



WEB COPY



W.P.(MD).No.21027 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :01.11.2022

ORDER PRONOUNCED ON : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.21029 of 2014

and MP(MD).No.2 of 2014

The Parish Priest
Church of Our Lady of Mount Carmel
Vavarai, S.T.Mancad-629 172
Kanyakumari District

....Petitioner

Vs

The State of Tamil Nadu
Represented by its Secretary
Department of Kadhi
Handlooms and Handicrafts
Fort St.George, Chennai 600 009

....Respondent

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the respondent in Letter No.7763/D1/2012-8 dated 11.08.2014, quash the same and further direct the respondent herein to reconvey forthwith the land of 60 cents in R.S.No.70/1 of Aruthesam Village, Kanyakumari District in favour of the petitioner Church.

For Petitioner

: Mr.Isaac Mohanlal
Senior Counsel
For Mr.T.Cibi Chakraborty

For Respondent

: Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.M.Lingadurai
Special Government Pleader



W.P(MD).No.21027 of 2014

ORDER

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The present writ petition has been filed challenging an order passed by the respondent herein wherein he has rejected the request for returning of 60 cents of land that was gifted by the writ petitioner in the year 1981.

2. According to the petitioner, the petitioner Church had established a Co-operative Society in the name and style of Vavarai Mount Carmel Industrial Weavers Co-operative Society in the year 1981 for the purpose of uplifting the economic and social conditions of the poor people residing in the surrounding area. For the said purpose, the Church has allotted an extent of 60 cents of land in R.S.No.70/1 of Aruthesam Village in favour of the Co-operative Society. The State Government had put up a shed in the land for use of the members of the Society out of its own fund. Since the Government officials had insisted that the said land should be gifted in favour of the Co-operative Society, a registered gift deed was executed on 07.08.1981. The shed was put up at the cost of Rs.5,49,000/- by the Government and the members were doing their weaving work.

3. The petitioner had contended that the possession of land continues to remain with the Church. In view of the technological advancement in the textile industry, the weaving work gradually dwindled and eventually the society was wound up in the year 2006. According to the petitioner, the



W.P(MD).No.21027 of 2014

Church is conducting various self-help programmes in the shed giving training for the villagers for their social and economical development. As the society is wound up and the land is no longer required for its purpose, the petitioner Church approached the Government for re-conveying the said land to the Church. Several representations were submitted to the Government on various dates. The petitioner Church has also expressed their willingness to refund the cost of the shed without reducing any depreciation. However, there was no response from the Government. Hence, the petitioner had filed W.P(MD).No.7782 of 2014 before this Court seeking for issuance of a writ of mandamus directing the respondent to consider and pass orders on the petitioner's representation dated 10.02.2014. This Court was pleased to dispose of the writ petition by order dated 02.06.2014 directing the respondent to consider the said representation and pass orders within a period of six weeks.

4. According to the petitioner, the respondent has issued the impugned order on 11.08.2014 rejecting the petitioner's request on the ground that there is no such condition in the gift deed with regard to return of the property in the event of the purpose being failed. The said order was passed without providing any opportunity to the writ petitioner. This order is under challenge in the present writ petition.



W.P(MD).No.21027 of 2014

5.The learned Senior Counsel appearing for the petitioner had contended that the impugned order is arbitrary, discriminatory and illegal.

The land originally belonged to the Church and it was gifted only for the specific purpose of running a Co-operative Weaver Society considering the poor social and economical condition of the residents of the said Village. The learned Senior Counsel had further contended that even today the shed is in possession of the Church and they are maintaining the same. Several programmes of the self-help group are being conducted in the shed and same is being maintained by the petitioner Church. The land that was gifted by the Church is surrounded by the lands belonging to the Church. There is no access to the gifted property except through the property belonging to the Church.

6.The learned Senior Counsel had further contended that the petitioner is running a Higher Secondary School and in the middle of the said School, the gifted property is located and the only access to reach the gifted property is through the School play ground. There is no access for the gifted property and only with the permission of the donor, the weavers were having access to the said land.

7.The learned Senior Counsel had further contended that under similar circumstances, the Government has returned the land after cancelling the gift deed to the Church in respect of St.Thomos Church at Aathoor through a



W.P(MD).No.21027 of 2014

registered document in Document No.647 of 2012 dated 15.03.2012.

According to the learned Senior Counsel, there is no impediment on the part of the Government to return the said land to the Church.

8.The learned Senior Counsel had further contended that a Liquidator was appointed under Section 138 of the Co-operative Societies Act, 1983 for the purpose of carrying out winding up operation of the Co-operative Society. After the winding-up operation, a General Body Meeting was convened by the Liquidator as contemplated under Section 114 (i) of the Tamil Nadu Co-operative Societies Rules 1988. In the said General Body Meeting that was held on 14.09.2011, all the members of the wound up Co-operative Society have agreed that the said land in dispute may be returned to the donor namely the petitioner Church. In view of the statutory meeting and the resolution passed in the said statutory meeting, the Government is duty bound to follow the same and return the said land to the petitioner Church. However, without considering the said resolution passed in the General Body Meeting, the present impugned order has been passed rejecting the request of the petitioner Church. Hence, he prayed for allowing the writ petition and to return the land to the petitioner Church after cancelling the gift deed.

