



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2017

Delivered on : 31.08.2017

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CORAM:

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P.[MD].Nos.9604, 18179 of 2016, 13756 and 14600 of 2017
and
W.M.P.(MD)Nos.7635,7636,8340,9852,13106 of 2016, 10735 and 11450
of 2017

W.P.[MD].No.9604 of 2016:

M.Thiyagarajan : Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai.
- 2.The State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and Water
Supply Department,
Fort St. George,
Chennai.
- 3.The Director of Medical Education,
Medical Education Council,
Kilpauk,
Chennai-10.
- 4.The District Collector,
Karur District,
Karur.
- 5.The Executive Engineer,
Public Works Department,
Buildings (C&M) Region,
Secunderabad,
Trichy-1.



6.The Commissioner,
Karur Municipality,
Karur.

7.M/s.Shripathi Associates,
No.62A, Thangaperumal Street,
Erode.

8.M.Thangarasu

9.R.Jothi Basu

[R-8 and R-9 impleaded as per the order
of this Court dated 20.07.2017 in
W.M.P. (MD) Nos.8290 and 8933 of 2017] : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to establish a Government Medical College and Hospital in the land in patta No.2423 of Kuppuchipalayam Village, Karur District, as mentioned in the Government Order in G.O.(Ms)No.352 of 2015, dated 30.11.2015 based on the petitioner's representation dated 20.05.2016.

For Petitioner	: Mr.AR.L.Sundaresan, Senior Counsel, For Mr.AN.Ramanathan
For Respondents 1 to 5	: Mr.B.Pugalendhi, Additional Advocate General, Assisted by Mr.M.Govindan, Special Government Pleader
For Respondent No.6	: Mr.D.Raghu
For Respondent No.7	: Mr.G.Prabhu Rajadurai, For Mr.I.Akbar Md.Abdullah
For Respondent No.8	: Mr.T.John Jeyaseelan Jacop
For Respondent No.9	: Mr.M.Prabhu

W.P.[MD].No.18179 of 2016:

K.G.Prem : Petitioner
vs.

1.The Principal Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and Water
Supply Department,
Fort St. George,
Chennai.



3.The Director of Medical Education,
Medical Education Council,
Kilpauk,
Chennai-10.

4.The District Collector,
Karur District,
Karur.

5.The Commissioner,
Karur Municipality,
Karur.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to implement the Government Order in G.O.Ms.No.352 of 2015, dated 30.11.2015 and construct the Government Medical College and Hospital at the donated lands in Kuppuchipalayam Village, Karur District.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel,
For Mr.A.Arun Prasad
For Respondents 1 to 4 : Mr.B.Pugalendhi,
Additional Advocate General,
Assisted by
Mr.M.Govindan,
Special Government Pleader
For Respondent No.5 : Mr.D.Raghu

W.P.[MD].No.13756 of 2017:

M.N.Prabhu : Petitioner
vs.

1.The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.The Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St. George,
Chennai-600 009.



3.The Director of Medical Education,
Medical Education Council,
Kilpauk, Chennai-600 010.

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4.The District Collector,
Karur District, Karur.

5.The Commissioner,
Karur Municipality,
Karur.

6.M/s.Navrang Dye Works,
Rep. by its Partner P.Subramanian

7.K.G.Prem

8.G.Pradeep Kumar : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 4 to establish a Government Medical College and Hospital at the alternate site selected by the first respondent situated within the municipal limits of Karur town in the land comprised in S.No.1481, 1482, 1483 and 1484, Sanappiratti, Karur Taluk and District, as confirmed in the letter dated 13.04.2017 of the first respondent, in continuation of the G.O.(Ms)No.352, Health and Family Welfare (E2) Department, dated 30.11.2015 issued by the first respondent.

For Petitioner : Mr.V.Thirumal

For Respondents1to4 : Mr.B.Pugalendhi,
Additional Advocate General,
Assisted by
Mr.M.Govindan,
Special Government Pleader

For Respondent No.5 : Mr.D.Raghu

W.P.[MD].No.14600 of 2017:

M.S.Vadivel

: Petitioner

vs.

1.The State represented by,
Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai.



2.The Director of Medical Education,
Medical Education Council,
Kilpauk,
Chennai-10.

3.The District Collector,
Karur District, Karur.

4.The Superintending Engineer,
Public Works Department,
Buildings (C&M) Region,
Medical Works,
Trichy-1.

5.The Commissioner,
Karur Municipality,
Karur.

6.M/s.Sripathy Associates,
No.62, Thangaperumal Street,
Erode.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to construct the Government Medical College and Hospital in Patta No.2423 of Kuppuchipalayam Village, Karur District, at the place mentioned in G.O.(Ms)No.352, dated 30.11.2015 passed by the first respondent, based on the representation given by the petitioner dated 24.07.2017.

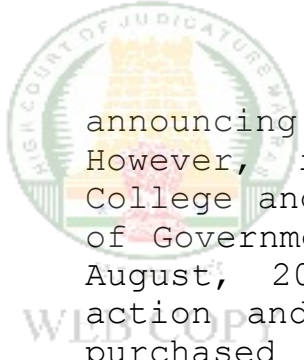
For Petitioner	: Mr.T.Lajapathi Roy, For Mr.M.Suresh
For Respondents1to4	: Mr.B.Pugalendhi, Additional Advocate General. Assisted by Mr.M.Govindan, Special Government Pleader
For Respondent No.5	: Mr.D.Raghu

C O M M O N O R D E R

K.K.SASIDHARAN, J.

