



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.11.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.SUNDAR**

W.P(MD)No.22301 of 2019

and

W.M.P(MD)No.19071 of 2019

R.Johnson

... Petitioner

/Vs./

- 1.The Revenue Divisional Officer / Sub Divisional Magistrate,
Arupukottai, Virudhunagar District.
- 2.The Tahsildar,
Arupukottai Taluk, Virudhunagar District.
- 3.The Sub Registrar,
Registration Department,
704, Kovilpatti Main Road,
Sathur 626203, Virudhunagar District.

4.Mary

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order of the 1st respondent in Na.Ka.A5/4352/2019 dated 19.09.2019, and quash the same.

For Petitioner : Mr.N.Dilipkumar
for Mr.P.Prabu
For R-1 to R-3 : Mr.M.Murugan
Government Advocate
For R-4 : No appearance

ORDER

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 22.10.2019, 12.11.2019 and 19.11.2019, which read as follows:

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Proceedings dated 22.10.2019 (1/2):

Mr.N.Dilipkumar, learned counsel representing counsel on record for writ petitioner is before this Court.

2.An 'order dated 19.09.2019 bearing reference Na.Ka.No.m5/4352/2019' (hereinafter referred to as 'impugned order' for the sake of brevity, clarity and convenience) made by the first respondent i.e., jurisdictional 'Revenue Divisional Officer/Sub Divisional Magistrate' (hereinafter referred to as 'RDO' for the sake of brevity) has been called in question in the instant writ petition. Vide impugned order, jurisdictional RDO has declared as void a 'settlement deed dated 20.09.2007 registered as document No.8059 of 2007 in the Office of Sattur Sub Registrar Office' (hereinafter referred to as 'said settlement deed' for the sake of brevity). Vide said settlement deed, writ petitioner's father one Raju had settled his self-acquired immovable property (residential house) in favour of the writ petitioner. Thereafter, writ petitioner's father Raju died and the date of demise is 28.11.2016.

3.Post demise of writ petitioner's father, writ petitioner's mother Mrs.Mary (fourth respondent/private respondent in instant writ petition) petitioned the jurisdictional RDO making several allegations seeking setting aside of said settlement deed. To be noted, writ petitioner's mother (fourth respondent) petitioned RDO under 'The Maintenance and Welfare of parents and Senior Citizens Act 2007' (hereinafter referred to as 'Senior Citizens Act' for the sake of brevity, clarity and convenience). On this petition, RDO embarked upon the exercise of conducting an enquiry and passed the impugned order.

4.Assailing the impugned order, instant writ petition has been filed.

5.In the instant writ petition, learned counsel for writ petitioner raises the following points :

(a) Said settlement deed dated



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20.09.2007 is prior to date of coming into force of Senior Citizens Act, namely 29.12.2007 and language of Section 23 is clear that it is applicable only to transfers made after commencement of Senior Citizens Act.

(b) Section 23 of Senior Citizens Act can be invoked only by the transferor whereas in the instant case, it is Late.transferor's spouse.

(c) Issue if any is with the writ petitioner's sister which is beyond the scope of RDO's power under Senior Citizens Act.

(d) This is a matter can be dealt with and adjudicated upon only by Civil Court and not by RDO.

6.In response to the aforesaid submission, learned State counsel draws the attention of this Court to Section 7 of the Senior Citizens Act, which reads as follows:

'Section 7-Constitution of Maintenance Tribunal-(1) The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under Section 5.

(2)The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.

(3)Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

7.It is submitted that pursuant to Section 7 of the Senior Citizens Act, State has passed Government Order in G.O.Ms.No.171 dated



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dated 31.12.2019 which reads as follows:

**'Constitution of Appellate Tribunal
for Each District Under the Act**

[G.O.Ms.No.172, Social Welfare and Nutritious Meal Programme (SW6), 31st December, 2009, Margazhi 16, Thiruvalluvar Aandu-2040.]

