



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2019

CORAM

THE HONOURABLE **MR. JUSTICE M. GOVINDARAJ**

W.P. (MD) No.19903 of 2019

Thottiyammal

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Ramanathapuram District,
Ramanathapuram.

2.The District Social Welfare Officer,
Ramanathapuram District,
Ramanathapuram.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent herein to dispose of the petitioner's representation dated 06.07.2018 within the time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For R1 & R2 : Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader.

For Meenakshi : Mr.J.Bharathan
(Daughter-in-law of the petitioner)

ORDER

This Writ Petition has been filed by a senior citizen, aged about 86 years, seeking a direction to the first respondent to dispose of the petitioner's representation dated 06.07.2018, within a time frame.

2.The case of the petitioner is that she executed settlement deed in favour of her grand son. After the death of her husband, her son, daughter-in-law and their children were harassing her continuously without providing food and thrown her out of the house. When she approached the family Court, a direction was given to petitioner's daughter to take care of her and she is now staying with her daughter. The daughter-in-law make all attempts to grab the property by fabricated documents. All the proceedings were clubbed together and common order was passed. However, as per the conditions, the daughter-in-law and grandson are not taking care of her and hence, she seeks cancellation of the settlement deed and re-issuance of the property. The official respondent has



not taken any action, hence, this Writ Petition.

3.This Court directed the appearance of the petitioner to verify certain facts. She would state that she cannot live with her daughter-in-law under the same roof. She wants her property back from her grandson, which was settled by her on 02.12.2013. She would also emphatically state that she does not require any mercy from her daughter-in-law or her grandchildren and that, she does not any money from them and she wants to live in the house, which was built by her son, where she and her husband were living for a long period. She would also state that she is the person, who settled the property in favour of her son and that she provided financial assistance to her son to lay the foundation of the said house.

4.Curiously, the Division Bench of this Court, in W.P.(MD) No.18796 of 2018, suo moto W.P.(MD)No.1270 of 2019, CrI.O.P.(MD) No.3014 of 2019 has dealt with this issue elaborately. Before the Division Bench, all the parties have appeared and after mediating the matter, the Division Bench has passed an order on 08.04.2019. From this order, it is seen that the petitioner is having undivided share in a landed property measuring 3.5 acres left by her husband. The daughter-in-law and her children have given their unconditional undertaking and they have no objection for transferring the patta by including the name of the petitioner and her three daughters. The Division Bench has also recorded that the petitioner executed a settlement deed on 02.12.2013 in favour of her grandson. In that property, her son put up some commercial building and its value got enhanced. The settlement deed was also produced before the Court and the petitioner accepted that she had signed in the document. But the dispute arose only after the demise of the petitioner's son namely Dass. The cancellation of settlement deed executed by her, which was stoutly opposed by her daughter-in-law and her grandchildren. They have expressed their no objection for the petitioner residing in that house till her life time. During the mediation at the Chamber of the Hon'ble Judges, the petitioner had expressed that she was free and happy, while she was living with her son and his family, till he was alive. It was also admitted by the petitioner that the daughter-in-law and the grandchildren invited her to live along with them, but the petitioner refused politely and also admitted that she was not physically forced out of the house by the attitude of the daughter-in-law. The Court has further dealt with the criminal complaint lodged against the fabrication of the legal heir certificate and omission of the name of the petitioner, as if, she has already died. A clear statement was given by the daughter-in-law and the grandchildren and that they have nothing to do with the legal heir certificate. After discussing the factual circumstances, criminal complaint lodged against them was also



quashed by the Hon'ble Division Bench.

5.Ultimately, the Division Bench has dismissed the writ petition filed by the petitioner and observed that the parties can approach the civil Court to decide the right, title and interest of the parties, uninfluenced by any of the observations or findings of this Court.

6.Thereafter, it appears that the petitioner has filed a petition for initiating action against her grandson for not maintaining her under the provisions of Maintenance and Welfare of the Parents and Senior Citizen Act, 2007 and the petitioner filed a petition to the first respondent stating that her son took her against her will and asked her sign in the document. Later, she came to know that it was a settlement deed made in favour of her grand son Praveen Kumar. Since, she was physically harassed and thrown out from the house, she lodged a complaint and sought for cancellation of settlement deed given in favour of her grandson.

7.During the course of arguments, the learned counsel appearing for the daughter-in-law and grandson would submit that

1.the petitioner is in possession of 1/5th share of undivided agricultural land measuring 3.5 acres.

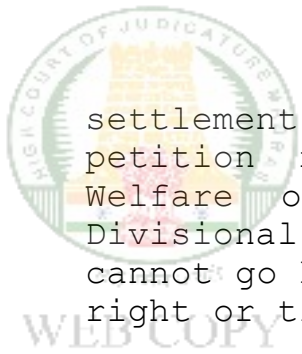
2.she has bank balance of Rs.5,00,000/-

3.she has received a sum of Rs.5,00,000/- from the Motor Accident Claims Tribunal awarded towards the compensation for the death of her son Dass.

In view of the same, he would contended that the Section 4 of the Act will not apply to the petitioner as she is capable to maintaining herself.

8.Secondly, Section 23 under which the present petition is filed, is also not applicable to the case as the property was not transferred subject to the condition that the transferee will provide the basic amenities and basic physical needs to the transferee and the transfer was not made out of expectation that the grandson will take care of her. It was made out of love and affection and not on the promise that her grandson persuaded her with a promise to maintain her. Rather she was taken by her deceased son to Registrars Office and not by grandson. Hence, it cannot be said that the transfer was fraudulent one. Even after the transfer of the property, the petitioner was living happily with the son and his family. Therefore, he would submit that the petition itself is not maintainable.

9.On perusal of the above, this Court is of the considered view that to establish her right or interest over the property, course, as held by Division Bench of this Court, is always open to the petitioner to approach the civil Court to cancel the



settlement deed. But, it appears that the petitioner has filed petition for retrieving the property through Maintenance and Welfare of the Senior Citizen Act, 2007 from the Revenue Divisional Officer. It is well settled that the first respondent cannot go beyond the scope of Section 23 of the Act and decide the right or title or interest.

10.However, a direction is given to the first respondent to dispose of the petition taking into consideration, the order passed by the Hon'ble Division Bench and the Sections 4 and 23 of the above said Act, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the first respondent shall follow the due procedure, by providing sufficient opportunity to all the parties concerned, before passing any orders.

11.With the above observations and directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

gns

To

1.The Revenue Divisional Officer,
Ramanathapuram District,
Ramanathapuram.

2.The District Social Welfare Officer,
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-90362[F] dated 30/09/2019)

+1 CC to M/s.SPL GP (SR-90431[F] dated 30/09/2019)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-90612[F] dated 01/10/2019)

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