

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE C.V.KARTHIKEYAN

WP.No.25050 of 2019

and

WMP.No.24627 of 2019

A.C.Suresh Babu

.. Petitioner

- Vs -

1. The District Collector,
O/o.Collectrate,
Thiruvallur.
2. The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
Ambattur.
3. The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
Central Chennai Division,
Park Road, Anna Nagar West Exten.,
Chennai-600 101.
4. A.N.Chandrasekaran
5. Sumathi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records from the 1st respondent pertaining to the proceedings Na.Ka.1279/A1/2015 dated 16.10.2015, which confirms the order of the second respondent in proceedings No.Mu.Mu.223/2014/A5 dated 30.01.2015 and quash the same.

For Petitioner : Mr.T.S.N.Prabhakaran
For Respondents : Mr.Inbanathan
for R1 to R3
Mr.M.Mimavanth for R4

O R D E R

This writ petition has been filed in the nature of Certiorari, to call for the records pertaining to the

proceedings Na.Ka.1279/A1/2015 dated 16.10.2015, which confirmed the order of the second respondent in proceedings No.Mu.Mu.223/2014/A5 dated 30.01.2015 and quash the same.

2. Heard Mr.T.S.N.Prabhakaran, learned counsel appearing for the petitioner, Mr.N.Inbanathan, learned Additional Government Pleader appearing for the first, second and third respondents and Mr.M.Mimavanth, learned counsel appearing for the fourth respondent.

3. The entire writ petition surrounds the orders passed under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The object of the Act is as follows:-

"It is very essential to provide a dignified special secured and a happy living to our aged parents and dream of an old age of the same quality for our self. After all old aging is not a disability but a natural happening. Elders are the only possible bridge between the past and the present. We always have some wisdom to imbibe from them. The parent who gave us birth and the relatives under whose shadow we nurtured, groomed and flourished, have become the burden on the overburdened shoulders of resent generation, then what to do except, to have the stick of law to make them liable to fulfill their obligations which are basically the moral obligations."

4. The Act is a welfare Act, which is meant to appreciate and express gratitude for the care and love and affection showered by parents while bringing up their children and also to give a sense of duty to the Children that at some point in their life, they will also become old and become Senior Citizens and they must realise that they have a duty to maintain their aged parents.

5. The present case is a very unfortunate case. As is seen from the proceedings, my learned Predecessor (P.D.Audikesavalu, J) had tried his utmost best to bring about an amicable settlement between the parties. Unfortunately, Mediation failed. The report of the Mediator also forms part of the records. It is seen that during the proceedings before the Mediator, the writ petitioner sought time and since finality was not attained, the Mediators had referred the matter back to Court.

6. The facts of the case are as follows:-

The writ petitioner is the son and the fourth respondent is his father. The fifth respondent is his younger sister. The petitioner claims that his father worked as a driver in the

Transport Department and attained age of superannuation in the year 1998. The petitioner had been given sufficient Education and during the course of arguments and also in the affidavit so far as it has been perused by the Court, there has been no complaint that the petitioner was not denied basic education or denied opportunity to seek employment either in this country or abroad. The petitioner completed Engineering in the year 1995. The petitioner should realise that he qualified as an Engineer only after initial school education. During school education which starts right from nursery to higher secondary, while studying in the primary classes, without the help of his parents, he could not have gone to school, he could not have walked to reach the school, he could not have educated himself.

7. The learned counsel appearing for the petitioner stated during the course of arguments that the petitioner secured a very profitable employment in the United States of America. He was in the United States and in other countries like Singapore, Thailand and Malaysia between the years 1995 and 2013. The learned counsel for the petitioner complained that during that period of employment, the petitioner had sent money to the fourth respondent herein. I shall put it very clearly that sending money to the parents is not an act of concession. It was an option exercised by the petitioner and he cannot take advantage of the fact that he had sent money and thereafter, extract the same in the later life of his parents. That would only amount to issuance of loan to the father and not extending benefit to the parents. It is certainly not an appreciation of the sacrifices made by the parents. The arguments advanced by the learned counsel that since the petitioner had sent monies to the fourth respondent, there is no obligation on his part to maintain him in a later age, does not stand the scrutiny of this Court and I reject the same. I am also not going into the further reasons for the acrimonious relationship between the petitioner and the fourth respondent. So far as it could be discerned from the arguments advanced by the learned counsels there appears to be cases and counter cases filed by the two of them. They have also been initiated criminal complaints against each other. The petitioner should feel ashamed of such facts. Finally, all these led to the filing of a petition, before the appropriate authority under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. This application was filed by the fourth respondent, but as seen from the orders passed by the authority viz., the Sub Divisional Magistrate-cum-Revenue Divisional Officer, the order of Maintenance was granted not only to the fourth respondent, but also to the mother of the petitioner. To the limited extent that the petitioner has not impleaded his mother as a respondent in the writ petition, this Court drops a few words of appreciation on the petitioner. It would have been very