No.II(2)/SWNMP/725(b-2)/

2009_In exercise of powers conferred under sub-section (1) of Section 15 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007(Central Act No.56 of 2007), the Governor of Tamil Nadu, hereby constitutes one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal. The above Appellate Tribunal shall be presided over by the District Collector of the concerned district.'

10.It is submitted that there is an alternate remedy available to the writ petitioner.

11.A perusal of Section 16 of the Senior Citizens Act reveals that the appellate remedy is available only to a Senior or Parent (to be noted, parent defined in 2(d) and senior citizen has defined as 2(h) of Senior Citizens Act). Therefore, it may not be available to the writ petitioner.

12.In the aforesaid backdrop, issue notice regarding admission to the respondents returnable by 12.11.2019.

13.Mr.M.Murugan, learned Government Advocate accepts notice on behalf of the respondents 1 to 3 (official respondents).

14.With regard to fourth respondent (private respondent) private notice is permitted.

15.Registry to show the name (in the cause-list) of the aforementioned learned State



counsel as well as the counsel for fourth respondent if any or name and full address of fourth respondent as in the writ petition cause-title (subject to proof of service being filed) in the next listing.

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16.List in the motion list on 12.11.2019.

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Proceedings dated 22.10.2019 (2/2):

Read this in conjunction with and in continuation of proceeding/order made in main writ petition today (22.10.2019) which reads as follows:

'Mr.N.Dilipkumar, learned counsel representing counsel on record for writ petitioner is before this Court.

2.An 'order dated 19.09.2019 bearing reference Na.Ka.No.m5/4352/2019' (hereinafter referred to as 'impugned order' for the sake of brevity, clarity and convenience) made by the first respondent i.e., jurisdictional 'Revenue Divisional Officer/Sub Divisional Magistrate' (hereinafter referred to as 'RDO' for the sake of brevity) has been called in question in the instant writ petition. Vide impugned order, jurisdictional RDO has declared as void a 'settlement deed dated 20.09.2007 registered as document No.8059 of 2007 in the Office of Sattur Sub Registrar Office' (hereinafter referred to as 'said settlement deed' for the sake of brevity). Vide said settlement deed, writ petitioner's father one Raju had settled his self-acquired immovable property (residential house) in favour of the writ petitioner. Thereafter, writ petitioner's father Raju died and the date of demise is 28.11.2016.

3.Post demise of writ petitioner's father, writ petitioner's mother Mrs.Mary (fourth respondent/private respondent in instant writ petition) petitioned the jurisdictional RDO making several allegations seeking setting aside of said settlement deed. To be noted, writ petitioner's mother (fourth respondent) petitioned RDO under 'The



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Maintenance and Welfare of parents and Senior Citizens Act 2007' (hereinafter referred to as 'Senior Citizens Act' for the sake of brevity, clarity and convenience). On this petition, RDO embarked upon the exercise of conducting an enquiry and passed the impugned order.

4. Assailing the impugned order, instant writ petition has been filed.

5. In the instant writ petition, learned counsel for writ petitioner raises the following points :

(a) Said settlement deed dated 20.09.2007 is prior to date of coming into force of Senior Citizens Act, namely 29.12.2007 and language of Section 23 is clear that it is applicable only to transfers made after commencement of Senior Citizens Act.

(b) Section 23 of Senior Citizens Act can be invoked only by the transferor whereas in the instant case, it is Late transferor's spouse.

(c) Issue if any is with the writ petitioner's sister which is beyond the scope of RDO's power under Senior Citizens Act.

(d) This is a matter can be dealt with and adjudicated upon only by Civil Court and not by RDO.

6. In response to the aforesaid submission, learned State counsel draws the attention of this Court to Section 7 of the Senior Citizens Act, which reads as follows:

'Section 7-Constitution of Maintenance Tribunal-(1) The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under Section 5.

(2) The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.

