



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2020

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

W.P. (MD) .No.3259 of 2016

and

W.M.P. (MD) No.2846 of 2016

M.Shanmugam Pillai

.. Petitioner

Vs.

1. The District Collector,
District Collectorate Office,
Pudhukkottai District.

2. The Superintendent of Police,
Office of the Superintendent of Police,
Pudhukkottai District.

3.S.Thiyagarajan

4.T.Kala

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondent Nos.1 and 2 to protect the petitioner and his properties situated in S.Nos.196/1, 196/3A, 196/3B and 196/2 in Thurayoor Village, Pudhukkottai District and consequently direct respondents No.1 and 2 to ensure the life and dwelling house property and lands of the petitioner are protected as per Section 20 of Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009.

For Petitioner : Mr.Ajay Justice Shaw
for M/s.T.Lajapathy Roy

For Respondents : Mr.A.Muthukaruppan
1 and 2 Additional Government Pleader

For Respondents : Mr.A.K.Manickam
3 and 4

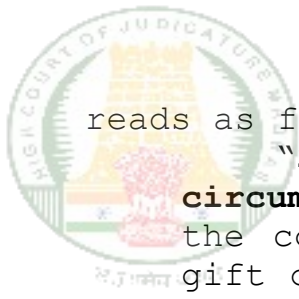


ORDER

This Writ Petition is filed for issuing a Writ of Mandamus directing the respondent Nos.1 and 2 to protect the petitioner and his properties situated in S.Nos.196/1, 196/3A, 196/3B and 196/2 in Thurayoor Village, Pudhukkottai District and consequently direct respondents No.1 and 2 to ensure the life and dwelling house property and lands of the petitioner are protected as per Section 20 of Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009.

2.It is not in dispute that the properties referred to in this petition are the properties of petitioner who is 76 years old. It is also not in dispute that the petitioner had two sons and a daughter. All the children of the petitioner are married. The petitioner admit in the affidavit filed in support of this petition that the properties are his ancestral properties and that the properties were inherited from his father. When the petitioner inherited the property from this father and if it is true that the properties were acquired by his father by way of self-acquisition, the properties will be the absolute property of the petitioner if the petitioner's father died after 1956 i.e., after the advent of Hindu Succession Act, 1956. It is stated by the petitioner that the petitioner's elder son namely the third respondent in the Writ Petition started threatening him with dire consequences if he does not transfer the entire property in the name of third respondent by way of gift or settlement. It is further stated that the petitioner refused to give such gift as another son will have to be given due share from the properties. It is under duress, the petitioner states that he executed a gift settlement deed in favour of third respondent in respect of the land and properties in Survey Nos.196/1, 196/3A, 196/3B and 196/2 in Thurayoor Village, Pudhukkottai District. It is the case of petitioner that after the execution of the settlement on 10.11.2010, the third respondent had thrown the petitioner and his wife out of the house. Despite the petitioner begged for shelter, it is stated that the third respondent had mercilessly driven them out. It is in the said circumstances, the petitioner was constrained to submit a representation to the respondents 1 and 2 to take necessary action against the third respondent and to restore the property to them. Since no action was taken the petitioner has approached this Court.

3.This Court after hearing the Counsels appearing on either side directed the parties to appear before this Court. The petitioner as well as his two sons and daughter are present today. There is no compromise despite an attempt. The petitioner is given some protection under the Maintenance and Welfare of Parents and Senior Citizens Act, 2009. Section 23 of the Act



reads as follows:

"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.

4. The rule empowers the District Collector to act as a Tribunal and to give relief. The learned Counsel appearing for the third respondent submitted that the gift deed in the present case is unconditional and that therefore, the transfer cannot be questioned or treated as void in terms of Section 23 of the Act. In the present case, the gift deed is in respect of substantial properties of the petitioner and it is gratuitous. It is further stated that the petitioner has also settled some of the properties in favour of his second son and that therefore, the provisions of the Act cannot be invoked as against the third respondent to invalidate the gift settlement deed in his favour. The petitioner's case has to be viewed having regard to the object behind the Act, namely, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Act was introduced to provide a more effective provisions for Maintenance and Welfare of the Parents and Senior Citizens guaranteed and recognised under the Constitution. In the preamble and in the statement of objects and reasons, the traditional norms and values of the Indian society for providing care for the elderly is quoted. Due to withering of joint family system, a large number of elderly has not been looked after by their family. Since many elder persons, particularly, widowed women are now forced to spend their twilight years all alone and they are exposed to emotional neglect due to lack of



physical and financial support, the central Government enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2009. This enactment is, therefore, a welfare legislation intended to protect the senior citizens during their last years. The State Government has also made an enactment which is in *pari materia* with the Central Act. Having regard to the objectives of the enactments and the admitted fact that the petitioner has given almost all the properties in favour of his two children, the object of the Act has to be seen while interpreting the provisions. The purpose of the Act is to protect the parents when they have parted away with their property with the hope that they will be maintained by their children or the persons who are taking the property from him. Even if the document does not contain a recital that the gift is subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor when the parents execute a settlement or gift giving all their property in favour of their children without retaining anything substantially to maintain themselves they are entitled to file a petition before the District Collector to render the document void. When this interpretation is in tune with the object of enactment, the petitioner is permitted to prosecute the application filed by the petitioner before the District Collector and the District Collector is directed to pass appropriate orders on merits keeping in mind the interpretation of this Court given in this order after hearing the children of the petitioner and giving them sufficient opportunity within a period of four weeks from the date of receipt of a copy of this order.

5. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

To

1. The District Collector,
District Collector Office,
Pudhukkottai District.



2. The Superintendent of Police,
Office of the Superintendent of Police,
Pudhukkottai District.

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-9108[F] dated
28/02/2020)

+1 CC to M/s.A.K.MANICKAM, Advocate (SR-9359[F] dated
28/02/2020)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9571[F] dated
02/03/2020)

ORDER MADE IN
W.P. (MD) .No.3259 of 2016
27.02.2020

SRM

AE (16.03.2020) 5P 6C