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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

**W.P. (MD) No.23283 of 2017**

**and**

**W.M.P. (MD) No.19567 of 2017**

- 1.T.Thangamani
- 2.T.Kalaiarasan
- 3.T.Padmavathi

... Petitioners

Vs

- 1.The State represented by its Secretary,  
Department of School Education,  
St.George Fort,  
Chennai- 600 006.

- 2.The Chief Educational Officer,  
Tirunelveli.

- 3.The District Educational Officer,  
Cheranmahadevi Division,  
Tirunelveli Town, Tirunelveli.

- 4.The Assistant Educational Officer,  
Nanguneri,  
Tirunelveli District.

... Respondents

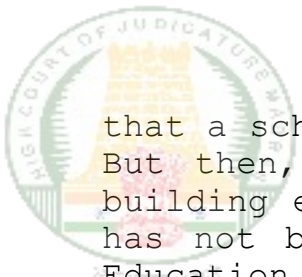
**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to put the building and Superstructures for Higher Secondary School in the land gifted by the petitioners at S.Nos.2940 and 3050 measuring 70 cents at North Vijayanarayanam Village, Tirunelveli District, Tirunelveli.

For Petitioner : Mr.K.R.Laxman  
For R1 to R4 : Mrs.S.Srimathy  
Special Government Pleader

**ORDER**

Heard the learned counsel on either side.

2.The writ petitioners who are three in number had gifted their ancestral property measuring about 70 cents in North Vijayanarayan Village, Tirunelveli District, comprised in S.No.2940 and 3050. The only condition stipulated by the writ petitioners is



that a school building will have to come up on the gifted property. But then, the Educational Department chose to put up the school building elsewhere. Thus, the purpose for which the gift was made, has not been fulfilled. Even now the writ petitioners want the Education Department to put up a school building.

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3. When the matter was taken up for hearing, the learned Special Government pleader for the respondent stated that the school building has been put up in some other spot and that it is not going to put up in the property that was given as a gift by the writ petitioners.

4. In this circumstances, I am of the view that the respondents are not justified in retaining the writ petitioners' land. When a land was donated with certain condition, the authorities are not entitled to retain the land alone, without fulfilling the condition which was stipulated in the gift deed. The issue on hand is no longer *res integra*.

5. The Hon'ble Division Bench vide order dated 13.11.2017 in W.A.No.1448 of 2017 held as follows:

"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:-

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 which 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 of 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 meanwhile, 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."



6. In this view of the matter, the prayer made in the writ petition is moulded and the respondents 2 to 4 herein are directed to come forward and co-operate with the writ petitioner for cancelling the gift earlier made vide documents dated 24.12.2012/31.12.2012, 09.01.2013 and 28.03.2013. The process of cancellation of the gifts made by the writ petitioners and their mother will be completed within a period of two months from the date of receipt of a copy of this order.

7. This writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Secretary,  
Department of School Education,  
St. George Fort,  
Chennai- 600 006.
2. The Chief Educational Officer,  
Tirunelveli.
3. The District Educational Officer,  
Cheranmahadevi Division,  
Tirunelveli Town, Tirunelveli.
4. The Assistant Educational Officer,  
Nanguneri,  
Tirunelveli District.

+1CC TO MR.K.R.LAXMAN, Advocate Sr. No. 60178  
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 60101

**W.P. (MD) No. 23283 of 2017**

**08.04.2019**

TR (30.04.2019) 4P 7C