INTRODUCTORY:

<https://hcservices.courts.gov.in/hcservices/> It is the established practice to constitute a Site Selection Committee to identify and select the best location for establishment of Government Medical College and Hospital, after



announcing the policy for such establishment by the Government. However, in the case of newly sanctioned Government Medical College and Hospital, at Karur, immediately after the announcement of Government decision by the Chief Minister of Tamil Nadu, on 12 August, 2014, the real estate developers at Karur took swift action and identified a site in a remote area and thereafter, purchased large extent of land on 27 August, 2014 and after retaining covetable portion for commercial development, gifted an irregular tale like portion, to the Director of Medical Education on 28 August, 2014 and with the active assistance of the District Administration and Local Officials of the Health Department, came out successful in making the Government to take the land. The then District Collector, Karur and the Joint Director of Health Department, Karur, danced to the tune of Real Estate promoters and without visiting the subject land to satisfy as to whether it was fit for the construction of Medical College building, moved very fastly and made recommendation to the Government on 29 August, 2014 to accept the land, without even making an attempt to identify and shortlist the other available land with locational advantages, so as to enable the Government to select the best among such sites. The Government, subsequent to the issuance of the order in G.O.(Ms).No.352, Health and Family Welfare (E2) Department, dated 30 November, 2015 sanctioning funds, found that the gifted land was not at all suitable, more so, on account of the fact that the Government District Head Quarters Hospital, which was converted and declared as the Medical College Hospital, is 6 ^{1/2} Kilometres away from the site covered under the gift deed and, therefore, took a decision to identify another suitable site with all the locational advantages and after short-listing two sites, finally decided to take the land offered by the Karur Municipality, which is very near to the existing Government Medical College Hospital at Karur. The attempt to establish the Medical College and the Hospital by taking the Municipal land is stalled by two real estate developers, who are the donors of the gifted land by filing Writ Petitions and obtaining interim orders restraining the Government from establishing the Medical College near the Government Medical College Hospital by utilizing the land allotted by the Karur Municipality. The net result is that the aspiring medical students were denied admission for the M.B.B.S. Course and the people of Karur, a full-fledged Multi-Speciality Hospital, attached to a Medical College. In short, the policy announced by the Government to establish the Medical College and Hospital at Karur and to commence the admission during the academic year 2016-2017 is stalled by the powerful real estate developers with the active assistance of all concerned who were in a dominant position to tilt the balance.

2. The alleged public cause projected by the donors of the ~~land and the services~~ *bona fides* of the Public Interest Litigation has to be tested in the light of the observation made by the Hon'ble Supreme Court in Abraham T.J. Vs. The State of Karnataka [2017(7)

<https://hccivils.ecm.gov.in/services/>

Scale 641] that there is no public interest in shifting a Taluk Office from the place located earlier by accepting the gift of land from public for conferring a right or cause of action for challenging the decision, even if the decision was taken by violating the conditions of gift, by which, land was donated by the public for construction of Government Office and that Writ Petition in such cases does not expose any kind of public cause.

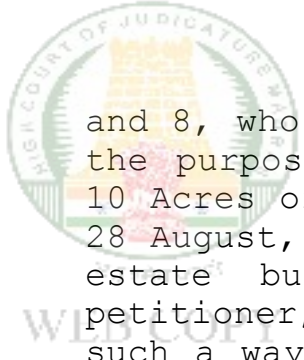
3. Individual Writ Petitions:

(A) The Writ Petition in W.P.(MD)No.9604 of 2016 is filed by a person, who purchased 30 Acres of land in Kuppuchipalayam Village on 27 August, 2014 and donated 15 Acres on 28 August, 2014 to the Government of Tamil Nadu for constructing the Medical College and Hospital at Karur. The petitioner seeks a Writ of Mandamus, directing the Government of Tamil Nadu to establish the Government Medical College and Hospital in the land donated by him and situated at Kuppuchipalayam Village.

(B) The Writ Petition in W.P.(MD)No.18179 of 2016 is at the instance of a person who was in ownership and possession of 97 Acres of land in Kuppuchipalayam Village from whom 30 Acres of land was purchased by the petitioner in W.P.(MD)No.9604 of 2016. The petitioner donated five Acres of land and retained 62 Acres of land bordering the land donated for establishing the Medical College at Karur. The prayer is to direct the Government to establish the Medical College at Kuppuchipalayam, as indicated in the order in G.O.(Ms).No.352, Health and Family Welfare (E2) Department, dated 30 November, 2015.

(C) The Writ Petition in W.P.(MD)No.14600 of 2017 is a proxy litigation by giving the brand name "Public Interest Litigation". This Writ Petition was filed immediately after the order passed by the first Division Bench presided over by the Hon'ble the Chief Justice for disposal of the pending Writ Petitions relating to the establishment of Medical College at Karur. The petitioner seeks a direction to the Government to construct the Medical College and Hospital at Kuppuchipalayam Village.

