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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P. No.2360 of 2020

and

WMP. No.2758 of 2020

Dhanraj

.....Petitioner

vs.

1 The District Collector
Krishnagiri District, Krishnagiri.

2 The Revenue Divisional Officer,
Hosur, Krishnagiri District.

3 Rajkumar

4 Venkatesh Babu

5 Dhanalakshmi

.....Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue an order or direction or Writ and in particular Writ in the nature of a Writ of Certiorarified Mandamus Calling for the records relating to the impugned proceedings dated 22.11.2019 passed in Pa.Mu. 13021/ 2019/ J2 on the file of the 1st Respondent herein and proceedings dated 01.03.2019 passed in Mu.Mu. 242/ 2019/ A1 on the file of the 2nd Respondent herein quash the same and consequently direct the Respondents 1 and 2 herein to consider the claim of the Petitioner as per Section 23 of The Maintenance and Welfare of Parents and Senior Citizens Act 2007.

For Petitioner : Mr. K.Govi Ganesan

For Respondents : Mrs.C.Sangamithirai,
for R1 & R2
Special Government Pleader
Mr.Gowthaman, for R5



ORDER

The petitioner has filed this petition seeking to quash the impugned proceedings dated 22.11.2019 on the file of the 1st Respondent herein and proceedings dated 01.03.2019 on the file of the 2nd Respondent herein and to direct the Respondents 1 and 2 herein to consider the claim of the Petitioner as per Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007.

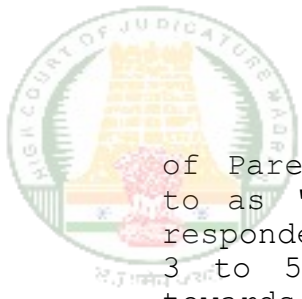
2. The facts of the case are as follows:

The petitioner is the retired Deputy Superintendent of Police and he retired from service during the year 1997. The petitioner was survived with two sons and one daughter i.e. respondents 4 to 6 herein. The petitioner's wife died during the year 2008. In the year 1980, the petitioner purchased a plot bearing No.320, S.F.No.709 Avalapalli Village, Hosur Taluk, Krishnagiri District measuring an extent of 2177 ½ sq. ft. The 5th respondent has undertaken to take care of the petitioner and hence, the petitioner settled the above said plot in favour of the 5th respondent vide settlement deed dated 15.02.2007 and registered as document No.3085/2007. Subsequently, the petitioner constructed a house, for which, he spend for a sum of Rs.16,00,000/-.

3. While being so, the petitioner suffered from Cancer during the year 2017. Therefore, the petitioner requested to repay the amount from the 5th respondent. But, the 5th respondent and her husband quarreled with the petitioner and demanded back the documents. The petitioner has lodged a complaint before the HUDCO Police Station and a case has been registered in Crime No.392/2018. Therefore, the petitioner cancelled the settlement deed dated 15.02.2007 and executed another settlement deed vide document No.16879/2018 settling the above said plot into three equal shares to his children viz. Respondents 3 to 5. But the 5th respondent refused to accept the same and filed a writ petition W.P.No.34125/2018 and this Court vide order dated 21.12.2018 allowed the writ petition on the ground of unilateral cancellation of settlement deed is not permissible. No notice was issued to the petitioner in the said writ petition.

4. Taking advantage of the said order, the 5th respondent settled the said plot in favour of her husband vide settlement deed dated 04.01.2019. On 13.01.2019, the 5th respondent and her husband threatened the petitioner with hooligans and thrown away the petitioner from his house, for which, a case in Cr.No.23/2019 was also registered against them.

5. The petitioner filed an application before the second respondent under the provisions of the Maintenance and Welfare



of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act'). After hearing all the parties, the second respondent vide his order dated 01.03.2019 directed respondents 3 to 5 to pay a sum of Rs.10,000/- each to the petitioner towards monthly maintenance and no finding and decision was arrived regarding the settlement deed. Hence, the petitioner filed an appeal dated 14.03.2019 before the first respondent. The first respondent, vide proceedings dated 22.11.2019, dismissed the appeal. With no other option, the petitioner filed the present writ petition before this Court seeking to quash the orders passed by the respondents 1 & 2.

