

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.35376 of 2019

and

WMP.No.36197 of 2019

S.Shenbagavalli .. Petitioner

Vs.

1. The District Magistrate Cum District Collector,
Kanchipuram,
Kanchipuram District.
2. The Sub-Divisional Magistrate Cum Sub Collector,
Kanchipuram,
Kanchipuram District.
3. R.Ponnambalam
4. V.Mannammal .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records of the impugned order dated 26.11.2019 under Ni.Mu.No.5655/2018/A5 passed by the 2nd respondent and quashing the same.

For Petitioner : Mr.P.K.Ganesh

For R1 & R2 : Mr.N.Inbanathan

Additional Government Pleader

O R D E R

The petitioner has filed this Writ Petition challenging the impugned order passed by the second respondent in Ni.Mu.No.5655/2018/A5 dated 26.11.2019.

2.In the affidavit filed in support of the writ petition, the petitioner, S.Shenbagavalli has stated that the property having an extent of 4050sq.ft. land along with the superstructure therein with electricity connection at Door No.15/61, Mettu Street, Keezhpadaipai, Chennai, was settled in

her favour on 10.03.2008 by way of Registered Settlement Deed bearing document No.1206 of 2008 in the office of Sub-Registrar at Padappai by the 3rd and 4th respondents, R.Poonambalam and V.Mannammal. The petitioner is their adopted daughter. It is claimed that the settlement deed was settled absolutely in favour of the petitioner and there was no right to revoke the said settlement deed. It is further stated that the said property is in the possession of the 3rd and 4th respondents and the rental income of the same is also received by them till date. It is also stated that the petitioner constructed a building to an extent of 600sq.ft. along with her husband. In the meanwhile, on 09.12.2019 the petitioner had received the impugned notice from the second respondent, wherein, it was observed that the petitioner had failed to maintain the 3rd and 4th respondents after acquiring their property by way of settlement. Consequently, under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, (hereinafter shortly called as 'the Act') the settlement deed executed in favour of the petitioner, was cancelled by the second respondent. Pointing out the relevant provisions of the Act, the petitioner stated that the aggrieved child cannot file an appeal before the District Collector. Under these circumstances, the petitioner has filed the present writ petition before this Court.

3.Heard Mr.P.K.Ganesh, learned Counsel appearing for the petitioner and Mr.N.Inbanathan, learned Additional Government Pleader appearing for the respondents 1 and 2.

4.The attention of this Court has been drawn to the order of the Madurai Bench of this Court dated 14.08.2014 passed in W.P.No.13733 of 2012 [M.Venugopal Vs. 1. The District Magistrate Cum District Collector, Kanyakumari District and others], wherein, a learned Single Judge (Justice S.Nagamuthu) had examined in detail the various provisions of the Act and also referred to the very same legal propositions as pointed out by the learned counsel for the petitioner, that as aggrieved child cannot file an appeal before the Collector. In this connection, the relevant portion of the order of the learned single Judge can be extracted hereunder, which reads as follows:--

"17.During the course of the proceedings, I noticed that a plain reading of Section 16 of the Act gives an impression that an appeal to the Appellate Tribunal would be only at the instance of a parent or a senior citizen. It gives further impression that the aggrieved children or the relatives have no right of appeal. This does not appear to be a conscious omission by the Parliament. The Parliament would not have thought of differentiating between the rights of the aggrieved parents and the senior citizens on one

hand and the rights of the aggrieved children and relatives on the other hand. It is too well settled that the right of appeal is a creature of statute and unless there is a specific provision made for appeal, such right of appeal cannot be readily inferred. If Section 16 of the Act receives literal interpretation, certainly it would lead only to an absurdity. For example, in a given case, if the parent is aggrieved by the quantum of compensation, going by the plain reading of Section 16, he can file appeal before the Appellate Tribunal. but, at the same time, this aggrieved children cannot go on appeal challenging the quantum ordered. They may have to approach the High Court either under Article 226 of the Constitution of India or under Article 227 of the Constitution of India. Thus, as against the same order of the Tribunal, there may be two proceedings before two different forums. This would not have been certainly intended by the Parliament. In order to avoid this absurd result, the Court should use its interpretative tools to supply the missing words into the provision. In N.Kannadasan Vs.Ajoy Khose and others, reported in 2009 (7) SCC 1, Hon'ble Justice S.B.Sinha, speaking for the Supreme Court Bench, has held as follows:

"Interpretative tools of constitutional provisions and the statutory provisions may be different. Whatever interpretative tool is applied, the Court must not forget that its job is to find out the intention of the legislature. It can be gathered from the words used. However, if plain meaning assigned to the Section results in absurdity or anomaly, literal meaning indisputably would not be applied. It is also well settled that the Court may have to change the interpretative tool in the event it is necessary to give effective contextual meaning to the Act".

Since I am of the firm view that the missing of the words "aggrieved child or relative, in Section 16 of the Act is only an unconscious omission by the Parliament, by applying the principle of "casus omissus", it should be held that such a right of appeal is available for the aggrieved son/daughter/relative as well. I only hope that the law makers would take note of this anomaly and rectify the defect in the drafting of Section 16 of the Act."

5. In view of the pronouncement made by the learned Single Judge, the right of appeal is also available for the son, daughter and relative. Hence, the petitioner herein is directed to file a regular appeal before the first respondent viz., District Magistrate-Cum-District Collector, Kanniyakumari District, the Appellate Tribunal, under Section 16 of the Act. Since the petitioner herein has bonafide preferred this writ petition on 16.12.2019, the appeal should be presented on or before 10.02.2020. If the appeal is preferred on or before 10.02.2020, then, the Tribunal shall consider the delay in filing the same favourably. If the appeal is presented after 10.02.2020, the petitioner would have to assign reasons for the delay and the Tribunal may consider and pass orders in accordance with the Rules. Since the time is granted till 10.02.2020 for filing an appeal, no coercive action shall be initiated against the petitioner, till 10.02.2020. Thereafter, the Tribunal may exercise its discretion and pass appropriate orders.

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

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

av
To

1. The District Magistrate Cum District Collector,
Kanchipuram,
Kanchipuram District.
2. The Sub-Divisional Magistrate Cum Sub Collector,
Kanchipuram,
Kanchipuram District.

+2ccs to Mr.P.K.Ganesh , Advocate SR.No. 7588
+1 cc to Government Pleader Sr.No. 8084

W.P.No.35376 of 2019

A.SK(04/02/2020)