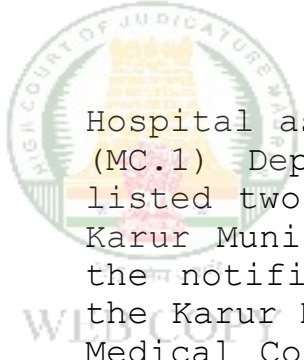
(D) The petitioner in W.P.(MD)No.13756 of 2017, who is the Municipal Councilor of Karur Municipality, filed this Writ Petition to direct the Government of Tamil Nadu to start the construction of Medical College at the land given by the Karur Municipality. According to the petitioner, the sixth respondent had purchased a total extent of 30.35 Acres of land in Kuppuchipalayam Village under two registered sale deeds on 27 August, 2014 from the seventh respondent for a total sum of Rs.1.58 Crores and on the next day, on his own, gifted an extent of 10.50 Acres to the Government. Similarly, the respondent Nos.7



and 8, who had purchased about 100 Acres of land over a period for the purpose of doing real estate business, had also gifted about 10 Acres of land along with the sixth respondent by document dated 28 August, 2014, so that, they can also be benefited in their real estate business from the remaining land. According to the petitioner, the respondent Nos.6 to 8 have gifted their land in such a way that their remaining land are situated around the land gifted by them for Medical College and Hospital. In any case, according to the petitioner, the land is situated in an interior area, without proper road access and it is unsuitable for establishing a Medical College. There was no identification of any other site as it was projected that this was the only site available. Subsequently, it was found that suitable sites are available. Finally, the land owned by Karur Municipality was selected, which is very near to the existing Hospital. The petitioner contended that the respondent Nos. 6 to 8 successfully stalled the construction of Medical College in the Municipal land at Sanappiratti Village. The petitioner, therefore, seeks a Writ of Mandamus for establishing the Medical College at the alternative site selected by the Government and situated within the Municipal limits.

THE FACTS:

4. The then Chief Minister of Tamil Nadu on 12 August, 2014, announced the policy of her Government to establish a Medical College and Hospital at Karur. The petitioner in W.P.(MD)No.18179 of 2016 was owning 97 Acres of land in Kuppuchipalayam Village, Karur District. The petitioner in W.P.(MD)No.9604 of 2016 along with his partners purchased 30 Acres of land in Kuppuchipalayam Village from the petitioner in W.P.(MD)No.18179 of 2016 on 27 August, 2014 and donated 20.35 Acres to the Health Department on 28 August, 2014 without even a formal request from the Government seeking land. Subsequently, another extent of 5 Acres of land was gifted. The petitioner in W.P.(MD)No.18179 of 2016 retained 62 Acres of land surrounding the gifted property for his future commercial development. The District Collector, by letter dated 29 August, 2014, informed the Government about the gift of land. The Government issued an order in G.O.(Ms).No.352, Health and Family Welfare (E2) Department, dated 30 November, 2015, sanctioning Rs.229.46 Crores for the proposed Medical College. The information given by the District Collector that the public have donated land in Kuppuchipalayam Village and it was transferred to the Director of Medical Education Department was also indicated in the said Government Order. Thereafter, construction contract was given to the seventh respondent in W.P.(MD)No.9604 of 2016. The Director of Medical Education inspected the site and opined that it was not suitable for locating the Medical College and Hospital. The Government, in the meantime, declared the existing District Head Quarters Hospital, Karur with 380 beds as the Medical College

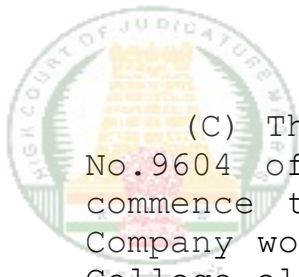


Hospital as per order in G.O.(Ms).No.95, Health and Family Welfare (MC.1) Department, dated 26 March, 2015. The Government short-listed two other sites and ultimately, selected the land owned by Karur Municipality at Sanappiratti Village, which is very near to the notified Medical College Hospital. The resolution passed by the Karur Municipality for allotment of land to the proposed Karur Medical College was challenged before the Principal Bench of this Court in W.P.Nos.8204 and 8236 of 2016 by a contractor, who was given contract to develop 10 Acres of land as a park. The Division Bench was informed by the counsel appearing for the Local Body that the 10 Acres land earmarked for the park would not be given for the Medical College. The Division Bench found that the Karur Municipality was in possession of another 20 Acres of land and the same would be sufficient for the construction of Medical College. The Writ Petition was, accordingly, disposed of. In the meantime, W.P.(MD)No.13756 of 2017 was filed in public interest to direct the Government to establish the Medical College within the municipal limits of Karur and more particularly, in the land allotted by Karur Municipality. When the Writ Petition in W.P.(MD) No.13756 of 2017 came up for hearing before the Division Bench, presided over by the Hon'ble the Chief Justice, the Bench was informed that on account of the interim order granted in W.P.(MD) No.9604 of 2016, the construction of Medical College was delayed. The Hon'ble the Chief Justice, therefore, directed all the three Writ Petitions to be posted before the First Division Bench on 27 July, 2017 for disposal. Thereafter, a new Writ Petition branding it as a Public Interest Litigation was filed in W.P.(MD)No.14600 of 2017 to support the case of the donors of land in W.P.(MD) Nos.9604 and 18179 of 2016. The Writ Petitions were all clubbed and posted before this Bench for final disposal on 09 August, 2017.

SUBMISSIONS:

5. (A) The learned Senior Counsel for the petitioner in W.P. (MD)No.9604 of 2016 contended that the land was donated to the Government for a specific purpose. The Government was not correct in changing the location after accepting the gift. The site within the Municipality would create traffic problems. According to the learned Senior Counsel, the site at Kuppuchipalayam Village is the ideal location as it would help the rural people.

