

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.1741 of 2015 and 27902 of 2018
and M.P.No.1 of 2015, W.M.P.Nos.2559 of 2017
and 30876 of 2018 in W.P.No.1741 of 2015
and W.M.P.No.32454 of 2018 in W.P.No.27902 of 2018

W.P.No.1741 of 2015 :

M.S.Palanivel

.. Petitioner

Vs.

1. The Chief Officer,
Parents and Senior Citizen Maintenance
cum Welfare Tribunal-cum-
Revenue Divisional Officer,
Tiruchengode,
Namakkal District.

2. The District Collector,
Namakkal District.

3. R.Sabapathi

4. Sarasu

.. Respondents

* * *

Prayer : Writ petition filed under Article 226 of the
Constitution of India praying for a Writ of Certiorari to call
for the records of the first respondent in Na.Ka.2861/2014/C
dated 09.01.2015 (signed on 19.01.2015) quash the same.

* * *

For Petitioner : Mr.A.Jenasenan

For Respondents: Mr.V.Shanmugasundar
Special Government Pleader for RR 1 & 2

Mr.C.Jagadish for RR 3 & 4

W.P.No.27902 of 2018 :

A.Gopalakrishnan

.. Petitioner

Vs.

1. The Superintendent of Police,
Namakkal, Namakkal District.
2. Deputy Superintendent of Police,
Thiruchengode,
Thiruchengode Taluk,
Namakkal District-637 211.
3. Inspector of Police,
Mallasamudram Police Station,
Thiruchengode Taluk,
Namakkal District-637 503.
4. Sub Inspector of Police,
Mallasamudram Police Station,
Thiruchengode Taluk,
Namakkal District-637 503.

5. M.S.Palanivel
6. R.Sabapathi
7. Sarasu
8. A.R.Sumathi
9. A.Raja

.. Respondents

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents 2 to 4 not to interfere in civil dispute by extending their support to the respondents 5 to 9 to take forcible possession of the property situated in Survey No.143/1, 143/3B, 144/2 and 101/2 at Pillanatham Village, Tiruchengode Taluk, Namakkal District.

* * *

For Petitioner : Mr.AR.L.Sundareasn, Senior Cousnel
for M/s.P.Gajendra Babu

For Respondents: Mr.V.Shanmugasundar
Special Government Pleader for RR 1 to 4

Mr.A.Jenasenan for RR 5

Mr.C.Jagadish for RR 6 & 7

Mr.R.Anbukarasu for RR 8 and 9

C O M M O N O R D E R

Since the issue involved in these writ petitions, viz., the disputed property, inter alia, is one and the same, and the petitioner and private respondents in W.P.No.1741 of 2015 have been arrayed as respondents 5 to 7 in W.P.No.27902 of 2018, both these writ petitions have been taken up together for hearing and disposed of by means of this common order.

2. The order of the Parents and Senior Citizen Maintenance-cum-Welfare Tribunal-cum-Revenue Divisional Officer, Tiruchengode, Namakkal District, dated 09.01.2015 (signed on 19.01.2015) in Na.Ka 2861/2014/C, is under challenge in W.P.No.1741 of 2015.

2.1. The petitioner is the son of third and fourth respondents. The third respondent, father of the petitioner, allegedly executed a Power of Attorney bearing document No.284/2009 on 30.06.2009 in favour of the petitioner to manage and sell his movable and immovable properties. On the strength of the said document, the petitioner entered into an agreement for sale with a third party, who is the petitioner in W.P.No.27902 of 2018, on 25.05.2012. It is claimed that out of the total sale consideration of Rs.52,00,000/-, a sum of Rs.37,00,000/- was paid to the third respondent.

2.2. While so, the third and fourth respondents executed a gift deed dated 11.09.2014 in favour of his daughter, sister of the petitioner. Neither the Power of Attorney nor the agreement for sale was cancelled at that time. Thereafter, the private respondents submitted a letter dated 22.09.2014 to the District Collector/second respondent seeking protection to enjoy their properties and the same was forwarded to the first respondent on 27.10.2014.

2.3. The third and fourth respondents submitted a representation to the first respondent under the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 against the petitioner and his wife on the allegation that they have taken away the properties belonged to them. The private respondents also stated that the third respondent has not executed any Power of Attorney as claimed by the petitioner.

