



W.P.(MD)No.21590 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.21590 of 2021

A.Kannappan (Died)

2.Anajalai

3.K.Thirupathi

4.K.Prema

... Petitioners

vs.

1.The Principal Secretary to Government,
School Education Department,
Secretariat, Government of Tamil Nadu,
Chennai - 600 009.

2.The District Collector,
O/o. District Collectorate,
Trichirappalli District, Trichirappalli.

3.The Chief Education Officer (CEO),
O/o. Trichirappalli Chief Education Officer,
Palakarai, Trichirappalli District.

4.The Assistant Education Officer (AEO),
O/o. Assistant Education Officer,
Kovilpatty, Trichirappalli District.

5.The Sub Registrar ,
O/o. Sub - Registrar Office,
Thuvankurichy, Trichirappalli District.

... Respondents



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(Petitioners 2 to 4 were impleaded as legal representative of the deceased first petitioner vide order of this Court dated 21.11.2023 in W.M.P. (MD)No.21641 of 2022)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing to the 3rd respondent to grant no objection certificate for cancelling the gift settlement deed executed by the petitioner on 03.11.2021 in favour of 3rd respondent as Document No.1691/2011 on the file of 5th respondent office and consequently direct to the 5th respondent to register the cancellation deed presented on 09.11.2021 in respect to S.No.19/11-A in extent of 24 cents as situated in Nallur Village.

For P2 to P4 :Mr.S.Muthumalai Raja
For Respondents :Mr.P.Thambi Durai
Government Advocate

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the third respondent to grant no objection certificate to the petitioner in order to enable the petitioner to cancel the gift-cum-settlement deed executed by the petitioner along with his brothers on 03.11.2011 in favour of the third respondent and consequently, to direct the fifth respondent to register the cancellation deed presented by the petitioner.



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2.The case of the petitioner is that he along with his two brothers were the absolute owners of the subject property. They decided to gift the subject property in favour of the Education Department in order to construct a High School in the property and thereby, they wanted the society to be benefited. Accordingly, a gift-cum-settlement deed, dated 03.11.2011, was executed in favour of the Chief Education Officer.

3.The further case of the petitioner is that the Education Department did not construct any School in the land, that was gifted, and they proceeded to construct a building for a Middle School at a different place. In view of the same, the petitioner wanted to cancel the gift-cum-settlement deed on the ground that the property was not utilised for the purpose, for which it was gifted to the Education Department. The petitioner has sought for no objection certificate from the third respondent and wanted to register the cancellation deed. Since the same was not acted upon, the present Writ Petition has been filed before this Court.



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4.The third respondent has filed a counter affidavit. The third respondent has taken a stand that the petitioner has been informed that the land is required for construction of a building for the proposed High School by upgrading the existing Middle School and that sufficient students strength is required and at the appropriate time, the School will be constructed in the land and the High School will be run in the building. The third respondent has also taken a stand that the land has already been gifted to the Department and the petitioner did not reserve any right to cancel the gift deed and the Education Department has now become the absolute owner of the property and therefore, there is no scope to cancel the gift deed. In view of the same, the third respondent has sought for the dismissal of this Writ Petition.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.On carefully reading the gift-cum-settlement deed, dated 03.11.2011, it is seen that the land was gifted to the Education



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Department in order to construct a High School. This was done by the petitioner and his brother with a fond hope that the people in the locality will be benefitted and the children will be able to get themselves educated. Unfortunately, the petitioner has not reserved any right to cancel the gift deed and the relevant clause in the gift deed reads as if an absolute gift deed has been executed without reserving any rights and that the petitioner and his brother will not seek for any right over the property and that the property was also handed over to the Department.

7. In the considered view of this Court, it will not be appropriate to exercise the Writ jurisdiction in this case. The *inter se* right between the parties is governed by the Transfer of Property Act, 1882, and the right to cancellation is governed under the Specific Relief Act, 1963. Both these acts will have to be read in tandem with the Indian Contract Act, 1872, in order to understand the nature of agreement between the parties. This will also require appreciation of evidence. In view of the same, the dispute can only be resolved before the competent Civil Court. A Writ Petition cannot be invoked for a dispute of this nature. In view of the same, it is left open to the petitioner to work out his remedy before the



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competent Civil Court. Except giving this liberty, no further orders can be passed in this Writ Petition.

8.This Writ Petition is disposed in the above terms. No costs.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

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(2/2)

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N.ANAND VENKATESH, J.

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