(B) The learned Senior Counsel for the petitioner in W.P.(MD) No.18179 of 2016 contended that the Government Order in G.O.(Ms). No.352, Health and Family Welfare (E2) Department, dated 30 November, 2015, contain the details of the location and, therefore, the Government was legally not correct in choosing another site. According to the learned Senior Counsel, the fact that the donors would be benefited by the boost in land value consequent to the establishment of Medical College cannot be a reason to uphold the Government decision for change of location.



(C) The learned counsel for the seventh respondent in W.P.(MD) No.9604 of 2016 contended that the seventh respondent could not commence the construction on account of change of site and the Company would be put to loss by the decision to locate the Medical College elsewhere.

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(D) The learned counsel for the petitioner in W.P.(MD) No.14600 of 2017 contended that Kuppuchipalayam Village is the ideal location for the Medical College, as it would enable the residents of majority of Villages in the District of Karur, to avail the medical facilities.

(E) The learned counsel for the petitioner in W.P.(MD) No.13756 of 2017 contended that it was only to boost the land value for the land owned by the donors, the land owners in connivance with certain officials gifted the land. Since there was no promise given by the Government that in case land is given free of cost, Medical College would be established there, there is no question of issuing a Mandamus. The learned counsel submitted that the site at Sanappiratti Village is an ideal one, given its location and proximity to the Government Medical College Hospital, Karur. The Government must, therefore, be given a free hand to proceed with the construction at Sanappiratti Village.

(F) The learned Additional Advocate General opened his arguments by saying that real estate mafia succeeded in their evil design to make the Government agree to the land gifted by them with the blessings of some of the local Government officials. The learned Additional Advocate General submitted that there was no site inspection undertaken by the District Collector or other local officials before accepting the gift of land. The Government was made to believe as if no other sites were available. The Government, with a view to start the Medical College without delay, sanctioned funds and issued orders indicating the location. It was only thereafter truth has come out that there was a calculated design to make the Government accept a portion of the land in a remote area and thereby, to boost the land value for the remaining land. The learned Additional Advocate General, by placing reliance on the plan of the gifted land, contended that the land was carved out in such a manner that the remaining lands of the donors would situate all around the land donated to the Government. It was contended that the Writ Petitions in W.P.Nos.8204 and 8236 of 2016 were also sponsored only by the petitioner in W.P.(MD) Nos.9604 and 18179 of 2016. According to the learned Additional Advocate General, the donors have played fraud on Government and Court and suppressing material particulars, obtained interim orders and stalled the process of establishing the Medical College. The learned Additional Advocate General submitted that the site offered by the Karur Municipality is the most suitable one and the inspection conducted by the Director of Medical Education testified its suitability. The



learned Additional Advocate General, by showing the relevant documents from the file, demonstrated that the Government has taken a policy decision to establish the Medical College at Sanappiratti Village and foundation stone was laid by the Chief Minister before her death.

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DISCUSSION:

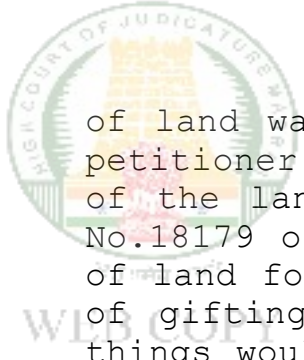
6. The proposal for establishing a Medical College and Hospital at Karur was announced by the Chief Minister on the floor of the Tamil Nadu Legislative Assembly on 12 August, 2014. The newspapers have widely reported the news regarding the establishment of Medical College and Hospital on 13 August, 2014. The Principal Secretary to Government, Health Department, by letter dated 14 August, 2014, requested the District Collector to acquire 20 Acres of land for establishment of Medical College and Hospital at Karur. In the usual course, for acquisition of land or identifying suitable land, the Collector has to constitute a Site Selection Committee. The Committee would comprise a representative of the Requisitioning Department for identifying and short-listing suitable sites. It is only after visiting the sites by the Committee, further action would be taken by the Collector either to acquire the land or to purchase it by private negotiation.

7. In order to verify as to whether the land gifted by the donors was inspected by the Collector either before or after executing the gift deed, we have summoned the entire original files available with the District Collector, Karur, Dean -cum-Special Officer, Theni Medical College and the Government files relating to the establishment of Government Medical College at Karur.

8. The file produced before us does not contain any material suggesting constitution of Site Selection Committee or any effort taken by the District Collector for selection of a suitable site. However, all of a sudden, the petitioner in W.P.(MD)No.9604 of 2016 along with his partners executed a gift deed in favour of the Director of Medical Education, donating 20.63 Acres of land in S.F.Nos.206/4 to 206/9, 208/3B and 208/4C of Kuppuchipalayam Village, Karur. The gift deed was executed at 05.30 p.m., on 28 August, 2014 before the Sub-Registrar, Karur, as per Document No.1130 of 2014.

9. The District Collector, Karur, without even inspecting the land at Kuppuchipalayam Village, informed the Government by letter dated 29 August, 2014, about the gift of land by public.

<https://hcservices.courts.gov.in/hcservices> It is worth mentioning here that purchase of 30 Acres of land in Kuppuchipalayam Village by the petitioner in W.P.(MD) No.9604 of 2016 itself was only on 27 August, 2014. The purchase



of land was from the petitioner in W.P.(MD)No.18179 of 2016. The petitioner retained the remaining property on all the three sides of the land given to the Government. The petitioner in W.P.(MD) No.18179 of 2016, after the gift, retained the remaining 62 Acres of land for future development. In case it was a *bona fide* action of gifting land to the Government for a larger public purpose, things would have been different. Here, the petitioner in W.P.(MD) No.9604 of 2016 purchased the land for the specific purpose of giving gift to the Government on 27 August, 2014 and by retaining prime area, donated a bit of land with irregular shape and low frontage to the Government. There is only a Panchayat road available as the approach road to this land. The plan of the property annexed to the gift deed would prove the actual motive in donating the land to the Government by retaining major portion for development by the donors.

