



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P.(MD)No.6389 of 2018

K.Manimaran

... Petitioner

Vs.

1.The Government of Tamil Nadu
represented by its Chief Secretary
Secretariat, Chennai.

2.The Principal Secretary to Governor
Office of the Excellency Governor of Tamil Nadu
Raj Bhavan, Guindy
Chennai.

3.The District Collector,
Theni District,
Collectorate, Theni.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to execute deed of cancellation of gift executed by petitioner in Document No.3180/2004 and restore the land in S.Nos.404/2A, 404/3, 404/4, 404/5, 206/2A situated at Vallalnathi Village, near Puthu Ramachandrapuram, Andipatti Taluk in his title and also restore his name in the patta No.2817.

For Petitioner :Mr.R.Narayanan

For Respondents :Mr.M.Rajarajan

Government Advocate

ORDER

The prayer in this writ petition is for a Writ of Mandamus to direct the respondents to execute deed of cancellation of gift executed by petitioner in Document No.3180/2004 and restore the land in S.Nos.404/2A, 404/3, 404/4, 404/5, 206/2A situated at Vallalnathi Village, near Puthu Ramachandrapuram, Andipatti Taluk in his title and also restore his name in the patta No.2817.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

3. The short facts, required to be noticed for the disposal of this writ petition, are as follows:

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That the subject land at S.Nos. 404/2A, 404/3, 404/4,

centre, s
land, the

3.1. Accordingly, the land in question has been donated by the petitioner to the Government only for the said purpose.

3.2. Subsequently, the Government, under policy decision, decided to establish the industrial centre in some other place or in some other village neither at the village of the petitioner nor at the land donated by the petitioner. Therefore, the land donated by the petitioner for the aforesaid specific purpose has become unutilised.

3.3. Only in that circumstances, the petitioner seems to have made a request to the respondents to return back the land donated by him, since the purpose for which, it was donated, has not been accomplished by the respondents.

3.4. However, since no orders have been passed and no steps have been taken by the revenue department, ie., the respondents in returning back the land, the petitioner unilaterally cancelled the gift deed on 22.03.2011. Pursuant to the unilateral cancellation on the part of the petitioner, he exploited the property by selling it to two individuals by name, one Ko.Murugan @ Murugesan and one M.Selvam on 25.03.2011 and 29.03.2011 respectively.

3.5. The purchaser one M.Selvam, who purchased part of the subject land ie., 84 cents from the petitioner, after the alleged unilateral cancellation, seems to have plotted out the land and sold to some various individuals. After various individuals purchased the same, in turn from the said Selvam, one of such purchaser seems to have approached the revenue department to effect the mutation in the patta, ie., the name of the purchaser, however the same was refused by the Tahsildar concerned on the ground that, the land has already been donated to the Government, and the State Government name has already been mutated in the revenue records. Hence, the aggrieved party, ie., one Parameswaran approached this Court challenging the said refusal order passed by the Tahsildar by filing W.P.(MD) No.11287/2013. The said writ petition came to be disposed of finally by an order of this Court dated 20.03.2017, where, a learned Judge of this Court, after

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order:

"3.The law relating to unilateral



cancellation has been settled by the Full Bench of this Court in **M/s.Latif Estate Line India Ltd., v. Hadeeja Ammal (2011) 2 MLJ 569** wherein, it has been held that the unilateral cancellation is invalid. It is crystal clear that the deed of cancellation said to have been executed by the fourth respondent on 22.02.2011 is void ab initio. Therefore, the Tahsildar, the third respondent herein was right in not effecting mutation in the name of the petitioner, but incorporating the name of the Government as the owner of the land in question. Therefore, I do not see any reason to interfere with the action of the third respondent. Hence, the writ petition fails and the same is dismissed. Needless to mention that all the subsequent transactions relying upon the impugned cancellation deed dated 22.02.2011 will also stand annulled. No costs. Consequently, M.P.(MD) Nos.1 and 2 of 2013 are closed."

3.6. Only in that circumstances, the present writ petition has been filed with the aforesaid prayer by the petitioner on the ground that, the plea raised by the petitioner to get back the land donated by him for the specific purpose, since the same was not utilised, despite has been recommended by the Field Level Officer, ie., the Tahsildar concerned, since has to be considered by the District Collector, who is the third respondent herein has not considered and therefore, in that context, he seeks indulgence of this Court to issue writ of mandamus as prayed for herein.

4. Mr.M.Rajarajan, learned Government Advocate appearing for the respondents, on instructions, would submit that, the unilateral cancellation, since has been declared to be invalid by this Court in the said writ proceedings, the instructions given by the Tahsildar, in Na.Ka.No.9403/2017/ஆ4 dated 10.01.2018, has made the following:

“எனவே, பிரஸ்தாப புலங்களை திரும்ப வழங்கக் கோரும் மனுதாரரின் கோரிக்கையானது மாண்புமிகு சென்னை உயர்நீதிமன்ற மதுரை கிளையில் ஏற்கனவே, தள்ளுபடியாகிவிட்டதால் மனுதாரருக்கு மேற்கண்ட பிரஸ்தாப புலங்களை திரும்ப வழங்க இயலாது என்ற விபரத்தினைப் பணிவுடன் தெரிவித்துக்கொள்கிறேன்.”

