

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

WP No.1031 of 2020

H.Chandran

....Petitioner

-Vs-

- 1.The District Collector,
Collectorate,
Udhagamandalam - 643 001.
2. The Executive Officer,
Athigaretti Town Panchayat,
Athigaretti, Nilgiris.
3. The Zonal Deputy Tahsildar,
Coonoor Taluk,
Coonoor, Nilgiris District.
4. The Revenue Divisional Officer,
Coonoor Taluk, Coonoor,
Nilgiris District.
5. The Assistant Director Town Panchayat,
Udhagamandalam,
Nilgiris District.

... Respondents

Prayer: This writ petition has been filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to execute a Deed of Cancellation on Gift Deed dated 26.10.2007, registered as Document No.2055 of 2007 and handover the property to the Petitioner.

For Petitioner : Mr.P.Sakthivel,
Additional Government Pleader for
R1, R3, R4 and R5

For Respondent : Mr.G.B.Rajesh for R2

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the 2nd respondent to execute a deed of cancellation of the gift deed dated 26.10.2007.

2. The case of the petitioner is that the property in question originally belonged to himself and his mother and both of them executed a gift deed in favour of the town panchayat. The property was gifted for the purpose of putting up a Panchayat building. The grievance of the petitioner is that the property was gifted in the year 2007 and till now, no steps have been taken to put up any panchayat building. Therefore, since the very purpose for which the property was gifted was not fulfilled, the petitioner is now seeking for re-conveyance of the property.

3. The 2nd respondent has filed a counter affidavit in this regard. The relevant portions is extracted hereunder :-

9. I submit that in the year 2008, the petitioner has filed a writ of Certiorarified Mandamus to quash the letter of the 1st respondent the District Collector and direct this respondent to construct a Panchayat building in the said Survey No.533/2 and 533/5 before the Hon'ble Court. But this Hon'ble Court dismissed the said writ petition by contending that "the land offered by the petitioner is the subject matter of litigation besides that they are competent to decide where the office to be constructed and not for the Court". For the said reasons, this Court is of the view that there is no infirmity in the order passed by the District Collector and in this result, the writ petition dismissed.

10. I submit that due to delay in settling the property dispute before the Subordinate Court, the Panchayat could not be able to construct a building in the said property. But now the suit is dismissed by the Hon'ble Court and due to which, this respondent is proposed to construct a building for a panchayat and its employee purpose in future as and when need arise. Hence the said land is very much needed for the Athigaretti Town Panchayat. The Population of the said panchayat also steadily increasing and it is necessary to facilitate them.

4. The learned counsel for the petitioner submitted that the panchayat building has been constructed in the adjacent portion and till today, the property is lying vacant. The learned counsel submitted that since the purpose of gifting the property has not been fulfilled, the respondent must be directed

to re-convey the property to the petitioner.

5. The learned counsel appearing on behalf of the 2nd respondent submitted that immediately after the gift deed was executed, the panchayat had title to construct the panchayat office in the said place. An official decision was also taken to that effect in the year 2007. At that point of time, a dispute arose between the petitioner and some other persons and suit was filed in O.S.No.103 of 2007 before the Sub Judge, Udhagamandalam. Due to this development, the 2nd respondent was not in a position to put up any construction. The learned counsel further submitted that the panchayat took a decision to put up a construction in the adjacent property. The petitioner questioned the same and filed a writ petition before this Court and the same was also dismissed. The learned counsel submitted that the suit has already been dismissed and therefore, steps will be taken to put up a panchayat building in the property that was gifted to the 2nd respondent as and when need arise. The learned counsel submitted that the 2nd respondent has given an undertaking in the affidavit that the property will be used only for the purpose for which it was gifted and for no other purpose.

6. This Court has carefully considered the submissions made on either side and also perused the materials on record.

7. It is seen from the gift deed that the petitioner has not reserved any right to seek for re-conveyance of the property. The property has been absolutely gifted in favour of the 2nd respondent. The 2nd respondent has taken a very specific stand that the panchayat was not able to proceed further with the construction in the year 2007-2008, since a dispute arose between the petitioner and some other third parties and a suit was filed. Therefore, the Panchayat took a decision to put up a construction in the adjacent property. This was also objected by the petitioner.

8. In view of the fact that the suit has already been dismissed and the 2nd respondent has also taken a specific stand that the property will be utilized for the purpose for which it was gifted, as and when the need arise, the same is recorded. It is further undertaken that the property will not be used for any other purpose.

9. In the considered view of this Court, the petitioner does not have any legal right to claim for re-conveyance. Admittedly in this case, the property has not been put to any other use and it is kept vacant till date. The learned counsel for the petitioner had relied upon certain judgments wherein it is found that the property that was gifted, was not utilized for the purpose for which it was given and therefore, this Court had

directed the officials to consider for re-conveyance. Those judgments will not apply to the facts of the present case.

10. In view of the above, this Court finds that the petitioner is not entitled for the relief sought for in this writ petition and accordingly, the same is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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+1 cc to the Government Pleader High Court sr23209

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