(3) Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them. '



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7.It is submitted that pursuant to Section 7 of the Senior Citizens Act, State has passed Government Order in G.O.Ms.No.171 dated 31.12.2019 which reads as follows:

'Constitution of Tribunal in Each Sub-Division under the Act

[G.O.Ms.No.171, Social Welfare and Nutritious Meal Programme (SW6), 31st December, 2009, Margazhi 16,Thiruvalluvar Aandu-2040.]

No.II(2)/SWNMP/725(b-1)/2009_In exercise of powers conferred under sub-section (1) of Section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Central Act No.56 of 2007), the Governor of Tamil Nadu, hereby constitutes a Tribunal in each sub-division for the purpose of adjudicating and deciding upon the order for maintenance under Section 5 of the said Act. The above Tribunal shall be presided over by the Revenue Divisional Officer of the concerned Sub-division.'

8.It is learned State counsel's says that RDO in passing the impugned order has exercised power pursuant to Government Order Section 7 of the Senior Citizens Act read with aforesaid Government Order and learned State counsel also referred to Sections 15 and 16 of Senior Citizens Act, which read as follows:

'15.Constitution of Appellate Tribunal_(1) The State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.

(2)The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.

16.Appeal_(1)Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:'

9.It is submitted that pursuant to Section 15 of the Senior Citizens Act, State has passed Government Order in G.O.Ms.No.172 dated 31.12.2019 which reads as follows:



'Constitution of Appellate Tribunal for Each District Under the Act

[G.O.Ms.No.172, Social Welfare and Nutritious Meal Programme (SW6), 31st December, 2009, Margazhi 16, Thiruvalluvar Aandu-2040.]

No.II(2)/SWNMP/725(b-2)/2009_In exercise of powers conferred under sub-section (1) of Section 15 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007(Central Act No.56 of 2007), the Governor of Tamil Nadu, hereby constitutes one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal. The above Appellate Tribunal shall be presided over by the District Collector of the concerned district.'

10.It is submitted that there is an alternate remedy available to the writ petitioner.

11.A perusal of Section 16 of the Senior Citizens Act reveals that the appellate remedy is available only to a Senior or Parent (to be noted, parent defined in 2(d) and senior citizen has defined as 2(h) of Senior Citizens Act). Therefore, it may not be available to the writ petitioner.

12.In the aforesaid backdrop, issue notice regarding admission to the respondents returnable by 12.11.2019.

13.Mr.M.Murugan, learned Government Advocate accepts notice on behalf of the respondents 1 to 3 (official respondents).

14.With regard to fourth respondent (private respondent) private notice is permitted.

15.Registry to show the name (in the cause-list) of the aforementioned learned State counsel as well as the counsel for fourth respondent if any or name and full address of fourth respondent as in the writ petition cause-title (subject to proof of service being filed) in the next listing.



16.List in the motion list on 12.11.2019.'

2.Learned counsel for writ petitioner in instant Writ Miscellaneous Petition submits that there is an imminent threat of immovable property which is subject of the impugned order being encumbered, alienated or dealt with in any other manner.

3.In the light of the imminence/immediacy and in the light of proceeding in the main writ petition, there shall be an order of interim stay as prayed for till the next listing.

4.List along with main writ petition on 12.11.2019 in the motion list.'

Proceedings dated 12.11.2019 (1/2):

Mr.N.Dilip Kumar, learned counsel representing counsel on record for writ petitioner and Mr.M.Murugan, learned Government Advocate on behalf of respondents 1 to 3 (Official respondents) are before this Court.

2. With regard to fourth respondent (private respondent), Mr.M.Murugan for Mr.M.Senthil Ayyanar, learned counsel who is before this Court submits that he has instructions to file vakalatnama and that vakalatnama will be filed before end of working hours tomorrow.

3. Registry to show the name of counsel for fourth respondent in the next listing, if the vakalatnama is in order. Otherwise, Registry to show the name and address of fourth respondent as in writ petition cause title in the next listing.

