



W.P(MD)No.5276 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5276 of 2020

and

W.M.P.(MD)Nos.4590 of 2020

1.R.Satheeshkumar

2.R.Sasikumar

... Petitioners

Vs.

1.The District Collector,
Sivagangai District.

2.The Revenue Divisional Officer,
Sivagangai.

3.The Joint Sub Registrar-II,
Sivagangai.

4.G.Kanna

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent in Pa.Mu.(AA 1)1573/2016 dated 04.07.2018 and confirmed by the impugned order of 1st respondent in Moo.Mu.Pi1/13838/18 dated 24.07.2019 quash the same and consequently forbearing the 4th respondent or any one from interfering with the petitioner's peaceful possession and enjoyment of the property covered under



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the registered deed of Inam Settlement dated 09.06.2016 vide Doc.No. 2385 of 2016 on the file of 3rd respondent.

For Petitioners : Mr.S.Srinivasa Raghavan

For Respondents : Mr.K.S.Selva Ganeshan
Additional Government Pleader for R1 to R3

ORDER

Heard the learned counsel for the petitioners and the learned Additional Government Pleader for R1 to R3.

2. The petitioners' grand mother Mrs.Siva Bakkiam executed a registered settlement deed dated 09.06.2016 settling the petition mentioned property in their favour. Subsequently, she filed a petition under Section 23 of the Senior Citizens Act before the Maintenance Tribunal/R2 herein. The second respondent vide order dated 04.07.2018 cancelled the settlement deed dated 09.06.2016. Challenging the same, the petitioners filed an appeal before the District Collector, Sivagangai. During the pendency of the appeal proceedings, Mrs. Siva Bakkiam passed away. The fourth respondent herein who is none other than the son of Siva Bakkiam contested the proceedings. The appeal was dismissed on 24.07.2019. Challenging the same, the writ petition came to be filed.



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3. The fourth respondent is a class I legal heir of the deceased Siva Bakkiam. He is a necessary party to the present writ proceedings for yet another reason. It was he who contested the appeal proceedings. He was rightly impleaded as one of the respondents in this writ petition. Though notice was sent to him, it was returned with the endorsement “ left”.

4. I went through the contents of the settlement deed dated 09.06.2016 executed by Siva Bakkiam. The settlor had conveyed the property absolutely in favour of the petitioners herein without reserving any condition. The settlement deed further states that it is irrevocable. The settlement was out of love and affection for the petitioners. The Hon'ble Supreme Court in the decision reported in **2022 Scc Online SC 1684 (Sudesh Chhikara V. Ramti Devi)** had held that if the deed of transfer does not contain any condition as envisaged under Section 23 of the Senior Citizens Act, the Maintenance Tribunal cannot invoke Section 23 of the Act to cancel the same. Respectfully applying the aforesaid ratio, I set aside the impugned orders.

5. I must however make an observation. Section 16 of Central Act No.56 of 2007(The Maintenance and Welfare of Parents and Senior Citizens Act, 2007) reads as follows:-

“ (1) Any senior citizen or a parent, as the case may be, aggrieved by an



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order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.” Question arose if the remedy of appeal can be availed only by any senior citizen or a parent. The Hon'ble First Bench of the Madras High Court in the decision reported in **2021 (2) CTC 129 (K.Raju V. Union of India)** held that the section cannot be interpreted to mean that any aggrieved individual apart from senior citizens and parents can file appeal under Section 16 of the Act. Hon'ble First Bench disagreed with the contra opinion expressed by the Hon'ble Panjab and Haryana High Court reported in AIR 2014 P&H 121 Paramjit Kumar Saroya V. Union of India. The Hon'ble Division Bench of High Court of Chattisgarh in Rita Roy V. Maintenance Tribunal (W.A.No.188 of 2022 dated 18.08.2022) agreed with the view taken in Paramjit Kumar Saroya. The three chartered High Courts(Madras, Bombay and Calcutta) are on the same page. The appeal by the petitioners before the first respondent under Section 16 of the Act was not



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really competent.

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7. The learned counsel appearing for the petitioner raised an interesting contention that an appeal under Section 16 of the Act in any event will not lie against an order passed under Section 23 of the Act even by a senior citizen or parent. Section 16(1) of the Act refers to “ an order of tribunal”. This expression can be understood as “ any order of Tribunal” which would include an order passed under Section 23 of the Act. Let us examine the statutory scheme. The Senior Citizens Act comprises 32 sections. It is divided into 7 chapters. Chapter II is titled “Maintenance of Parents and Senior Citizens”. Section 4 to 18 fall in Chapter II. Chapter V is titled “Protection of Life and Property of Senior Citizen”. Section 23 is found in this Chapter. The Hon'ble Supreme Court of India in ***K.M.Nanavathi V. State of Bombay (AIR 1961 SC 112)*** held that one is entitled to have regard to the indicia afforded by the arrangement of sections. The arrangement of sections into parts and their headings are substantive parts of the Act. The arrangement of sections was also taken note of in ***Richhpal Singh Meena V. Ghasi (2014) 8 SCC 918 and Madhu Limaye V. SDM (1970) 3 SCC 746***. Some of the earlier decisions of the Madras High Court have also taken note of the arrangement of sections as an aid in interpreting an understanding statutes (AIR 1914 Mad 613) (AIR 1914 Mad 330) (AIR 1920 Mad 1019) (ILR 1920 43 Mad 675) (AIR 1930 Mad 520).



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If the intention of the Parliament was to provide the remedy of appeal against an order passed under Section 23 of the Act, the appeal provision would have been included in any chapter after Chapter V. The first proviso to Section 16(1) of the Act also contains the key. It virtually ousts the power of the appellate Tribunal to stay the operation of the maintenance order passed by the Maintenance Tribunal. The fact that the first proviso talks about payment of maintenance amount indicates that the appeal under Section 16(1) of the Act was meant to be directed against an order passed under Chapter II. If the senior citizen files an appeal against the quantum of maintenance, the children or relative should continue to pay the amount as directed by the Tribunal in the manner ordered by the appellate Tribunal. Of course, the senior citizen or parent can file an appeal questioning the dismissal of petition seeking maintenance or any other relief under Chapter II.

8. There yet another reason for me to conclude that an order passed under Section 23 of the Act is not appealable. The scope of enquiry under Section 23 is highly limited. If the document does not contain the condition that a transferee shall provide the basic amenities and basic physical needs to the transferor, Section 23 of the Act cannot be invoked. The petition will have to be straightaway dismissed. There is nothing to enquire further. If such a condition is incorporated in the document and the transferor claims that the transferee has



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refused or failed to provide such amenities and physical needs, again that should be sufficient in normal circumstances to conclude the matter. But If the transferee claims that he has not refused or failed to provide the same or that he is ready to abide by the condition set out in the deed of transfer, there may be scope for enquiry. The order of the Maintenance Tribunal under Section 23 of the Act is amenable to challenge under Article 226 of the Constitution of India. Appeal under Section 16(1) of the Act is not maintainable against such an order even at the instance of senior citizen / parent. The jurisdiction of the civil Court is barred in view of Section 27 of the Act. A writ petition alone will lie questioning such an order.

9. The impugned orders are set aside and the writ petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To

1.The District Collector,
Sivagangai District.

2.The Revenue Divisional Officer,
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3.The Joint Sub Registrar-II,



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G.R.SWAMINATHAN, J.

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