

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 3220 of 2014

Between:

Smt B.Prabhavathama and others

... Petitioner

And

The State and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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< Gist:

> Head Note:

! Counsel for the Petitioner : Mr S.A.Razak

**^ Counsel for the Respondent: G.P. for Revenue
: G.P. for Medical Health and
Family Welfare**

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 3220 of 2014

ORDER:

Heard the Learned Counsel for the Petitioner and Learned Government Pleader for Revenue appearing on behalf of Respondents 2 to 4 and learned Government Pleader for Medical Health and Family Welfare.

2. The Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the respondents in not reverting the land to the donor/petitioner to an extent of Ac.3.00 cents in survey No.5 of Thimmajipet Village, Timmakipet Mandal, Mahaboobnagar District donated for the purpose of construction of Primary Health Centre by making necessary entries in the Revenue Records (ROR) as illegal, arbitrary and in violation of Section 126 of Transfer of Property Act and consequently direct the respondents to permit the petitioner to resume the land in question forthwith duly making necessary entries in the Right to Records forthwith.

3. The case of the Petitioner in brief, is as follows:

a) The Petitioner had donated land to an extent of Ac.2.00 cents under the registered gift deed dated 28.07.1987 and also an extent of Ac.1.00 cents under the unregistered gift deed, totaling land to an extent of Ac.3.00 in Survey No.5 of Thimmajipet Village, Thimmajipet Mandal, Mahaboobnagar District.

b) The said land had been donated by the petitioner for the purpose of Construction of Primary Health Centre which had been proposed by the Government subject to availability of land in the village, in the year 1987.

c) Accordingly, the petitioner was inclined to gift the land and the same had been entered into revenue records by the respondents. However, the said land had not been utilized for the construction of Primary Health Centre due to the locals opposing the construction, as the donated land of the petitioner is 2 K.M's away from the Thimmajipet Village.

d) Ultimately, the Primary Health Centre building had been constructed in the Government Survey Land no. 22 of

Thimmajipet Village in the year 1998 and the petitioner's donated land had not been utilized for the designated purpose.

e) Despite several representations to handover the donated land as it was not being utilized, the respondents have not handed over the said land to the petitioner.

f) While things stood thus, the petitioner's husband fell ill and bedridden due to paralysis and other ailments which required huge amounts of money for medical treatment. Petitioner having no other source of income, made a representation dated 29.08.2005 to respondents against which the 3rd respondent had written a letter dated 02.09.2005 to the 2nd respondent for resumption of land as the same is not being utilized by the petitioner.

g) The 2nd respondent had not taken any action pursuant to the said letter. In support of one of the representations, the 2nd respondent by his letter dated 13.11.2006 asked the 3rd respondent to send report after inspecting the land personally.

h) The 3rd respondent by letter dated 22.11.2006 asked the 4th respondent to enquire and send detailed report to the 2nd respondent. In response to the said letter, the 4th respondent had recorded the statement of the petitioner and had sent a report to 2nd respondent.

i) Even the 3rd respondent had also enquired into the matter personally and by letter dated 13.12.2006 asked the 4th respondent for report with regard to construction of PHC Building and classification of said land.

j) In the meanwhile, petitioner's husband died on 26.12.2011. Even the petitioner is suffering from old age ailments and requires assistance of others to go around. The survival for the petitioner is difficult and requires money for medical treatment of the petitioner.

k) The respondents should have made necessary corrections in the revenue records and should have allowed the petitioner to resume the land, when the object of the gift has not happened. The said land in the gift deed is conditional and if not complied with, the said land has to be returned to the owner of the property.

l) When any property has been donated for a particular purpose and when the said purpose fails, the property so gifted shall be reverted back to the donor as per Provisions of Section 126 of Transfer of Property Act.

m) The High Court in W.P. No. 19339 of 2003 dealing with a similar situation had, directed the respondents therein to take necessary steps for delivery of possession of land and to make necessary entries in the revenue records. Hence the Writ Petition.

4. The counter affidavit filed by Respondents 2 to 4, in brief, is as follows:

a) As per the revenue records of the land bearing Sy.No.5 of Thimmajipet Village, the same is classified as "PATTA" and is recorded in the favor of "PRATHAMIKA AROGYA KENDRAM" and even in the DHARANI records, the same land bearing Sy.No. 05/b/1 to an extent of Ac.3.00 guntas is recorded in favor of "PRATHAMIKA AROGYA KENDRAM".

b) The Original Donors i.e., the petitioner and Petitioner's husband had died long ago and their legal heirs are living.

