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W.P.No.16684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12..04..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.16684 of 2023

S.R.Arun

..... Petitioner

-Versus-

- 1.The Member Secretary,
Commissioner of Land Reforms,
Ezhilagam, Chepauk,
Chennai 600005.
- 2.The Special Officer,
Bhoodan Yagna,
Ezhigalam, Chennai 600 005.
- 3.The District Collector,
Collectorate,
Tiruppur, Tiruppur District.
- 4.The Sub Collector,
O/o Revenue Divisional Officer,
Tiruppur, Tiruppur District.
- 5.The Revenue Tahsildar,
Avinashi Taluk,
Tiruppur District.
- 6.The Sub Registrar,
Sub Registrar's Office,
Avinashi, Tiruppur District.

.... Respondents



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Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to release the land measuring an extent of 1.99 7/16 acres with various sub divisions in S.F.No.133, Velayuthampalayam Village, Avinashi Taluk, Tiruppur District, from the purview of TN Bhoodan Yagna Act 1958 pursuant to the recommendations made in the reports dated 16.03.2023 made in Na.Ka.No. 5457 / 2022 / E1 and dated 27.12.2022 made in Na. Ka. No. 2460/2021/A6 submitted by the respondent 4 and 5 respectively the 3rd respondent by considering the petitioners representation dated 03.11.2022.

For Petitioner : Mr.N.Manokaran

*For Respondent (s) : Mr.A.Selvendran,
Special Government Pleader
for RR 1 to 3*

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus, directing the respondents 1 to 3 to release the lands measuring 1.99 7/16 acres with various sub-divisions in S.F.No.133, Velayuthampalayam Village, Avinashi Taluk, Tiruppur District, from the purview of the Tamil Nadu Bhoodan Yagna Act, 1958, pursuant to the recommendations made in the reports dated 16.03.2023 made in Na.Ka. No. 5457 / 2022 / E1 and dated 27.12.2022 made in Na.Ka. No.2460 / 2021 / A6 made by the respondents 4 and 5 respectively to the 3rd respondent by considering the petitioners



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representation dated 03.11.2022.

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2. The facts leading to the filing of the present writ petition, in brief are as follows:-

(i) A land measuring 13.61 Acres comprised in S.No.133 situated at Velayuthampalayam village of Avinashi Taluk, was originally owned by one V.Muthurayappa Gounder. During his life, Muthurayappa Gounder donated 5 Acres of land out of 13.61 Acres of land to Bhoodan Board under a Gift Deed dated 16.09.1956. However, survey number of the land so donated was not mentioned in the gift deed. The said gift was subsequently published in Coimbatore District Gazette in July, 1962.

(ii) While so, the said Muthurayappa Gounder himself gave a representation on 01.03.1967 to the 2nd respondent stating that he had donated land in S.No.523 of Puthupalayam village and not in S.No.133 of Velayuthampalayam village. In fact, Muthurayappa Gounder and his three sons had partitioned the land in S.No.523 by partition deed dated 20.09.1970 in respect of the remaining extent owned by their family wherein they have specifically excluded 3.00 Acres of land in S.No.523 of Puthupalayam village, which was already donated to Bhoodan Board. Subsequently, Muthurayappa Gounder had requested the 2nd respondent to release the land in S.No.133. The



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2nd respondent called for a report from the Special Deputy Tahsildar (Bhoodan),

Coimbatore. Accordingly, the Special Deputy Tahsildar undertook a field inspection on 03.03.1967 and conducted an inquiry on 15.03.1967 and finally, the Special Deputy Tahsildar found that Muthurayappa Gounder donated 3.00 Acres of land in S.No.523 under Gift Deed dated 15.03.1967 and thereby requested to release the land in S.No.133 of Velayuthampalayam. The respondents 1 and 2 had accepted the above said alternative land in S.No.523 of Pudhupalayam village as per Form VII & Form VIII pursuant to the enquiry conducted under sub-section (2) (viii) of Section 17 of the Tamilnadu Bhoodan Yagna Act, 1958. Hence, Muthurayappa Gounder gave a representation dated 23.04.1967 to the Special Deputy Collector (Bhoodan), Madurai, seeking no objection to make use of the land in S.No.133 for the construction of rice mill. The Chairman, State Bhoodan Board, vide his proceedings in Ref.No.2520/62C, dated 15.07.1967 was pleased to issue a 'No Objection Certificate' for the construction of building in S.No.133. Accordingly, Muthurayappa Gounder constructed a rice mill and was in enjoyment of 1.99 Acres of land in S.NO.133 of Velayuthampalayam village. The said Muthurappa Gounder was in possession and enjoyment of 1.99 ½ Ares of land in S.F.No.133, Velayuthampalayam village.



