



W.P.No. 25887 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 25887 of 2022
and
W.M.P.No. 31730 of 2022

Q. Nizamuddin ... Petitioner

Vs

1. State of Tamil Nadu
Represented by Secretary to the Government,
Revenue Department,
St. George Fort,
Chennai – 600 001.

2. Revenue Divisional Officer,
Central Chennai Division,
Officer of Revenue Divisional Office,
Chennai.

3. I.M. Quthrothulla

4. Assistant Commissioner of Police,
Office of Assistant Commissioner,
F2, Egmore, Chennai – 600 008.

5. A.Ehtasham ... Respondents

(R5 impleaded by order dated 01.02.2023
in W.M.P.No. 31730 of 2022 by CVKJ)



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Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records pertaining to the proceedings of the second respondent bearing Na.Ka.No. 2933/2021/A4 dated 01.09.2022 and quash the same.

For the Petitioner : Mr. S.K. Masthan
For the Respondents : Mr. S.J. Md. Sathik
Government Advocate
for R1, R2 & R4
Mr. P. Paramasivadosh
for R3

ORDER

The writ petition has been filed in the nature of certiorari seeking interference with an order of the second respondent, the Revenue Divisional Officer, Central Central Division at Chennai dated 01.09.2022 in Na.Ka.No. 2933/2021/A4.

2. The petitioner herein Q.Nizammuddin is the second son of the first wife of the third respondent, I.M. Quthrothulla.

3. One of the statements made by, the learned counsel for the petitioner is that the third respondent I.M .Quthrothulla has four wives and ten children. The grievance expressed is that he is focused only



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on the petitioner herein who is only one of the sons of one of the wives and also stated that none of the other son children or wives discharge their obligation to maintain the third respondent.

4. The petitioner herein had filed as a document a lease deed. The petitioner had entered into such lease with the petitioner in W.M.P.No. 31730 of 2022, A. Ehtasham. The said lease deed was with respect to running a shop at No. 38, Ayyasami Street, Pudupet, Chennai -600 002, which shop was run in the name and style of Bismi Chicken Center. The petitioner claims that he had paid an advance of Rs. 2,00,000/- and had to agreed to pay rent, a sum of Rs. 10,000/- per month.

5. It is a case of the learned counsel for the petitioner that the petitioner had independently entered into that particular lease deed and that particular business is the exclusive business of the petitioner herein. Quite independently, the third respondent had taken recourse to the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and had approached the second respondent.



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6. It is the case of the third respondent that he had, out of the income earned by him from his businesses, purchased a particular property in the name of his first wife and in the name of the petitioner herein. However, he had been left high and dry by the petitioner and therefore he had taken recourse to the provisions of the said Act and sought cancellation of the sale deed of that particular house.

7. The second respondent who was now compelled to take a decision with respect to whether he could direct cancellation of the sale deed and whether, such a request could be entertained under the provisions of the said Act, instead of entering into a discussion on that particular aspect, had taken a via media method and had found that the petitioner is running the aforementioned shop and had also taken note of an undertaking given by the petitioner before the jurisdictional police that he would pay maintenance to the third respondent and therefore placed that particular obligation on the petitioner herein and in default had stated that the petitioner should handover the shop to the third respondent. The second respondent had also directed that the jurisdictional police should ensure that the shop is handed over for failure to pay maintenance.



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8. It is also stated by the learned counsel for the third respondent that this undertaking was also reiterated before the second respondent. The fallout of the said order which is now impugned in the writ petition is that the business has stopped. There is no business, He could not run the business because there is a threat that the shop should be handed over to the third respondent.

9. The further fall out is that since the business has stopped, the shop is now kept under lock and key. It is under those circumstances, W.M.P.No. 31730 of 2022 had been filed by the owner of the entire premises complaining that there has been a short fall in the receipt of rental income so far as that particular shop is concerned and further that he is also prevented from letting out the shop to any other prospective tenant. In effect neither was the petitioner herein paid maintenance to the third respondent, nor has the third respondent received any maintenance amount from the petitioner and he has not got the relief of cancellation of the sale deed. In the midst of the quarrel between the son and the father, the petitioner in W.M.P. No. 31730 of 2022 has now had the unfortunate experience of having his shop being put under lock and seal and any income to be generated



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from that being denied to him. Thus, the via media approach adopted by the second respondent has not worked out favourably to any of the parties.

10. It is the further contention of the petitioner herein that the second respondent had not forwarded a copy of the complaint as originally preferred by the third respondent. It is stated that there has been violation of the principles of natural justice so far as that aspect is concerned.

11. The learned counsel for the third respondent also stated that the primary relief which he sought from the second respondent was to attend upon the sale deed and enter into a discussion whether the sale deed should be cancelled or not and whether the second respondent has authority to cancel the sale deed and whether the representation given necessitates cancellation of the said sale deed. None of those aspects have been addressed by the second respondent.

12. These are issues on facts and I would rather state that since the issues have to be addressed in accordance with the particular



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Statute namely the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, it would be only appropriate that the second respondent acts in conformity with that particular statute. The second respondent is an authority created by the statute and therefore he is placed under an obligation to act accordingly. Any small leverage which he considered he has should also be in conformity only with the provisions of the said Act and discretion cannot be exercised going, beyond the scope of the said Act. Either he grants the relief or he negatives the relief. There are appellate authorities to examine that particular order. If he enters into a negotiation, then it must be ensured that no further litigation arises out of such negotiation. Failure to do so has resulted in the filing of the present writ petition and to more acrimonious relationship between the father and the son. Let them once again go back to the original authority namely the second respondent. The order under question is set aside and a direction is given to the second respondent to:

i) move forward to enquire the statements made in the representation given by the petitioner herein.

ii) Invite both the petitioner and the third respondent and record their statements and forward copies of the statement to both of them



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iii) Serve copies of the documents filed by either side on either side.

iv) Thereafter give a finding in accordance with the provisions of the said Act, and since he is an authority created only under the Act, not go beyond the terms and provisions of the said statute.

13. In view of the above reasons and the directions given, the order dated 01.09.2022 in Na.Ka.No. 2933/2021/A4 is set aside. A further direction is given that the particular shop namely Bismi Chicken Center, has now got to be handedover to the petitioner in W.M.P.No. 31730 of 2022, A. Ehtasham and the said petitioner can take a decision as to how he is going to deal with the shop. He can take any considered decision that he feels would serve his interest best.

14. The second respondent is directed to re-examine the entire issue on the basis of the complaint of the third respondent and give a finding keeping in mind the aforementioned directions and give a finding on or before 30.04.2023.



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15. The writ petition stands disposed of. No costs. Consequently, connected W.M.P.Nos. 24963 & 24964 of 2022 are closed.

16. In view of the fact that directions are given, petitioner in W.M.P.No. 31730 of 2022 can take possession of the shop and then take any decision. The said application is partly allowed only with respect to the first petitioner in W.M.P.No. 31730 of 2022 and dismissed with respect to the 2nd and 3rd petitioners. Before issuing the order copy, the Registry may implead the said petitioner as the fifth respondent in the writ petition and thereafter issue order copy.

01.02.2023

Index: Yes/no
mrn



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To

WEB COPY

1. The Secretary to the Government,
State of Tamil Nadu
Revenue Department,
St. George Fort,
Chennai – 600 001.
2. The Revenue Divisional Officer,
Central Chennai Division,
Officer of Revenue Divisional Office,
Chennai.
3. The Assistant Commissioner of Police,
Office of Assistant Commissioner,
F2, Egmore, Chennai – 600 008.



WEB COPY



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C.V.KARTHIKEYAN, J.
(mrn)

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