The construction of "PRIMARY HEALTH CENTRE" in the donated land of the petitioner has been objected by the locals, since the land is situated 1 (One) K.m. away from the limits of the Thimmajipet Village and hence the same had been constructed in Government Survey Land in Sy.No.22, which is within the limits of Thimmajipet Village.

c) On the ground that the donated subject land has not been utilized for the said purpose, the petitioner is seeking to return the subject land. But there is no condition/clause in the gift deed stating that the land donated is not used for the purpose mentioned in gift deed, it can be returned to the donor.

d) In the absence of specific clause that in the event, the property is not used for a specific purpose, the land has to be returned to the donor and as such the petitioner is not entitled for relief sought in the Writ Petition.

e) Though the land is not utilized for the purpose of construction of Primary Health Centre, once the land had been donated in favor of the Government, the Government is at liberty to utilize the said land for any other purpose. Hence

the said Writ Petition is devoid of merits and is liable to be dismissed.

5. PERUSED THE RECORD :

i. Order dated 25.09.2003 passed in

W.P.No.19339/2003 reads as under :

"The mother of the petitioners, by name Ratnamma proposed to donate an extent of A 1.00 of land Sankalmaddi village of Moosapet village in favour of the Government for the purpose construction of a Mandal complex. The possession of the land was taken over by the Government and entries were made in the revenue records showing it as Khariz Khata. However, on account of the orders passed by this Court, the Mandal head quarters was shifted to Addakul village from Moosapet. The purpose for which the land was donated did not subsist.

The petitioners submitted an application dated 2.8.2002 to the District Collector, 1st respondent herein, requesting him to return the land and to direct necessary entries to be made in view of these developments. The 1st respondent issued proceedings dated 23.6.2003 discussing the matter at length and directed the Mandal Revenue Officer, Addakal, 3 respondent herein, to take necessary action and report compliance. The petitioners complain that no action has been taken thereon by the 3 respondent so far.

From a perusal of the proceedings dated 23.6.2003 issued by the 1st respondent, it is clear that he directed the 3rd respondent to take necessary steps to return the land to the petitioners. When the administrative head of the district directed the 3rd respondent to take necessary steps to return the land to the petitioners there does not exist any justification for the 3rd respondent to keep the matter pending for months together. The generous gesture made by the family of the petitioners has landed them in trouble on account of the indifference exhibited by the authorities like the 3rd respondent. This Court takes serious exception to the inaction on the part of the 3rd respondent. He did not take steps though 3 months elapsed after the 1st respondent has passed orders.

The writ petition is accordingly allowed directing the 3rd respondent to take necessary steps for formal delivery of possession of the land in question to the petitioners and to make necessary entries in the revenue records, within a period of two weeks from the date of receipt of a copy of this order. In default, it shall be open to the petitioners to enjoy the land unhindered by the interference from any circle. No costs."

ii. The report No.A/1114/2005, dt. 02.09.2005 of the Mandal Revenue Officer, Thimmajipet, addressed to the District Collector, Mahabubnagar, reads as under :

"I invite kind attention to the refs cited. Wherein Smt B. Prabhavathumita W/o B.BuchiahGuptha R/o Thimmajipet proper has submitted representation before the Di. Collector on 29-8-2005 stating that an extent of Acs: 3-00 in Sy.No. 5 of Thimmajipet proper was donated voluntarily on free of cost for construction of PHC Building at Thimmajipet during the year 1987, but the Govt have constructed PHC building in Sy.No. 21 instead of their donated land. At present her husband who is suffering with ill health and requires huge amount for his medical treatment for which SmtB.Prabhavathamma has requested for resumption of her patta land since the land was not utilized to PHC building and it was already constructed in other land, so as to enable them, to sold the land to bear medical treatment to her husband.

In this regard it is to submit that as per my local enquiry **it is revealed that during the year 1987 Sri B.Buchiah Guptha (applicant's husband) and the then Sarpanch of Thimmajipet with a proper and a good intention has donated their patta land in SyNo 5 extent 3-00 situated at Thimmajipet proper for construction of PHC Building and the land also got registered in favour of DM&HO, Mahabubnagar vide Reg Doct No.1998/87,dt:28-7-87. The Regd. Document also implemented in the ROR in the year 1992 and recorded as Praathamika Arogya Kendram"**. But due to objection

made by local peoples for construction of PHC building in Sy. No 5 which was donated since the said land located nearly 2 KM away from the village site. **Basing on the objection of local public, the PHC building was proposed for construction in the Govt land in Sy.No.22 at Thimmajipet and accordingly, the Govt have sanctioned the PHC building which is also constructed and functioning since 1998 in the same building.**

Further at present, the economic condition of Sri B.BuchiahGuptha (petitioner's husband) is very week and he requires huge amount, for medical treatment and her request, also is genuine and the land which was given for PHC Building is not constructed and the main purpose for donation is defeated for which she has requested for resumption of their patta land."