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(iii) While so, in January, 1972, the 5th respondent made an attempt to measure the land in S.No.133 of Velayuthampalayam village which was originally donated by Muthurayappa Gounder. Immediately, Muthurayappa Gounder raised an objection on 28.01.1972 by placing above factual details. Thereafter, the Special Tahsildar (Bhoodan) sent a communication in Na.Ka.No.1994/70, dated 28.01.1972 to stop the sub-division proceedings in respect of the land in S.No.133. Above all, a suit which was filed for partition among the family members came to be concluded in A.S.No.951 of 1969 by judgement of this court dated 10.10.1974 and a preliminary decree was passed in respect of 1.99 7/16 Acres of land comprised in S.F.No.133 in favour of Muthurayappa Gounder and in terms of the said preliminary decree, the respective co-sharers divided the properties and the subject property as allotted to the share of Muthurayappa Gounder.

(iv) The said Muthurayappa Gounder sold the land measuring 1.94 ½ acres of land in S.F.No.133/1 to my father A.Ramalingam and C.Subramanian on 31.10.1985 and the remaining 5 cents with a rice mill in S.F.No.133/1 was sold to the father of the petitioner and C.Subramanian by way of another sale deed dated 30.11.1985. After the purchase of the said property, when they applied for transfer of patta, the 5th respondent called for a report from the



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Special Deputy Collector (Bhoodan) on 09.12.1985 with regard to acceptance of alternative land in S.F.No.523. Accordingly, the father of the petitioner and C.Subramanian became absolute owner and obtained patta vide pata NO.420. Again the 5th respondent sent a reminder letter in Na.Ka.20123/85/A3, dated 20.01.1986 to the Special Deputy Collector (Bhoodan). About 14 years after the issuance of patta, Inspector of Bhoodan, Coimbatore sent a letter dated 16.03.2000 to the 4th respondent to cancel the patta. It was, however, rejected by the 4th respondent on 30.05.2001 vide proceedings in Mu.Mu.No.3367/2000/A2. The petitioner's father-A.Ramalingam and C.Subramaniam were continued to be in possession and enjoyment of the land as the absolute title holder and they also executed gift deed along with the neighbouring land owners in favour of President of Village Panchayat by gifting a strip of land measuring 23 feet for the formation of a road.

(v) Thereafter, C.Subramaniam filed a suit in O.S.No.156 of 2016 on the file of the Subordinate Judge, Avinashi against the father of the petitioner viz., Ramalingam for a preliminary decree for partition which ended in a compromise decree on 01.02.2016 and pursuant to the decree in O.S.No.156 of 2016 on the file of the Subordinate Judge, Avinashi, C.Subramaniam was allotted 8.160 cents in S.F.Nos.133/1D1, 133/1D2, 133/2E1 & 133/2E2 while



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the father of the petitioner was allotted 73.85 cents in S.F.Nos.133/1D1, 133/1D2, 133/2E2 & 133/2E2. Thereafter, the father of the petitioner executed a settlement deed on 06.05.2016 registered as Doc.No.6019 of 2016 by settling 73.85 cents in the name of the petitioner and his brother R.Senthilkumar followed by a rectification deed dated 08.06.2016 registered as Doc.No.7480 of 2016. Thereafter, when the petitioner presented the document before the 5th respondent, he came to know that the 6th respondent said to have sent a communication dated 31.11.2022 in Na.Ka.No.2460/2021/A6 to the 6th respondent claiming that S.F.No.133 of Velayuthampalayam belongs to Bhoodan Board. Thereafter, the petitioner submitted a representation on 21.02.2022 to the 5th respondent to recall the objection proceedings dated 31.01.2022. The petitioner also sent a detailed representation dated 03.11.2022 to the respondents 1 to 5 by placing the entire facts and documents and requesting to release the land in S.No.133 from the purview of Bhoodan Yagna Act, 1958. The petitioner also obtained particulars under the Right to Information Act which would show that recommendations were made by the respondents 1 to 5 to release the land in respect of S.F.No.133. However, no orders have been passed so far.

