



W.P (MD).No.27342 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.27342 of 2024

Dindigul Muslim Kalvi Sangam

Haji. Penm Orinental High School Valagam,

Collector Office Road, Dindigul - 624004,

Dindigul District, Rep. by its Secretary,

K.P.S. Abdul Azee

... Petitioner

Vs.

1. The District Registrar

O/o. the District Registrar,

Dindigul,

Dindigul District.

2. The Joint Sub Registrar

O/o. the Joint Sub Registrar,

Dindigul,

Dindigul District.

3. P.C.N.M. Abdul Wahab,

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to cancel the Unilateral Cancellation deed executed by the 3rd Respondent registered as Document No. 7951 dated 10.10.2012 in the office of the Sub Registrar Office, Dindigul, the 2nd Respondent herein within the period that may be stipulated by this Court.

For Petitioner : Mr.V.Karthikraja
for M/s.Ajmal Associates

For Respondents : Mr.M.Sarangan
Additional Government Pleader
for R1 & R2

: Mr.P.Kalaiyarasi Bharathi for R3

ORDER

This writ petition has been filed for a direction, directing the second respondent to cancel the Unilateral Cancellation deed executed by the third respondent registered vide Document No. 7951/2012 dated 10.10.2012.

2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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4. The petitioner is the Secretary of Dindigul Muslim Kalvi Sangam, which was established in the year 1984 and registered as Registration No.5 of 1984 under the Tamil Nadu Societies Registration Act, 1975. The land comprised in S.No.436/1, 437/2 ad-measuring to an extent of 5.50 Acres situated at Chettinayakkanpatti Village, Dindigul, originally owned by the third respondent's grand father, viz., Haji Mohammed Meeran, who was Muthawalli of Vedasandur Chinna Masjid Manbaul Hasamath Madras Dharmum. In turn, he had executed a settlement deed in favour of the petitioner on 16.03.1986 vide Document No.501/1986, in pursuant to the resolution passed by the Waqf Board in resolution No.160/1985, dated 30.06.1985 for the purpose of construction of School and Hostel. After execution of settlement deed, Haji P.C.Nainar Mohammed Oriental Arabic High School was established by the Society in the year 1986. Subsequently the private school was declared as Aid from the State Government. The Society was struck off from the Register of Societies by the first respondent under Section 44(4) of the Tamil Nadu Societies Registration Act, 1975, for violation of provisions under Section 16 of the of the Tamil Nadu Societies Registration Act and published in the Tamil Nadu Government Gazette on 25.09.1991. Subsequently, in the appeal granted exemption in exercising of powers conferred under of the Tamil Nadu Societies



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Registration Act, and issued Government Order in G.O.(2D) No.61, Commercial Taxes and Registration Department, dated 09.05.2013 and preferred an appeal to the Inspector General of Registration, to restore the petitioner's Society in the Register of Societies.

5. While being so, the third respondent challenging the order of exemption granted in G.O.(2D) No.61, Commercial Taxes and Registration Department, dated 09.05.2013, filed a Writ Petition before this Court in W.P.No.20765 of 2013. However, the Inspector General of Registration, by his proceedings dated 21.07.2015, allowed the appeal and restored the petitioner's Society in the Register of Societies by paying necessary penalty and other dues subject to the outcome of the W.P.No.20765 of 2013 filed by the third respondent herein. Thereafter the Writ Petition was dismissed by an order dated 28.10.2022 and it was confirmed by the order the Hon'ble Division Bench of this Court in W.A.No.3172 of 2023. Once again, the third respondent herein challenging the order passed by the Inspector General of Registration in W.P. (MD)No.2786 of 2016 before this Court. In the affidavit filed in support of the said Writ Petition, the third respondent stated that the settlement deed, which was executed by the third respondent's grandfather in favour of the petitioner was cancelled by the cancellation deed dated 10.10.2012, vide document No.



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7951/2012. Therefore, the petitioner was constrained to approach this Court in W.P.(MD)No.5902 of 2017, challenging the unilateral cancellation of settlement deed executed by the third respondent's grandfather. Simultaneously, the petitioner also approached the civil Court in O.S.No.268 of 2021, challenging the unilateral cancellation of settlement deed. Therefore, the petitioner had withdrawn the Writ Petition in W.P.(MD)No.5902 of 2017, with liberty.

6. The issue of unilateral cancellation of settlement deed dealt with by the Hon'ble Full Bench of this Court reported in ***AIR-2022(Mad.)323 (Sasikala V. Revenue Divisional Officer)***, which is held as follows:

55. With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed. Section 126 of the Transfer of Property Act, reads as follows:

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.



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A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

56. Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarify that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub- registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which



does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

57. The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed, merely on the basis of the statement of the donor or the recitals in the document for cancellation.

58. From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme



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Court in Thota Ganga Laxmi and Ors.-vs- Government of Andhra Pradesh & Ors., reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in Veena Singh's case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in Asset Reconstruction Company (India) Ltd., case, reported in 2022 SCC On-line SC 544 for the following propositions:

(a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e) However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f) As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which



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fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

(g)The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.”

7. It is made clear that the unilateral cancellation of deed or deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right or interest in the property. Admittedly, the case on hand the third respondent executed the cancellation of settlement deed, which was executed by his grandfather in favour of the petitioner and got registered vide document No.501/1986, dated 16.03.1986. That apart, the petitioner was given liberty to challenge the unilateral cancellation of settlement deed by way of Writ Petition before this Court. The said order came to be passed as against the dismissal of rejection of plaint in O.S.No.268 of 2021, filed by the petitioner for declaration, declaring that the unilateral cancellation of settlement deed as null and void. While allowing the Civil Revision Petition in C.R.P. (MD)No.1822 of 2024 and thereby, rejected the plaint filed by the petitioner in O.S.No.268 of 2021 and gave liberty to the petitioner to challenge the unilateral cancellation of settlement deed by way of Writ Petition. Accordingly, the petitioner filed this Writ Petition.



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8. In view of the above, it is settled provision of law that execution of cancellation of settlement deed, dated 16.03.21986 registered vide Document No.501/1986 is void and *non est*, in the eye of law, it does not operate to execute or any right or title in respect of the subject property. However, the third respondent is at liberty to approach the civil Court for appropriate relief in accordance with law. The second respondent is directed to record this order in the book records in respect of the subject property.

9. With the above direction, Accordingly, this Writ Petition is disposed of. No costs.

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

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To

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1. The District Registrar

O/o. the District Registrar,

Dindigul,

Dindigul District.

2. The Joint Sub Registrar

O/o. the Joint Sub Registrar,

Dindigul,

Dindigul District.



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G.K.ILANTHIRAIYAN, J.

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