BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.19754 of 2024
and
W.M.P(MD)No.16744 of 2024

M.Ameen .. Petitioner

Vs.

1.The Special District Revenue Officer,
Land Acquisition, NH-744,
Virudhunagar.

2.The Special Tahsildar,
Unit VIII, NH No.744,
Virudhunagar,
Virudhunagar District. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order in Na.Ka.A1/32/2022, dated 29.07.2024 passed by the respondents and quash the same as arbitrary and consequently direct the respondents to disburse the compensation amount to the petitioner for the acquisition of land for formation of Tirumangalam Shenkottai fourways, to an extent of 1665 sq. m., in

Survey No.499/1 resurvey No.82/2 New Survey No. 81/9 Karadiparai, Poolangkudiyiruppu, Shenkottai taluk, Tenkasi district within a time frame that may be stipulated by this Court.

For Petitioner	:	Mr.R.Pon Karthikeyan
For Respondents	:	Mr.B.Saravanan Additional Government Pleader

ORDER

The petitioner's request for disbursing the compensation under the Land Acquisition Act to her has been rejected on the ground that the Hiba under which she claims a right has not been registered.

2. The brief facts giving rise to this writ petition is alluded to herein below:

The lands comprised in Survey No.499/1 Resurvey No.82/2 New Survey No.81/9 measuring an extent of 70 cents at Karadipaarai Village Poolangkudiyiruppu, Shenkottai taluk, Tenkasi district belonged to the petitioner's father Meerapillai. He had purchased it under a registered sale deed, dated 15.06.1981. The revenue records were mutated in his name. The petitioner would submit that her father had executed a Hiba in her favour, dated 01.12.1991 allotting the lands measuring 70 cents in Survey No.499/1 Resurvey No.82/2 and New Survey No.81/9 of the above said village and her mother being a guardian as the petitioner was a minor. The petitioner’s father passed away on 22.05.1992 and her mother was her guardian till she attained majority.

3. The lands were acquired for forming Thirumangalam-Shenkottai fourways. The remaining extent of 13 cents was in possession of the petitioner. However, by the impugned order, her request for disbursement of compensation was rejected. The only ground on which the request has been rejected is that the Hiba has not been registered. A Hiba has to satisfy 3 essential characteristics. There must be (i)a declaration of gift by the donor (ii) acceptance of the gift by the donee 3) delivery of possession of the property. More than the law, does not make it compulsory to reduce a gift into writing and oral gifts fulfilling the aforesaid three essential was sufficient.

4. In ***AIR 1995 SC 1205 (Mahboob Sahab V. Syed Ismail & Others)***, the Hon'ble Supreme Court has held as follows:

> *"5........It would, thus, be clear that though gift by a Mohammadan is not required to be in writing and consequently need not be registered under the Registration Act; a gift to be complete, there should be a declaration of the gift by the donor, acceptance of the gift, expressed or implied, by or on behalf of the donee, and delivery of possession of the property, the subject-matter of the gift by the donor to the donee. The donee should take delivery of the possession of that property either actually or constructively. On proof of these essential conditions, the gift becomes complete and valid. In case of immovable property in the possession of the donor, he should completely divest himself physically of the subject of the gift."*

5. The Hon'ble Supreme Court in the judgment reported in ***AIR 2011 SC 1695 [Hafeeza Bibi & Others V. Shaik Farid (Dead) by Lrs & Others]*** has held as follows:

> *"29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan*

orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.

6. In the instant case, all the three ingredients have been fulfilled in the case of the petitioner. Therefore, the impugned order, dated 29.07.2024 is set aside. The petitioner is directed to obtain No Objection Certificate from the other legal heirs and the respondents are directed to consider the application of the petitioner afresh after serving notice to the other legal heirs and hearing their objection.

7. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.08.2024

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

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Virudhunagar.

2.The Special Tahsildar,
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Virudhunagar District.

P.T.ASHA, J.

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