(vi) There are 120 residential houses and a rice mill located on the subject



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matter of property. The entire extent of land had been dealt with and the land was divided into various sub-divisions. Despite such recommendations, no orders have been passed by the respondents. Hence, the writ petition.

3.1 A counter affidavit has been filed by the 3rd respondent wherein while admitting the fact that

(i) out of a larger extent of 13.61 Acres of land in S.F.No.133 of Velayuthampalayam village, Avinashi Taluk, Tiruppur District, was jointly owned by (1) Muthurayappa Gounder, (2) Muthammal and (3) Palanisamy Gounder. ;

(ii) out of the said larger extent of land, 5.00 Acres of land was voluntarily gifted by Muthurayappa Gounder to Bhoodan Board on 16.09.1956 by way of a registered gift deed, however without mentioning the survey number and boundaries of gifted land;

(iii) as per the revenue records land in S.F.No.133 was sub-divided into S.F.No.133/1 – 3.00 Acres and the Chairman, Bhoodan Board is the pattaadar and the land in respect of the remaining land of 10.61 Acres in



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S.No.133/2, (1) Muthurayappa Gounder, (2) Muthammal and (3) Palanisamy Gounder were pattadars;

the 3rd respondent *inter-alia* contended that

(i) thereafter, the said Muthurayappa Gounder informed through a petition that he had not gifted 5 Acres of land but he had gifted only 3.00 Acres of and, therefore, the Special Deputy Tahsildar conducted an inquiry and submitted a report on 25.03.1967 in Na.Ka.No.30/1962 to the Special Deputy Collector (Bhoodan), Madurai recommending that the land admeasuring 3.00 Acres in S.F.No.133 of Velayuthampalayam village may be released from the competent authority (1st respondent Board);

(ii) the Special Deputy Tahsildar further informed that 3.00 Acres of land in S.No.523 of Pudhupalayam village gifted by Muthurayappa Gounder in lieu of the subject matter of land may be accepted subject to inspection and brought into the account of Bhoodan



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Board.

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3.2. Though the 3rd respondent admitted that in lieu of the land to an extent of 3.00 Acres in S.No.133 of Velayuthampalayam village, land to an extent of 3.00 Acres in S.F.No.523, Pudhupalayam village was gifted to the Bhoodan Board on 15.03.1967 and Form-VII was prepared in Tamil and English and the gift deed was available with the office, it is contended by the 3rd respondent that since it was recited in the family settlement registered as Doc.No.1106 of 1970 that land to an extent of 3.00 Acres in S.No.523 is gifted to Bhoodan Board, as per recital in the settlement deed and gift deed, land measuring an extent of 3.00 Acres in S.F.No.523 also belongs to the Bhoodan Board.

3.3. It is the further case of the 3rd respondent that since the land in S.F.No.133 was divided into various pieces and sold to various persons, and mutations were also effected in their respective names and the Chairman, State Bhoodan Board, Madurai, granted permission to Muthurayappa Gounder by his proceedings in NO.2520/62C dated 15.07.1967, the request for mutation of patta made in the name of the board could not be effected. There are about 20 houses in the land in S.NO.133/1 and 100 houses and one kalyana Mandapam and also a government hostel for backward classes students are located in



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S.No.133/2.

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3.4. It is admitted by the 3rd defendant that land measuring 1.65.0 Hectares (4.08 Acres) in S.NO.523 of Pudhupalayam village was also owned by Muthurayappa Gounder and the said Muthurayappa Gounder by gift deed dated 15.03.1967 donated the southern side of the said land, measuring an extent 3.00 Acres of land in lieu of 3.00 Acres of land in S.N.133 which was originally donated by him. Though in respect of the gifted land comprised in S.No.523 though Form-VII was prepared in Tamil and English, the same were not published in the gazette immediately and it was published in the Tiruppur District Gazette No.26 only recently on 26.04.2023 and in the Tamilnadu State Gazette NO.19 on 10.05.2023. Since the legal heirs of Muthurayappa Gounder are still in possession of the land in S.No.523, if only the land subsequently donated by the owner is accepted by the Bhoodan Board as an alternate land in lieu of the land already gifted to the Bhoodan Board and the alternate land is brought into account of the Bhoodan Board, the land already gifted could be released. Until then, according to the 3rd respondent, the lands in S.No.133 as well as S.No.523 gifted to the Bhoodan Board will vest only with the Bhoodan Board.

