



Reserved on 23.03.2023

Pronounced on 24.03.2023

WEB COPY

W.M.P.No.7679 of 2023
in W.P.No.7565 of 2023

RMT.TEEKAA RAMAN.J.

The writ miscellaneous petition has been filed seeking for interim injunction, forbearing the respondents / The Commissioner, Tindivanam Municipality and Tamin Nadu Water Supply and Drainage Board, from constructing “underground drainage system” in S.No.96/1B, 95/1C1C2, 97/1B, 97/2A, Dr.Wahab Nagar Layout, Tindivanam Town, Tindivanam.

2.1. According to the petitioners, they are the residents of Dr.Wahab Nagar Layout and it was formed and approved by the 1st respondent in 1986. The said layout was formed with 33 plots by one Salaudeen, the power agent of Ameena B, the developer. According to the said layout, a portion of land was left behind for the formation of the park. A Gift Deed dated 24.07.1987 was executed vide Doc.No.1052 of 1987 by the power agent of the developer in favour of the 1st respondent. On 08.05.1992, vide proceedings in Na.Ka.No.4200/92, the 1st respondent had



WEB COPY

annulled the deed of gift on account of the reasons assigned in the deed dated 15.06.1992.

2.2. According to the petitioners, the Gift Deed dated 24.07.1987 registered as Doc.No.1052/1987 stood modified in so far as the park area is concerned. According to the petitioners, under the deed of gift dated 15.06.1992 registered as Doc.No.569/1992 would indicate that the earlier gift was partially modified. A portion of land that was earmarked as park was converted into house plots and the remaining portion was gifted to the 1st respondent for the purpose of forming the road for public use.

2.3. On 01.03.2023, the 1st respondent, without any prior notice, started to dig deep pits in the petitioners plots. When the petitioners questioned the same, the 1st respondent stated that it was dug for construction of an “underground drainage system”. The 1st respondent is illegally trying to convert the house plots into a sewage collecting area. Hence, the writ petition.



WEB.COM

3. Mr.P.Srinivas, the learned counsel for the 1st respondent /

The Commissioner, Tindivanam Municipality, Tindivanam, on instruction would submit that these petitioners have no *locus standi* to challenge the Gift Deed given in the year 1987 by the promoter of the layout. In the said Gift Deed, two parks namely small and big parks as referred to, were gifted to the Municipality as a pre-condition for approval of the layout. In the year 1987 instead of mentioning the road, it has mentioned all the Survey numbers, which are falling under the small park and hence, Gift Deed in the year 1992 came into force and also filed copies of the Gift Deed dated 24.07.1987 and Gift Deed dated 11.05.1992.

4. On a bare perusal of the Gift Deed of the years 1987, Item No.10 is referred to small park while Item No.11 is referred to big park measuring 11642 Sq ft. The Item No.11 is relating to the present petition premises, which is gifted to the 1st respondent Municipality as a pre-condition for approval of the layout as required under Town and Country Planning Act for the public purpose.



WEB CODE

5. In the second Gift Deed dated 11.05.1992, there was a reference with regard to the fact that in the first Gift Deed, all the Survey numbers covered under the layout has been mentioned instead of specifically referring the road number and its respective survey numbers, which had necessitated the donor to make Gift Deed and the subsequent Gift Deed was came into force. According to the petitioners, they have revoked and the new Gift Deed came into force, which does not contain the big park which is the subject matter of the writ petition. On the sole ground he could contest that injunction to be granted in favour of the petitioners and the 4th respondent / Tamil Nadu Water Supply and Drainage Board should not be permitted to carry on the work.

6. On hearing the rival submissions of the learned counsel for the petitioner and the learned Standing Counsel for the Tamil Nadu Water Supply and Drainage Board and after perusing the Gift Deed dated 24.07.1987 and Gift Deed dated 11.05.1992, I find that Gift Deed in the year 1987, two parts have been referred to namely Small park and Big park in Sl.Nos.10 and 11 respectively. While in the second Gift Deed, only the small park is mentioned and hence the modification is only with regard to



WEB CODE

the small park and also mentioning of Survey Numbers relating to the road formed in the layout that was gifted to the Municipality for the usage of general public. At this juncture, Section 122 of Transfer of Property Act, which deals with the Gift is clear on the issue that unilateral revocation of the gift is impermissible in law.

7. At this juncture, it needs to be stated that the suit filed by some of the residents in O.S.No.339 of 1972 before the District Munsif Court in respect of the second Gift Deed and injunction therefor was decreed in favour of the Municipality. Though the suit filed by the Municipality in O.S.No.49 of 2001 is dismissed for default as contended by the learned counsel for the Municipality, the schedule of the property is referred therein is a small park, which is not the subject matter of the writ petition.

8.(a). On perusal of two gift deeds of the years 1987 and 1992, I find that vide gift deed of the year 1987, land has been gifted by the promoter of the layout, wherein it is specifically mentioned, 'small park' and 'big park', as stated supra and while in the gift deed of the year 1992, which according to the petitioner, he has not donated to the municipality.



WEB COPY

8.(b). On reading the recitals of both the gift deeds, I find that for obtaining the planning permission for the proposal of approval of layout, he has gifted the property under 1987 Gift deed, wherein he has stated the entire survey numbers without specifically mentioning the proposed road as Road 1, 2, 3 and 4, respectively and hence, he is supposed to have executed a 'rectification deed' mentioning the roads, instead of doing so, he has captioned the document as 'gift deed'. Though the nomenclature of the deed is titled as 'gift deed', on a combined reading of both the gift deeds, I find that it is only a rectification deed though captioned as gift deed. Yet another point is that when one big park is gifted in the gift deed of the year 1987, there cannot be any unilateral revocation of the gift deed, in respect of the big park.

8.(c). It remains to be stated that it must be followed by a cancellation deed and a fresh gift deed has to be executed since as per the 1st gift deed the Municipality has become the title owner of the property covered under the schedule and hence, the Municipality ought to have executed the cancellation deed and further in the instant case, the second



WEB COPY

gift deed of the year 1992, the donor again has executed the document and further, there is no whisper or recital in the gift deed of the year 1992 regarding the big park. When that being the case, I am unable to uphold the petitioner's contention that the big park was not gifted to the Municipality, wherein the 4th respondent-Tamil Nadu Water Supply and Drainage Board, is now constructing the underground sewerage for the general public.

8.(d). Admittedly, the land in question is gifted to the Municipality for a park for public purpose and it is now put to construction of underground drainage for the general public and hence, I do not find any deviation and thus, there is no merits in this case.

9. At the risk of the repetitions, however, for the sake of clarity and continuity, I find that the Gift Deed of the year 1987 is valid in law, wherein the place earmarked as a big park in the layout has been gifted to the Municipality and the 1st respondent Municipality in order to cater the needs of the general public has permitted the Tamil Nadu Water Supply and Drainage Board to do the needful and carrying their activities and hence, I find that the petitioners have not made *prima facie* case nor any balance of



convenience in their endeavor. On the contrary, I find that there is *prima facie* case only in respect of the first respondent Municipality and hence, I am not inclined to grant any interim order.

10. Accordingly, this writ miscellaneous petition stands dismissed.

24.03.2023
(1/2)

ata



WEB COPY



RMT.TEEKAA RAMAN.J,

ata

Pre-delivery order made in
W.M.P.No.7679 of 2023
in W.P.No.7565 of 2023

24.03.2023
(1/2)