

(1989) 07 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 2136/1989

M. Virupaksha Gowda and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 3 KarLJ 384

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

M.P. Chandrakantharaj Urs, J.-This matter coming up for preliminary hearing after notice is disposed of by the following order:

2. The learned Counsel for the petitioner as well as the learned High Court Government Pleader have been heard. The first petitioner is the son of one of the donors of certain agricultural land measuring 2 acres in Sy.No. 140 of M. Gonahal Village in Bellary District. The 2nd petitioner is the resident of the same village. They are aggrieved by the resolution of the Health Standing Committee of the Zilla Par shad, Bellary passed at the meeting held on 3-10-1988 at 11-00 a.m. as at Annexure-F, as well as the affirmation of that resolution by the Zilla Parishad at its meeting held on 29-11-1988 as at Annexure-G. They have prayed for quashing of the two resolutions inter alia on the ground that the first petitioner's father and uncles donated 2 acres of land in the aforementioned Sy.No. on the strict understanding that the land will be utilised for the construction of a hospital for the benefit of the villagers. One K. Channabasavana Gowda also donated 2 acres of land in Sy.No. 140 in the same village adjoining the 2 acres donated by the first petitioner's father and uncles for the same purpose. The impugned resolutions now have deviated from the purpose for which two bits of land measuring in all 4 acres were granted for the construction of hospital and all other amenities that go with it to the detriment of the villagers and therefore, the resolutions should be quashed is the contention advanced.

3. Undoubtedly, as evidenced by Annexures-B and B1, the deeds of gift in

question, he donors donated the land to the Government for the purpose of establishing the hospital. The gift has been accepted on behalf of the Government and the property has vested in the Government and the title has passed on to the Government. From the records produced by the learned Government Pleader, it is seen that K. Channabasavana Gowda, the donor under the gift deed as at Annexure-B1 has expressed that he has no objections for a school being built on the land donated by him instead of the hospital. The resolutions impugned are pursuant to the recommendations made by the Deputy Director of Public Instructions, Bellary as well as the District Health and Family Welfare Officer, Bellary, who have decided to have both school and hospital located within the four acres. The petitioners' complaint is that having induced the donors to part with the land holding out of a promise that hospital will be constructed, the Government is estopped from constructing anything other than a hospital and therefore, resolutions must be quashed.

4. I do not think such a proposition is acceptable to the Court. A conditional gift is valid in so far as the gift is concerned. But, condition will be void. Location of hospitals, schools and other amenities which are necessary for the welfare of the people in rural areas is a matter of discretion vested in the Administration viz., the executive, in the State. Even though at a point of time a certain location may be approved and that location may be acquired by way of gift as in the instant case, the Courts cannot exercise its jurisdiction under Article 226 to find the Executive Government to locate the school if they find that something is more useful or both the school and the hospital may be located on the same land. It must be still left to the executive discretion.

5. Almost similar question fell for consideration before the Division Bench of this Court in the case of Mallihal Village Panchayat v State of Mysore, (A.I.R. 1969, Mys.L.J. 345). In that case, the Division Bench of this Court clearly held that the High Court had no power to interpose its own view, by issuing writ of mandamus when the matter fell within the administrative function of the State Government. The High Court therefore could not direct the State Government by a writ of mandamus to locate a primary health centre at a particular place when the State Government had chosen another site for the centre as more suitable. While ruling as above, the decision of the Supreme Court in the case of Venkateswara Rao v Government of Andhra Pradesh, (A.I.R. 1966, S.C. 828), was distinguished. In the instant case what has been decided is to locate both the hospital and the school within the four acres allotted. One of the donors as already adverted to, has consented to the location of the school on the land donated by him. Therefore, the first petitioner or even the second petitioner cannot make a grievance of the resolutions impugned. If they feel aggrieved that the donation of the land made by them was obtained by mis-representation, they only have to seek cancellation of Annexure-B in an appropriate Civil Court having jurisdiction under Section 31 of the Specific Relief Act.

6. Subject to the above observation, this petition is dismissed as misconceived

and prayers therein are rejected.

Writ petition rejected.