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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.24807 OF 2012

AND

MP NO.1 OF 2012

A.Mohanraj

...Petitioner

Vs.

1. The District Registrar
Namakkal District
Namakkal.
2. The Sub Registrar
Sub Registrar Office
Sendamangalam,
Namakkal District.
3. The Assistant Engineer
Operation and Maintenance
Tamilnadu Electricity Board
Muthukapatti,
Namakkal District.
4. P.Lakshmi

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to cancellation of the settlement deed dated 17.05.2012 registered as Doc.No.1529/2012 on the file of the 2nd respondent, quash the same as opposed to Sections 123 and 126 of the Transfer of Property Act, 1882, and consequently direct the 3rd respondent to effect name transfer relating to the Electricity Service Connections:-

- (i) SC No.243/Tariff-1A connected with Door No.3/92
- (ii) SC No.723/Tariff-1A connected with Door No.1/69
- (iii) SC No.838/Tariff-V connected with Door No.1/69B



- (iv) SC No.839/Tariff-V connected with Door No.1/69A
(v) SC No.430/Tariff-IV connected with 5 HP Motor

Pump set in the Well situated in S.F.No.139/2B, in Kondamanaickenpatti Village, Namakkal District in the name of the petitioner by considering his name transfer application dated 26.05.2012 made in Form-2 prescribed under Regulation 5(7) of the Tamil Nadu Electricity Code 2004.

For Petitioner : Mr.Sunny Sheeen
for Mr.V.Raghavachari

For Respondents : Mr.M.Rajendran
1 and 2 Additional Government Pleader

For Respondent 3 : Mr.Abul Kalam

For Respondent 4 : Mr.Umapathi

O R D E R

Aggrieved over the Cancellation of the Settlement Deed dated 17.05.2012 registered as Document No.1529/2012 on the file of the second respondent, the petitioner has preferred the present writ petition.

2.The fourth respondent executed a registered Gift Settlement Deed dated 04.04.2012 vide Document No.1206/2012 in favour of the petitioner, who is her brother, out of natural love and affection and put him possession of the property mentioned in the Schedule. Later, she cancelled the Gift Settlement Deed dated 04.04.2012, by way of Cancellation of Settlement Deed dated 17.05.2012, vide Document No.1529/2012 which was registered at the office of the second respondent. The only reason given by the fourth respondent for cancellation of settlement deed reads as under:

".....இதில் கண்ட சொத்துக்கள் எனது கவாதீன அனுபவத்திலேயே இருந்து வருகிறது, எனவே என் தானசெட்டில்மெண்டு பத்திரத்தை ரத்து செய்ய விரும்புவதால் இந்த தானசெட்டில்மெண்டு ரத்து பத்திரம் நான் எழுதி வைக்கிறேன்....."

3.According to the petitioner, registered Settlement Deed cannot be cancelled in view of the requirements that there must be execution of a registered settlement deed; acceptance of settlement deed and delivery of the property. Further, as per Section 126 of the Transfer of Property Act, 1882, the settlor and settlee must have agreed that the settlement shall be suspended or revoked on the happening of a specified event, such



event must be one which does not depend upon the settlor's will, the settlor and settlee must have agreed to the condition at the time accepting the gift and the condition should not be illegal or immoral and should not be repugnant to the estate created under the gift. Further, registration of the Cancellation of Settlement Deed is per se illegal and void ab initio.

4.The learned counsel for the petitioner would submit that pursuant to the execution of the Gift Settlement Deed, the third respondent Electricity Board has already transferred the Service Connection in favour of the petitioner and that the said prayer has already been satisfied.

5.The learned counsel for the petitioner relied on a judgment of the Kerala High Court in SUBHASHINI VS. DISTRICT COLLECTOR AND OTHERS [2020 (5) KLT 533] wherein it is observed as under:

"52.We also notice from the facts of the present case that the property settled on the son is the share of the mother which lies contiguous to the share obtained by that son. The residential building was constructed therein by availing loans from Banks as revealed from the records and admitted by the mother in her complaint. In the above circumstances, the mother can only claim for a right to reside in the building which has been reserved in her favour, in the settlement deed. The ownership of the residential building would not be transferred to her even if the deed is declared void. We refer to Bishan Das v. State of Punjab [AIR 1961 SC 1570], a Constitution Bench of the Hon'ble Supreme Court, and refer to an extract from paragraph 11:

"It is by now well settled that the maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country; see Thakoor Chunder Parmanick v. Ramdhone Bhattacharjee, 6 South WR 228, Beni Ram v. Kundan Lall, 26 Ind App 58, and Narayan Das v. Jatindranath, 54 Ind App 218 (AIR 1927 PC 135). These decisions show that a person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the



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owner of the land by the application of the maxim quicquid plantatur solo, solo cedit".