shocking if the mother had also been impleaded as a respondent. But for reasons best known to the petitioner, he has however, substituted the sister for his mother, as fifth respondent herein.

8. Be that as it may, it is complained by the learned counsel for the petitioner that the third respondent viz., The Sub Divisional Magistrate-cum-Revenue Division Officer has an obligation to examine as to whether any application is worth being examined and whether the application is bona fide and whether the applicant had means to look after himself. It is complained that no such enquiry was made. It is stated that enquiry in this regard should be in the form of recording of statements. The learned counsel for the petitioner did not thankfully extend that line of argument to state that such statement should be subjected to cross-examination. At any rate, a duty is cast on the third respondent viz., The Sub-Divisional Magistrate-cum-Revenue Divisional Officer, to undertake a prima facie examination of the facts.

9. A perusal of the order of the third respondent shows that she had issued notice for appearance of the fourth respondent, who appeared along with his wife and daughter, presumably, the fifth respondent herein. In the order dated 30.01.2015 in Mu.Mu.223/2014/A5, it has been very specifically stated by the Authority that "ஆஜராகி தனது வாக்குமூலத்தை பதிவு செய்துள்ளார்.". Thereafter, the petitioner appeared before the said Authority on 10.11.2014. It is further stated in the order that "அன்று விசாரணைக்கு ஆஜராகி வாக்குமூலம் அளித்துள்ளார்.". Therefore, it is clear that the petitioner has also given his statement before the said authority. This Court, in a judicial Review, under Art.226 of the Constitution of India, has to examine whether the procedure was adopted by the Authorities as laid down in the provisions of the Act. The procedure had been followed. After recording statement, inquiry was also conducted. The statements made were also extracted in the order and analysed. Finally, the second respondent had directed that the petitioner should pay a sum of Rs.10,000/- as maintenance amount not only for the fourth respondent, but also for his wife. This order was passed in the year 2015. Payment of a total Rs.10,000/- for two parents a month would mean that the petitioner was actually paying a total sum of Rs.333.34/- to both his parents per day, which would also indicate that he has been called upon to pay sum of Rs.166.67/- each to his father and mother per day. It is a mute question as to whether, taking into account the medical expenses and other old age requirements, a person can maintain himself or herself with a sum of Rs.166.67/- every day.

10. The learned counsel for the petitioner states that the fourth respondent is a person of abundant means and in this

regard, he has produced before this Court a statement, which shows that there are Fixed Deposits for an amount of Rs.27,00,000/- in the account of the fourth respondent. This has been specifically denied by the fourth respondent, who is present in Court. That was the amount, which the fourth respondent has specifically given up and it was in lieu of such renunciation that the sum of Rs.10,000/- fixed as maintenance by the authorities.

11. While examining the facts in this writ petition, this Court is not prepared to enter into a discussion and examination of the personal wealth of either the petitioner or the fourth respondent. This Court is examining whether the order passed can be subjected to judicial review and be impugned or not. While examining that aspect, the first principle, which has to be examined is whether Principle of Natural Justice has been followed. This would necessitate examination whether opportunity was granted. If opportunity was granted, whether there was an element of bias on the part of the Authority will have to be examined. If there is no bias what remains to be examined is whether the order has been passed with reasons.