6. Counter affidavit filled by the Respondent No.2 to 4, in particular at Paras 4 and 5 read as under:

"(4) Now the Petitioner is seeking to return the subject land on the ground that the land was not utilized for the purpose for which it was donated i.e., construction of Primary Health Centre. **However, there is no clause in the Gift deed that if the land donated by the land is not used for the purpose mentioned in the gift deed, it can be returned to the donor. In this**

connection, I am advised to submit Section 126 of Transfer of Property Act governs the field."

(5) It is submitted that in the absence of any of the grounds mentioned above, the gift deed executed in favour of the Government cannot be cancelled, in the absence of specific clause that in the event the property is not used for a specific purpose, the land has to be returned to the donor. As such, the petitioner is not entitled to the relief sought for in the writ petition."

7. DISCUSSION AND CONCLUSION :

i. It is the specific case of the Petitioner that land to an extent of Ac.3.00 gts., in Sy.No.5 of Thimmajipet was donated voluntarily on free of cost for the purpose of construction of Primary Health Centre in the year 1987 to the Government vide Registered Gift Deed dt. 28.07.1987. But however, the Government had constructed PHC building in Sy.No.21 instead of Sy.No.5 donated by the Petitioner and therefore in view of the fact that very purpose of the donation had been defeated the Petitioner made a representation to handover the subject land to the Petitioner gifted by the Petitioner since the same had not been utilized by

the Government for the purpose for which the Petitioner has donated.

ii. A bare perusal of the report dt. 02.09.2005, No.A/1114/2005 of the Mandal Revenue Officer, Thimmajipet, clearly indicates that it is a fact as borne on record that the subject land donated by the Petitioner had not been utilized for the purpose of construction of PHC building for which the said land had been donated.

iii. This Court opines that the plea of the Respondent No.2 in the counter affidavit for not considering Petitioner's request for return of the subject land to the Petitioner and denying the same on the ground that there is no clause in the gift deed that if the land donated by the donor is not used for the purpose mentioned in the gift deed it can be returned to the donor and in the absence of the specific clause the gift deed executed in favour of the government cannot be cancelled though the subject land had not been utilized

for the purpose for which it has been donated is ex facie arbitrary, irrational, unreasonable and unsustainable.

iv. This Court opines that it is the bounden duty of the Respondent Authority to consider the request made by the Petitioner for return of the subject land on account of the non-accomplishment of the purpose for which the land was gifted giving due weight to the wishes of the Petitioner while executing the gift deed donating the subject land for the purpose indicated therein. This Court opines that in a case of this nature, when the purpose of the gift failed to materialize, the donor would be justified in claiming the land back. The generous gesture of the Petitioner in donating the land for a purpose should infact be appreciated and the land donated should be returned to the Petitioner by the Respondent Authority since the Petitioner's gift is a conditional gift for the purpose of construction of PHC and on account of subsequent events or efflux of time the object is no more in existence.

v. Under similar circumstances this Court in W.P.No.19339/2003 vide its orders dt. 25.09.2003,

directed the 3rd Respondent there under to take necessary steps for formal delivery of the possession of land in question to the Petitioners and to make necessary entries in the Revenue Records within a period of 2 weeks from the date of receipt of the copy of the order.

8. Taking into consideration the aforesaid facts and circumstances of the case and also the view taken by this Court under similar circumstances in judgement dated 25.09.2003 passed in W.P.No.19339 of 2003, the Writ Petition is allowed as prayed for and the Respondents are directed to consider Petitioner's representation dt. 20.01.2014 seeking surrender of Petitioner's land in Sy.No.5 to an extent of Ac.3.00 gts., of Thimmajipet Village, Thimmajipet Mandal, Mahabubnagar District donated by the Petitioner for the purpose of construction of PHC building to the Government free of cost and take necessary steps for formal delivery of possession of the subject land in question to the Petitioner and make necessary corrections in the Revenue Records within a period of 3

weeks from the date of receipt of the copy of the order.

However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
b/o kvrm