



W.P.(MD)Nos.9616 and 20828 of 2021

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Reserved on : 01.07.2024

Pronounced on : 29.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)Nos.9616 and 20828 of 2021

and

W.M.P.(MD)Nos.7365 and 7366 of 2021

W.P.(MD)No.9616 of 2021

1. Soundarapandian

2. Rishi

... Petitioners

Vs.

1. The Appellate Tribunal / District Collector,
Madurai District.

2. The Revenue Divisional Officer /
Tribunal for Maintenance of Parents and
Senior Citizens Act 2007,
Madurai.

3. A.Karupayee

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the



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records relating to impugned order 12.02.2021 in Na.Ka.C5/15147/2020 on the file of first respondent and that of the impugned order dated 13.03.2020 in K.Dis.No.2926 of 2019 on the file of second respondent and quash the same.

For Petitioners : Mr.S.Pon Senthil Kumaran

For R1 & R2 : Mr.V.Om Prakash
Government Advocate

For R3 : Mr.G.Prabhu Rajadurai

W.P.(MD)No.20828 of 2021

Rishi

... Petitioner

Vs.

1. The District Collector,
Madurai District.
2. The Revenue Divisional Officer,
Madurai.
3. The Thasildhar,
Madurai West Taluk,
Madurai.
4. Soundarapandian
5. A.Karupayee
6. R.Jayabalan

... Respondents



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Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records from the office of third respondent relating to Patta No.6246 dated 08.07.2021 in Na.Ka.No.2021/0103/24/163084 and Patta No.6267 dated 27.07.2021 in Na.Ka.No.2021/0103/24/169788 issued in favour of respondents 5 and 6 respectively and quash the same and consequently direct the third respondent to reissue patta in favour of petitioner for the land in S.No.227/6 at Villachery Village, Madurai.

For Petitioner : Mr.S.Pon Senthil Kumaran

For R1 to R3 : Mr.V.Om Prakash
Government Advocate

For R4 to R6 : No appearance

COMMON ORDER

The Writ Petition in W.P.(MD)No.9616 of 2021 is directed against the order dated 12.02.2021 passed by the first respondent, confirming the order of the second respondent dated 13.03.2020.

2. The Writ Petition in W.P.(MD)No.20828 of 2021 is directed against the issuance of patta in favour of the respondents 5 and 6 by the office of the third respondent in respect of land in Survey No.227/6 of Villachery Village, Madurai.



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In W.P.(MD)No.9616 of 2021

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3. Admittedly, the second writ petitioner is the son of the first writ petitioner and the first writ petitioner is the son of the third respondent.

4. The third respondent has executed a gift settlement deed dated 06.09.2017 in favour of the first writ petitioner, who in turn executed a settlement deed dated 09.11.2018 in favour of his son-second writ petitioner. The third respondent has then filed a petition before the second respondent seeking to cancel the gift settlement deed dated 06.09.2017 executed by her in favour of the first writ petitioner and the settlement deed dated 09.11.2018 executed by the first writ petitioner in favour of the second writ petitioner by invoking the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter called as 'the said Act'). The writ petitioners have filed their objections. The second respondent, after enquiry, has passed an order dated 13.03.2020 declaring that the settlement deeds dated 06.09.2017 and 09.11.2018 are null and void, invoking the provisions of Section 23 of the said Act. Aggrieved by the said order of the second respondent, the writ petitioners have preferred an appeal before the first respondent under Section 16 of the said Act and



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the first respondent has passed the impugned order dated 12.02.2021 dismissing the appeal and thereby confirming the order of the second respondent. Challenging the order of the first respondent, the above writ petition came to be filed.

5. It is the specific contention of the third respondent that the third respondent had two daughters and three sons including the first writ petitioner, that the first writ petitioner had taken the third respondent to Alanganallur Sub Registrar Office under the guise of purchasing a property in favour of the third respondent and obtained gift settlement deed fraudulently, that the third respondent is not having any means to take care of her as she is aged more than 80 years and that therefore, the third respondent was constrained to lodge a petition for cancelling the alleged settlement deed taken in favour of the first writ petitioner and the subsequent settlement deed executed by the first writ petitioner in favour of the second writ petitioner.

6. It is not in dispute that the first writ petitioner's brothers and sisters have filed a suit in O.S.No.73 of 2019 on the file of V Additional



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District Court, Madurai against the writ petitioners and the third respondent claiming partition and allotment of 4/6 shares in the properties and also for declaration that the settlement deeds dated 06.09.2017 and 09.11.2018 are null and void and that the writ petitioners have filed their written statement and are contesting the suit.

