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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2022

Pronounced on : 08.12.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 1965 of 2023

And

W.M.P.Nos. 2043 & 2044 of 2023

Mr.R.Sokkanathan

... Petitioner

..Vs..

1. The District Collector
Krishnagiri,
Krishnagiri District.
2. The Revenue Divisional Officer
Krishnagiri
Krishnagiri District.
3. The superintendent of Police
Rep. by State of Tamil Nadu
Krishnagiri Taluk
Krishnagiri District.
4. Mr.G.Rajendran

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the second



respondent proceedings under order No. Na.Ka.No.9002/2022/ஈடு dated 03.01.2023 and quash the same as illegal and invalid.

For Petitioner	:: Mr. N.Suresh
For RR 1 to 3	:: Mr. K.Tippu Sulthan Government Advocate
For 4 th Respondent	:: Mr. J.Ramesh

ORDER

The Writ Petition had been filed in the nature of Certiorari seeking records of the second respondent / the Revenue Divisional Officer, Krishnagiri, Krishnagiri District, in order No. Na.Ka.No.9002/2022/ஈடு dated 03.01.2023 and quash the same.

2. The writ petitioner is the son of the fourth petitioner. It is stated that the fourth petitioner, who is a retired School Teacher was possessed of one property and he had sold it and had divided the sale consideration by giving a sum of Rs.30,00,000/- lakhs to each one of his three sons including the writ petitioner and Rs.18,00,000/- to each one of his four daughters.



3. The fourth respondent also had an ancestral property in which the petitioner was living. It is stated that the petitioner wanted to purchase it for consideration of Rs.14,00,000/- and had paid an advance of Rs.5,50,000/-. It is stated that the advance was given in cash and there was no written agreement. It had been stated that subsequently the fourth respondent wanted the petitioner to vacate and since the petitioner refused, the fourth respondent had given a complaint under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. The second respondent/ Revenue Divisional Officer, Krishnagiri, had conducted an enquiry and passed an order in Mu.Mu.2600/2022/F dated 05.07.2022. By that order, the second respondent had directed the petitioner to vacate the premises within a period of two months.

4. It is stated that both the petitioner and the fourth respondent filed an appeal before the District Collector, Krishnagiri/the first respondent. By an order dated 12.12.2022 in Na.Ka.No. 35966/2022C-2, the first respondent / District Collector confirmed the order of the second respondent/Revenue Divisional Officer, Krishnagiri. It is stated that the impugned order was then passed by the second respondent on 03.01.2023 in



Na.Ka.No. 9002/2022/F directing the petitioner to vacate the premises and handover possession to the fourth respondent. It must be mentioned that the premises is situated at Moramadhu Village in S.No. 576 / 20 in patta No. 253, measuring 0.01.71 hectares and is a house. Questioning this particular order, the Writ Petition has been filed.

5. The second respondent/Revenue Divisional Officer, Krishnagiri had filed a counter affidavit wherein it had been stated that the second respondent had passed an order dated 05.07.2022 in Mu.Mu.2600/2022/F on a complaint given by the fourth respondent, a School Teacher, aged about 74 years seeking a direction against the petitioner to vacate and handed over the aforementioned house. It was stated that after hearing both the sides and after observing that the property stands in the name of the fourth respondent and that the petitioner had not produced any evidence for agreement of sale or on advance sale consideration being paid, orders had been passed directing the petitioner to vacate from the premise. It was stated that the second respondent had only directed the petitioner to vacate the premises within a period of two months and handover the premise to the fourth respondent. It had been stated that the impugned order had been



passed only on further directions of the first respondent/District Collector and an appeal had not been filed before the District Collector by the petitioner against the order of the second respondent. It had therefore been stated that the Writ Petition should be dismissed.