2.4. The first respondent caused notice on the petitioner, for which, he appeared before the said authority and placed his explanation and the facts. It is claimed by the petitioner that he is always willing to take care of the third and fourth respondents. It is also stated by the petitioner that in December 2014, the private respondents submitted before the first respondent that they are not interested to receive any maintenance from the petitioner. Thereafter, the third and fourth respondents also cancelled the Power of Attorney executed

in favour of the petitioner.

2.5. In the said backdrop, the impugned order came to be passed by the first respondent on 19.01.2015, directing the petitioner to return the movable and immovable properties to the parents and not to disturb their peaceful possession. The said order is put to challenge in W.P.No.1741 of 2015.

2.6. This Court, while ordering notice to the respondents in the said writ petition, on 23.01.2015 directed the petitioner, inter alia, to pay a sum of Rs.10,000/- p.m. each to the third and fourth respondents and from September, 2014, the arrears was directed to be paid by way of Demand Draft and also directed him to continue to pay the same.

2.7. The third respondent thereafter filed W.M.P.No.2559 of 2017 seeking to vacate the said interim order dated 23.01.2015 and to dismiss the writ petition.

2.8. Since there was default in payment of amount ordered by this Court, the petitioner sought extension of time from this Court in W.M.P.No.15879 of 2017, which was disposed of on 01.03.2018 directing him to pay the arrears and also continue to pay the amount, failing which, the interim order stands vacated.

2.9. Failing to comply with the order dated 01.03.2018, the petitioner filed W.M.P.No.30873 of 2018 on 05.10.2018 seeking time of one week.

3. Seeking to forbear the official respondents/respondents 2 to 4 therein from interfering with the civil dispute by extending their support to the respondents 5 to 9 to take forcible possession of the property situated in Survey No.143/1, 143/3B, 144/2 and 101/2 at Pillanatham Village, Tiruchengode Taluk, Namakkal District, W.P.No.27902 of 2018 was filed by the petitioner, who is one of the agreement holders of the property from the petitioner in W.P.No.1741 of 2015.

3.1. It is claimed by the petitioner that one S.Manoharan and himself entered into an agreement for sale with the fifth respondent/ the petitioner in W.P.No.1741/2015 on 25.05.2012 and after paying a sum of Rs.37,00,000/-, out of the total sale consideration of Rs.52,00,000/- they have been given possession of the property and from then they have been in possession and enjoyment of the property.

3.2. It is claimed by them that without their knowledge and without cancelling the Power of Attorney and the subsequent agreement for sale, respondents 6 and 7 executed a Gift Deed in favour of the eighth respondent and she along with her husband/the ninth respondent attempted to interfere with their peaceful possession of the property.

3.3. In view of the same, a police complaint was given and a suit in O.S.No.167/2015 was filed. During the pendency of the suit, the sixth respondent/father of the fifth respondent, filed a petition under the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 before the RDO and got an order in his favour, which is impugned in W.P.No.1741 of

2015.

3.4. The petitioner further averred that though an interim order of stay of the order impugned in W.P.No.1741 of 2015 was granted by this Court on certain terms and conditions, the ninth respondent along with respondents 2 to 4 in this writ petition, attempted to interfere with their peaceful possession of the property.

3.5. It is the claim of the petitioner that the police officials under the guise of implementing the order of the Tribunal-cum-Revenue Divisional Officer (RDO), threatened the petitioner to vacate the premises. Claiming that when the petitioner and his co-owner S.Manoharan have not even been arrayed as parties to the said proceedings, they are not bound by the said order. In the said circumstances, the petitioner is before this Court with W.P.No.27902 of 2018 with the aforesaid prayer.

4. Learned counsel for the petitioner in W.P.No.1741 of 2015 questions the jurisdiction of the first respondent therein to issue the directions contained in the impugned order. It is his submission that the first respondent can direct the petitioner to pay the maintenance amount, which, indisputably, the parents did not want. The learned counsel submitted that the parents of the petitioner failed to show that the conditions for invoking the power under Section 23 of the MWPSA Act are fulfilled and hence, the first respondent is estopped from invoking the said provision.