4. List on **19.11.2019** in the motion list.

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Proceedings dated 12.11.2019 (2/2):

Read this in conjunction with and in continuation of earlier proceedings / order of this Court dated 22.10.2019.



2. Three Official respondents and fourth respondent (private respondent) have been served and have instructed counsel.

3. Interim order already granted on 22.10.2019 to continue until further orders.

4. List along with main writ petition on **19.11.2019.**

Proceedings dated 19.11.2019:

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 12.11.2019.

2. Notwithstanding paragraph 2 therein, this Court is informed that no counsel has filed vakalatnama for fourth respondent, however name of fourth respondent is shown in the cause-list. Though name of fourth respondent was called out aloud thrice in Court and adjoining corridor also, there was no response. Be that as it may, learned State Counsel requests for a short accommodation.

3. List on 21.11.2019. '

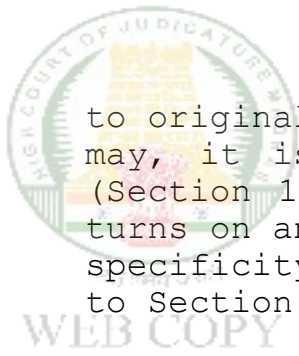
2. The aforesaid three proceedings shall be read as integral part of parcel of this order.

3. While the proceedings extracted and reproduced supra give the trajectory which this writ petition has taken before this Court, proceedings dated 22.10.2019 captures factual matrix as well as the controversy and encapsulates the same in a nutshell. Therefore, it is not necessary to dilate further on facts.

4. The four points or grounds on which instant writ petition is predicated is adumbrated in sub-paragraph (d) of Paragraph No.5 in earlier proceedings of this Court dated 22.10.2019. With regard to ground (b), learned counsel for writ petitioner very fairly submits that with regard to an appeal under Section 16 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'said Act' for the sake of brevity), a Hon'ble Single Judge of this Court in **M.Venugopal's** case being **M.Venugopal vs. The District Magistrate cum District Collector, Kanyakumari District and others** reported in **2014 (5) CTC 162** has held that an appeal to the appellate tribunal (District Collector) can be filed by aggrieved children and relatives also without being restricted to appellant /

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Learned counsel submits that instant case pertains



to original proceedings under Section 23 of said Act. Be that as it may, it is not necessary to enter into a debate on this aspect (Section 16 principle qua Section 23) of the matter, as the issue turns on another point. In other words, to mention with clarity and specificity, question as to whether M.Venugopal principle will apply to Section 23 is left open.

5. Point (a) / Ground (a) which is regarding contentious settlement deed (dated 20.09.2007) prior to date of coming into force of the said Act (29.12.2007) saves the day for the writ petitioner. With regard to this point (a) / ground (a), another judgment rendered by a Hon'ble Single Judge of this Court being order dated 29.01.2019 in **M.S.Palanivel's** case being **M.S.Palanivel vs. The Chief Officer, Parents and Senior Citizen Maintenance cum Welfare Tribunal cum Revenue Divisional Officer, Tiruchengode, Namakkal District and others** fortifies this ground. Most relevant paragraph in M.S.Palanivel's case referred to by another Hon'ble is paragraph Nos.16 to 20 and the same read as follows:

'16.From the perusal of Section 23 of the said Act it is clear that the said provision contemplates any transfer subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and in the event the transferee refuses or fails to provide such maintenance and physical needs, then any such transfer of property shall be deemed to have been made by fraud or coercion. It is pertinent to mention in this case that the senior citizens have even refused to accept any maintenance from the petitioner, which is also recorded in the impugned order. While so, in the absence of any transfer of property, whether the respondents 3 and 4 in W.P.No.1741 of 2015 are entitled for the return of the movables and immovables, only based on their allegation that they have not been maintained by the petitioner in W.P.No.1741 of 2015? Though the petitioner in W.P.No.1741 of 2015 claimed that the Power of Attorney was executed in his favour, the Power of Attorney does not authorise him to sell any particular property, whereas, it only states the power deed for purchase and sell on behalf of the father.