9.Per contra, the learned Additional Advocate General appearing for the respondent herein had contended that the petitioner Church has executed a gift deed in favour of the Co-operative Society on 07.08.1981. There is no



W.P(MD).No.21027 of 2014

clause in the said gift deed that the land should be used only for the purpose of Co-operative Society. There is no other Clause in the gift deed either to return the land or to revoke the gift deed under certain specified circumstances. Hence, the gift deed is an absolute document and the petitioner Church has lost its title and thereafter, the petitioner Church cannot have any legal right to seek for returning of the land that was gifted by them.

10.The learned Additional Advocate General had further contended that the Co-operative Society was wound up on 29.08.2006. As per Auditor Report as on 31.03.2017, the Society has to pay statutory dues to a tune of Rs.21,93,677/-. Hence, according to the learned Additional Advocate General, unless the entire dues are paid, it cannot be considered that winding up proceedings have been completed. The land in dispute may be required to be sold so as to pay the statutory dues. Hence, the question of return of the said land to the donor is not possible. The learned Additional Advocate General had further contended that there is an alternative pathway to reach the land in dispute and hence, the contention of the petitioner Church that the access to the disputed land is only through the play ground of the School maintained by the petitioner Church is not factually correct. Unless all the statutory dues are paid, the winding up process will not be terminated. After payment of all dues, the land in question could be utilised by some other society with similar objective. Having gifted the land without any conditional



W.P(MD).No.21027 of 2014

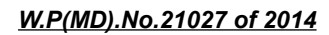
clause, the question of return of the said land to the donor does not arise.

Hence, he prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side and perused the materials available on record.

12.A Co-operative Society under the name and style of Mount Carmel Industrial Weavers Co-operative Society was registered on 20.03.1981 in TNH.No.83 at Vavarai, Kanyakumari District. For construction of a weaving shed for the said Society, an extent of 60 cents in Survey No.70/1 was gifted by the petitioner Church under a registered Document No.1546 of 1981 dated 07.08.1981. An industrial shed was constructed by the Society after borrowing loan from the Government under G.O.Ms.No.339, dated 18.03.1984. The said Society was functioning well for almost 25 years. Thereafter, due to technological advancement in the textile industry, the weaving work gradually dwindled and the workers stopped attending the Co-operative Society. An enquiry was conducted under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983.

13.The enquiry revealed that there is no possibility for the renewal of the Co-operative Society and an order was passed on 29.08.2006 for winding up of the Society. A Liquidator was appointed for carrying out winding up operations of the Society. The Liquidator after following various procedure had issued a notice on 05.09.2011 to convene the General Body Meeting of



14. A perusal of the gift deed dated 07.08.1981 will clearly disclose that it is an absolute gift without any condition. There is no clause for revocation in the said gift deed or for return of the gifted land to the donor on failure of the purpose for which it was donated. Therefore, it is clear that the donor will have no legal right to make a claim for return of the said land on failure of the purpose for which it was gifted.

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W.P(MD).No.21027 of 2014

Government but only in favour of the Co-operative Society. Hence, the land belonging to the Co-operative Society is liable for statutory dues of the said Co-operative Society. Therefore, the request of the petitioner Church for returning the land on payment of cost of the shed, without considering the liability of the Co-operative Society to pay the statutory dues, is not legally sustainable. As far as the contention of the writ petitioner that there is no access to the disputed land is concerned, it is for the Liquidator or Government to take a call upon the right of access to the land in dispute.

16.The petitioner Church having gifted the property absolutely in favour of the Co-operative Society without any condition or Clause for revocation or cancellation, they do not have a legal right to make a claim for return of the gifted property. It was contended that the Government has returned the land under similar circumstances to St.Thomas Church at Aatoor. However, a perusal of the cancellation deed dated 15.03.2012 will clearly indicate that it was a conditional gift and hence, the Liquidator was pleased to cancel the said gift deed and return the same to the donor. However, in the present case, as stated supra, the gift is an absolute one and the petitioner Church cannot compare themselves with the gift granted by the St.Thomas Church at Aatoor.



W.P(MD).No.21027 of 2014

17.In view of the above said facts, there are no merits in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.01.2023

Internet : Yes/No
Index : Yes/No
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To

The Secretary
State of Tamil Nadu
Department of Kadhi
Handlooms and Handicrafts
Fort St.George, Chennai 600 009



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W.P.(MD).No.21027 of 2014

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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