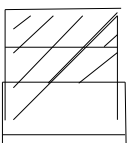
11.The Certificate issued by the Sub-Divisional Magistrate, Karur, dated 06 December, 2016, shows the details of 20.35 Acres of land in various Survey Numbers donated to the Government for establishing the Medical College.

Survey No.	Area in (Hectares)
206/4	0.90.0
206/5A	0.91.0
206/6	1.71.5
206/7A	0.47.5
206/8A	0.52.5
206/9A	0.65.5
208/3B2	0.74.0
208/4C	2.43.0
Total	8.35.0

12. The following is the corresponding plan showing the land donated to the Government and the adjacent land retained by the donors for private development:



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Land gifted to the Government

Land retained by the land owners/Donors



13. It is clear from the boundaries indicated in the registered gift deed that except the portion abutting the Panchayat Road, the surrounding lands extending to several Acres are all in the ownership and possession of the donors.

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14. The counter-affidavit filed by the Principal Secretary to the Government, Health and Family Welfare Department, indicated that the donated site was inspected by the Director of Medical Education. The Director of Medical Education informed the Government that the site donated by the donors was not at all suitable for the construction of Medical College and Hospital. The Government, therefore, directed the Dean -cum- Special Officer to identify other suitable sites. Finally, out of two sites identified at Karur, Government, on consideration of the locational advantages including the location of the notified Karur Government Medical College Hospital and other relevant factors, took a conscious decision to establish the Medical College at the site offered by the Karur Municipality at Sanappiratti Village. The Karur Municipality, by resolution dated 29 January, 2016, resolved to allot 30 Acres of land in Karur Town to the Government. Subsequently, on account of the litigation in W.P.Nos.8204 and 8236 of 2016, another resolution was passed to allot 16.49 Acres of land. The land housing the District Head Quarters Hospital, presently known as Government Medical College Hospital having an extent of 4.05 Acres was also given to the Medical College by the Government. The Government has, therefore, acquired 20 Acres of land, which is sufficient for establishment of Medical College and Hospital. In fact, another Government land having an extent of 1.31 Acres adjacent to the Medical College Hospital was also transferred to the Medical College by Government Order dated 31 January, 2017.

MEDICAL COUNCIL OF INDIA REGULATIONS:

15. The Medical Council of India Regulations regarding establishment of new Medical College requires 20 Acres of land. However, it is provided that it would suffice, if two pieces of land comprising 20 Acres of land are allotted for utilization of District Hospitals by respective State Governments for opening Medical Colleges.

16. The Government has identified two sites one housing the District Head Quarters Hospital, which is now declared as the Medical College Hospital, and another site owned by the Karur Municipality. The land selected by the Government would satisfy the MCI norms.

<https://hcservices.courts.gov.in/services/> 17. The further process for construction of the Medical College was delayed on account of the litigations initiated by the donors.



POLICY DECISION TO LOCATE THE MEDICAL COLLEGE:

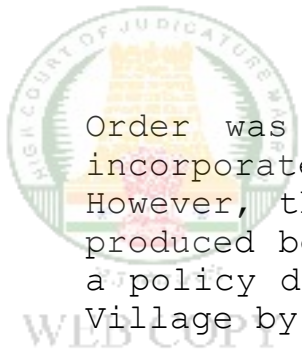
18. The decision taken by the Government to establish the Medical College by utilizing the land allotted by Karur Municipality is indicated in paragraph Nos.9, 10 and 14 of the counter-affidavit filed by the Principal Secretary to Government in W.P.(MD)No.13756 of 2017.

"9. I submit that since the land at Kuppuchipalayam Village is located in the outskirts of Karur Town and has been found to be not suitable for construction of Medical College and Hospital and that the alternate land selected by the Government, is located in the heart of the Karur Town itself and has been found to be more suitable and located very close to the existing District Headquarters Hospital, which is to be attached to the Medical College, the Government has taken a policy decision to construct a new Government Medical College and Hospital in the land belonging to Karur Municipality, in the interest of public at large.

10. Based on the policy decision taken by the Government to construct a new Government Medical College and Hospital in the land belonging to Karur Municipality and the resolution passed by the Karur Municipality on 01.03.2016, the Hon'ble Chief Minister has also laid the foundation stone for construction of a new Government Medical College and Hospital at Sanappiratti site.

14. I submit that based on the policy decision taken by the Government to construct a new Government Medical College and Hospital in the land belonging to Karur Municipality at Sanapiratti and in view of the fact that foundation stone has also been laid by the then Hon'ble Chief Minister for the Sanapiratti site, the Government is proposing to construct the medical college only at Sanapiratti and use the existing Government District Headquarters Hospital, which has already been converted into Medical College Hospital and is in the process to obtain Letter of Permission (LOP) from the Medical Council of India."

19. The Principal Secretary to Government, Health Department, in paragraph No.9 of the counter-affidavit, made it very clear that the Government has taken a policy decision to construct the new Medical College and Hospital in the land belonging to Karur Municipality in the interest of public at large. According to the counter-affidavit filed by the Principal Secretary to Government in W.P.(MD)No.9604 and 18179 of 2016, the policy is not translated into action by issuing a formal Government Order. The learned Additional Advocate General has made it clear that



Order was not issued to amend the earlier Government Order to incorporate the new location, as the matter is sub-judice. However, the materials available on record and the Government file produced before us would demonstrate that the Government has taken a policy decision to establish the Medical College at Sanappiratti Village by utilizing the land offered by the Karur Municipality.

