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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.5721 of 2013

and

M.P.No.1 of 2013

1. N. Gurumoorthy

2. Sangeetha @ Anbe Sangeetha

..Petitioners

Vs.

1. Office of the Collector cum Appellate Authority,
under the Pondicherry Settlement Act 1970
Puducherry.

2. Mohanasundaram Rajamany,
W/o. Mohanasundaram

3. Abdul Kafoor,
S/o. Abdul Kadhar

4. Abdulla
S/o. Abdul Vasigh

5. Sibuththulla (deceased)

6. Umukulseem

7. Mariyam Riluvana

8. Habee Bullah Shibli

9. Safiya Sultana

10. Shakirullah Fahim (minor),
rep. by his natural Guardian,
her mother 6th respondent.

(R6 to R10 are substituted as LRs
of the deceased Sibuththulla R5
vide order in WMP.No.25729 of 2019
by VBDJ on 04.09.2019)

... Respondents



PRAYER : Petition filed under Article 226 of the Constitution of India to issue a writ of prohibition prohibiting the first respondent from adjudicating the settlement appeal no.3 of 2012.

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For Petitioner : Mr. R. Thiagarajan

For Respondents : Mrs. G.DJearamy,
Gov. Advocate (Pondy)
for R1

: Mr. K. Sukumaran,
for R2 to R5

ORDER

This petition has been filed prohibiting the first respondent from adjudicating the Settlement Appeal No.3 of 2012 pending on its file.

2. According to the petitioner, an appeal has been filed by respondents 2 to 5 to cancel the settlement effected in favour of the second petitioner. The Settlement Appeal filed by respondents 2 to 5 itself is not maintainable before the first respondent and he has no jurisdiction to entertain the appeal. Apart from that no order has been passed by the concerned authority in favour of the second petitioner, in the absence of any such order, the respondents 2 to 5 cannot maintain the appeal before the first respondent.

3. Per contra, the learned counsel appearing for the respondents 2 to 5 submitted that, a fraudulent transfer has been made by the first petitioner in favour of the second petitioner, who is none other than his wife. Based on the transfer, mutation has been effected in the revenue records under Section 19 of the Pondicherry Settlement Act . Against the order of mutation of revenue records passed under Section 19, an appeal lies before the first respondent under Section 21 of the Act. Hence, the respondents have filed an appeal. The appeal is also taken on file and the same is pending. According to them, only the first respondent has jurisdiction to entertain the appeal. Hence, the writ petition is not maintainable.

4. I have considered the submissions made on either side and also perused the materials available on records carefully.

5. Section 21 of the Pondicherry Settlement Act, 1970, provides an appeal against the order passed under the Act, which reads as follows:



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21.(1) Any person aggrieved by any order made under this Act may appeal,-

(i) If such order is made under clause (ii) of sub-section (3) of Section 14, to the Director; and

(ii) if such order is made under sub-section (3) of Section 16 or in the case of a correction made under sub-section (2) of section 19, to the Collector.

(2) Every appeal under sub-section (1) shall be preferred within thirty days of the date of receipt of order appealed against and the Director or the Collector, as the case may be, after giving the parties concerned an opportunity of being heard, pass such order as he deems fit.

(3) Every order made by the Director or the Collector shall, subject to Section -22, be final."

6. In the instant case, a mutation was carried out in the revenue records under Section 19 of the Act. Against that order, only appeal lies under Section 21(1)(ii) of the Act before the first respondent. Hence, the first respondent alone has jurisdiction to entertain the appeal. Hence, I find no merit in the submission of the learned counsel for the petitioner.

7. At this stage, the learned counsel for the petitioner would submit that even though the appeal was taken on file, the appeal was not filed in time and he may be permitted to raise the objection regarding limitation in the appeal. On the other hand the learned counsel for the respondents 2 to 5 submitted that, the respondents also may be permitted to produce all the materials before an appellate authority to substantiate his claim. It is needless to say that once the appeal is filed, it is for the parties to substantiate their claim with acceptable materials, and it is for the appellate authority to consider the same and pass orders, and no direction needs to be issued in this regard.

8. In the above circumstances, the first respondent is directed to proceed with the appeal and dispose the same, within a period of four months from the date of copy of the order, after giving opportunity to the petitioner as well as the respondents 2 to 5 .



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9. With the above directions, this writ petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

mrp
To

Office of the Collector cum Appellate Authority,
under the Pondicherry Settlement Act 1970
Puducherry.

+1 CC to Mr.K. Sukumaran, Advocate sr 89054.
+1 CC to Mr.R. Thiagarajan, Advocate sr 89351.
+1 CC to Govt. Pleader sr 89604.

W.P.No.5721 of 2013

RR(CO)
SP(21/01/2020)