



WEB COPY



W.P.No.18945 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HON'BLE MR. JUSTICE C. V. KARTHIKEYAN

Writ Petition No.18945 of 2022

M.Mageshwaran

... Petitioner

Versus

1. The Government of Tamil Nadu,
Rep. by Chief Secretary to Government,
Fort St.George, Chennai – 600 009.
2. The Chair Person,
Appellate Tribunal,
Under the Maintenance and Welfare of
Parents and Senior Citizens,
(The District Collector, Vellore),
Sathuvachary, Vellore-632 009.
3. The Presiding Officer,
Tribunal under Maintenance and Welfare of
Parents and Senior Citizens,
(The Revenue Divisional Officer, Vellore),
District Collectorate,
Sathuvachary, Vellore-632 009.
4. The District Registrar (Administration)
(in the cadre of Asst. I. G. of Registration),
Vellore.
5. The Sub Registrar,
Kaniyambadi,
Vellore Taluk, Vellore – 632 102.



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6. Tmt.M.Pushpa

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent passed in his proceedings in Pa.Mu.T3/303/2022 dated 10.05.2022 by invoking the provisions of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for cancelling the settlement deed standing in favour of the petitioner and to quash the impugned order and consequently dismiss the Appeal of the sixth respondent seeking to cancel the settlement deed registered as Document No.2128 dated 03.10.2008 registered before the fifth respondent.

For Petitioner : Mr.R.Lakshmi Narayanan

For R1 to R5 : Mr.M.Muthusamy,
Government Advocate

For R6 : Mr.J.Ramesh

ORDER

The Writ Petition has been filed in the nature of a Writ of Certiorarified Mandamus seeking interference with an order of the 2nd respondent in Proceedings No. Pa.Mu.T3/303/2022 dated 10.05.2022.



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2. The said order was passed under the provisions of Maintenance and Welfare of the Parents and Senior Citizens Act, 2007. By the said order, the 2nd respondent/Chairperson, Appellate Tribunal under Maintenance and Welfare of the Parents and Senior Citizens Act/the District Collector, Vellore had cancelled the Settlement Deed, dated 03.10.2008 which was registered as document No.720/2008 in the Office of the Sub Registrar, Kaniyambadi at Vellore District.

3. The 6th Petitioner, Tmt.M.Pushpa is the mother of the petitioner herein. The petitioner is her second son. She had another son who unfortunately had died and is survived by his wife and children.

4. Quite apart from the two sons, she also has three daughters. Owing to love and affection over the petitioner herein, she and also her three daughters had jointly executed a Settlement Deed on 03.10.2008 which was registered as Doc.No.720/2008 in the Office of the Sub Registrar at Kaniyambadi at Vellore District.



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5. Under the said Settlement Deed, the mother and the three daughters had settled the lands, measuring 0.59 cents in Survey No.149/15, measuring 0.74 cents in Survey No,149/20, measuring 0.10 cents in Survey No.149/16 in favour of the petitioner. The right to use the well was also given in the Settlement Deed.

6. However, the 6th respondent came to the opinion that the petitioner had not taken care of her, though a Settlement Deed had been executed and therefore, she had filed an application before the 3rd respondent/Presiding Officer under the Tribunal, under the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007/Revenue Divisional Officer at Vellore.

7. By an order dated 03.02.2021, the application was dismissed. The 6th respondent then, filed a First Appeal before the 2nd respondent/Appellate Tribunal.



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8. By an order dated 10.05.2022, the Appellate Authority was of the opinion that a case had been made out and set aside the order of the 3rd respondent and had cancelled the aforementioned Settlement Deed.

9. Aggrieved by that order, the petitioner had filed the present Writ Petition.

10. The learned counsel for the petitioner stated that the Settlement Deed had been executed not only by the 6th respondent but also by three of his sisters. It was stated that the 6th respondent is financially well-off consequent to the fact that her husband/father of the petitioner herein was originally in the Army and ex-service man and after retirement, he was drawing pension as an ex-service man. Subsequent to retirement, he also worked in BSNL office and therefore, on his death, that pension also accrued to the 6th respondent.

11. It is therefore contended by the learned counsel for the petitioner that the 6th respondent, is earning what he termed as two



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pensions, one from the Army and the other from BSNL. It is therefore stated that there was no necessity for her to have any landed property and consequently, there was no necessity for the 2nd respondent to have interfered and cancelled the Settlement Deed.

12. It is contended that since she is drawing two pensions, she is financially sound and there was no necessity for the petitioner herein to take any extra steps to maintain her.

13. Those reasons may appear quite attractive but legally unsound. Once there is an obligation to maintain, irrespective of the fact whether the person who is to be maintained gets family pension or not, still the obligation remains. The quantum of the maintenance amount may reduce or increase or vary but still as a concept, maintenance has to be provided by a son to his mother. He cannot hide behind the fact that merely because his father worked in the Army in the first instance and after retirement, worked in BSNL and therefore, there is no obligation to maintain his mother. This statement cannot be accepted and is straightaway rejected by this Court.



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14. The petitioner however stated that he is prepared to pay any amount as maintenance. He also stated that the daughters and the mother have joined together consequent to the cancellation of Deed and are preparing to alienate the properties.

15. The satisfaction of the 1st respondent with respect to the recitals in the Settlement Deed cannot be re-examined by this Court since, the procedure adopted is fair and proper. The petitioner herein had been given an opportunity of being heard and was also heard. Judicial review would lie primarily on the procedure adopted and not on the conclusion of an administrative order.

16. The 1st respondent is a statutory authority and a judicial order had been passed. The only aspect which has been overlooked is that under the Settlement Deed, the 6th respondent was one of four settlees and therefore, to that extent alone the order should be interfered with. The benefit which the petitioner had gained owing to the Settlement Deed being signed by his three other sisters naturally remain.



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17. Therefore, the order is interfered with and is set aside only to the extent of the share of the 6th respondent in the properties as mentioned therein. The petitioner will naturally get the benefit of the Settlement Deed in so far as the share of his three sisters are concerned.

18. This clarification is issued. Let the 5th respondent/Sub Register, Kaniyambadi make necessary endorsement in his books that the Settlement Deed is cancelled in so far as the share of Tmt.S.Pushpa alone is concerned in the afore mentioned lands.

19. To that extent, clarification is issued.

20. The Writ Petition stands partly allowed to that limited extent possible. No order as to costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation Case: Yes/No



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C.V.KARTHIKEYAN,J.

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