5. Learned counsel for the petitioner in W.P.No.27902 of 2018 submits that he is a bona fide agreement holder and he was given possession of the property, which is now disturbed by the private respondents, which is impermissible in the eye of law. It is his submission that instead of appearing before the civil court, the private respondents rushed to this Court, wherein, they are not the parties.

6. Learned counsel for the parents submitted that armed with the forged documents, both the petitioners are attempting to dislocate them from their shelter in the evening of their life. The petitioner in W.P.No.27902 of 2018 is a friend of their son. Learned counsel contended that the neither before this Court nor before the authorities, the petitioners appeared with clean hands and hence, sought for dismissal of these writ petitions.

7. The relationship between the petitioner and respondents 3 and 4 in W.P.No.1741 of 2015 is not in dispute. While the petitioner claimed that he is ready to take care of his parents, it is the claim of the parents that they have been ill-treated by the petitioner. Further, when the petitioner claimed that the settlement deed was executed by the third respondent, the

third respondent disputed the same stating that it was under coercion he gave a Power of Attorney to the petitioner only to represent the case in O.S.No.128/2007 before the Civil Court and it was never his intention to sell the property.

8. Before delving into the facts of the case, it is to be stated that the Parliament has legislated the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, (in short, "MWPSA Act") which received the assent of the President on 29.12.2007 and published in the Gazette of India, Ext. Pt.II, S.1, dated 31.12.2007. The said Act has provisions for the maintenance and welfare of parents and senior citizens. The objects and reasons of the said enactment are extracted below:

"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalism of suitable mechanism for protection of life and property of older persons;

(d) setting up of oldage homes in every district."

9. It is heartening to note the reasons for enacting the MWPSA Act. Though there were acts and provisions in place for similar relief, to have simple, inexpensive and speedy provisions for making claim of maintenance by the parents, the said Act is enacted. What has to be done by the kids and relatives out of love and affection is now made as a legal obligation, but for the attitude of the younger generation.

10. Section 7 provides for constitution of Maintenance Tribunal and Section 15 provides for constitution of the appellate tribunal. Section 17 of the said Act bars the representation of a legal practitioner on behalf of the parties. Section 18 directs the State Governments to designate the District Social Welfare Officer or an officer of the similar rank as Maintenance Officer, who can be permitted to appear before the Tribunals, if the parties so desire. Section 23 of the MWPSA Act provides certain transfer of properties to be void in certain circumstances. Section 27 of the Act bars the jurisdiction of civil courts in respect of any matter to which any provision of the said Act applies and also states that no injunction shall be granted by any civil court in respect of anything which is done in good faith under the Act.

11. The Tamil Nadu Government exercising the powers conferred by Section 32 of the MWPSA Act, issued the Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (in short, "2009 Rules") making the procedures for dealing with the petitioner under the MWPSA Act, provision for appointment of Conciliation Officer etc., drawing duties and powers of the District Collector, Constituting State Council and District Committees of Senior Citizens, etc.

12. Rule 9 of the 2009 Rules authorises the State Government to designate the District Social Welfare Officers as Conciliation Officers and if the parties are willing to go for settlement, the Tribunal is empowered to send the parties to the Conciliation Officer. It is not known as to whether the State Government has notified the appointment of Conciliation Officers, as mandated under the 2009 Rules. If that is there,

the parties could have been referred to the Conciliation Officer to work out the possibilities of arriving at an amicable settlement, instead of continuing with their difference of opinion.

13. A reading of the above provisions shows that a transfer of property is void in certain circumstances. So far as the case on hand is concerned, the averment of the son/the petitioner in W.P.No.1741 of 2015 is that his father had executed a Power of Attorney in his favour, which is also a registered document, empowering him to administer, maintain, purchase, sell the immovable properties and that based on the said registered Power of Attorney, he had entered into the agreement to sell dated 25.05.2012 with Manoharan and A.Gopalakrishnan. As per the said agreement, the agreement holders/prospective purchasers were also put in possession of the property. However, the case of the father, who is the third respondent in that writ petition, is that his wife and himself executed a gift deed in favour of their daughter on 11.09.2014. It appears that besides the properties mentioned under the agreement to sell, there are a few more extent of lands, which are added in the gift deed. The impugned order came to be passed on 19.01.2015, after enquiry. In the impugned order, though it is stated that the petitioner herein claimed that a sum of Rs.37,00,000/- was received as advance, pursuant to the agreement to sell, which was handed over to his father and a receipt was also obtained, there is no discussion on the same in the order. In the deposition before the enquiry officer, the father/third respondent in W.P.No.1741 of 2015 had totally denied any execution of the Power of Attorney in favour of the petitioner.