17.Be that as it may, even presuming that there is a Power of Attorney giving power to sell a specific property, whether it would amount to a transfer to come within the purview of Section 23 of the MWPSA Act. The Power of Attorney is only a creation of title holder, whereby, the



principal authorises the agent to do the acts specified therein, which even executed, will be binding on the principal. The Power of Attorney is also revocable and terminable at any time, unless it is irrevocable Power of Attorney in the manner known to law. It has been held by the Hon'ble Apex Court in *Suraj Lamp & Industries (P) Ltd., vs. State of Haryana*, (2012) 1 SCC 656 that the Power of Attorney is not a document of conveyance, but it is only a document of convenience.

18. In the case on hand, the third respondent in W.P.NO.1741 of 2015/father had specifically denied the execution of any Power of Attorney in favour of his son/the petitioner in W.P.No.1741 of 2015. Whereas, the petitioner claims that there is a Power of Attorney in his favour. Even presuming that the Power of Attorney was executed by the father, it will not confer any right or title or interest in any immovable property. Any immovable property can be conveyed only by a deed of conveyance (registered sale deed) after paying appropriate stamp duty and registration charges. Therefore, the Power of Attorney cannot be recognized as a mode of transfer of immovable property. As stated earlier, the document produced by the petitioner in W.P.No.1741 of 2015 also does not contain any description of the property. It is the claim of the said petitioner that he had executed an unregistered agreement to sell. The agreement to sell also will not confer any right, title, interest in an immovable property, except to the limited right given under Section 53-A of the Transfer of Property Act, 1882, which is part performance of the contract.

19. As mentioned earlier, the agreement also finds a clause that the prospective purchases/agreement holder was put in possession even on the date of execution of the agreement to sell. In the light of the above, when there is no 'transfer' of any property by way of gift or otherwise as required by the MWPSC Act, it is not open to the third respondent / father to invoke Section 23 of said Act to seek for return of movable and immovable properties.

20. Admittedly, there seems to be a deed of settlement in favour of the petitioner in the year 2006, which is registered as document No.954/2006. The very Act came into force on



31.12.2007. As per Section 23 of the MWPSA Act, any 'transfer' only after the commencement of the Act would render it void subject to the conditions. Therefore, the gift deed executed in favour of the petitioner prior to the commencement of the Act cannot be challenged.'

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6. With regard to ground (a) / Point (a), as it turns on chronicle of facts / dates itself which are not in dispute, learned State counsel submits that chronicle / dates speak for themselves. Settlement deed dated 20.09.2007 is prior to coming into force of said Act ie., 29.12.2007. It follows as a sequitur that Section 23 cannot be invoked more so owing to the language in which Section 23 is couched. As the writ petitioner's ground (a) / Point (a) is being sustained, being fortified by M.S.Palanivel's case law, it is not necessary to go into grounds (c) and (d). As alluded to supra, ground (b) is left open.

7. As the writ petitioner succeeds on the simple and straight forward ground that the contentious settlement deed is dated 20.09.2007 which is prior to the date of coming into force of the said Act, ie., 29.12.2007, fortified by M.S.Palanivel principle, writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Revenue Divisional Officer / Sub Divisional Magistrate,
Arupukottai, Virudhunagar District.

2.The Tahsildar,
Arupukottai Taluk, Virudhunagar District.

3.The Sub Registrar,
Registration Department, 704, Kovilpatti Main Road,
Sathur 626203, Virudhunagar District.

+1 CC to M/s.P. PRABHU, Advocate (SR-100227[F] dated 21/11/2019)

+1 CC to M/s.Special Government Pleader (SR-101141[F] 25/11/2019)

Order made in
W.P(MD)No.22301 of 2019

Dated:21.11.2019

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