53. These are instances, where a Court of law and also of equity would exercise its jurisdiction to bring out a resolution of the disputes raised; which, however, the Tribunal constituted under Section 7 of the Act of 2007 cannot do. The Tribunal constituted under the Act of 2007, under Section 23(1) can only declare void the transfer, at the option of the transferor. As we noticed earlier, it cannot even order recovery of possession of the subject property, for which again the transferor will have to approach the Civil Court. On the aspect of option, a disturbing issue arises from sub-section (3) of Section 23, which we extracted herein above. Any organisation referred to in the Explanation to sub-section (1) of Section 5 is entitled to approach the Tribunal under sub-section (1) of Section 23. Section 5 has been made specifically for the purposes of maintenance. When it stands extended to Section 23(1), there arises the question as to who would exercise the option for cancellation especially if the senior citizen is not in a position to express such will by reason of old age or otherwise.

54. One other aspect is that the option if exercised, cannot be withdrawn and if the senior citizen expires immediately after the declaration by the Tribunal, the property would revert as the estate of the deceased and every legal heir acquires a right to inherit. We specifically notice the Division Bench judgment of this court in Antony Scaria & Anr. v. District Collector & Ors. [2020 (3) KLT 183], wherein before the death of the transferor there was no declaration made by the Tribunal. The writ petition was filed by the transferor against the refusal of the Tribunal and the appellate authority to invoke its jurisdiction under Section 23(1). Pending writ petition, the transferor died when the other legal heirs sought to continue the proceedings. It was held that the right to approach the Maintenance Tribunal is in the personal capacity of the senior citizen and not a heritable right under



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common law. The situation would be quite different if in the life time of the senior citizen the declaration is made by the Tribunal. On his death the property devolves on the legal heirs.

55. Sunny Paul a decision of the Delhi High Court was also placed before us by the learned Counsel appearing for the appellant. In Sunny Paul, the Tribunal is seen to have issued direction to the sons to vacate the household and handover the household articles back to the petitioner/parents and the SHO of the jurisdictional police station was directed to enforce, enforcement/compliance of the directions. There the said directions were issued in view of the specific provisions available under the rules framed under the Act of 2007. For eviction of a son or a daughter or legal heir from a self acquired property, there is no such provision available in the Rules framed for the State of Kerala."

6. It is well settled that in order to cancel the Settlement Deed, the parties have to approach the competent Civil Court. The Sub Registrar has no power or authority to register the Cancellation of Settlement Deed which is unconditional and irrevocable.

7. In the present case on hand, pursuant to the Settlement Deed, the petitioner has got the electricity service connection transferred in his favour. Further, the instructions given by the Inspector General of Registration to the Sub Registrars, makes it very clear that the Sub Registrar has no power to set aside or venture into the validity of the title unless fraud is proved. This position has already been explained by the Full Bench of this Court in LATIF ESTATE LINE INDIA LIMITED VS. HADEEJA AMMAL [2011 (2) CTC 1].

8. Relying on a Full Bench judgment of this Court in Latif Estate's case (cited supra) this Court in NAMBIKKAI MARY VS. THE SUB-REGISTRAR-II, SUB-REGISTRAR OFFICE, PATTUKOTTAI [2015 (7) MLJ 10] has observed as under:

".....11. In the light of the dictum laid down by the Full Bench of this Court, I am of the considered view that the deed of cancellation of settlement dated 01.02.2013, which has been alleged to have unilaterally executed by the second respondent, does not create, assign, limit or extinguish any right,



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title or interest in the property and is of no effect and accordingly, it does not create any encumbrance in the property already transferred and therefore, it could not be accepted for registration. However, in the case on hand, the first respondent has registered the said cancellation deed, on the ground that there is no provisions in the Registration Act to reject or refuse to register any document. Even then, it has no force in law, in view of the above said decision of the Full Bench of this Court.

12. Therefore, this writ petition stands disposed of, holding that the impugned unilateral cancellation of settlement deed, dated 01.02.2013, in Document No.137/2013, registered with the first respondent, is bad in law. However, it is open to the second respondent to work out his remedy before the competent Civil Court regarding the cancellation of the settlement deed dated 11.01.2013 and till such a decree is passed by the Civil Court, the second respondent shall not press into service the alleged deed of cancellation of settlement dated 01.02.2013, as it has no force in law....."

9. In view of the above legal position, the Cancellation of the Settlement Deed dated 17.05.2012 registered as Document No.1529/2012 on the file of the Sub Registrar, Sub Registrar Office, Sendamangalam, Namakkal District stands set aside. However, liberty is granted to the fourth respondent to work out her remedy in the manner known to law. The period spent on by the writ petitioner will stand excluded under Section 14 of the Limitation Act, 1963.

10. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK



To

1. The District Registrar
Namakkal District
Namakkal.

2. The Sub Registrar
Sub Registrar Office
Sendamangalam, Namakkal District.

3. The Assistant Engineer
Operation and Maintenance
Tamilnadu Electricity Board
Muthukapatti, Namakkal District.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.23356

+1cc to the Government Pleader, S.R.No.23830

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AK-II[co]
NSK/24/05/2022