14. The Chief Officer/Parents and Senior Citizen Maintenance-cum-Welfare Tribunal-cum-Revenue Divisional Officer had not even discussed about the execution of the Power of Attorney alleged by the third respondent. One of the agreement holders Mr.Manoharan has also been examined by the Village Administrative Officer and found that he was in possession of the property on the date of enquiry. The impugned order does not give any direction to the petitioner to pay maintenance amount to the parents, as it was not at all sought for. On the other hand, the movable and immovable properties were directed to be returned back to the parents, as prayed. The Chief Officer of the Tribunal/first respondent, without application of mind simply, accepting the statement of the father, ordered the petitioner to return the Tractor and trailer along with other movable properties and also to return the alleged blank bond papers containing the signatures obtained from the third respondent by coercion, besides a direction not to disturb his

parents' possession. The Chief Officer of the Tribunal has further directed the parties to go before the civil court with respect to the shares of the parties in Survey No.101/2, 143/1, 143/3B and 144/2.

15. Admittedly, there are no documents executed by the senior citizen, namely, the father or the mother in favour of the petitioner, who is the son transferring any property in his name, after the commencement of the MWPSA Act. Section 23 of the MWPSA Act provides certain transfer of properties to be void in certain circumstances. It is relevant to extract Section 23 of the said Act as hereunder:

"23. (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, the said transfer of property shall be deemed to have been made by fraud or coercion of 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."

16. From the perusal of Section 23 of the said Act it is clear that the said provision contemplates any transfer subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and in the event the transferee refuses or fails to provide such maintenance and physical needs, then any such transfer of property shall be deemed to have been made by fraud or coercion. It is pertinent to mention in this case that the senior citizens have even refused to accept any maintenance from the petitioner, which is also recorded in the impugned order. While so, in the absence of any transfer of property, whether the respondents 3 and 4 in W.P.No.1741 of 2015 are entitled for the return of the movables and immovables, only based on their allegation that they have not been maintained by the petitioner in W.P.No.1741 of 2015 ? Though the petitioner in W.P.No.1741 of 2015 claimed that the Power of Attorney was executed in his favour, the Power of Attorney does not authorise him to sell any particular property, whereas, it only states the power deed for purchase and sell on behalf of the father.

17. Be that as it may, even presuming that there is a Power of Attorney giving power to sell a specific property, whether it would amount to a transfer to come within the purview of Section 23 of the MWPSA Act. The Power of Attorney is only a creation of title holder, whereby, the principal authorises the agent to do the acts specified therein, which even executed, will be binding on the principal. The Power of Attorney is also revocable and terminable at any time, unless it is an irrevocable Power of Attorney in the manner known to law. It has been held by the Hon'ble Apex Court in Suraj Lamp & Industries (P) Ltd. V. State of Haryana, (2012) 1 SCC 656 that the Power of Attorney is not a document of conveyance, but it is only a document of convenience.

18. In the case on hand, the third respondent in W.P.No.1741 of 2015/father had specifically denied the execution of any Power of Attorney in favour of his son/the petitioner in W.P.No.1741 of 2015, whereas, the petitioner claims that there is a Power of Attorney in his favour. Even presuming that the Power of Attorney was executed by the father, it will not confer any right or title or interest in any immovable property. Any immovable property can be conveyed only by a deed of conveyance (registered sale deed) after paying appropriate stamp duty and registration charges. Therefore, the Power of Attorney cannot be recognized as a mode of transfer of immovable property. As stated earlier, the document produced by the petitioner in W.P.No.1741 of 2015 also does not contain any description of the property. It is the claim of the said petitioner that he had executed an unregistered agreement to sell. The agreement to sell also will not confer any right, title, interest in an immovable property, except to the limited right given under Section 53-A of the Transfer of Property Act, 1882, which is part performance of the contract.

