



W.P(MD)No.12851 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.12851 of 2023

and

W.M.P(MD)No.10878 of 2023

Ramkumar

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Ramanathapuram.

2.The Social Welfare Officer,
Ramanathapuram.

3.The Superintendent of Police,
Ramanathapuram District.

4.The Inspector of Police,
Anti Land Grabbing Special Cell,
Ramanathapuram District.

5.R.Veerammal

6.Sribhagan

7.Amarnath

8.S.Bhavani

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring that the first respondent have no jurisdiction, power and authority to cancel or to declare as void the settlement deed dated 15.07.2016 registered as Document No.454 of 2016 on the file of the Joint Sub Registrar No.I, Ramanathapuram, under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and consequentially for issuance of a Writ of Certiorari calling for the records relating to the impugned enquiry notice dated 08.05.2023 in Na.Ka.No.A4/1153/2023 issued by the first respondent and quash the same.

For Petitioners : Mr.R.Raja

For R1 to R4 : Mr.J.Ashok
Additional Government Pleader

ORDER

This Writ Petition is not misconceived. This Writ Petition has been filed in the nature of declaration, seeking that this Court should declare that the first respondent has no jurisdiction to entertain a complaint given by the fifth respondent, mother of the petitioner herein. The fifth respondent had invoked the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and consequent to such petition given by the fifth respondent, the first respondent had issued a notice to the petitioner herein dated 08.05.2023 in



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Na.Ka.A4/1153/2023. In the notice it had been stated that the petitioner should appear for an enquiry on 15.03.2023 at 11.00 a.m. This notice, which is essentially, in the nature of determining facts, is not questioned in this writ petition but rather a prayer is sought that this Court should declare that the first respondent has no authority to issue such notice.

2. The authority is authorized by the statute to enquire into a representation given by a senior citizen. Depending on the facts and circumstances through which the enquiry proceeds, the result would be that either the petition is ordered or the petition is dismissed. But opportunity must be given for the officer to first examine the facts and circumstances of the case. Every fact differs and there cannot be a declaration that a particular officer who is nominated in the statute has no authority to even initiate enquiry. The Writ Petition is misconceived. Learned counsel for the petitioner placed reliance on the Judgement of the Hon'ble Supreme Court reported in **2022 SC Online 1684 (Sudhesh chhikara Vs Ramti Devi and another)** and placed specific reliance on paragraph No.12 and 13, which reads as follows:

"12. Sub-section(1) of Section 23 covers all kinds of transfers as is clear from the use of the expression "by way of gift or otherwise". For attracting sub-section(1) of Section 23, the following two conditions must be fulfilled:



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a. The transfer must have been made subject to the condition that the transferee shall provide the basis amenities and basic physical needs to the transferor; and

b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

13. If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void. "

3. This only gives the conditions under which the provisions of the Act can be invoked. Whether they apply to the facts of this case or not is what the first respondent has to enquire. He has jurisdiction to enquire. He may finally conclude that the representation given by the fifth respondent does not merit any order being passed in her favour. He may even conclude that there are merits in the said application. He may even impose an order that the petitioner herein should pay maintenance to the fifth respondent. There are various options available. The enquiry cannot be nipped at the beginning stage itself and more particularly, since the notice is not questioned, the authority cannot be stated to have no jurisdiction.



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4. This Writ Petition is dismissed as the relief sought is misconceived. I hold that the first respondent has authority to enquire into the matter and to pass any appropriate orders. I am confident that appropriate orders in accordance with law would be passed. This writ petition is dismissed even without issuing notice to the 5,6,7 and 8 respondents. It must be again reiterated that the fifth respondent is the mother of the petitioner. The sixth and seventh respondents are the brothers of the petitioner, the 8th respondent is the sister of the petitioner. No costs. Consequently, connected miscellaneous petition stands closed. No costs.

05.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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To

- 1.The Revenue Divisional Officer, Ramanathapuram.
- 2.The Social Welfare Officer, Ramanathapuram.
- 3.The Superintendent of Police, Ramanathapuram District.
- 4.The Inspector of Police, Anti Land Grabbing Special Cell,
Ramanathapuram District.



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C.V.KARTHIKEYAN, J.

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