



WP(MD)No.2151 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

WP(MD)No.2151 of 2020 &
WMP(MD)No.1824 of 2020

K.Sudalaimuthu

... Petitioner

Vs.

1.The District Collector,
Tirunelveli,
Tirunelveli District.

2.The Revenue Divisional Officer cum Sub Collector,
Tirunelveli, Tirunelveli District.

3.S.Kantha Konar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records of the impugned order passed by the first respondent in Na.Ka.No.K4/43729/2019 dated 31.12.2019 confirming the order passed by the second respondent in Na.Ka.A8/4195/2019 dated 22.10.2019 and quash the same as illegal.



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For Petitioner : Mr.R.J.Karthick
For Respondents : Mr.T.Amjadkhan,
Government Advocate for R1, R2
Mr.S.Ramasamy for R3

ORDER

The writ petition is filed seeking to issue a writ of certiorari calling for the records of the impugned order passed by the first respondent in Na.Ka.No.K4/43729/2019 dated 31.12.2019 confirming the order passed by the second respondent in Na.Ka.A8/4195/2019 dated 22.10.2019 and quash the same.

2. The brief facts are as follows.

2.1. The third respondent is the father of the petitioner and he had filed a petition before the Revenue Divisional Officer, Tirunelveli under the Maintenance and Welfare of Senior Citizens Act, 2007 (herein after referred as 'the Act) against the petitioner, to cancel the settlement deed dated 10.11.2018 with regard to the dwelling house. The Revenue Divisional Officer, Tirunelveli without any material to prove the third



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respondent's case, has passed an order straightaway cancelling the settlement deed dated 10.11.2018. Against the said order, the petitioner had preferred a statutory appeal under Section 16 of the Act before the District Collector, Tirunelveli, who is the first respondent herein. The first respondent vide the impugned order dated 31.12.2019, without appreciating the factual and oral submissions, dismissed the appeal. Against which, the present writ petition is filed.

3. Heard the learned counsels on either side.

4. The writ petition deserves to be allowed on the ground that the third respondent does not fall within the category of Senior Citizen as defined under the Act. Further, the Act would apply only when the settlement deed which is sought to be cancelled contains a clause that the transfer is subject to the condition that the transferee provides the basic amenities and basic physical needs to the transferrer. Section 23 (1) of the Act states that when such a clause is contained and the transferee fails to maintain the transferrer, then the document can be cancelled. A



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perusal of the settlement deed, which has been executed by the third respondent in favour of the petitioner does not spell out this fact. The settlement deed has been accepted and acted upon by the petitioner by mutating the revenue records in his name. Therefore, the respondents 1 and 2 do not have the jurisdiction to consider the issue on hand. Therefore, the very initiation of the proceedings is without jurisdiction and the same is liable to be set aside.

5. Accordingly, the writ petition is allowed. The impugned order of the first respondent in Na.Ka.No.K4/43729/2019 dated 31.12.2019 confirming the order passed by the second respondent in Na.Ka.A8/4195/2019 dated 22.10.2019 is hereby quashed. No costs. Consequently, the connected Miscellaneous Petition is closed.

31.03.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order
mbi



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To

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P.T.ASHA, J.

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