



WEB COPY



W.P. No.28472 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 28472 of 2022

T. Annamalai

... Petitioner

-VS-

1. The District Collector,
and District Magistrate,
(Maintenance Appellate Tribunal)
Chengalpattu District,
Collectorate,
GST Road,
Chengalpattu 603 001.

2. The Revenue Divisional Officer,
Taluk Office Complex,
Opp mepz, gst road, Kadaperi,
West Tambaram,
Chennai 600 045.

3. The Commissioner of Police,
Tambaram,
Chennai 600 047.

4. A. Sangeetha

5. A. Sabarirajan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the respondents 1 to 3 and their subordinates to implement the order of the Maintenance Appellate Tribunal i.e., the 1st Respondent dated 15.07.2021 vide Rc.No.11084/2020/M1



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and put the petitioner in possession of the petitioner's property under the Maintenance and Welfare of Parents and Senior Citizens act, 2007 by evicting the 4th respondent.

For Petitioner : Mr. K. Meenakshisundaram

For Respondents : Mr. U. Baranidaran (R1 to R3)
Additional Government Pleader

Mr. Rajesh Vivekananda (R4)

No appearance (R5)

ORDER

Heard Mr. K. Meenakshisundaram, Learned Counsel for the Petitioner, Mr. U. Baranidaran, Learned Additional Government Pleader appearing for the First to Third Respondents, Mr. Rajesh Vivekananda, Learned Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. There is no representation for the Fifth Respondent when the matter is called at 12.10 p.m. today.

3. The Petitioner, who is a Senior Citizen, had executed a settlement-deed dated 18.10.2010 registered as Document No. 4618 of 2010 in the office of the



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Sub-Registrar, Pammal transferring his property in favour of the Third Respondent, who is his daughter. He had made an application invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) for treating that settlement-deed as void before the Second Respondent, which was granted by Order No. Na. Ka. 2261/2019/A dated 24.10.2020 and has been confirmed in appeal under Section 16 of the Act by Order in Rc. No. 11084/2020/M1 dated 15.07.2021 passed by the First Respondent, which is sought to be implemented in this Writ Petition.

4. It is clear from the plain language of Section 23 of the Act that its benefit would be applicable only when there is a specific clause in the instrument of transfer that the transferee has an obligation to provide the basic amenities and needs of the senior citizen, which he has refused or failed to carry out, which is fortified by the ruling of the Hon'ble Supreme Court of India in the decision in ***Sudesh Chhikara -vs- Ramti Devi*** (Order dated 06.12.2022 in Civil Appeal No. 174 of 2021) holding the field. In this case, as the requisite clause to avail the remedy in Section 23 of the Act mentioned supra is absent, this Court by separate order dated 18.12.2023 (today) in W.P. No. 18084 of 2021 filed by the Fourth Respondent has set aside the Order in Rc. No. 11084/2020/M1 dated



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15.07.2021 passed by the First Respondent and Order No. Na. Ka. 2261/2019/A

dated 24.10.2020 passed by the Second Respondent. *Afortiori*, the bar of jurisdiction of the Civil Court to entertain suit for such relief created under Section 27 of the Act would not arise, meaning thereby that it would not preclude the Petitioner from working out his remedies under common law including Section 31 of the Specific Relief Act, 1963, for appropriate relief. It is needless to add here that no view has been expressed by the Court on the merits of the controversy involved in the matter.

In the result, the Writ Petition is disposed with the aforesaid observations.

No costs.

18.12.2023

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 17.04.2024.

gsa

To

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and District Magistrate,
(Maintenance Appellate Tribunal)
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P.D. AUDIKESAVALU, J.

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