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W.P.No.4391 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.4391 of 2024 and
WMP.No.4722 of 2024

B.Ramesh

... Petitioner

Vs.

1.The Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Maintenance and Welfare of Parents and Senior Citizens Act,
(Act-2007) Tribunal,
Coimbatore North Division,
Coimbatore

2.Susheela @ Lissie

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of certiorari calling for the entire records of the
records of 1st respondent in Pa.Mu.No.1183/2023/A1, dated 20.12.2023
and to quash the same as arbitrary and unreasonable.

For Petitioner : Mr.K.Balasubramaniam

For Respondents

For R1 : Mr.P.Gurunathan,
Additional Government Pleader



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For R2 : Mr.Dinuprashanth

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 20.12.2023 thereby allowed the complaint lodged by the second respondent under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and cancelled the settlement deed executed in favour of the petitioner.

2. The petitioner is the son of the second respondent. The second respondent owned property comprised in old RS.No.865/2A and new RS.No.865/2A1 situated at Thakampatti, Mettupalayam, Coimbatore District. While being so, the said property was settled in favour of the petitioner by the registered settlement deed dated 01.11.2022 bearing document No.14661/2022. Thereafter, the second respondent lodged complaint before the first respondent under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the same was allowed.



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2. The learned counsel for the petitioner would submit that the second respondent borrowed loan by mortgaging the subject property with LIC and he only repaid the entire loan amount and discharged the subject property. The second respondent is in custody of the petitioner and he is maintaining the second respondent without any problem whatsoever. That apart, the second respondent is a pensioner and she could maintain herself. Further, the complaint itself is not maintainable under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 since settlement deed did not contain specific clause to maintain the second respondent, failing which the settlement deed shall stand cancelled. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Sudesh Chhikara vs. Ramti Devi and another*** rendered in Civil Appeal No.174 of 2021 dated 06.12.2022.

3. The learned counsel for the second respondent submitted that the second respondent is a pensioner. While she was in bank service,



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she obtained loan from the Life Insurance Corporation of India and constructed house in the plot which was purchased by her. Thereafter, she had underwent surgery and having various ailments due to her old age. While being so, on compulsion, that too while she was bedridden, she was taken to the Registrar Office and registered settlement deed in respect of the subject property in favour of the petitioner herein. However, after settlement deed, he failed to maintain the second respondent and also seized her passbook, Aadhar card and pension payment order. Therefore, the second respondent lodged complaint under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. After due enquiry, the first respondent allowed the complaint and ordered to cancel the settlement deed which was executed in favour of the petitioner herein.

4. On perusal of the settlement deed executed in favour of the petitioner, revealed that loan was borrowed and constructed house in the subject property. Due to love and affection, the subject property was settled in favour of the petitioner.



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5. This court already dealt with the present issue in several writ petitions including the case of ***Mohamed Dayan Vs. District Collector.***, order dated **08.09.2023** in ***W.P.No.28190 of 2022*** in which this Court, after discussing various judgements of the Hon'ble Supreme Court of India and various judgements of High Court, held as follows:-

“33. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity with reference to the purpose and object sought to be achieved under the provisions of the Senior Citizen Act. Section 4(2) of the Act, unambiguously stipulates that the obligation of the children or the relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

34. In the context of the adoption of the phrase “lead a normal life” Rule 20(2)(i) of the Maintenance of Senior Citizen Rules, enumerates that “it shall be the duty of the District Collector to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity”. Therefore, normal life includes security and dignity. Thus the normal life as indicated under Section 4(2) of the Act, is not mere life, but a life with security and dignity. In the context of Article 21 of the Constitution of



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India, life includes decent medical facility, food, shelter with dignity and security. All such combined necessities of human life is falling under the term “Normal Life” emboldened under Section 4(2) of the Senior Citizen Act. Therefore, simply providing food and shelter would be insufficient. But life includes providing of decent medical facilities, food, shelter and other requirements with dignity in commensuration with the status of the family and taking into consideration of the living style of the senior citizen throughout.

35. Therefore, the children defending their case merely on the ground that they are willing to provide food and shelter, cannot be taken as a ground for the purpose of sustaining the Settlement Deed executed by the senior citizen. The requirement of the provisions are to be complied in its real spirit and in the event of an iota of doubt, the Authority Competent is empowered to cancel the Settlement Deed or Gift Deed, as the case may be, in order to protect the normal life of senior citizen.

36. Section 4(3) denotes, 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 parents may lead a normal life. Therefore, it is an obligation on the part of the children to maintain his or her parents and ensure the parents to lead a normal life. In the event of complaint, the Authorities Competent are expected to ensure that the senior citizen and their life and dignity are



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protected. The above provision is to be read in conjunction with the Rules framed under the Act.

37. Rule 20 of the Maintenance of Senior Citizen Rules, provide duties and powers of the District Collector. The District Collector is casted upon the duty to ensure that the life and property of citizens of the District are protected and other people to live with security and dignity. Therefore, it is the statutory duty on the part of the District Collector to protect the safety and security of senior citizens in his District. Thus the complaint filed by the senior citizen, cannot be treated lightly. Such complaints are to be enquired into in a pragmatic manner, so as to understand the real grievances of the senior citizen and accordingly, all appropriate actions are to be initiated to provide safety, security and to protect the dignity of the senior citizen.

38. The Kerala High Court observed in the case of Radhamani and Others (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “Where any senior citizen who, after the commencement of this Act, has 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



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influence and shall at the option of the transferor be declared void by the Tribunal”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.

39. To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the person in favour of whom such Gift or Settlement Deed has been executed.

40. “Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or



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coercion or undue influence. When the deeming clause has been incorporated under the provisions of Section 23(1) of the Act, 'Love and Affection' to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence.

41. The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express condition in the document, "Love and Affection" being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.



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42. *The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-so, they are intending to visibly express their love and affection towards their children by settling their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their old-age. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.*

43. *Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or Settlement, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement.*



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44. In respect of the judgment relied on by the petitioner in the case of Sudesh Chhikara vs. Ramti Devi and Another (cited supra), the Three Judges Bench of the Hon'ble Supreme Court of India in the case of S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and Others (cited supra) is to be followed. There are several judgments to establish that the purpose and object of the Senior Citizens Act, is to be complied with in its letter and spirit in order to protect the life, security and dignity of senior citizens. Thus the judgment relied on by the petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned."

The above case is squarely applicable to the case on hand.

6. Therefore, though there is no specific condition in the settlement deed to show that the petitioner shall maintain the second respondent, the complaint is very much maintainable under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

7. In view of the above, this Court finds no infirmity or illegality in the impugned order and the first respondent rightly declared



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that the settlement deed executed in favour of the petitioner is void.

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8. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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