BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2024

Pronounced on : 14.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.3636 of 2021
and
W.M.P.(MD)Nos.2943 and 2944 of 2021 and 17472 of 2022

P.Reddington Pinto ... Petitioner

Vs.

1. The Appellate Authority Cum District Collector,
Parents and Senior Citizens Maintenance and
Welfare Appellate Tribunal,
District Collectorate,
Tuticorin,
Tuticorin District.

2. P.Charles Maskranes ... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to impugned Notice in Na.Ka.C1/27119/2019 dated 19.01.2021 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.Mahaboob Fazil
for M/s.Lajapathi Roy and Associates

For R1 : Mr.M.Prakash
Additional Government Pleader

For R2 : No appearance

ORDER

The Writ Petition is directed against the order dated 19.01.2021 passed by the first respondent, setting aside the order dated 17.09.2020 passed by the Revenue Divisional Officer, Tiruchendhur under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. Admittedly, the writ petitioner is the son of the second respondent.

3. The second respondent has executed a gift deed dated 22.04.1998 in favour of the writ petitioner vide Document No.379/1998 before the Tiruchendhur Sub Registrar Office. The second respondent has filed a complaint before the Revenue Divisional Officer, Tiruchendhur to cancel the gift deed dated 22.04.1998 executed in favour of the writ petitioner, by invoking Section 23 of the Maintenance and Welfare of Parents and Senior

Citizens Act, 2007 (hereinafter called as 'the said Act') and the Revenue Divisional Officer has passed an order dated 17.09.2020 rejecting the complaint of the second respondent on the ground that since the gift deed came to be executed prior to the operation of the said Act i.e., on 29.09.2008, the gift deed cannot be cancelled. Aggrieved by the said order, the second respondent has preferred an appeal before the first respondent and the first respondent has passed the impugned order dated 19.01.2021 setting aside the order passed by the Revenue Divisional Officer and thereby ordered to cancel the gift deed. Challenging the order passed by the first respondent, the present writ petition came to be filed.

4. The learned counsel appearing for the writ petitioner has challenged the impugned order mainly on the following three grounds:-

1. *The gift deed sought to be cancelled came to be executed on 22.04.1998 prior to the date on which the said Act came into force i.e., on 29.09.2008.*
2. *The second respondent has neither pleaded nor shown that the gift deed does contain condition that the transferee would provide the basic amenities and basic physical needs to the transferor and that the said condition was not complied with by the writ petitioner.*

3. The first respondent has neither conducted any proper enquiry nor followed the mandatory requirements for deciding the appeal by the appellate Tribunal and thereby committed illegalities and irregularities in the proceedings.

5. Now taking the last ground at first, the learned counsel appearing for the writ petitioner would submit that the first respondent, by treating the appeal filed by the second respondent as an appeal on the administrative sides, issued notice calling upon the parties to be present before him for enquiry, that when the parties appeared, they were directed by the first respondent to give their written statements, that the first respondent has then certified that the same were written in his presence and that the first respondent, on the basis of the above two statements, has passed the impugned order, without recording any evidence nor conducting any enquiry.

6. The learned counsel appearing for the writ petitioner would rely on the decision of this Court in the case of ***M.Venugopal Vs. The District Magistrate-cum-District Collector, Kanyakumari District and others*** reported in ***2014 (5) CTC 162***, wherein also, in a similar case, a learned Judge has observed,

"25. Turning to the order passed by the Appellate Tribunal, the appeal was made on 27.03.2012 by the petitioner. Treating the said appeal as an appeal on the administrative side, the District Collector called for para-war remarks from the Revenue Divisional Officer. The Revenue Divisional Officer submitted his para-war remarks on 25.06.2012. Thereafter, the District Collector issued notice on 10.07.2012 calling upon the parties to be present before him for enquiry. Accordingly, they appeared. The petitioner was asked by the District Collector to give a written statement. Accordingly, in the presence of the District Collector, he gave a written statement. The District Collector certified that the same was written in his presence. The 3rd respondent was also asked to give a written statement. He submitted an already prepared written statement. Based on these two statements, the District Collector/Appellate Tribunal passed the impugned order confirming the order of the Tribunal. This order does not have any reference to the records of the Tribunal. The very fact that the Appellate Tribunal/District Collector called for para-war remarks from the Tribunal/Revenue Divisional Officer would go to show that the Appellate Tribunal was also under the mistaken impression that the proceeding is administrative in nature and not a quasi-judicial proceeding. It also did not notice that no evidence was recorded by the Tribunal. I do not

understand as to how the Appellate Tribunal could direct the parties to file written statements, ignoring the earlier statements given before the Tribunal. This would only go to show that the District Collector is also ignorant of the nature of the functions of the Appellate Tribunal. Both the Revenue Divisional Officer and the District Collector have not even understood that in the place of a full- fledged court of law, the Tribunal and the Appellate Tribunal have been constituted with similar powers and more or less with similar functions."

