

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20/06/2018
Delivered on	01/10/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.33413 of 2013 &
M.P.No.1 of 2013 & W.M.P.No.3154 of 2018

T.Rajaratnam

.. Petitioner

Vs.

1.The Collector,
Chennai District,
Appellate Tribunal of Maintenance
of Parents and Senior Citizens,
Singaravelar Maligai,
Chennai - 600 001.

2.The Sub Divisional Magistrate and
District Backward Classes and
Minority Welfare Officer,
Singaravelar Maligai,
Chennai - 600 001.

3.C.Thangavelu

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order Me.Mu.Ma.No.Aa6/2127/2013, dated 05.11.2013 passed by the first respondent confirming the proceedings No.L1/10083/2013, dated 30.05.2013 passed by the second respondent and quash the same.

For Petitioner : Mr.S.J.Jagadev

For Respondents : Mr.B.Anand

Government Advocate for R1 and R2

Mr.Kaushik N.Sharma for R3

O R D E R

This Writ Petition has been filed challenging the order of the first respondent dated 05.11.2013, confirming the order of the second respondent dated 30.05.2013, whereby, the Authorities have directed the petitioner to hand over possession of the

property measuring an extent of 1187 sq.ft in J.D.Durairaj Nagar, Aminjikarai, Chennai.

2. The facts in nutshell:-

The petitioner is the eldest son of the third respondent. The property in question was purchased in the name of the third respondent from Apparao Garden Cooperative House Sites Society, through a registered sale deed dated 07.03.1981 for a sale consideration of Rs.1,487/-. It is not disputed that a small house was constructed in the year 1985 thereon. The third respondent approached the second respondent for delivery of possession of the property by filing an application under the provisions of the Tamil Nadu Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 (In short "the Act") alleging that he is the absolute owner of the property in question and that is being enjoyed by the petitioner and he was ill-treated and thrown out from the property.

3. The case of the petitioner is that the second respondent issued a notice in Form C for his appearance on 08.05.2013, however even without providing the copy of the maintenance application, the second respondent proceeded to conduct enquiry and he was forced to give a statement. The further case of the petitioner is that he studied upto 5th standard and his father / third respondent herein was erratic, irregular and wayward. Hence, the petitioner who is the eldest son of the third respondent started earning at the age of 12 by doing carpenter work and maintained his family and also arranged for the marriage of his younger brother and two sisters. It is further stated that he had been at Saudi Arabia on employment as Carpenter and he was sending his earning to his father for construction of the house and he returned back in January 1990 and after his marriage he has been residing with his family in the property in dispute for the past 24 years, while the third respondent is living with his brother at New No.34, Old No.16, Kakkan Nagar, Aminjikarai, Chennai.

4. The petitioner would further allege that he purchased another piece of property for a sum of Rs.7,50,000/- by availing loan from the Bank of India and due to jealousy, the third respondent had initiated the proceedings and also settled half of the property in favour of his second son through a registered settlement deed dated 23.03.2012. Aggrieved over the settlement, the petitioner has filed a suit in O.S.No.6037 of 2013 before XVI Assistant City Civil Court, Chennai, claiming title over the property and to declare the settlement deed as null and void and in I.A.No.16399 of 2013, the Court has granted an order of status quo and at this juncture, the Authorities cannot order delivery of possession and he is ready to pay maintenance at the

rate of Rs.5,000/- to the third respondent.

5. In the instant case, it is not in dispute that the petitioner did not file counter before the second respondent and on the basis of the oral evidence of the third respondent, the second respondent directed the petitioner to vacate the premises and hand over the possession. The order of the second respondent was confirmed by the first respondent. Assailing the orders, the present Writ Petition has been filed.

6. Mr.S.J.Jagadev, learned counsel for the petitioner would urge that the Tribunal constituted under the Act has no jurisdiction to decide the rights of the parties in immovable property and to order eviction of the petitioner, especially, when the issue is pending before the competent City Civil Court. It is further contended that Section 5(3) of the Act mandates affording an ample opportunity to the opposite party, but without even serving the copy of the application filed by the third respondent, he was forced to defend the case. According to the learned counsel, the petitioner was denied reasonable opportunity and fair hearing, which is gross violation of the principles of natural justice and procedure established in Section 5(3) of the Act.

