



WEB COPY

W.A(MD)No.502 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2022

CORAM:

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

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.502 of 2022

and

C.M.P (MD)No.4571 of 2022

- 1.Gurupakiyam
- 2.P.Vigneshwaran
- 3.P.Subash Saravanan
- 4.P.Maheswaran

... Appellants/third party

Vs.

- 1.Pitchaiammal ... 1st Respondent/writ petitioner
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The Assistant Commissioner of Police,
Thallakulam Division,
Madurai.
- 4.The Inspector of Police,
Thallakulam Police Station,
Madurai. ... Respondents 2 to 4/Respondents 1 to 3

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P(MD)No.5513 of 2022,dated 29.03.2022.

Prayer in WP(MD). 5513/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the 1st respondent take necessary steps to handover the possession to writ petitioner D.No.7, Jamburapuram Main road, Goripalayam, Madurai-2 as per rule 21 of the Maintenance and Welfare of Parents and Senior Citizens rule, 2009 based on petitioner representation dated 03.03.2022 and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.



For Appellants :Mr.S.Siva Ilayaraja
For R-1 :Mr.J.Gunaseelan Muthiah
For R-2 to R-4 :Mr.S.P.Maharajan,
Special Government Pleader

JUDGMENT

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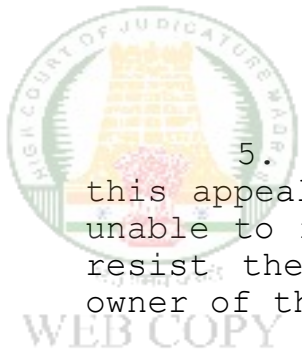
(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This writ appeal is preferred by third parties to the writ petition in W.P(MD)No.5513 of 2022, challenging the order passed in the writ petition, dated 29.03.2022.

2. The writ petitioner is the mother-in-law of the first appellant. The appellants 2 to 4 are the children of the first appellant. The writ petitioner has filed an application before Revenue Divisional Officer, for getting possession of her property by resorting to the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007(hereinafter referred to as 'the Act'). The Revenue Divisional Officer, Madurai, by an order dated 12.11.2021, after hearing the writ petitioner and her son, directed the writ petitioner's son, to vacate the house belonged to the writ petitioner and handover possession to her, within a period of three months. Despite the specific order passed by the Revenue Divisional Officer and the fact that no appeal had been filed before District Collector under Section 16 of the Act, challenging the order the Revenue Divisional Officer, the writ petitioner's son failed to handover possession of the house to the writ petitioner. This propelled the writ petitioner to file a writ petition for issuance of a Writ of Mandamus, directing the first respondent Commissioner of Police, to take necessary steps to handover possession of the premises bearing Door No.7, Jamburapuram Main Road, Goripalayam, Madurai-2, to the writ petitioner, as per Rule 21 of the Rules framed under the Act.

3. After considering the order passed by the Revenue Divisional Officer and the provisions of the Act and the Rules framed thereunder, the learned single Judge allowed the writ petition with a specific direction to the first respondent in the writ petition to take necessary steps to handover possession of the property bearing Door No.7, Jamburapuram Main Road, Goripalayam, Madurai-2, by vacating the writ petitioner's son and daughter-in-law from the said premises, within a period of four weeks from the date of receipt of a copy of the order.

4. Challenging the said order passed by the learned single Judge in the writ petition, the appellants have preferred this writ appeal after getting leave of this Court on the ground that they are living in the upstairs portion and that they had been asked to vacate the premises, without being made them as parties to the writ petition.



5. Though permission was granted to the appellants to file this appeal without deciding the petitioners' right, this Court is unable to find any independent right in favour of the appellants to resist the application filed by the writ petitioner, who is the owner of the property, which is not disputed.

6. It is an admitted fact that the property namely the dwelling house in respect of which proceedings were initiated by the writ petitioner, belongs to the writ petitioner. In the complaint given to Revenue Divisional Officer, the writ petitioner has stated that she was driven out from the residence by her son and daughter-in-law.

7. Even before this Court, the fact that the property belongs to the writ petitioner is not disputed. However, the writ petitioner's son wanted some time to move out from the residence as he does not own another house. Hence, granting three more months time to the writ petitioner's son to handover possession, an order was passed. The writ petition is only to direct the official respondents to execute the order of the Revenue Divisional Officer in terms of the Rules framed under the Act.

8. In such circumstances, when the appellants have no independent right, their case as that they are residing in the upstairs portion independently and the first appellant is not in good terms with her husband cannot be countenanced. As a matter of fact, in the affidavit filed in support of the stay petition, the appellants have stated that they have filed a suit in O.S.No.73 of 2022 on the file of the Principal District Munsif, Madurai Town.

9. It is to be noted that under Section 27 of the Act, the civil Court's jurisdiction is barred and the appellants cannot maintain the suit without an independent right. This Court is unable to accept the contentions of the learned counsel appearing for the appellants as having merits.

10. In view of the above, the order of the learned single Judge is in order and this appeal cannot be entertained as the appellants have no independent right in respect of the premises. Even in the suit, the first appellant has stated that she believed that the property would be given to her husband. In such circumstances, this writ appeal is liable to be dismissed as devoid of merits.

11. In the result, this writ appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

12. The appellants now admit that they are in the first floor of the building. Though the appellants state that the writ
<https://hccservices.judges.gov.in/hccservices/> in the ground floor, the learned counsel appearing



for the first respondent/writ petitioner states that she had already been driven out from the house and she is literally in street.

13. The learned counsel appearing for the appellants though disputes the said allegation, the appellants cannot have any objection for the first respondent/writ petitioner being in possession of the ground floor of the premises.

14. Therefore, the respondents 2 to 4, are directed to ensure that the first respondent / writ petitioner is in possession of the ground floor of the premises. The respondents 2 to 4, shall take possession of the first floor from the appellants. The respondents shall give four weeks time to the appellants to vacate the first floor of the premises.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

Pm

To

1.The Commissioner of Police, Madurai City,
Madurai.

2.The Assistant Commissioner of Police,
Thallakulam Division, Madurai.

3.The Inspector of Police,
Thallakulam Police Station, Madurai.

+1 CC to M/s.J.GUNASEELANMUTHAIAH, Advocate (SR-24782[F] dated 09/06/2022)

+1 CC to M/s.SIVA ILAYARAJA, Advocate (SR-25378[F] dated 13/06/2022)

+1 CC to M/s.SPL GP (SR-25401[F] dated 13/06/2022)

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