



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.03.2021**

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THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

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W.P (MD) No.5980 of 2021

and

W.M.P (MD) No.4696 of 2021

S.Dhanalakshmi

...Petitioner

Vs

1. The District Collector/ Appellate
Tribunal For Senior Citizen Maintenance &
Welfare,
Madurai District, Madurai.
2. The Revenue Divisional Officer/ Tribunal
For Senior Citizen Maintenance &
Welfare,
Madurai District, Madurai.
3. The Sub-Registrar,
Chokkikulam,
Madurai.
4. S.Vimalarani

.. Respondents

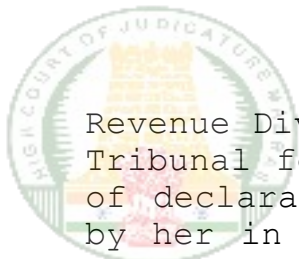
PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating with the impugned order in Na.Ka.No.C5/22437/2020, dated 12.02.2021, passed by the 1st respondent and quash the same as it is arbitrary and illegal .

For Petitioner	: Mr.R.Suriyanarayanan
For Respondent	: Mr.M.Jeyakumar,
Nos.1 & 2	Additional Government Pleader
For Respondent	: Mr.K.Sathiya Singh,
No.3	Additional Government Pleader

ORDER

The case of the petitioner is that she and her late husband Srinivasan, filed a petition before the 2nd respondent, namely the

<https://hcservices.ecourts.gov.in/hcservices/>



Revenue Divisional Officer, who is the competent authority under the Tribunal for Senior Citizen Maintenance and Welfare, seeking relief of declaration cancelling the gift deed dated 21.05.2010 executed by her in favour of the 4th respondent, who is the daughter of the petitioner. According to her, the 4th respondent was settled with the property as she promised to maintain her for her lifetime. But unfortunately, she has resiled from her promise and has not maintained her.

2.The 2nd respondent after hearing the parties to the petition and also after holding an enquiry in terms of the provisions of the Senior Citizen Maintenance and Welfare of Parents Senior Citizens Act, 2007, passed an order cancelling the gift settlement deed dated 21.05.2010 and cancellation of the same has been entered into the encumbrance certificate.

3.According to the petitioner, though notice was issued, the 4th respondent has not chosen to appear and therefore, she was set ex-parte and final order was passed. However, aggrieved over the order, the 4th respondent has approached the 1st respondent by filing an appeal and the 1st respondent after hearing the parties has passed an order on 12.02.2021 reversing order of the 2nd respondent and restored the settlement deed in favour of the 4th respondent, the order of the 1st respondent is subject matter of challenge.

4.The writ petition has been filed by saying that under the provisions of the Senior Citizen Maintenance and Welfare of Parents Senior Citizens Act, 2007, no appeal could be laid to the 1st respondent at the instance of the son or daughter and this position has been legally clarified and held by the latest decision of a Division Bench of this Court, which is also enclosed along with the typed set of documents. The recent decision also has been reported in **2021-1-L.W.820 [K.Raju Vs Union of India, represented by Secretary to Government, New Delhi & Others]**. The Division Bench of this Court has clearly held that under Section 16 of the Act, it is only senior citizens or parents, who is aggrieved by the order in original can prefer the appeal to the appellate Tribunal.

5.The Division Bench has culled out Section 16 and finally concluded as below:

"4. Section 16(1) of the said Act of 2007 is quoted:

"16. Appeals.- (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:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal: Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said



period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time."

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.

6. It is elementary that an appeal is a creature of a statute and no right of appeal inheres in any person unless such right is expressly conferred by any statute. It is possible for a right of appeal to be hedged with conditions or even a right of appeal to be granted to a class of persons and not granted to another. 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.

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. The petitioner relies on a judgment of the Punjab and Haryana High Court reported at AIR 2014 P&H 121 (Paramjit Kumar Saroya v. The Union of India). There is no doubt that such judgment concludes, upon a reading of Section 16 of the Act, that any person aggrieved by an order of the Tribunal may prefer an appeal. However, we have not been able to persuade ourselves to concur with the view. For the reasons indicated hereinabove, we



respectfully disagree.

9. When the clear words of a statute do not permit any other meaning or interpretation, particularly when it pertains to a right of appeal, additional words cannot be read into the provision to discover a right in favour of a class of persons excluded by necessary implication in the appellate provision. When the words used in Section 16 of the Act are "Any senior citizen or a parent ... aggrieved by order of a Tribunal may ... prefer an appeal..." and the other words govern the time or describe the senior citizens or the parent in the alternative, there is no room to imagine that others aggrieved by an order of the tribunal may also prefer an appeal on the ground that the scales must be balanced between the two sides.

10. In the light of the above and there being no other issue involved, W.P.No.29988 of 2019 is dismissed. It is recorded that the petitioner says that the parties have come to a settlement, but no conclusive finding needs to be rendered in such regard in the context of the present lis and also since the private respondents are not represented."

6. This Court in fact has taken note of the above judgment and follow the same in the instant writ petition. The appeal provision is very clear that it cannot be invoked by son or daughter even if they are aggrieved by an order of the original authority, namely, the Revenue Divisional Officer, but it is open to them to challenge such order in a manner known to law.

7. In view of the recent decision of the Division Bench of this court and as the decision is binding on this Court, no purpose would be served to issue notice in the writ petition or keep the matter pending on its file needlessly in order to provide an opportunity to the 4th respondent. Therefore, the writ petition is disposed of at the admission stage itself.

8. Thus the matter being covered legally against the 4th respondent and finding no useful purpose would be served in hearing the 4th respondent, the writ petition is allowed by setting aside the impugned order at the admission stage itself, instead of admitting or ordering notice and keeping the matter on the file of this Court.

9. For the above stated reasons, the impugned order in No. Ka.No. C5/22437/2020, dated 12.02.2021, passed by the 1st



respondent is hereby set aside and the writ petition stands allowed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

dsk

To

1. The District Collector/ Appellate Tribunal For Senior Citizen Maintenance & Welfare,
Madurai District, Madurai.
2. The Revenue Divisional Officer/ Tribunal For Senior Citizen Maintenance & Welfare,
Madurai District, Madurai.
3. The Sub-Registrar,
Chokkikulam,
Madurai.

+1 CC to M/s.SPL GP (SR-12158[F] dated 18/03/2021)
(SR-12261[F] dated 18/03/2021

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