19. As mentioned earlier, the agreement also finds a clause that the prospective purchaser/agreement holder was put in possession even on the date of execution of the agreement to sell. In the light of the above, when there is no 'transfer' of any property by way of gift or otherwise as required by the MWPSA Act, it is not open to the third respondent/father to invoke Section 23 of the said Act to seek for return of movable and immovable properties.

20. Admittedly, there seems to be a deed of settlement in favour of the petitioner in the year 2006, which is registered as document No.954/2006. The very Act came into force on 31.12.2007. As per Section 23 of the MWPSA Act, any 'transfer' only after the commencement of the Act would render it void subject to the conditions. Therefore, the gift deed executed in favour of the petitioner prior to the commencement of the Act

cannot be challenged.

21. Just before filing of the petition/application before the first respondent/the Chief Officer of the Tribunal, the third and fourth respondents/parents also have executed a gift deed on 11.09.2014 in favour of their daughter/eighth respondent in W.P.No.27902 of 2018. After executing the gift deed in favour of the daughter, this complaint has been filed by the parents. If at all Section 23 of the MWPSA Act has to be made applicable, it can only be applied to the transaction dated 11.09.2014, that is, the gift deed executed by the parents in favour of the daughter. This is because as per Section 2 of the MWPSA Act, "children" includes son, daughter, grandson and granddaughter.

22. As referred to earlier, there had been interim orders granted by this Court at the time of admission and as early as on 20.09.2018, the parents were put back in possession of the property and the Village Administrative Officer also has issued a possession certificate dated 06.10.2018. It is also admitted that a suit in O.S.No.128 of 2007 on the file of District Munsif Court has been filed by one P.Krishnan.

23. The petitioner in W.P.No.27902 of 2018 along with one Manoharan had filed a suit for specific performance in O.S.No.167 of 2015 on the file of the District Court, Namakkal, for the relief of specific performance and injunction. However, pursuant to the interim order of this Court, the possession has been put back with the father/third respondent in W.P.No.1741 of 2015.

24. As the petitioner in W.P.No.27902/2018 has rightly moved the civil court for appropriate relief, it is open to him to proceed with the same in the manner known to law. The relief sought for by him in this writ petition is only for a Mandamus forbearing the respondents police officials not to take forcible possession. Since the possession has already been taken, nothing further remains to be decided in the said writ petition in W.P.No.27902/2018. It is open to them to proceed with the suit, which has already been filed, in the manner known to law.

25. As discussed earlier, in the absence of any transfer of property, the question of putting back the third and fourth respondents in possession of the property, after declaring the transfer of property as void does not arise.

26. To sum up,

(i) The parents/third and fourth respondents have already declined the maintenance from the petitioner. Therefore, they may not be entitled for any maintenance.

(ii) In the absence of transfer of property, the invocation of Section 23 of the MWPSC Act is not permissible. Any other transaction or transfer of any property by them after the commencement of the said Act may be considered at their instance.

(iii) As the possession has been taken away from the agreement holders pending the writ petition and the senior citizens have been put back in possession of the property, the same shall continue with them.

(iv) It is open to the agreement holders to proceed with the suit and take appropriate action, subject to the result of the suit in the manner known to law.

(v) The learned District Judge, Namakkal, before whom the suit in O.S.No.167 of 2015 is pending shall try the same uninfluenced by any of the findings given in this order and dispose of the suit in a time bound manner, not later than six months from the date of receipt of a copy of this order.

27. With the above directions and observations, both the writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Namakkal District.

1a.The District Judge,
Namakkal.

2. The Superintendent of Police,
Namakkal, Namakkal District.

3. The Chief Officer,
Parents and Senior Citizen Maintenance
cum Welfare Tribunal-cum-
Revenue Divisional Officer,
Tiruchengode,
Namakkal District.

4. The Deputy Superintendent of Police,
Thiruchengode,
Thiruchengode Taluk,
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5. The Inspector of Police,
Mallasamudram Police Station,
Thiruchengode Taluk,
Namakkal District-637 503.

6. The Sub Inspector of Police,
Mallasamudram Police Station,
Thiruchengode Taluk,
Namakkal District-637 503.

+1cc to M/s.Jenasenan, Advocate sr.no.6985
+1cc to P.Gajendra Babu, Advocate sr.no.6984
+1cc to M/s.C.Jagadish, Advocate sr.no.7930

W.P.Nos.1741 of 2015 &
27902 of 2018

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