7. At the outset, the learned Government Advocate appearing for the respondents 1 and 2 would fairly admit that the first respondent has no jurisdiction to try the appeal filed by the writ petitioners as they were not having any right of appeal under the provisions of the said Act.

8. It is pertinent to note that Section 16 of the said Act contemplates for filing of the appeal only by senior citizen or parent, who is aggrieved by an order of the Tribunal.

9. It is necessary to refer the judgment of the Hon'ble Division Bench of this Court in the case of ***K.Raju Vs. Union of India and others*** reported in ***2021 (2) CTC 129***, wherein, the Hon'ble Division Bench has observed,



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“9. When the clear words of a statute do not permit any other meaning or interpretation, particularly when it pertains to a right of appeal, additional words cannot be read into the provision to discover a right in favour of a class of persons excluded by necessary implication in the appellate provision. When the words used in Section 16 of the Act are “Any senior citizen or a parent ... aggrieved by order of a Tribunal may ... prefer an appeal...” and the other words govern the time or describe the senior citizens or the parent in the alternative, there is no room to imagine that others aggrieved by an order of the tribunal may also prefer an appeal on the ground that the scales must be balanced between the two sides.”

10. In the present case, as already pointed out, the second respondent Tribunal has passed orders in favour of the third respondent-mother. Though the writ petitioners were aggrieved by the order of the Tribunal, they cannot be considered as aggrieved persons as contemplated under Section 16 of the said Act. Applying the plain meaning of Section 16 of the said Act and also the decision of the Hon'ble Division Bench of this Court, this Court has no hesitation to hold that the appeal filed before the first respondent could not have been legally entertained and as such, the order passed in the appeal without jurisdiction cannot be sustained.



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11. As already pointed out, the order of the second respondent has been confirmed by the first respondent in the appeal and that since the order passed by the first respondent which is without jurisdiction is a nullity, the order of the second respondent remains in force. Hence, the above writ petition can only be taken as a one, which was filed challenging the order of the second respondent.

12. The case of the writ petitioners is that after the demise of the father of the first writ petitioner, the first writ petitioner looked after all the family members including his brothers and sisters and the third respondent's health, that the first writ petitioner has incurred and spent huge amounts for the welfare of the family members and hence, was forced to take loans from others and to settle the loans, the first writ petitioner's brothers and sisters and the third respondent have agreed to relinquish their right in the properties in dispute and upon full consent and knowledge of the family members, the third respondent has executed the gift settlement deed in favour of the first writ petitioner, that due to some misunderstandings and as an after thought with *mala fide* intention, the third respondent at the instigation of her other sons and daughters has



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lodge the above complaint and that the gift settlement deed executed by the third respondent in favour of the first writ petitioner is legally valid.

13. As already pointed out, it is the specific contention of the third respondent that the settlement deed was taken from her fraudulently by the first writ petitioner.

14. 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



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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.”

15. The learned counsel appearing for the writ petitioners would mainly contend that the impugned document does not contain any condition as required under Section 23 of the said Act, that the third respondent has neither pleaded nor shown that the gift settlement deed does contain condition that the transferee would provide the basic amenities and basic physical needs to the third respondent and that the said condition was not complied with by the first writ petitioner.

16. The learned counsel appearing for the third respondent would submit that the gift settlement deed now in dispute does contain condition that the first writ petitioner has to maintain the third respondent and that therefore Section 23 of the said Act gets attracted.



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17. It is necessary to refer the exact wordings in the gift settlement deed dated 06.09.2017 hereunder for better appreciation,

“... நீ எங்களுக்கு முன்றாவதாக பிறந்த மூத்த ஆண் மகனானபடியாலும், உன்மேல் எனக்கு இருக்கும் இயற்கை அன்பினாலும், பாசத்தாலும் பிரியத்தாலும் மற்றும் நீயும் எனக்கு செய்ய வேண்டிய பணிவிடைகள் செய்தும், உடல்நிலை குன்றும்போது மருத்துவச் செலவுகள் செய்தும் என்னை பராமரித்து வருவதாலும், நான் எனது மற்ற வாரிசுகளுக்கு வேறு அபிவிருத்திகள் செய்துவிட்டபடியாலும், நீ நாளது தேதிவரை எனக்கு தேவையான சகலபாத்தியங்கள் செய்து வருவதாலும் இனிமேல் செய்து வருவாய் எனவும், நானும் உனக்கு ஏதாவது சொத்து எழுதிவைக்க வேண்டும் என்று நான் எண்ணியிருந்த என்னுடைய நெடுநாளைய எண்ணம் பூர்த்தியாகும் பொருட்டும் உன் பிற்கால வாழ்க்கைக்கு உதவும் பொருட்டும் எனக்கு பாத்தியப்பட்டதும் அடியிற்கண்ட சொத்துக்களானது □

