



W.P.No.10667 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.04.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.10667 of 2023

and W.M.P.No.10601 of 2023

S.Parthasarathy

... Petitioner

Vs

1. District Collector,
Thiruvallur Collectorate,
Tiruvallur-602001.
2. Sub Collector,
Thiruvallur Collectorate,
Thiruvallur-602001.
3. The Tahsildar
Avadi Taluk Office
Modern City, Deena Dayalan Nagar,
Pattabiram, Chennai-600054.
4. Nagammal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records on the file of the 3rd Respondent in Na.Ka.No.906/2021/A2 dated 16.03.2023 and quash the same as illegal.



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W.P.No.10667 of 2023

For Petitioner ... M/s.P.Karthikeyan

For Respondents ... Mr.M.Alagu Goutham,
Government Advocate for R1 to R3.

ORDER

Aggrieved by the order passed by the 3rd respondent dated 16.03.2023 canceling release deed executed by the 4th respondent, the petitioner is before this Court.

2. The case of the petitioner is that he is the adopted the son of the 4th respondent and late Subramani. After the demise of Subramani, the 4th respondent and the petitioner are his legal heirs. On 20.10.2018, the 4th respondent has released her right over one half of share of the property and the same has been registered before the Avadi Sub-Registrar of Office. Thus the petitioner became the absolute owner of the property at that time. Thereafter, the petitioner has settled the entire portion of the property in favour of his wife. On account of the dispute between the petitioner and his biological sister, the 4th respondent has filed a complaint alleging land grabbing and seeking to cancel both the deeds. The petitioner was served with summons dated



W.P.No.10667 of 2023

30.10.2021 calling upon him to attend the enquiry upon the complaint filed by the 4th respondent which the petitioner attended. After hearing the petitioner, an order was passed cancelling the documents under Section 23 of the Maintenance and Welfare of parents and senior citizens Act, 2007. The petitioner alleges that the said order was never communicated nor served upon the petitioner. On 20.03.2023, when the petitioner was served that the impugned order asking him to vacate the premises, he came to know of the order passed by the respondent dated 28.11.2022 both the documents. Hence this Writ Petition.

3. Learned counsel for the petitioner submits that the petitioner has not been served with the order dated 28.11.2022 depriving the opportunity of the petitioner to substantiate his rights. He further submits that the respondents have not vested with any power to order eviction of the occupants. He also submits that even if the release deed is cancelled, the petitioner is having his share in the property. The release deed pertains only to the share of the 4th respondent.



W.P.No.10667 of 2023

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4. Per contra, learned counsel for the respondents submits that the petitioner without challenging the order dated 28.11.2022 cannot challenge the subsequent order evicting the petitioner. Subsequent order is only the implementation of the order passed under the Senior Citizens Welfare Act.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.

6. The aforesaid facts are not in dispute. Admittedly, the 2nd respondent has passed an order after hearing the petitioner. However, the petitioner claims that the same has not been served upon him. Since, this Writ Petition involves factual disputes which cannot be entertained by this Court under Article 226 of the Constitution of India. Further, the petitioner is having an alternative remedy of challenging the order before the appropriate civil court.



W.P.No.10667 of 2023

WEB COPY

7. In view of the aforesaid, this Writ Petition stands dismissed granting liberty to the petitioner to challenge the order dated 28.11.2022 in accordance with law before the appropriate forum. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2023

Index: Yes/No

Internet: Yes

NHS

To

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Page No:5/7



WEB COPY



W.P.No.10667 of 2023

M.DHANDAPANI, J

NHS

W.P.No.10667 of 2023



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W.P.No.10667 of 2023

06.04.2023