4. Heard both sides.



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5. The learned counsel appearing for the petitioner would vehemently submit that Muthurayappa Gounder originally gifted certain extent of his land comprised in S.No.133 of Velayuthampalayam village without mentioning the survey number of the land so gifted. Subsequently realizing his mistake, he gifted an alternate land measuring an extent of 3.00 Acres in S.No.523 of Pudhupalayam village. The said gift deed was also registered and accepted by the respondents. An inquiry was also conducted in this regard and recommendations were also made to release the land in S.No.133. That apart, the Chairman, State Bhoodan Board, has also permitted to establish a rice mill on the land in S.No.133 of Velaythuampalayam village. Despite such recommendations made for the release of the land, no orders have been passed on the representation made by the petitioner for the release of the land.

6. The learned counsel for the petitioner would also take this court through the various official communication exchanged either between the government officials or government officials and the persons having right over the subject land.

7. The learned Special Government Pleader appearing for the respondents would on the other hand, on instructions, submit that recommendations for the release of the land from the purview of the Act is pending with the respondents



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and the representation of the petitioner in this regard would be considered and suitable orders would be passed as early as possible.

8. According to Special Government Pleader, the land in S.No.133 of Velayuthampalayam village and also the land in S.No.523 of Pudhupalayam village are vested with the Bhoodan Board. Since the legal heirs of the land owners are in possession of the land in S.No.523, the request of the petitioner for the release of land in S.No.133 which was originally gifted by Muthurayappa Gounder could not be done.

9. A perusal of the available records would go to show that originally an extent of 5.00 Acres of land was gifted by Muthurayappa Gounder in favour of Bhoodan Board on 16.09.1956 by way of registered gift deed, however, no survey number was mentioned in the gift deed. The said gift was, in fact, published in the Coimbatore District Gazette. Thereafter, a representation was made by the original owner stating that he had not donated the land in S.No.133 Velayuthampalayam village whereas he had donated the land in S.No.523. Thereafter, another gift deed was executed on 15.03.1967 in respect of alternate land measuring an extent of 3.00 Acres comprised in S.No.523 in lieu of land in S.No.133. This alternate land was also accepted by the board. He was also making arrangements to construct a rice mill on the land in S.No.133



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of Velayuthampalayam village which was not actually donated by him.

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10. It is relevant to be noted that due publications were effected in Tiruppur District Gazette and also in the Tamilnadu State Gazette only recently in 2023.

11. Reverting to the factual aspects, in the mean while, on the request by the land owner who gifted the land, an enquiry was conducted by the Special Tahsildar (Bhoodan) on 25.03.1967 and the Special Tahsildar (Bhoodan) had recommended for accepting the exchange proposal and for the release of the donated land in S.No.133 of Velayuthampalayam village. Thereafter, in the year 1967 itself, the original owner also sought permission from the Bhoodan Board to construct a rice mill on the land in S.No.133 which was considered in his favour by the Chairman, State Bhoodan Board, Madurai on 15.07.1967 by proceedings in Ref. No.2520/62C and “no objection” was granted by the Board for the construction of rice mill on the land in S.No.133 of Velayuthampalayam village since license was already granted. Partition in respect of the land was also entered into among the legal heirs of the original owners. Thus, it is clear as seen from the partition deed dated 29.09.1970 and other official communications that a land measuring an extent of 3.00 Acres in S.No.523 was already gifted and setting the said land apart, the other lands were partitioned



