



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 19640 of 2021

And

W.M.P.No. 20921 of 2021

C.Paranthaman

... Petitioner

..Vs..

1. The District Collector
Office of the District Collectorate
GST Road, Chengalpattu – 603 001.

2. The Revenue Divisional Officer
Office of the Revenue Divisional Office
No.32, Chitlapakkam, Tambaram West
Tambaram, Chennai -45.

3. The Tahsildar
Office of the Tahsildar
No.32, Chitlapakkam, Tambaram West
Tambaram, Chennai -45.

4. C.P.Easwaramurthy

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the third respondent pertaining to the impugned R.C.No. 8696/2021/M1



dated 20.07.2021 on the file of the first respondent and quash the same and further directing the first respondent to implement the order dated 25.11.2019 passed by the District Collector, Kancheepuram in proceeding Na.Ka.No.28367/2019/M1 to cancel the settlement deed dated 11.02.2015 in Doc.No.1146/2015 and carry out the entries in the register maintained by them.

For Petitioner	:: Dr.A.Thiyagarajan Senior Counsel for Mr.C.B.Muralikrishnan
For RR 1 to 3	:: Ms. P.Rajarajeswari Government Advocate
For 4 th Respondent	:: Mr. G.Mohammed

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to R.C.No. 8696/2021/M1 dated 20.07.2021 on the file of the first respondent / District Collector, Chengalpattu and to quash the same and to further direct the said respondent to implement the order dated 25.11.2019 also passed by the District Collector, Kancheepuram in proceedings No. Na.Ka.No.28367/2019/M1 and to cancel the settlement deed dated 11.02.2015 registered as Document



No. 1146 of 2015 in the Office of the Sub Registrar, Tambaram.

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2. The petitioner is the father of the fourth respondent. The petitioner by the aforementioned settlement deed, namely, settlement deed registered as Document No. 1146 of 2015 dated 11.02.2015 before the Sub Registrar at Tambaram had settled land and building in T.S.No. 238/3 corresponding Survey No. 238/3B in Patta No. 2245 in Thiruvengatapuram Nagar, West Tambaram, Chennai, measuring 1 ground and 393 sq.ft., (2793 sq.ft.) in favour of the fourth respondent/his own son. Thereafter, there were some differences. It is however an admitted fact that in the said property, the petitioner had put his own funds to construct one portion and the fourth respondent had put up another construction in yet another portion within the same land in effect now divided into two separate portions.

3. The petitioner had taken recourse to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and had filed an application before the second respondent /Revenue Divisional Officer at Tambaram, Chennai. The said official had passed an order on 30.08.2019 in Na.Ka.58/2019/E. It was also noticed at the time when the said order was



passed that there was a suit which had also been parallelly filed by the petitioner herein in O.S.No. 288 of 2018 before the Additional District Court at Chengalpattu.

4. In view of the pendency on that particular suit, the Revenue Divisional Officer / second respondent held that the two separate portions, one built by the petitioner and another by the fourth respondent can be allotted to each of them and that arrangement can be put into effect after the suit is disposed of. In fact, it had been stated that after the particular suit is disposed of, the fourth respondent can execute a sale deed in favour of the petitioner herein.

5. This would effectively mean that the petitioner will again have to pay a consideration for that portion though he was the purchaser of the land and building in the first instance.

6. The petitioner had, since the statute provides, preferred an appeal before the District Collector, Kancheepuram. An order was passed on 25.11.2019 in Na.Ka.No.28367/2019/M1. The District Collector again



opined that since the suit was pending, no orders could be passed but very specifically did not set aside the order of the Revenue Divisional Officer at Tambaram, dated 30.08.2019.

7. By that order, to repeat the Revenue Divisional Officer had stated that the two separate portions can be allotted to the petitioner/father and the fourth respondent/son and that later the son could execute a sale deed in favour of the father with respect to the portion where the father is residing which portion the father had constructed with his own funds.

8. Thereafter, the petitioner, went back to the Additional District Court at Chengalpattu and made an endorsement that he was not pressing the suit and the suit was dismissed as not pressed by an order dated 18.12.2019. A decree also followed. After that since the suit had been disposed of, the petitioner gave a letter and according to the learned Senior Counsel, only a representation to the second respondent / Revenue Divisional Officer on 17.08.2020 to put into effect the earlier order.

