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W.P.No.23829 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23829 of 2022

and

W.M.P.No.22812 of 2022

Mr.T.Vimalanathan

... Petitioner

Vs.

1.The District Collector,
Tiruvannamalai,
Tiruvannamalai District.

2.The Revenue Divisional Officer,
Tiruvannamalai,
Tiruvannamalai District.

3.The Sub Registrar,
Chengam,
Tiruvannamalai District.

4.Mr.Sambasivam

5.Mr.Arun Kumar

6.Mr.S.Durai

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the



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Order dated 29.07.2022 passed by the 1st respondent herein in Na.Ka.No.637/A4/2022 and quash the same.

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For Petitioner	: Mr.P.Balamurugan
For R1 to R3	: Mr.E.Sundaram Government Advocate
For R4	: Mr.T.Panchatsaran
For R5 & R6	: Mr.S.Muthumani

ORDER

The order dated 29.07.2022 passed by the District Collector under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is under challenge in the present writ petition.

2. The petitioner states that the 4th respondent Mr.Sambasivam is his and 5th respondent's grand father. The 4th respondent had executed a settlement deed in favour of the petitioner in respect of the property to an extent of 9.58 ½ acres. A settlement deed made in favour of the petitioner was challenged by the 4th respondent under the provisions of the Senior Citizen Act. The Revenue Divisional Officer conducted an enquiry and passed an order in proceedings dated 23.05.2022 stating that a civil suit was



instituted between the family members in O.S.No.33 of 2022 and therefore, the parties were granted liberty to resolve the issues before the Civil Court of Law.

3. The settlement deed executed in favour of the petitioner and the 5th respondent was under challenge under the Senior Citizen Act.

4. The 5th respondent also participated in the enquiry before the Revenue Divisional Officer. Since the Revenue Divisional Officer relegated the parties to approach the Civil Court of Law, the 4th respondent preferred an appeal before the District Collector. The District Collector conducted an enquiry and considered the statement of the petitioner as well as the respondents 4 and 5. The findings of the District Collector states that the petitioner and the 5th respondent are not maintaining the 4th respondent even after the settlement of the property. That apart, the 4th respondent is not residing with the petitioner as of now.

5. The learned counsel for the petitioner states that the petitioner never refused to provide maintenance to the 4th respondent and therefore, the cancellation of the Settlement deed made by the District Collector is



perverse.

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6. The District Collector considered the mitigating circumstances and also plight of the Senior citizen after settling a larger extent of his properties in favour of the petitioner and the 5th respondent, who are his grand sons.

7. This Court considered the purpose and object of the Senior Citizen Act, wherein, the statement of objects and reasons for the enactment was considered by the Parliament as under:

“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



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time-consuming as well as expensive. Hence, there is a need to have simple inexpensive and speedy provisions to claim maintenance for parents.”?

8. Let us consider the spirit of the Act, with reference to the purpose and object sought to be achieved.

9. Section 2(b) defines “Maintenance” includes provision for food, clothing, residence and medical attendance and treatment. Section 2(f) defines “Property” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property. Section 2(k) defines “Welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens. Section 3 provides Act to have overriding effect.

10. Therefore, it is not only providing food to the Senior Citizen, it must be ensured that they live in comfort, considering the status of the family. Mere providing food, shelter would be insufficient to comply with the object sought to be achieved under the Act. Such maintenance to be in commensuration with the family status and the status of the citizens and the



circumstances under which senior citizens are leading their livelihood. At the outset, mitigating circumstances are also to be considered to determine whether the senior citizen is entitled for the relief under the Act or not.

11. Section 4 denotes Maintenance of parents and Senior Citizens. Sub section 3 contemplates that “The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life”. Sub section 4 denotes “any person being a relative of a senior citizen and having sufficient means, shall maintain such senior citizen, provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen”. Sub section 4 includes class-2 legal heirs also under the Succession Act. Thus, the maintenance of the Senior Citizen does not stop with the class 1 legal heir and it is extended to the class 2 legal heirs also, if they are going to inherit the property of the senior citizen.

12. Sub section 3 is directly implicated with Article 21 of the Constitution of India i.e, Right to life. Article 21 of the Constitution guarantees protection of life and personal liberty. Protection of life includes provision for food, clothing, residence and medical attendance and treatment



as defined under section 2(b) of the Act.