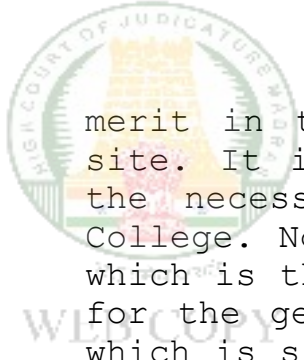
20. The site at Sanappiratti Village is very near to the Government District Hospital. The Government, therefore, converted the District Hospital as the Medical College Hospital. The notified Medical College Hospital is a full-fledged Super Speciality Hospital with 380 beds and several Departments, manned by Specialists. The reason for selecting the site at Sanappiratti Village is on account of its nearness to the Medical College Hospital, and the availability of necessary infrastructural facilities. The site is very near to the Railway Junction and Bus Stand. It would enable the people to come from the rural areas as it is well connected by Rail and Road. In fact, there is no challenge to the decision declaring Karur District Head Quarters Hospital as Karur Medical College Hospital, as per G.O.(Ms).No.95, Health and Family Welfare (MC.1) Department, dated 26 March, 2015.

21. Since the Medical College Hospital is situated very near to the proposed location at Sanappiratti Village, it would help the Government to start the Medical College early. There is no need for deputing the Specialists and other Medical Professionals to a distant place. The Specialists who are working in the Government Medical College Hospital would continue to work as faculty members of the new Medical College. The Government would, therefore, be in a position to open the Medical College at least during the academic year 2018-2019.

REASONS FOR ACCEPTING THE GIFT:

22. The Government file indicated that the land donated by the petitioner in W.P.(MD)No.9604 of 2016 was shown and projected as the only site available for locating the Government Medical College at Karur and that was the reason for indicating the site in the Government Order in G.O.(Ms).No.352, Health and Family Welfare (E2) Department, dated 30 November, 2015. Therefore, it is clear that the Government officials at Karur misguided the Government to accept the land donated by the petitioner in W.P.(MD)No.9604 of 2016 under the pretext that no other suitable land is available. It cannot, therefore, be said that a policy decision was taken by the Government by considering the locational advantages of the donated site at Kuppuchipalayam Village for establishing the Medical College there and as such, it was not correct thereafter to change the location.

<https://hcservices.courts.gov.in/hcservices/> 23. The learned Senior Counsel for the petitioner in W.P.(MD) No.9604 of 2016 took up a contention that the site at Kuppuchipalayam Village would serve the rural people. There is no

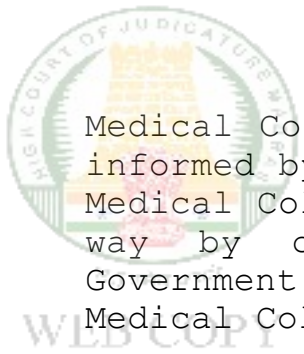


merit in the said contention on account of the location of the site. It is situated in a remote area. The State has to develop the necessary infrastructure including road before opening the College. Now, people are coming to the District Hospital at Karur, which is the designated Medical College Hospital. It would be easy for the general public to come over to the new Medical College, which is situated at a walkable distance from the existing Medical College Hospital.

24. The background facts would make the position very clear that only the petitioners in W.P.(MD)Nos.9604 and 18179 of 2016 would be the beneficiaries, in case the Medical College is located at Kuppuchipalayam Village. It would not benefit the general public as there is no proper conveyance to the said area. The gift of land was made with a business motive. The same is evident by the factum of purchase of land on 27 August, 2014 and execution of gift deed on 28 August, 2014. The contention that local people approached them to donate the land is a reason invented by the donors for suppressing the real motive in gifting the land. Unfortunately, the Government officials, who were expected to act in larger public interest, assisted the land developers and stalled a project evolved to serve the public at large.

25. The petitioners in W.P.(MD)Nos.9604 and 18179 of 2016 seek a Writ of Mandamus, to construct the Medical College and Hospital at Kuppuchipalayam Village solely on account of the gift of land by them to the Government. There is no legal right to compel the Government to establish the Medical College and Hospital at Kuppuchipalayam Village. There was no promise given by the Government to the petitioners before the gift that the Medical College would be established there. The gift of land was a voluntary act on the part of the donors. The petitioners in W.P.(MD)Nos.9604 and 18179 of 2016, except their self-serving affidavit filed in support of the Writ Petitions, have not produced even a scrap of paper to show that the Director of Medical Education or the Collector approached them for land and pursuant to such request, coupled with a promise, they have parted with the land. Therefore, there is no legal duty on the part of the Government to comply with the demand made by the donors of land. The Government has now made it clear that the land would be given back to the petitioners in W.P.(MD)Nos.9604 and 18179 of 2016. The petitioners have, therefore, no legal right to compel the State to establish the Medical College at Kuppuchipalayam Village.

26. The Government Order in G.O.(Ms).No.95, Health and Family Welfare Department, dated 26 March, 2015, transferring the Government Head Quarters Hospital at Karur to the Director of Medical and Rural Health Services to function as a Government



Medical College Hospital is not under challenge before us. We are informed by the learned Additional Advocate General that the other Medical Colleges in Tamil Nadu were all established in the similar way by converting the District Head Quarters Hospital as Government Medical College Hospital and transferring it to the Medical College.