5. By relying upon these instructions, the learned Government Advocate would submit that, since the unilateral cancellation made by the petitioner, since has been declared invalid, the land donated already by the petitioner to the Government is vest with the Government and as of now, the Government is the owner of the land. Therefore, on need basis, the Government would take a decision as to whether, the land donated by the petitioner has to be retained by the Government for any public purpose or to be returned back to the petitioner, as he



sought for.

6. I have considered the said submission made by the learned Government Advocate and have gone through the materials placed before this Court.

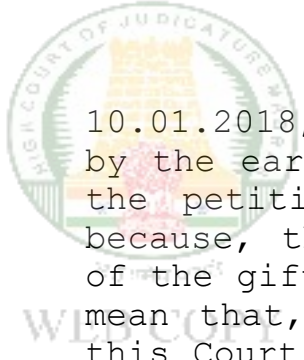
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7. The facts as narrated above are not in much controversy. Admittedly, the subject land belongs to the petitioner. He voluntarily donated the same to the Government only for the purpose of establishment of Women Industrial Training Institute at the land ie., at his village. Therefore, the said action on the part of the petitioner can only be construed as a philanthropic action on the part of the petitioner. Since he has voluntarily donated the land to the Government for the purpose of establishment of Women Industrial Training Institute and the Government has not established the same, for which purpose only it was donated, it is for the Government to take a decision to return back the same to the petitioner. Under law, once the land is vested with the Government by valid instrument, the Government become owner of the land. Therefore, as a matter of right, the petitioner cannot claim it and on that score, mandamus cannot be issued. However, since the land has been donated by the petitioner on voluntary basis only for a specific purpose and if the specific purpose has not been accomplished or the Government by policy decision decided not to establish any Institute in that particular place and that has been established in some other land in some other village, the land in question is not going to be utilised for that specific purpose any more.

8. When that being the position, this Court feels that, there is every justification on the part of the petitioner to get back the land and in this regard, the Tahsildar concerned, after having inspected the land, has given a recommendatory report to the District Collector on 05.01.2011.

9. Despite the recommendatory report, since no action seems to have been taken by the Collector concerned, having waited for some time, such a unilateral action on the part of the petitioner to cancel the gift deed has been undertaken by him. At any rate, since the said unilateral cancellation of the gift deed by the petitioner cannot be accepted, this Court, in the earlier writ petition, as stated above, has rightly held that the said unilateral cancellation of sale deed is invalid. Be that as it may, since the recommendatory report dated 05.01.2011, made by the Tahsildar concerned, is still pending before the third respondent Collector, who has to take a decision thereon on merits and to pass orders, the petitioner has got every right to seek a mandamus to the third respondent to decide the issue on merits and to pass

10. It is to be made clear that, in the instructions dated



10.01.2018, the Tahsildar concerned has stated that, this Court, by the earlier order referred to above, has rejected the claim of the petitioner to get back the land. It is totally incorrect, because, this Court has only declared the unilateral cancellation of the gift deed made by the petitioner was invalid, that does not mean that, the petitioner is not entitled to seek indulgence of this Court to give a mandamus to the respondents to direct them to consider the plea of the petitioner to get back the land on the reason that, the land has not been utilised for the specific purpose for which it was donated.

11. In that view of the matter, this Court is inclined to dispose of this writ petition with the following directions:

(1) That the respondents, especially, the third respondent is hereby directed to take a decision on the plea raised by the petitioner to get back the land, ie., the subject land, by taking into account the report submitted by the Tahsildar on 05.01.2011 and in this regard, before taking a decision, the third respondent can once again hear the Tahsildar as well as the Revenue Divisional Officer concerned and also the petitioner and accordingly, a pragmatic decision can be taken by taking into account that, the land in question was voluntarily donated by the petitioner for specific purpose, which was not accomplished by the Government ; and

(2) The needful as indicated above shall be undertaken by the third respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar (CS)

To

1.The Chief Secretary
Government of Tamil Nadu
Secretariat, Chennai.

2.The Principal Secretary to Governor
Office of the Excellency Governor of Tamil Nadu
Raj Bhavan, Guindy



3.The District Collector,
Theni District,
Collectorate, Theni.

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+1 CC to M/s.SPL GP (SR-74498[F] dated 10/07/2019)

+1 CC to M/s.R.NARAYANAN, Advocate (SR-74572[F] dated
10/07/2019)

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W.P. (MD) No. 6389 of 2018
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