9. It is very forcefully argued by the learned Senior Counsel on



behalf of the petitioner that the representation dated 12.08.2020 was not application under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 but only a representation to put into effect the earlier order passed by the very same authority on 30.08.2019. However, the second respondent had taken upon himself that as an application under the provisions of the Act and had issued notice to the fourth respondent and had passed an order, after examining Section 23 of the said Act, stating that there was no clause provided in the document for the fourth respondent, to look after the petitioner and therefore had refused to cancel the settlement deed.

10. An Appeal was filed as against that order before the District Collector, Chengalpattu. The Appeal also suffered an order of dismissal on 20.07.2021. Calling into question both the orders, the present Writ Petition has been filed.

11. Heard Dr.A.Thiyagarajan, learned Senior Counsel for Mr.C.B.Muralikrishnan, learned counsel appearing on behalf of the petitioner and Ms. P.Rajarajeswari, learned Government Advocate appearing for the respondent Nos. 1 to 3 and Mr.G.Mohammed, learned



counsel appearing for the fourth respondent.

WEB COPY 12. The facts have been stated above.

13. The facts are that the petitioner / father had settled the land and building which he had purchased in favour of the fourth respondent /his son. Thereafter owing to various circumstances, he had approached the second respondent seeking cancellation of the settlement deed. He had also filed a suit. The second respondent, had stated that since it was found as a fact that two separate portions were in existence and that constructions had been put up separately by the petitioner and the fourth respondent, had stated that as and when the suit is disposed of, the son, who was the settlee under the settlement deed can sell or convey for adequate consideration, the portion where the petitioner is residing and had put up construction. In fact it was stated that the petitioner in his advanced age was residing with his wife and it was therefore stated that they could live peacefully.

14. That order was put in question before the District Collector / first respondent.



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15. The first respondent had an option either to dismiss the appeal or to allow the appeal. If he remands the order, he had to set aside the order of the Revenue Divisional Officer. He exercised neither of the options. He only gave an opinion that since a suit is pending, the parties should await the outcome of the suit.

16. The petitioner then withdrew the suit and suffered an order of dismissal on 18.12.2019.

17. Thereafter, the petitioner went back to the Revenue Divisional Officer and gave a representation on 17.08.2020 calling upon him to put into effect his own order dated 30.08.2019 and to call upon the fourth respondent herein to execute a sale deed in his favour so that he and his wife / mother of the fourth respondent can live in peace.

18. This representation was converted as an application in original under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 by the second respondent. I hold that procedure was



wrong. That representation was not an application under the provisions of the Act. It was a representation simpliciter. Even otherwise, the second respondent should have been conscious that an earlier order had been passed by the very same office under the provisions of the Act. There cannot be a re-visitation of the earlier order unless specifically called and unless that order had been set aside. The same issue cannot be reagitated, once again heard orders passed. The earlier order had attained finality. The Revenue Divisional Officer had become functus officio.

19. The Revenue Divisional Officer, however unfortunately exceeded his jurisdiction and proceeded into a discussion of Section 23 of the said Act and stated that the settlement deed cannot be cancelled. This opinion of the second respondent has to be set aside and interfered with, since it was not called for.

20. The petitioner only wanted an examination of the representation and to put into effect the earlier order. This does not mean the second respondent had been vested with a right to question an earlier order passed by his own office. The order is straightaway set aside.



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21. Since that order is set aside, any consequential order passed by the District Collector/first respondent will also have to suffer an order of dismissal and is set aside.

22. Atleast the first respondent/District Collector should have examined the fact that there was an earlier order of the Revenue Divisional Officer which had not been set aside in manner known to law and which stares at the face of the fourth respondent and which stared on the face of the Revenue Divisional Officer. The order passed by the District Collector dated 20.07.2021 is thus set aside by this Court.

23. It now remains that the Revenue Divisional Officer / second respondent will have to examine the representation dated 17.08.2020 in the light of the earlier order passed by his own office on 30.08.2019 and the order of the District Collector dated 25.11.2019. Let him follow the procedure of natural justice, issue notice to the fourth respondent, examine both the parties and thereafter, examine the earlier order passed and then pass a fresh order in manner known to law on the representation given. He



need not invoke the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to examine the representation. It must be examined as a representation in the light of the earlier orders passed. Such exercise is to be done and hopefully completed on or before 31.03.2023.

24. With the above said direction, the Writ Petition stands allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

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12

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