FOUNDATION STONE LAYING CEREMONY:

27. The Government of Tamil Nadu, after selecting the site offered by the Karur Municipality at Sanappiratti Village, took a policy decision to establish the new Government Medical College and Hospital there. The then Chief Minister laid the foundation stone at Sanappiratti Village through Video-conferencing on 01 March, 2016. The people of Karur celebrated the event in a grand manner. The newspaper reports relating to the event are part of record.

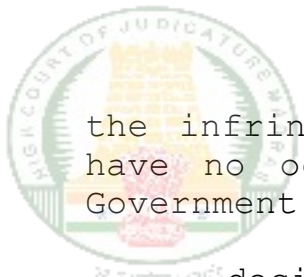
THE PRECEDENT:

28(i). In Abraham T.J. Vs. The State of Karnataka [2017(7) Scale 641], a similar issue came up for consideration before the Hon'ble Supreme Court. In the said case, two ladies donated 5 Acres of land to establish a Mini Vidhana Soudha (The Taluk Office) in Aland Taluk, Karnataka. However, a decision was taken by the Government subsequently not to establish the Mini Vidhana Soudha at the originally chosen place at Aland, but to shift to another place in the same Taluk. The Writ Petition filed by the petitioner challenging such shifting of the place by alleging *mala fides* and raising a contention that there had been violation of the conditional gift deed executed by the two ladies was dismissed by the High Court of Karnataka. While upholding the High Court order and imposing cost of Rs.25,00,000/- (Rupees Twenty Five Lakhs) to be deposited by the petitioner, the Supreme Court observed thus:

"7. Ordinarily, we would have straightaway dismissed the special leave petition but we are inclined to say something in addition. Shifting of "Mini Vidhan Saudha" of present nature by an executive decision to six kilometers away is not a matter of public interest. It does not espouse any kind of public cause. It really pertains to smooth administration where the "Mini Vidhan Saudha" or Taluk Office complex will be situated. It does not come within the domain of public interest litigation. It is pure and simple abuse of the concept of public interest litigation. Be it clarified that the conception of public interest litigation was not conceived to be used for this purpose."

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) The Hon'ble Supreme Court in State of U.P. v. Chaudhari Ran Beer Singh [2008(5) SCC 550], made it clear that so long as



the infringement of fundamental right is not shown, Courts will have no occasion to interfere in policy decision taken by the Government. The Supreme Court said:

"13. In matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government."

(iii) The Supreme Court in Mohd. Murtaza v. State of Assam [2011(12) SCC 413] observed that certain matters are by their very nature such as had better be left to the administrative authorities instead of Courts themselves seeking to substitute their own views and perceptions as to what is the best solution to the problem. It was further held that in matters of policy, the Courts have a limited role and it should interfere only with the same when it is clearly illegal.

(iv) In Union of India v. Kannadapara Sanghatanegala Okkuta & Kannadigara [2002(10) SCC 226], the issue before the Hon'ble Supreme Court was in respect of the location of the Railway Head Quarters. The earlier decision to establish the Head Quarters at Bangalore was later changed by the Railways to Hubli. The decision of the Central Government to shift the Head Quarters to Hubli from Bangalore after spending public funds was quashed by the Karnataka High Court. While setting aside the decision of the High Court, the Supreme Court observed thus:

"5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal mala fides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal mala fides. Why the headquarters should be at Hubli and not at Bangalore, is not for the court to decide. There are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is



a political one, it cannot possibly give rise to a challenge on the ground of legal mala fides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as mala fide....."

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6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy the court will not interfere, such a direction could under no circumstances have been issued. If a case had been made out, and in this case no such case had been made out, that a decision to locate at Hubli was not in accordance with law, then the only direction which could have been issued by the court was to consider as to where the headquarters should be located. It is not the function of the court to decide the location or the situs of the headquarters, it is the function of the Government. On this ground also, the decision of the High Court is incorrect."

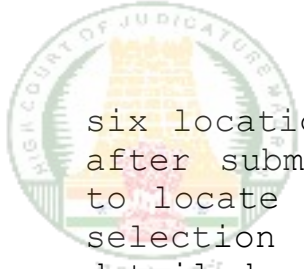
(v) The Supreme Court in *Raj Shikshan Prasarak Mandal v. State of Maharashtra* [2001(10) SCC 75], while refusing to interfere in the policy decision of shifting the School from Mallapur to Ardahpur in the State of Maharashtra, observed that so long as the Government decision is not actuated with any malice or is not the outcome of an arbitrary and whimsical act, the same should not be interfered with by a Court of law under Article 226 of the Constitution of India.

NO PLEADING REGARDING MALICE:

29. The petitioners in W.P. (MD) Nos. 9604 and 18179 of 2016 have not pleaded malice or legal *mala fides* in the act of the Government selecting a new site. In the absence of allegations regarding legal *mala fides*, malice or arbitrary exercise of power, it cannot be said that a situation has arisen to interfere with the Government decision selecting Sanappiratti Village for establishing the Medical College and Hospital at Karur.

