BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.16963 of 2021

Bakkiamani ... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Aringar Anna Maligai,
Madurai District.

2.The Assistant Commissioner,
Madurai Corporation,
South Zone Office,
Madurai District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to transfer the house tax, water tax, drainage tax, garbage tax in favour of petitioner for the house situated at 12A/21, T.S.No.1490, Muthu Erulappar Pandithar Street, Simmakkal, Madurai District, considering her representation, dated 16.08.2021.

For Petitioner : Mrs.A.Banumathy
For Respondents : Mr.R.Murali
Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Mandamus, directing the 1st respondent to transfer the house tax, water tax, drainage tax, garbage tax in favour of petitioner, for the house situated at 12A/21, T.S.No.1490, Muthu Erulappar Pandithar Street, Simmakkal, Madurai District, considering her representation, dated 16.08.2021.

2.Infact the petitioner was having a house property at No.12A/21 TS.No.1490, Muthu Erulappar Pandithar Street, Simmakkal, Madurai Town and District. The said property had been settled by way of gift to the daughter of the petitioner one, A.Ponmani, by a registered gift deed, dated 18.11.2004.

3.Subsequently, since the daughter, who inherited the property by way of the said gift deed from the petitioner, who is her mother, since has not taken proper care of the petitioner, she wanted to cancel or revocation of the gift deed, accordingly, a revocation deed, dated 31.08.2009, was executed, which was also registered in the concerned Registrar Office.

4.In the meanwhile, it seems that the property in question had been assessed for property tax by the respondent Corporation in the name of the daughter of the petitioner. Now, by virtue of the revocation of the gift deed, dated 31.08.2009, the petitioner wanted to assess the property in question, for property tax in the name of the petitioner, and in this regard, the petitioner had given a representation to the respondent Corporation, on 16.08.2021, and since the said representation has not been considered or kept pending by the respondent Corporation, the petitioner has approached this Court by filing the present writ petition.

5.Heard Mrs.A.Banumathi, learned counsel appearing for the petitioner, who having reiterated the aforesaid facts, would seek indulgence of this Court to issue a direction by way of mandamus to the respondent Corporation to decide the representation of the petitioner.

6.Heard Mr.R.Murali, learned Standing Counsel appearing for the respondent Corporation, who would submit that, whether, based on the revocation of the gift deed, dated 31.08.2009, the petitioner can claim the ownership of the property in question, and based on which, that property can be assessed for the property tax in the name of the petitioner is also questioned, that has to be examined and then only, a decision can be taken, he contended.

7.I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8.It is a settled preposition that, once, a gift or settlement is made, even to the family members or blood relations, the settler or the person, who made the gift cannot revoke or cancel the said settlement or gift, and therefore, in the present case, the gift deed already registered, dated 18.11.2004, in favour of the petitioner's daughter, since was sought to be cancelled or revoked, and in this regard, though it was claimed by the petitioner that, a revocation deed has been executed and registered on 31.08.2009 at the concerned Registration Office, the said revocation is bad in law, in view of the law having been settled in this regard by the Hon'ble Supreme Court of India as well as the full Bench of this Court. Therefore, based on such revocation of the gift deed, already been made in favour of the petitioner's daughter, the petitioner cannot straight away claim ownership of the property.

9.Nevertheless, there is a way out for the petitioner to get relief, since the petitioner is a senior citizen, and if at all, any such property belongs to the petitioner, being a senior citizen, has been bequeathed by way of gift or settlement to the legal heirs or to any family members on expectation or on condition that those beneficiaries would take care of the petitioner/senior citizen, in their advanced age, and after getting such gift or revocation, the beneficiary did not come forward to take care of the senior citizen like the petitioner, then the remedy open to the senior citizen is to approach the Revenue Divisional Officer concerned, who are the Tribunal, within the meaning of the Senior Citizen Act, and under the provisions of the said Act, especially, under Section 23, the petitioner can seek cancellation of the gift deed, dated 18.11.2004, and since such power is vested with the said Tribunal, such kind of cancellation, if it is made, then, based on such cancellation, it is open to the petitioner to make fresh request to the respondent Corporation to assess the property in the name of the petitioner. Therefore, without resorting to such a procedure contemplated under the said Act, the petitioner cannot straight away seek assessment of property tax of the property concerned, on the strength of the revocation of gift deed, dated 31.08.2009 for the reasons stated above.

10. Therefore, in view of the aforesaid legal position, this Court is inclined to dispose of this writ petition, by making the aforesaid observations, and therefore, the present relief, sought for in this writ petition, cannot be granted, accordingly, the writ petition is liable to be dismissed, and it is dismissed, however, with the liberty to the petitioner to approach the Tribunal under the aforesaid Act. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Commissioner
Madurai Corporation,
Aringar Anna Maligai,
Madurai District.

2.The Assistant Commissioner,
Madurai Corporation,
South Zone Office,
Madurai District.

W.P.(MD) No.16963 of 2021
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