



Writ Petition No.29722 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/1/2023

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.29722 of 2022

T.Ambikapathi

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Petitioner

Vs

1. The Secretary to Government
Municipal Administration Department
Fort St. George
Chennai 600 005.
2. The Director
Directorate of Town Panchayat
Kuralagam
Chennai 600 109.
3. The District Collector
Kancheepuram District
Kancheepuram.
4. The Commissioner
Maraimalai Nagar Town Panchayat
Maraimalai Nagar 603 209.
5. The Sub-Registrar
Chengalpattu II
Chengalpattu.



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6. The Director
Town and Country Planning
13 Varadarajar Street
Vedachalam Nagar
Chengalpattu HO
Chengalpattu 603 001.

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Respondents

(R-6 impleaded vide order dated 19/12/2022
made in W.M.P.No.33510 of 2022 in
W.P.No.29722 of 2022 by NSKJ)

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in 13294/MA.V (1)/2019-10, dated 23/6/2022 and to quash the same and pass appropriate orders directing the fourth respondent to execute the deed of cancellation to cancel the gift deed dated 23/7/1997 registered as Document No.2004 of 1997 in respect of the land admeasuring an extent of 15,824 sq.ft comprised in S.No.375/2B2, Ninakarai Village, Chengalpattu Taluk, Kancheepuram District.

For Petitioners

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Mr.L.Dhamodharan

For respondents

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Mr.N.Naveen Kumar
Government Advocate
for R.R.1 to 3, 5 and 6

Mr.P.Srinivas
for R.4.



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ORDER

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This writ petition has been filed to quash the order, dated 23/6/2022, passed by the first respondent in 13294/MA.V (1)/2019-10, and direct the fourth respondent to execute the deed of cancellation to cancel the gift deed, dated 23/7/1997 registered as Document No.2004 of 1997 in respect of the land admeasuring an extent of 15,824 sq.ft comprised in S.No.375/2B2, Ninakarai Village, Chengalpattu Taluk, Kancheepuram District.

2. The case of the petitioner in brief is as follows:-

The petitioner is the owner of agricultural land admeasuring an extent of 2.49 acres comprised in S.No.375/2B2 Ninakarai Village. The petitioner originally executed a Power of Attorney dated 31/1/2007 appointing one Shahul Ameen as his agent in respect of the agricultural land measuring an extent of 1.68 acres. The said Power of Attorney was revoked by a Deed of Revocation dated 27/6/1997, registered as Document No.285 of 1997. In the interregnum, with an intention to cheat the petitioner, Power Agent had created a simple mortgage in favour of his wife Banu Shahul by a Deed of Mortgage, dated 27/3/2006. Hence, the petitioner had filed a suit in O.S.No.267 of 2006, on the file of the District Munsif Court, Chengalpet, to



declare the mortgage deed as null and void. The said suit was decreed in his favour and the appeal preferred by Shahul Ameen ended in dismissal, confirming the judgment and decree passed in the Suit.

3. The petitioner had made numerous representations to the fourth respondent for the cancellation of the gift deed. Since no action was forthcoming, the petitioner had filed W.P.No.5729 of 2018 and the same was disposed of, on 10/4/2018, with a direction to dispose of the petitioner's representation, dated 7/2/2018. The fourth respondent passed an order, confirming that the land in question referred in the gift deed is being under the cultivation of the petitioner, but Government's permission could not be obtained for the cancellation of gift deed. Hence the petitioner had filed a writ petition in W.P.No.499 of 2019, challenging the order of the fourth respondent. Vide, order, dated 10/4/2018, this Court had disposed of the writ petition, directing the petitioner to submit a representation to the fourth respondent.

4. The fourth respondent has recommended for the cancellation of the Gift Deed. But, the first respondent, did not pass orders. After initiation of contempt proceedings, furnished information referring to G.O.Ms.No.730,



that the execution of Gift Deed is not possible and the said order has been challenged in the instant writ petition.

5. Heard Mr.L.Dhamodharan, learned counsel for the petitioner, Mr.N.Naveenkumar, learned Government Advocate for the respondents 1 to 3, 6 and 5 and Mr.P.Srinivas, learned counsel for the fourth respondent.

6. Counter has filed on behalf of the first respondent, wherein it is stated that the case of the petitioner is not within the ambit of the terms of the said G.O.(Ms)No.730 Rural Development and Local Administration Department, dated 14/4/1976 which sets out the instances for which the conveyance of the lands can be made. Further, gifting has been done for the public purpose and hence the petitioner's claim with regard to the dispute with the Power Agent are all factual matters that require to be considered on adducing evidence. Para 3 of the said G.O., reads as under:-

“3 (1). After careful consideration of all aspects, the Government have decided to impose total ban, and accordingly, direct from the date of this order, that no immovable property belonging to the Municipal Councils coming under the following categories, be disposed of by them:



(a). Properties directly purchased by the Municipal Councils by private negotiation for a valuable consideration

(b). Properties transferred to the Municipal Councils by public free of value as gift.

(c). Properties acquired by the Government under the land acquisition Act, on behalf of the Municipal Councils, where the Municipal Councils met the entire cost of acquisition.

2. The ban will apply to:

a. Sanction of long lease exceeding three years, in respect of the general public;

b. Sanction of lease, exceeding 9 years in respect of Government Department (Central and State) and Corporate bodies, constituted by the Central and the State Government by a special status or registered under the Company law;

c. Sale, exchange, gift and mortgage

Provided that the Government may, in special and extraordinary circumstances, sanction long lease, sale, mortgage, exchange and gift, when the land, buildings etc., are required for the following public purposes:-

a. for bonafide educational purposes

b. for bonafide medical purposes

c. for any bonafide charitable purposes;

d. required by institutions engaged in bonafide social welfare activities

e. required by the linguistic minorities in the State for their welfare in general”.

7. The learned Government Advocate, produced a status report, dated 30/1/2023, of the Assistant Director, District Town and Country Planning, Chengalpattu District, wherein, it is stated that the sixth respondent has not



approved or regularised any lay out as stated by the petitioner. Hence, sixth respondent has nothing to do.

8. It is an admitted fact that gift deed has been executed only for the purpose of laying the road and park, which has not been disputed. As the layout has not been sanctioned and the lands are still the agricultural land, this Court is of the view that the respondents cannot take advantage of G.O.Ms.No.730, Rural Development and Local Administration Department, dated 14th April, 1976 and contend that immovable property cannot be disposed of. No doubt, transfer has been completed after execution of the gift deed. It is relevant to note that the first respondent has not elaborated in the impugned order, the manner in which the applicability of G.O., to the case of the petitioner.

9. The very purpose of executing the gift deed is only to provide proper access to the plot owners and provide OSR. When the area is not developed or not contemplated for such lay out, the petitioner's right over the property cannot be divested. As the layout has not been formed or

regularised, respondents cannot retain the property of the petitioner, under



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the pretext of G.O.Ms.No.730.

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10. In such a view of the matter, this writ petition is allowed and the order, dated 23/6/2022 passed by the first respondent, in 13294/MA.V(1)/2019-10, is set aside. Fourth respondent is directed to reconvey the property by way of gift deed by executing the necessary document, as expeditiously as possible. The petitioner shall bear all the registration expenses. No costs.

30/1/2023

mvs.

Index : Yes / No

Internet: Yes

Speaking/non speaking order

Neutral Citation: Yes

To



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