SITE SELECTION COMMITTEE FOR AIMS:

30. The Government of India allotted one All India Institute of Medical Science (AIMS) to the State of Tamil Nadu. In order to establish the AIMS, Government of India constituted an Expert Committee. The Government of Tamil Nadu has shown several places and out of that 6 locations were short-listed. The Expert Committee submitted its report to the Central Government. Since Selection of the site was not announced, Writ Petitions were filed before this Bench in public interest. The Central Government informed this Court that a Sub-Committee was formed to visit the



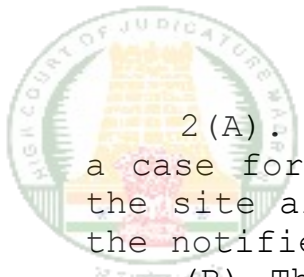
six locations once again to consider the locational advantages and after submission of report, the Government would take a decision to locate AIMS at a particular place. Therefore, it is clear that selection of site for a Medical College or AIMS would require detailed study of the location. The Government has to consider a host of factors before identifying a particular site for establishing Medical College. However, in the case of Karur Medical College, before accepting the land donated by the petitioners in W.P.(MD)Nos.9604 and 18179 of 2016, no such Expert Committee for site selection was formed. The District Collector and the local Joint Director of Health Department not even cared to visit the site before accepting the gift to decide as to whether it was locationally advantageous to establish the Medical College and Hospital there. The acceptance of the gift in relation to the site at Kuppuchipalayam Village was actuated by *mala fides* and it was an arbitrary exercise of power by the then Collector and Joint Director of Health, Karur. The Government, subsequently, rectified the mistake by selecting the site owned by the Karur Municipality, which, according to us, was a *bona fide* act taken in larger public interest.

W.P.(MD)No.14600 of 2017:

31. This Writ Petition was filed only after the observation made by the Hon'ble the Chief Justice in the order dated 25 July, 2017 that the Medical College is in public interest and that it should be started as expeditiously as possible. The petitioner is only a name lender and the petitioners in W.P.(MD)Nos.9604 and 18179 of 2016 are behind the screen. The observation made by the Hon'ble the Chief Justice, in the order dated 25 July, 2017, that the Government has decided that the construction of a Hospital within the limits of Karur Town would sub-serve the interest of the people better and accordingly, a decision was taken to set up the Medical College and Hospital at the alternate site offered by the Karur Municipality within Karur Municipal area made the petitioner to file this Writ Petition to show as if there is an element of public interest. We, therefore, do not find any ground made out by the petitioner for issuing a Writ to direct the Government to construct the Medical College at Kuppuchipalayam Village.

CONCLUSION:

32(1). For the reasons aforesaid, we are of the considered view that the petitioners in W.P.(MD)Nos.9604, 18179 of 2016 and 14600 of 2017 are not entitled for a Writ of Mandamus, to direct the State to establish the new Government Medical College and Hospital at Kuppuchipalayam Village. There is absolutely no public interest involved in the matter and in fact, we have no hesitation to hold that these three Writ Petitions are nothing but "paise interest litigations". The gift of land is a clear device to boost the land value in the area and for commercial purposes. The remaining area and the ultimate beneficiaries would only be the donors, as they are in possession of vast land adjacent to the donated land.



2(A). The petitioner in W.P.(MD)No.13756 of 2017 has made out a case for issuing a Writ for establishing the Medical College at the site allotted by the Karur Municipality, which is very near to the notified Medical College Hospital.

(B) The decision taken by the Government to locate the Karur Medical College and Hospital at Sanappiratti Village was not vitiated on account of legal *mala fides*. The decision to change the site gifted by the donors was not actuated with any kind of malice. It was not the outcome of an arbitrary or whimsical act. There was no error or illegality in the decision making process. We are satisfied on the basis of the materials produced by the State that a very suitable site owned by the Karur Municipality was selected by the Government for establishing the Medical College at Karur and it was a decision taken in larger public interest.

(C) We, therefore, issue a Writ in the nature of a Writ of Mandamus, directing the State to establish the Government Medical College and Hospital at Sanappiratti Village in accordance with the policy decision taken by the Government and indicated in the counter-affidavit filed on behalf of the Government by the Principal Secretary to Government. The Government must take immediate follow-up action for construction of the Medical College building at the site allotted by the Karur Municipality. The land donated by the petitioners in W.P.(MD)Nos.9604 and 18179 of 2016 should be re-conveyed to the donors forthwith.

DISPOSITION:

33. In the upshot, we dismiss the Writ Petitions in W.P.(MD) Nos.9604, 18179 of 2016 and 14600 of 2017. We allow the Writ Petition in W.P.(MD)No.13756 of 2017. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2.The Secretary,
The State of Tamil Nadu,
Municipal Administration and Water
Supply Department,
Fort St. George,
Chennai.



3.The Director of Medical Education,
Medical Education Council,
Kilpauk,
Chennai-10.

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4.The District Collector,
Karur District,
Karur.

5.The Executive Engineer,
Public Works Department,
Buildings (C&M) Region,
Medical Works,
Trichy-1.

6.The Superintending Engineer,
Public Works Department,
Buildings (C&M) Region,
Medical Works,
Trichy-1.

7.The Commissioner,
Karur Municipality,
Karur.

+2 ccs to Mr.A.Arun Prasad, Advocate, SR.No.75750, 75752

+One cc to Mr.M.Prabhu, Advocate, SR.No.75748

+One cc to Mr.A.N.Ramanathan, Advocate, SR.No.75749

+One cc to Mr.M.Suresh , Advocate, SR.No.75751

+One cc to Mr.V.Thirumal, Advocate, SR.No.75648

SML

RL/14C/23P/KK/SAR1/7/9/2017

Common Order made in
W.P.[MD].Nos.9604, 18179 of 2016,
13756 and 14600 of 2017