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among the legal heirs. The suit among the legal heirs of the original land owner

for partition in respect of the land comprised in S.NO.133 of Velayuthampalayam village would also make it clear that from very inception of land was enjoyed by them and permission was also obtained from the board for the construction of rice mill on the land in S.No.133. It is not in dispute that based on the original gift deed land in S.No.133 of Velayuthampalayam village was sub-divided into S.No.133/1 and S.No.133/2. Several transactions took place between either the original land owner or his legal heirs and the official respondents in respect of the land in S.No.133 and the admission made in the counter affidavit filed by the 3rd respondent would indicate that there are more than 20 houses located on the land in S.No.133/1 and more than 100 house and a commercial building are located on the land in S.No.133/2. Having accepted the gift of land in S.No.523 in lieu of land in S.No.133, the Special Tahsildar (Bhoodan) had recommended for the release of the subject land by his proceedings dated 27.12.2022. The District Collector, Tiruppur, also by his proceedings dated 16.03.2023 in Na.Ka.No.5457/2022/E1 upon verification of earlier correspondences and documents recommended for the release of the subject land in S.NO.133/1 of Velayuthampalayam village in respect of 3.00 Acres. However, admittedly, no orders have been passed till date.



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12. The available documents would make it very clear that though gift deed was originally for 5.00 Acres, there was no survey number mentioned in the gift deed, however, the gift deed was published in the district and State gazette long back with a specific mention that the land so gifted is comprised in S.No.133. After realizing his mistake, the original land owner had asserted that he had gifted 3 Acres of land comprised in S.No.523 of Pudhupalayam village and not the land in S.No.133 of Velayuthampalayam village. Acting upon such request, permission as sought by him for the construction of rice mill on the land in S.No.133 was also granted by the Bhoodan Board in 1967 itself. Thereafter, there were several transactions in respect of the land in S.NO.133. In fact, there were various communications exchanged between the official respondents. These facts would clearly indicate that the Bhoodan Board was also intended to accept the alternate land measuring an extent of 3.00 Acres comprised in S.No.523 of Pudhupalayam village in lieu of the land in S.NO.133 of Velayuthampalayam village. Now, this court has been informed that alternate land was also transferred in favour of the Bhoodan Board.

13. Section 17-A of the Tamil Nadhu Bhoodan Yagna Act, 1958 reads as under:-

“17A. Permission to exchange the donated land. - Notwithstanding anything contained in this Act,



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the Government may, if the circumstances so warrant, permit the exchange of the land already donated to, and vested in, the State Board, with an alternate land, by the donor or his legal heirs, as the case may be, in such manner as may be prescribed, subject to the following conditions, namely:-

- (a) the alternate land shall be of equivalent value;
- (b) there shall be no encumbrance on the alternate land;
- (c) the donor or his legal heirs shall be competent to transfer such alternate land;
- (d) there shall not be any arrear of land revenue or tax or any amount due to the Government or other authority;
- (e) the land already donated had not been assigned to any person or authority under this Act.”

14. Rule 12-A of the Tamil Nadu Bhoodan Yagna Rules, 1959 reads as under:-

“12-A. Exchange of Land:-

(1) On receipt of an application from the donor or his legal heirs, as the case may be, for exchange of land, the Government may, after consultation with the State Board and after satisfying the conditions laid down in clauses (1) to (e) of Section 17-A of the Act by order permit the exchange of land.

(2) The State Board shall immediately on receipt of such order of the Government, direct the donor or



his legal heirs, as the case may be, to submit a declaration as prescribed in section 16 of the Act to the State Board and thereafter the provisions contained in sections 16 to 19 of the said Act and the procedure laid down in rule 8 to 12 shall muttatis muttatis mutandis is apply to the alternate land offered under section 17-A of the Act.

(3) After vesting of alternate land with the State Board, the land already donated shall be released.”

Thus, sub-rule (3) of 12-A of the Tamil Nadu Bhoodan Yagna Rules, 1959, makes it clear that after vesting of alternate land with the State Board, the land already donated shall be released.

15. In the instant case, since recommendations were already made and alternate land is already vested with State Board, and publication was also made in the District as well as State Gazettes and third party rights have been created in respect of the subject land which was originally donated and the same was divided into various sub-divisions and there are many houses and buildings located on the land, this court is of the view that the authorities shall act on the recommendations made in this regard and consider the representation of the petitioner pending with them for the release of the subject land and pass appropriate orders thereof releasing the land within a period of four months from the date of receipt of a copy of this order.



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In the result, the writ petition is allowed with the above directions. No costs.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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12..04..2024

To

- 1.The Member Secretary,
Commissioner of Land Reforms,
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N.SATHISH KUMAR.J.,

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