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13. The spirit of Sub section 3 to section 4 is to be read in consonance with the guarantee provided under Article 21 of the Constitution of India. Sub section 3 states that it is the obligation of the children to maintain his or her parents extending to the needs of such parents either father or mother or both, as the case may be, so that such parent may lead a normal life. The word employed is “needs”. The needs of the Senior Citizen is to be ascertained with reference to the living standards of senior citizen and also based on the status of the family. Merely providing food or shelter to the senior citizen would be insufficient and it must be in commensuration with the family status and the living standards of the senior citizen. Further, sub section 3 provides guarantee for normal life. Therefore, such maintenance must be continuous, till the life time and thus, the object of the provisions are unambiguous that the senior citizen is to be maintained till their life time in consonance with the provisions of the Act.

14. Section 20 stipulates Medical support for senior citizens. Section 23 deals with transfer of property to be void in certain circumstances. Sub section 1 to section 23 reads that “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.”

15. The powers conferred under section 23 of the Act is to be read along with the duties and powers of the District Collector stipulated under Rule 20 framed under the Act. The rules are framed by virtue of the powers conferred under section 32 of the Act. Rule 20 (2)(i) mandates that it shall be the duty of the Collector to ensure that the lives and properties of the senior citizens of the District are protected and they are able to live with security and dignity. Thus, the District Collector is *Parens Patriae* (Legal Protector) of the senior citizen to protect the life and property of the senior citizen and they are able to live with security and dignity. The wider powers conferred on the District Collector is to be exercised in all circumstances, when the senior citizen is in need of any protection or assistance. The powers conferred on



the District Collector under the Rules shall be exercised in all circumstances where right to life of the senior citizen is infringed or under threat coercion or otherwise.

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16. Regarding the conditions stipulated under Section 23 of the Senior Citizen Act, the scope may not be restricted for the purpose of rejecting the relief to the senior citizen as the purpose and object of the Act is to be considered.

17. Section 23(1) of the Senior Citizen Act contemplates “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”.

18. With reference to the above provision, the Kerala High Court also decided the issue in the case of **Radhamani & Others vs. The State of**



Kerala, represented by The Secretary, Revenue Department & Others

reported in **CDJ 2015 Ker HC 1019** and the relevant paragraphs are as under:

“10. Section 23 of the Senior Citizens Act, 2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing relationship of those individuals. Transferee cannot disown his own action of love and affection after



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the transfer comes into effect. The transfer itself being based on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the deed in same manner, he was taken care prior to execution of the deed.

11. It is to be noted that the special scheme in terms of Senior Citizens Act, 2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable



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as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.”

19. Considering the scope of section 23(1) of the Act, the Senior Citizen is entitled to seek the relief of declaration to declare a settlement deed as null and void on the ground of fraud or coercion or undue influence and section 23(1) of the Act is a deeming provision, which provides that in the event of breach of promise if any made, then the transfer of property shall be deemed to have been made by fraud or coercion. It is sufficient, if the son or daughter of the Senior Citizen breached the promise given to their parents at the time of execution of settlement or gift deed or otherwise.

20. Section 3 of the Maintenance And Welfare of Parents and Senior Citizens Act, 2007 enumerates that “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”



21. Section 4(3) of the Act stipulates about the obligation of the children to maintain his or her parents that extends to the needs of such parents either father or mother or both, so that they can lead a normal life. Thus, the object of the act is to be protected and merely because the senior citizen has not proceeded against other children, the relief sought for by the senior citizen cannot be refused.

22. In view of the legal position stated above, the Revenue Divisional Officer passed an order relegating the parties to approach the Civil Court of law, which is not in consonance with the spirit of the Senior Citizen Act as well as the object sought to be achieved. However, the District Collector has considered the statement of the parties independently and formed an opinion that the settlement deed executed in favour of the petitioner and the 5th respondent was based on love and affection and subsequently, the 4th respondent is living separately. That being the factum, considered by the District Collector, this Court do not find any infirmity or perversity in respect of the orders passed.



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23. As discussed above, the beneficial legislation is to be interpreted in a pragmatic manner so as to ensure that the relief is mandated to the senior citizen considering their old age and other infirmities. Larger extent of the property has been settled in favour of the petitioner and the 5th respondent, who are grand sons, subsequently the senior citizen filed a complaint before the Collector. The Revenue Divisional Officer relegated the parties to approach the competent Civil Court of Law, which is not in accordance with the Senior Citizen Act, but the Collector reversed the order passed by the Revenue Divisional Officer, which is in accordance with the provisions of the Act and thus, the petitioner has not established any acceptable ground for the purpose of interfering with the orders passed by the District Collector.

24. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.07.2023

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Index : Yes
Neutral Citation : Yes
Speaking order



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S.M.SUBRAMANIAM, J.

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