



W.P.(MD) No.2206 of 2020.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.2206 of 2020
and
W.M.P.(MD) No.1857 of 2020**

Malaichami

... Petitioner

/vs./

**1.The District Collector,
Sivagangai,
Sivagangai District.**

**2.The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.**

3.Periyasami

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Prohibition, prohibiting the 2nd respondent with proceeding with the enquiry initiated vide his proceedings in Na.Ka.No.A/1/5553/2018 dated 16.10.2019.



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For Petitioner : Mr.M.Mahaboob Athiff
For R1 & R2 : Mr.J.John Rajadurai
Government Advocate
For R3 : No appearance

ORDER

The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for issue of Writ of Prohibition prohibiting the second respondent, namely the Revenue Divisional Officer, Sivagangai from proceeding with the enquiry, which he has initiated vide his proceedings in Na.Ka.No.A/1/5553/2018 dated 16.10.2019.

2.The proceedings have been initiated at the behest of the third respondent, who is the father of the petitioner. The learned counsel for the petitioner would submit that an extent of 3 acres and 72 cents in S.No.57/5 at Kanchirakulam, Thiruppuvanam, Sivagangai District, was gifted to the petitioner by the third respondent under a registered settlement deed dated 07.12.2007. From the date of the settlement deed, the petitioner has been in possession and enjoyment of the same.



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3.It appears that certain misunderstandings and disputes arose between the petitioner and his other siblings and the father was taking sides with them, as a result of which, there was difference of opinion between the petitioner and the third respondent. It is in this backdrop that the petitioner had been served with the impugned notice directing him to appear for enquiry on 25.10.2019 on the basis of the application made by the third respondent on 20.08.2018 to cancel the settlement deed. The petitioner had only received the notice and there was no attendant documents.

4.A perusal of the notice indicated that the petitioner's father had invoked the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act 56 of 2007) (*herein after referred to as Act*). The second respondent is the person notified as a Tribunal under Section 7 of the Act. Section 23 of the Act deals with the jurisdiction of the Court and going by the language of the said Section, the second respondent did not have the jurisdiction to entertain the application and therefore, the petitioner sought to have the notification quashed.



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5. In support of his contention, the learned counsel for the petitioner had relied upon the judgment of this Court in W.P.Nos.1741 of 2015 and 27902 of 2018 (*M.S.Palanivel and another Vs. The Chief Officer, Parents and Senior Citizen Maintenance cum Welfare Tribunal cum Revenue Divisional Officer, Tiruchengode, Namakkal District and others*) dated 29.01.2019.

6. Heard the learned counsels appearing on either side.

7. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act 56 of 2007) is a special enactment to provide effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. The Act clearly provides the jurisdiction and the procedure for approaching the Tribunal constituted under this Act. Section 6 of the Act deals with the same.

8. Section 23 of the Act deals with the remedy available to the senior citizens in respect of the property transferred by them. A perusal of this Section would clearly reveal that the provisions of the Act can be invoked where the



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transfer by way of gift or otherwise by the senior citizen has been made after the commencement of the Act and subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor.

9. For better appreciation, Section 23 of the Act reads as under:-

“23. Transfer of property to be void in certain circumstances:-

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the



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organisation referred to in Explanation to sub-section (1) of section 5.”

10.In the instant case, the settlement deed has been executed on 07.12.2007, whereas the Act has come into effect on 29.12.2007. Further, the jurisdiction of the Tribunal can be invoked only in cases, where there is a condition imposed in the settlement deed that the settlement is made on condition that the senior citizen is taken care of by the settlee. In the instant case, both the ingredients are missing. Therefore, the submissions of the learned counsel appearing for the petitioner that the second respondent does not have the jurisdiction to initiate proceedings under this Act has to necessarily be upheld. The respondents 1 and 2 have not been able to contradict the above.

11.In the result, the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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