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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.6155 OF 2019

&

W.M.P.NO.6983 AND 6984 OF 2019

J.Sivadhanam

... Petitioner

.Vs.

1. The District Collector/Tribunal,
Salem District.

2. The Revenue Divisional Officer,
Salem.

3. Susin

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned proceedings of the 1st Respondent in his proceedings dated 17.02.2019 in Na.Ka.No.35660/2018/02, and quash the same and consequently for a direction for cancellation of all Deeds mentioned by the 2nd Respondent in his proceedings dated 12.12.2018 in Na.Ka.No.3092/2018/A4.

For Petitioner : Mr.M.Sriram

For Respondents : Mr.M.R.Gokulakrishnan
1 & 2 Government Advocate

For 3rd Respondent : Mr.M.L.Ramesh

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned proceedings dated 17.02.2019 passed by the 1st Respondent in Na.Ka.No.35660/2018/02, and for a consequential direction to cancel all Deeds mentioned by the 2nd Respondent in his proceedings dated 12.12.2018 in Na.Ka.No.3092/2018/A4.



2. According to the Petitioner, her husband viz. P.Jayaraj died on 23.04.2007 and that, she has two daughters and one son. Both her daughters are married. Her son, who is the 3rd Respondent herein, in whose favour, she executed a Settlement Deed in respect of a house property, deserted her without even paying any amount towards maintenance. Hence, the Petitioner filed a Petition before the 2nd Respondent invoking the provisions under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The 2nd Respondent, after a detailed enquiry and after perusing all the records furnished by the Petitioner and after hearing the objections of the 3rd Respondent, invoking the provisions of Section 23 of the Act, cancelled all the transfers in the name of the 3rd Respondent.

3. Aggrieved by the same, the 3rd Respondent, invoking the provisions under Section 16 of the Act, approached the Appellate Tribunal. The 1st Respondent/Appellate Authority reversed the order passed by the 2nd Respondent vide proceedings dated 17.02.2019. Seeking to quash the same, the Petitioner is before this Court.

4. Learned counsel for the Petitioner contended that, the Appeal filed by the 3rd Respondent under Section 16 of the Act is not maintainable, as the object of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is clear that, if there is no maintenance of the parents by the children, the Revenue Divisional Officer concerned has every right to cancel the Settlement/Sale Deeds executed in favour of the children.

5. In support of his stand, learned counsel for the Petitioner has relied on a First Bench decision of this Court in the case of K.Raju vs. Union of India (W.P.No.29988 of 2019, dated 19.02.2021). The First Bench dismissed the said Writ Petition clearly holding that, it is the wisdom of the legislature to decide what classes of persons would be entitled to the right of Appeal and what conditions may be attached to the exercise of such right and how such right may be exercised. Learned counsel also relied on a Madurai Bench decision of this Court in the case of S.Dhanalakshmi vs. The District Collector/Appellate Tribunal for Senior Citizens Maintenance & Welfare, Madurai District (W.P.(MD) No.5980 of 2021, dated 17.03.2021), whereby, the said Writ Petition was allowed holding that, the Appeal provision cannot be invoked by the son or daughter even if they are aggrieved by an order of the original Authority, viz. the Revenue Divisional Officer.



6. On the other hand, learned counsel appearing for the 3rd Respondent submitted that, the 1st Respondent was right in reversing the order passed by the 2nd Respondent and that, the same may be upheld.

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7. The First Bench of this Court in the case of K.Raju vs. Union of India reported in (2021 (1) L.W. 820) (supra) has clearly held that, under Section 16 of the Act, only Senior Citizens or parents, who are aggrieved by the order in original, can prefer an Appeal to the Appellate Authority. For better appreciation, relevant portion of the said order is extracted hereunder:

"5. The words used in the provision are lucid and by no stretch of imagination, can such clear words of the statute be read or understood or interpreted to imply that, any class of persons other than any senior citizen or a parent may be entitled to prefer an Appeal under such provision. The terms "senior citizens" and "parent" are defined in Section 2 of the Act. The word "Tribunal" is also defined to mean the Maintenance Tribunal as constituted under Section 7 of the Act.

...

7. At the highest, an appellate provision may be assailed as unreasonable as falling foul of the constitutional principles, particularly under Article 14 thereof. But, merely because a class of persons has been conferred the right to prefer an Appeal while another class may have not been given such right, ipso facto, would not make the appellate provision vulnerable to any challenge under Article 14 of the Constitution. Indeed, the right of Appeal that inheres in a party to the lis at the time of initiation of the lis may also be subsequently taken away by legislature, the only caveat being that such a right must be expressly taken away and such right cannot be seen to be extinguished by implication."

8. Considering the facts and circumstances of the case and in view of the ratio laid down in the above First Bench decision of this Court, the impugned proceedings dated 17.02.2019 passed by the 1st Respondent/Appellate Authority is set aside and the order dated 12.12.2018 passed by the 2nd Respondent herein,



cancelling all the Settlement Deeds executed in favour of the 3rd Respondent, is upheld.

9. In fine, the Writ Petition is allowed with liberty to the 3rd Respondent herein to work out his remedy in the manner known to law. No costs. Consequently, connected W.M.P.Nos.6983 and 6984 of 2019 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(aeb)

To

1. The District Collector/Tribunal,
Salem District.
2. The Revenue Divisional Officer,
Salem.

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.59841
+1cc to Mr.M.Sriram, Advocate, S.R.No.59948
+1cc to the Government Pleader, S.R.No.59970

W.P.NO.6155 OF 2019 &
W.M.P.NO.6983 AND 6984 OF 2019

RR(CO)
PBS/10/12/2021