12. The learned counsel for the petitioner has complained that the impugned order passed by the first respondent viz., The District Magistrate-cum-District Collector, Thiruvallur suffers from each of reasons for the order. The order passed has been perused by me. It is an appeal filed by the petitioner herein. Therefore, he cannot complaint that notice has not been issued to him and that he was not heard. It is stated in the order that the enquiry was conducted on 31.03.2015 at 5.00.p.m. It was stated that both the petitioner and the respondents were present during the hearings. It is also recorded that the various Fixed Deposits in Tamil Nadu Power Finance Corporation to a sum of Rs.20,00,000/- and another Fixed Deposit for a sum of Rs.19,00,000/- in Indian Overseas Bank, Anna Nagar Town Branch (which are the fixed deposits mentioned in para 10 supra) had been admitted as belonging to the present writ petitioner. It is also stated that if claim for this amount of Rs.39,00,000/- is given up by the fourth respondent/father, then the petitioner/son would condescend to pay a sum of Rs.10,000/- per month as maintenance.

13. I would find fault on the first respondent viz., The District Magistrate/Collector of Thiruvallur for having accepted the gratuitous offer of the petitioner. The authority is expected to pass an order on appreciation of facts and the order cannot be passed on concession. At any rate, it is to be appreciated that some good sense prevailed on the first respondent/Collector in that he had atleast accepted the concession of the petitioner and had the order of payment of

Rs.10,000/- as passed by the second respondent as maintenance to the father and mother.

14. It is also seen that the petitioner had also filed a Civil Suit in CS.No.95 of 2015 and the records reveal that the fourth respondent had agreed to give up his claim on payment of Rs.1,62,680/- and the petitioner had agreed to pay a sum of Rs.10,000/- as maintenance.

15. It has to be observed that the Parliament has passed the Act under consideration not to get gratuitous payments from sons/daughters, but rather to enforce the obligation to maintain their parents. It is a matter of shame that Parliament had to pass a legislation in this regard.

16. It is also seen that the order passed by the first respondent is dated 16.10.2015 and as on date nearly 52 months have gone by. The learned Additional Government Pleader while relying on the proceedings of the Revenue Divisional Officer, has stated that the petitioner had paid the said maintenance amount only for 3 months out of the 52 months as on date. This fact disturbs my conscience and forces me to dismiss the writ petition with costs of Rs.25,000/- to be paid by the petitioner. The petitioner is directed to pay the sum of Rs.10,000/- as maintenance from the date of the original order i.e., 30.01.2015. Accordingly, the petitioner is directed to comply with the order of the second respondent and pay a sum of Rs.10,000/- to his parents as maintenance from the date of the original order viz., 30.01.2015 till the date, which has to be complied with, on or before 31.03.2020 and thereafter, the monthly payment of Rs.10,000/- has also to be paid by the petitioner to his parents. The fourth respondent is permitted to enforce it in a manner known to law.

17. With respect to costs of Rs.25,000/- imposed, it has to be complied on or before 28.02.2020 in the following manner. The petitioner is directed to pay a sum of Rs.10,000/- by way of Demand Draft to The Dean, Adyar Cancer Institute (WIA) Extn., Canal Bank Road, Adyar, Chennai and after sum of Rs.5,000/- to T.T.Ranganathan Clinical Research Foundation, Chennai and another sum of Rs.10,000/- to Stanley Medical College and Hospital, Chennai towards the treatment of poor patients.

18. The District Collector/first respondent is directed to obtain a report from the said institutions and ensure that the costs as aforesaid has been paid by the petitioner. If it not paid, the first respondent is directed to recover the costs of Rs.25,000/- from the petitioner under the provision of the Revenue Recovery Act.

19. With the above directions, this writ petition is dismissed with costs of Rs.25,000/- to be paid as aforesaid. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

kmi

To

1. The District Collector,
O/o.Collectrate, Thiruvallur.
2. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer,
Ambattur.
3. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer,
Central Chennai Division, Park Road, Anna Nagar West Exten.,
Chennai-600 101.

+1 CC to Govt. Pleader sr 9515.

+1 CC to Mr.G. Purushothaman, Advocate sr 8998.

+2 CC to Mr.M.L. Rajesh, Advocate sr 9199, 9649.

WP.No.25050 of 2019

SJ(CO)
SP(11/02/2020)

सत्यमेव जयते

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