6. The learned counsel for the petitioner submitted that the petitioner is aged about 80 years and he is struggling with cancer. The 3rd and 4th respondents are paying the maintenance to the petitioner regularly, but the 5th respondent has not paid the maintenance amount from 01.03.2019 to till date. Instead of strictly directing the 5th respondent to pay the maintenance to the petitioner, the first respondent herein directed the petitioner to approach the second respondent in this aspect. It will cause great hardship to the petitioner. The 5th respondent did not even attend the enquiry before the first respondent. The first and second respondent, without considering the facts and circumstances of the case, rejected the claim made by the petitioner, which resulted in great injustice to the petitioner. Hence, the learned counsel seeks to quash the proceedings passed the respondents 1 & 2 and allow this petition.

7. The learned Special Government Pleader appearing on behalf of the respondents submitted that based on the petitioner's representation, the respondents conducted enquiry and the enquiry revealed that there is dispute between the petitioner and his legal heirs/respondents 3 to 5 from the past many years and it came to know that the respondents 3 to 5 have not taken care of their father. Hence, the second respondent directed them to pay the monthly maintenance to the petitioner. The learned counsel further submitted that the house and house site requested by the petitioner was already executed a gift deed by himself to the 5th respondent. Now there is provision available to resume back the house and plot. It is up to the petitioner to seek redress only in the Court and not before this Court. Hence, the learned counsel seeks to dismiss the writ petition.

8. The learned counsel for the 5th respondent submitted that he has no instructions from the 5th respondent.

9. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondents and perused the materials available on record.



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10. The petitioner is the aged father and the respondents 3 to 5 are his sons and daughter respectively. The petitioner is suffering from cancer. The petitioner has executed a settlement deed in respect of the subject house and vacant plot in favour of the 5th respondent long back vide settlement deed dated 15.02.2007. After obtaining the settlement deed, the 5th respondent had abandoned the petitioner and even not provided him with the basic amenities, which resulted in the lodging of a complaint by the petitioner under the Act, which was rejected by respondents 1 and 2, while directing respondents 3 to 5 to pay the maintenance in a sum of Rs.10,000/- each per month to the petitioner. Challenging the said dismissal, the petitioner filed an appeal before the first respondent, who negatived the appeal and directed the respondents 3 to 5 to continue to pay the maintenance. Aggrieved by the said order, the present petition has been preferred.

11. It has been fairly submitted that the respondent 3 and 4 have been regularly paying the maintenance to the petitioner, but the 5th respondent is irregular. Therefore, the petitioner sought to cancel the settlement deed. Being the sons and daughter, the respondents 3 to 5 are duty bound to take care of their father. As the father has substantially suffered for a long period, it is the duty of the children to take care of him. The property in question is not an ancestral property, in which the petitioner can claim any legal right. The first respondent, without considering the facts, dismissed the appeal.

12. In the facts and circumstances as aforesaid, this Court is inclined to dispose of the writ petition with the following directions :-

(a) The 5th respondent is directed to pay the monthly maintenance amount of Rs.10,000/- to the petitioner or or before the 5th of every English calendar month;

(b) The petitioner is directed to communicate a copy of the aforesaid order to the 5th respondent through Registered Post with Acknowledgement Due;

(c) On receipt of a copy of the order, the 5th respondent is directed to pay the arrears of maintenance from 1.3.2019 till date to the petitioner within a period of one week from the date of receipt of a copy of the order; and

(d) If the 5th respondent pays the maintenance amount regularly, respondents 1 & 2 shall not evict the 5th respondent from the premises and failure to pay the



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amount of Rs.10,000/-every month, the petitioner shall communicate the said fact to respondents 1 and 2 and on receipt of the said communication, respondents 1 and 2 are directed not only to evict the 5th respondent from the subject property, but also cancel the settlement deed granted in favour of the 5th respondent and hand over possession of the house and house site to the petitioner and also register a case under the Act against the 5th respondent.

13. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

14. Post this case on 11.02.2022 'for reporting compliance'.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

Rli

To

1 The District Collector
Krishnagiri District, Krishnagiri.

2 The Revenue Divisional Officer,
Hosur, Krishnagiri District.

+1cc to Mr. K.Govi Ganesan, Advocate, S.R.No.5440

W.P. No.2360 of 2020
and
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RP[co]
NSK 09/02/2022