18. A Full Bench of Kerala High Court in the case of **Subhashini Vs. The District Collector, Kozhikode and others** reported in **AIR OnLine 2020 KER 674**, while answering the reference, has dealt with the scope of Section 23 of the said Act elaborately and has come to a conclusion that the condition as required under Section 23(1) for provision of basic



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amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer and it is a jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry.

19. The learned counsel appearing for the writ petitioners would rely on the decision 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:-



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“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



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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



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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.”

20. The above decisions are squarely applicable to the case on hand.

21. Section 23 of the said Act contemplates that the transfer must have been made subject to the condition that the transferee would provide the basic amenities and basic physical needs to the transferor. In the case on hand, the third respondent has nowhere whispered that the gift was given subject to any condition, but she expressed her wish and expectations and that cannot be considered as conditions.

22. As rightly contended by the learned counsel appearing for the writ petitioners, the above wordings in the gift settlement deed, by no stretch of imagination, can be taken as condition imposed on the first writ petitioner that he has to provide the basic amenities and basic physical needs to the third respondent. Moreover, as already pointed out, the third



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respondent has nowhere pleaded that the gift settlement deed was executed subject to a condition that the first writ petitioner would provide the basic amenities and basic physical needs to the third respondent and that the first writ petitioner has failed to comply with the said condition. In the absence of any such condition, applying the dictum laid down by the Hon'ble Supreme Court in **Sudesh Chhikara's** case above referred, the question of invoking Section 23 of the said Act does not arise at all. Consequently, this Court concludes that the impugned order cannot legally be sustained and the same is liable to be quashed.

In W.P.(MD)No.20828 of 2021

23. The second writ petitioner in W.P.(MD)No.9616 of 2021 has filed the above writ petition challenging the pattas issued by the third respondent in favour of the respondents 5 and 6.

24. The first writ petitioner in W.P.(MD)No.9616 of 2021 is the fourth respondent, the third respondent in W.P.(MD)No.9616 of 2021 is the fifth respondent and the subsequent purchaser from the fifth respondent is the sixth respondent.



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25. The main contention of the writ petitioner is that subsequent to the order passed by the respondents 1 and 2, the third respondent at the instance of the fifth respondent has cancelled the patta stood in the name of the writ petitioner and changed the patta in favour of the fifth respondent, that the fifth respondent has then sold the said property to sixth respondent vide sale deed dated 27.07.2021 and that immediately at the instance of the sixth respondent, the third respondent has changed the patta in favour of the sixth respondent.

26. It is not in dispute that the third respondent has made patta changes in pursuance of the orders passed by the respondents 1 and 2. Since this Court has decided that the said orders are liable to be quashed, the patta changes made by the third respondent are also liable to be set aside consequently.

27. Since the partition suit is pending between the parties before the competent civil Court, the third respondent in W.P.(MD)No.9616 of 2021/fifth respondent in W.P.(MD)No.20828 of 2021 is at liberty to challenge the gift settlement deeds now under challenge.



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28. In the result, these Writ Petitions are allowed. The impugned order dated 12.02.2021 passed by the District Collector, Madurai and order dated 13.03.2020 passed by the Revenue Divisional Officer, Madurai are quashed and the Patta Nos.6246 dated 08.07.2021 and 6267 dated 27.07.2021 issued in favour of the respondents 5 and 6 are also quashed. The parties are at liberty to approach the revenue authorities for issuance of patta, subject to the result of the suit in O.S.No.73 of 2019 pending on the file of the V Additional District Court, Madurai. The third respondent in W.P.(MD)No.9616 of 2021/fifth respondent in W.P.(MD)No. 20828 of 2021 is at liberty to challenge the gift settlement deeds now under challenge in the above partition suit. Consequently, connected Miscellaneous Petitions are closed. No costs.

29.07.2024

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

To

1. The District Collector,
Madurai District.



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2. The Revenue Divisional Officer,
Madurai.

3. The Thasildhar,
Madurai West Taluk,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Common Order made in
W.P.(MD)Nos.9616 and 20828 of 2021
and
W.M.P.(MD)Nos.7365 and 7366 of 2021

Dated : 29.07.2024