7. Mr.Kaushik N.Sharma, learned counsel for the third respondent contended that the third respondent is the sole owner of the property in dispute vide sale deed dated 07.03.1981 and a small house was constructed in the year 1985. Subsequently in the year 1990 it was expanded by the third respondent and only in the year 1990, the petitioner was permitted to occupy the premises. The submission of the learned counsel for the third respondent is that the petitioner along with his wife applied for loan from the Bank of India on 13.02.2006 mortgaging the property and the third respondent forced to stand as a guarantor and thereafter on 10.01.2009, the third respondent was assaulted by the petitioner and he was thrown out of the property and hence, the third respondent having no other choice, living with his younger son T.Muthukumar. It is further submitted that the petitioner was given opportunity before the Authorities and the Authorities have jurisdiction to direct the petitioner to hand over possession to the third respondent by placing reliance on the decision of the Gujarat High Court reported in AIR 2013 Guj 160 [Jayantram Vallabhdas Meswania vs. Vallabhdas Govindram Mswania].

8. Heard the rival submissions and perused the materials available on record.

9. In the case on hand, a perusal of the records would reveal that the property bearing Plot No.8 in J.D.Durairaj Nagar, Aminjikarai was purchased in the name of the third respondent through the registered sale deed dated 07.03.1981. Both the petitioner and the third respondent would admit that in the year 1985, a small house was constructed and it was expanded in the year 1990. The case of the petitioner is that he went abroad and employed as Carpenter in Saudi Arabia Trading and Construction Company, as such he worked from April 1985 to January 1990 and the entire earning was transferred to India and the property was developed from his earning. In support of his case, Certificate issued by the Saudi Arabian Trading and Construction Company dated 12.01.1990 was annexed in the typed-set. Even though the third respondent has claimed before the Authorities that he was the absolute owner of the land and building was constructed by him, but admittedly, no document was produced in support of his case except the copy of the sale deed. Moreover, in the written argument, it is stated that the third respondent was kicked and thrown out of the said property on 10.01.2009. This statement is not supported by any material. In the written arguments, it is categorically admitted that the third respondent permitted the petitioner to use the unused portion of the property since 1990. During the course of the argument, the learned counsel for the petitioner submitted that the Authorities in a summary procedure cannot decide the title of the property and the issues already pending before the competent Civil Court in O.S.No.6037 of 2013. It is further stated that till the disposal of the suit, the petitioner is ready to pay Rs.5,000/- per month towards maintenance to third respondent. Since the learned counsel for the third respondent has agreed to receive the maintenance amount from the petitioner, this Court directed the petitioner to bring a Demand Draft towards the arrears of the maintenance. When the case was listed again for handing over the Demand Draft to the third respondent, the learned counsel refused to receive the same and wanted to argue the case on merits.

10. The learned counsel for the third respondent mainly relied on the decision of the judgment of Gujarat High Court, referred supra, in support of his case that the Authorities have jurisdiction to direct the children to hand over possession of the property. In my considered opinion, the judgment has no application to the facts of the case for the reason that in that case the father contended before the Adjudicating Authority that he was forcibly snatched away a room in the premises and his son started to occupy the same. The son did not claim right over the property and he expressed his willingness to hand over possession of part of the room to his father. I find force in the contention of the learned counsel for the petitioner, the Authorities under the Act can only order residence and for

maintenance and no finding could be rendered about the right over the property. It is further seen that the first respondent, the Appellate Authority had also recorded the statement of the mother of the petitioner / the wife of the third respondent, but no materials have been placed on record to show under what Authority she was permitted to give evidence and whether the petitioner was given opportunity to cross examine the witness.

11. For the above reasons, the petitioner is entitled to succeed in this Writ Petition. In such view of the matter, the orders impugned in the Writ Petition are set aside and accordingly, the Writ Petition is allowed. The petitioner is directed to pay maintenance to the third respondent at the rate of Rs.7,000/- (Rupees Seven Thousand only), per month, payable on or before 5th of every succeeding month, commencing from November 2018 onwards. The arrears of maintenance would come to Rs.4,69,000/- (i.e., from the date of filing of the application viz., 18.03.2013 to till date (67 months), which shall be paid by the petitioner at Rs.50,000/- at every quarter, i.e., once in three months. The payment shall start from 05.11.2018 and shall complete payment of arrears on or before 08.06.2021. The parties are at liberty to establish their case before the Competent Civil Court. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Collector,
Chennai District,
Appellate Tribunal of Maintenance
of Parents and Senior Citizens,
Singaravelar Maligai,
Chennai - 600 001.

2.The Sub Divisional Magistrate and
District Backward Classes and
Minority Welfare Officer,
Singaravelar Maligai,
Chennai - 600 001.

+1cc to Mr.S.J.Jagadev, Advocate, S.R.No.67678

+1cc to Mr.Kaushik N.Sharma, Advocate, S.R.No.67700

+1cc to the Government Pleader, S.R.No.68136

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M.P.No.1 of 2013 & W.M.P.No.3154 of 2018

VGII (CO)
GSP (26/10/2018)



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