6. The fourth respondent had also filed a counter affidavit wherein it had been stated that the petitioner was demanding the fourth respondent to sell the house property at Moramadhu village to third parties and give the sale consideration to the petitioner. The fourth respondent however refused to do that. There was an altercation. It is stated that the fourth respondent and his wife are both suffering from severe medical complications. It had been stated that it was under those circumstances, he had filed an application to direct the petitioner to vacate the premises. Accordingly, an order was also passed by the Revenue Divisional Officer. It had also been stated that no appeal had been filed against this order. Therefore, the fourth respondent had filed an application before the District Collector to put into effect the said order and directions were given to the second respondent and the impugned order came to be passed. It had been stated that the Writ Petition should be dismissed.



WEB COPY 7. Heard the learned counsels.

8. This is an issue between a son and father. The son is the writ petitioner and the father is the fourth respondent. Admittedly, the fourth respondent had sold his property and out of the sale consideration had given Rs.30,00,000/- each to each of his three sons and Rs.18,00,000/- each to each one of his four daughters. He was left only with one house which was situated at Moramadhu village in Krishnagiri District in land measuring 0.01.71 hectares in S.No. 576/20 in Patta No. 253.

9. It is the contention of the writ petitioner that he wanted to purchase the said property for total consideration of Rs.14,00,000/- and he had given an advance of Rs.5,50,000/- on 25.02.2022. However, the agreement of sale not been produced. There is no receipt with respect to the advance of Rs.5,50,000/- said to be paid by the petitioner to the fourth respondent. It is only a statement made by the writ petitioner.



10. The fourth respondent had given a complaint under the provisions of the Maintenance and Welfare of Parents and Citizens Act, 2007 before the second respondent / Revenue Divisional Officer, Krishnagiri. An order was passed by the second respondent dated 05.07.2022 in Mu.Mu.No. 2600/2022/F after hearing all the parties. The second respondent had heard not only the fourth respondent and the petitioner but also the four daughters of the fourth respondent, Dhamayanthi, Varalakshmi, Kamatchi and Gayatri and the daughter-in-law/wife of the first son of the fourth respondent, Tmt. Mayadevi and also the other son Dharanidaran. It is thus seen that a comprehensive enquiry was made by the second respondent. The second respondent had passed an order directing the petitioner herein to vacate the premises and hand over possession to the fourth respondent. That order was passed under the provision of the Maintenance and Welfare of Parents and Citizens Act.

11. It is the contention of the learned counsel for the petitioner that under the said Act, maintenance alone can be granted but no order can be passed to vacate any premises. If that be so, the petitioner should have filed an appeal against the order before the District Collector. He did not file any



appeal. The statement made by the petitioner that he actually filed an appeal is not supported by records. The order had therefore become final.

12. The fourth respondent then filed an application before the District Collector seeking enforcement of the said order. The District Collector/the first respondent passed such a direction. Therefore, the second respondent/Revenue Divisional Officer again passed the same order directing the writ petitioner to vacate and hand over possession. This order is challenged in the writ petition. This is only a consequential order. The Writ Petitioner had not chosen to challenge the order dated 05.07.2022. It is not for this Court to question the correctness of the said order. The Legislation is an inbuilt Act giving the authority to the officials to pass appropriate orders in accordance with the provisions. Even though vacating a premise may not strictly lie within the four corners of the Act, to render proper justice, the second respondent had passed an order directing the petitioner to vacate the premise. For some reason, he had not filed any appeal even though an appellate remedy was available.



13. This Court cannot and should not sit as an appellate authority.

No prayer had been sought seeking permission to file an appeal and to condone the delay in filing the appeal. The order has to be obeyed and the order should stand. It is also to be noted that the writ petitioner had received a sum of Rs.30,00,000/- uniformly with his other brothers when the fourth respondent had sold a house and shared the sale proceeds. It is correctly contended on behalf of the respondents that the Writ Petition is not maintainable since the writ petitioner had not chosen to any appeal against the order order of the second respondent dated 05.07.2022 even though a provision was available under the Act.

14. The Writ Petition therefore has to fail and accordingly, it is dismissed. Consequently, connected Miscellaneous Petitions stands closed.

08.12.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



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C.V.KARTHIKEYAN, J.,

vsg

To

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2. The Revenue Divisional Officer
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**Pre-Delivery Order made in
W.P.No. 1965 of 2023
And
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