

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.20436 of 2020

&

W.M.P.No.25213 & 25214 of 2020

A.Abishek

... Petitioner

Vs.

1.First Class Executive Magistrate cum Sub collector,
Kallakurichi.

2.The Sub Registrar,
Sangarapuram Sub Registrar Office,
Sangarapuram,
Kallakurichi.

3.G.Ramu Chettiar

4.R.Ayyanar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the 1st respondent passed in Mu.Mu.A6/8138/2019 dated 16.11.2020 quash the same as illegal, arbitrary and non est in the eye of law.

For Petitioner :Mr.V.Ayyappa Raja

For Respondent 1 :Mr.V.Shanmuga Sundar
Special Government Pleader

For Respondent 2 :Mr.T.M.Pappaiah
Special Government Pleader

For Respondent 3 : Mr.K.P.Jotheeswaran

For Respondent 4 : Mr.A.Prakash

O R D E R

This writ petition has been filed challenging the order dated 16.11.2013 passed by the first respondent under section 23

of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 cancelling the settlement deed dated 22.02.2013 executed by the third respondent in favour of the petitioner.

2. According to the petitioner, while he was a minor, the third respondent who is his grandfather executed a settlement deed in his favour in respect of agricultural land measuring about 7 acres and 39.5 cents comprised in S.No.3/1A2C, 3/1A4B etc., in Mukannur Village, Sangarapuram Taluk, Kallakurichi District. According to the petitioner, under the settlement deed, his father who is the fourth respondent herein stood as a guardian on his behalf. According to the petitioner, now he has attained majority and is aged 20 years. However, according to the petitioner, under the impugned order dated 16.11.2020, the first respondent acting on the complaint given by the third respondent under section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, cancelled the aforementioned settlement deed which was earlier executed in his favour by him, arbitrarily in violation of principles of natural justice as no notice was given to him prior to the said cancellation. In such circumstances, this writ petition has been filed.

3. Heard Mr.V.Ayyappa Raja, learned counsel for the petitioner, Mr.V.Shanmuga Sundar, learned Special Government Pleader for the first respondent, Mr.T.M.Pappaiah, learned Special Government Pleader for the second respondent, Mr.K.P.Jotheeswaran, learned counsel for the third respondent and Mr.A.Prakash, learned counsel for the fourth respondent.

4. Learned counsel for the petitioner drew the attention of this Court to the impugned order dated 16.11.2020 passed by the first respondent and would submit that arbitrarily and in violation of principles of natural justice, the said order has been passed by the first respondent. He would submit that no notice was given to the petitioner by the first respondent before passing the impugned order. According to him, the third respondent who is the petitioner's grandfather executed the settlement deed dated 22.02.2013 in favour of the petitioner, when the petitioner was a minor and the fourth respondent who is the father of the petitioner stood as a guardian on his behalf. According to the learned counsel for the petitioner, the petitioner has now attained the age of majority. But without any notice to the petitioner, acting on the complaint given by the third respondent under section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, the impugned order has been passed cancelling the settlement deed dated 22.02.2013 which was earlier executed by the third respondent in favour of the petitioner.

5. Per contra, learned Special Government Pleader for the first respondent would submit that the petitioner was a minor when the settlement deed dated 22.02.2013 was executed and therefore, there was no necessity for the first respondent to issue notice to the petitioner before cancelling the settlement deed. Further he drew the attention of this Court to the impugned order and would submit that as seen from the impugned order, notice has been given to the fourth respondent who is the father of the petitioner and the guardian under the settlement deed dated 22.02.2013. Hence, according to him, there is no violation of principles of natural justice and hence, the writ petition is not maintainable. According to him, the only remedy available to the petitioner is to file the statutory appeal before the District Collector.

6. Mr.K.P.Jotheeswaran, learned counsel for the third respondent would submit that there is no necessity for the first respondent to issue notice to the petitioner and also would submit that notice was given to the fourth respondent by the first respondent who was the guardian under the settlement deed dated 22.02.2013 for the petitioner who was a minor at the time of execution of settlement deed dated 22.02.2013. Further he would contend that the petitioner has not maintained the third respondent despite giving an assurance under the settlement deed dated 22.02.2013 that he will maintain him and that was the reason for the third respondent for giving a complaint under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 seeking for cancellation of the settlement deed. According to him, there is no violation of principles of natural justice by the first respondent. Further he would contend that the third respondent is very old, aged 81 years and therefore, his interest will have to be protected.

7. Admittedly, as seen from the impugned order, no notice has been given to the petitioner before cancelling the settlement deed dated 22.02.2013 executed by the third respondent in his favour. As seen from the impugned order, even according to the first respondent, notice was given only to the fourth respondent alone. Infact, the complaint was given by the third respondent only against the fourth respondent and the petitioner who is the son of the fourth respondent in whose favour the settlement deed was executed by the third respondent was not made as a party respondent in the application filed by the third respondent under section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. Admittedly, the petitioner who has now attained the age of majority and is aged 20 years, necessarily will have to be heard before passing any final order under section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. In the instant case, it does not been done as the petitioner was neither a party to the

impugned proceedings nor was he heard in the impugned proceedings.

8. For the foregoing reasons, this Court is of the considered view that principles of natural justice has been violated by the first respondent before passing the impugned order. Hence, the impugned order dated 16.11.2020 will have to be necessarily quashed and the matter remanded back to the first respondent for fresh consideration.

9. In the result, the impugned order dated 16.11.2020 passed by the first respondent is hereby quashed and the matter remanded back to the first respondent for fresh consideration of the third respondent's application under section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 seeking for cancellation of settlement deed executed by him in favour of the petitioner and the first respondent shall pass final orders on merits and in accordance with law after hearing all the necessary parties including the petitioner as well as the third and the fourth respondents within a period of four weeks from the date of receipt of a copy of this order.

10. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.First Class Executive Magistrate cum Sub collector,
Kallakurichi.

2.The Sub Registrar,
Sangarapuram Sub Registrar Office,
Sangarapuram,
Kallakurichi.

+1cc to M/s.R.Bharath Kumar, Advocate Sr.9014
+1cc to M/s.K.P.Jotheeswaran, Advocate Sr.8871
+1cc to the Government Pleader Sr.8488

W.P.No.20436 of 2020

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