7. The above observations are squarely applicable to the case on hand. As already pointed out, in the present case also, the first respondent, by treating the appeal as an appeal on the administrative side, has directed the parties to appear before him and on their appearance, recorded their statements and without any further enquiry, has proceeded to pass the impugned order. As rightly contended by the learned counsel appearing for the writ petitioner, the first respondent, without understanding the nature of the appeal filed before him and the nature of the enquiry required for deciding the appeal, has proceeded mechanically and passed the impugned order.

8. Now turning to the first objection, as already pointed out, the Revenue Divisional Officer himself has rejected the complaint of the second respondent on the ground that the gift deed now under challenge was executed even prior to the said Act came into force. Though the first respondent has referred the decision of the Revenue Divisional Officer, he has not assigned any reasons for differing with the view taken by the Revenue Divisional Officer and for not applying the said position to the case on hand.

9. Before entering into further discussion, it is necessary to refer Section 23 of the said Act,

> ***"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 organisation referred to in Explanation to sub-section (1) of section 5."

10. The very provision of Section 23(1) commenced with words 'where any senior citizen who, after the commencement of this Act, has transferred'.

11. The learned counsel appearing for the writ petitioner has relied on two decisions of a learned Single Judge of this Court, one in the case of ***Alla Baksh Vs. The District Collector, Sivagangai*** in ***W.P.(MD)No.26510 of 2023 dated 06.11.2023*** and the second one in the case of ***S.Kannappan Vs. The Revenue Divisional Officer cum Tribunal of Maintenance and***

Welfare of Parents and Senior Citizens, Madurai and others in ***W.P.(MD)No.15838 of 2022 dated 03.01.2023***, wherein, a learned Judge of this Court, by relying on the judgment of this Court in the case of ***S.Neelavathi Vs. District Magistrate-cum-District Collector*** reported in ***2018 (6) CTC 21,*** has held that the Maintenance Tribunal will not have the jurisdiction to cancel the documents that were executed prior to the coming into force of the said Act.

12. Considering the plain meaning of Section 23 of the said Act and the decisions above referred, this Court has no hesitation to hold that since the gift deed sought to be cancelled came to be executed on 22.04.1998 prior to the said Act has come into force on 29.09.2008, the finding of the Revenue Divisional Officer that the Tribunal will not have jurisdiction to cancel the documents, cannot be found fault with.

13. Now turning to the second objection, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara Vs. Ramti Devi*** reported in ***2022 SCC OnLine SC 1684***, wherein also, the Respondent no.1-mother had executed a release deed in favour of her

daughters including the appellant, that subsequently, the Respondent no.1-mother had filed a petition under Section 23 of the said Act alleging that after executing the release deed, her son and daughters were not maintaining her, that the Maintenance Tribunal has come to a decision that the release deed dated 14.11.2008 was null and void, that the said order came to be challenged before the High Court and the High Court has confirmed the order passed by the Maintenance Tribunal and that when the matter was taken up before the Hon'ble Supreme Court, the Hon'ble Apex Court has held as follows:-

> *"12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression "by way of gift or otherwise". For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:*
>
> > *a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and*
> >
> > *b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.*
>
> *If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then*

becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

13. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

14. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that *the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.*

15. We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all."

14. In the present case also, the gift deed now under challenge does not contain any condition that the writ petitioner has to provide the basic amenities and basic physical needs to the second respondent. As already pointed out, the second respondent has not even pleaded that the gift deed was executed subject to a condition that the transferee would provide the

basic amenities and basic physical needs to the transferor and that the writ petitioner has failed to comply with the said condition. In the absence of any such condition, as rightly contended by the learned counsel appearing for the writ petitioner, the question of invoking Section 23 of the said Act does not arise at all.

15. Viewing from any angle, the impugned order cannot legally be sustained and as such, the same is liable to be set aside.

16. In the result, this Writ Petition stands allowed and the impugned order passed by the first respondent dated 19.01.2021 is hereby quashed. Consequently, connected Miscellaneous Petitions are closed. No costs.

14.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To
1. The Appellate Authority Cum District Collector,
Parents and Senior Citizens Maintenance and
Welfare Appellate Tribunal,
District Collectorate,
Tuticorin, Tuticorin District.

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
W.P.(MD)No.3636 of 2021
and
W.M.P.(MD)Nos.2943 and 2944 of 2021 and 17472 of 2022

Dated : 14.06.2024