellation is wholly untenable.

6. I find merit on the above said submissions, for, when the petitioner had already executed a Deed of Cancellation annulling the Gift Deed dated 06.01.1995, it is highly untenable on the part of the petitioner to ask for execution of Deed of Consent as that would unnecessarily incur loss to the exchequer.

7. Besides, it is not known how the panel advocates of the State Bank of India can insist upon the petitioner to get a

Deed of Consent from the respondent Panchayat Union. Therefore, the prayer of the petitioner seeking a direction to the respondent to execute Consent Deed cannot be entertained as they have already given No Objection Certificate by categorically stating that the present owner / petitioner herein is in legal and lawful possession of the lands in question.

8. In fine, for the reasons stated above, the writ petition fails and the same is dismissed. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rkm
To

The Commissioner,
Panchayat Union,
Thali Panchayat Union,
Thali, Krishnagiri District.

+2 ccs to Mr.I.Arokiasamy Advocate sr 2347
+2 ccs to M/s.S.Jayakumar Advocate sr 1490

W.P.No.43814 of 2016

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