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WP No.7076 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.09.2024**

CORAM:

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

W.P.No.7076 of 2024
&
WMP.Nos.7900 & 7903 of 2024

Balasubramanian,
Madukkarai Market Anbu Nagar,
Coimbatore South,
Coimbatore 641 105.

.... Petitioner

vs.

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Presiding Officer,
The Parents and Senior Citizen
Maintenance Tribunal cum
The Revenue Divisional Officer,
Coimbatore South, Coimbatore.
3. Maruthathai

...

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records comprised in the order made in Pa.Mu.9048/2023/A1, dated 16.12.2023 on the file of the 2nd respondent and quash the same.



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For Petitioner : Mr.M.R. Thangavel for
Mr.P.K. Harinath Babu
For Respondents : Mr. P. Gurunathan, AGP
for R1 and R2
Mr.L.Mouli for R3

ORDER

This Writ Petition is filed challenging the order passed by the 2nd respondent dated 16.12.2022, whereby, the Deputy Superintendent of Police, Perur was directed to evict the petitioner from the house of the subject property and handover possession of the same to the petitioner's mother, the 3rd respondent herein.

2. The 3rd respondent is having three sons and the petitioner is her second son. The petitioner's father bequeathed the house property situated at 12/10/16, Premier Colony, Madukkarai Market, Anbu Nagar, Coimbatore South, Coimbatore 641 105 in favour of the petitioner herein. In the said house, the petitioner and the 3rd respondent were residing. After the demise of his father on 04.01.2015, all the sons are living separately including the petitioner. The 3rd respondent has been residing in the subject



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property. While being so, the petitioner made a request to the 3rd respondent to reside with her since he had proposed to construct a new house in a house plot situated just opposite to house in which his mother was residing, in order to look after the construction. On the said request, the 3rd respondent permitted the petitioner to reside in her house. Thereafter, the petitioner had driven the 3rd respondent from the house and the said property already bequeathed in his favour by a Will dated 04.01.2014 by his father. Therefore, the 3rd respondent was residing in the relatives house and the petitioner also failed to maintain her. Hence the 3rd respondent, had no other option to approach the 2nd respondent under section 23 of Maintenance and Welfare of Parents and Senior Citizens Act. After due enquiry, the 2nd respondent ordered for evicting the petitioner from the subject property.

3. The learned counsel for the petitioner submitted that under any provision of the Act, the 2nd respondent cannot order eviction of the petitioner. The petitioner never threatened or gave mental agony to the 3rd respondent, but unfortunately, the 3rd respondent at the behest of her other two sons, is trying to defeat the petitioner's right over the subject



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property. The petitioner is always willing to maintain the 3rd respondent.

On the strength of the impugned order, the 3rd respondent is attempting to evict the petitioner from the subject property inspite of the fact that there is a suit in O.S.No.1359 of 2023 was pending between them. Therefore, the petitioner cannot be evicted from the subject property, that too, under section 23 of the said Act.

4. In this regard, the learned counsel for the 3rd respondent submitted that after the order passed by the 2nd respondent, now the possession has been taken over and the 3rd respondent is residing in the subject property. Further, the petitioner had completed entire construction in front of the 3rd respondent's house and it is ready for occupation. However, the petitioner, in order to grab the subject property, wants to enter in to the subject property.

5. Heard the learned counsel for the petitioner, learned Govt. Advocate appearing for the respondents 2 and 3 and the learned counsel appearing for the 3rd respondent.



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6. In so far as the jurisdiction of the 2nd respondent is concerned, in respect of passing of order of eviction is concerned, the Honourable Supreme Court, in the case of ***Smt.S.Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and others*** reported in (2021)

15 SCC 730, has held as follows:

'Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely "where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...". On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression "such estate or part thereof is transferred". Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive



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maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of [Section 23](#) must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression „transfer" would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of [Section 2\(f\)](#) which defines the expression property to include “rights or interests in such property”. The expression „transfer" not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of [section 23](#) speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under [Section 9](#) of the Act.

17 The substance of sub-Section (2) of [section 23](#), as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a right to receive



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maintenance out of an estate" and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the [Senior Citizens Act 2007](#) may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law, i.e. the appellant.'

7. In the above citation, it is declared that the 2nd respondent will have the authority to order eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. The eviction in other words, would be an incident of the enforcement of the right to maintenance and protection.

8. It is also relevant to extract Rule 21 of the Welfare of Maintenance of Parent and Senior Citizen Rules 2009.

'21. Action plan for the protection of life and property of Senior Citizens.

(1) The District Superintendent of Police and in the case of cities having a Police Commissioner, such Police Commissioner shall take all necessary steps, subject to



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such guidelines as the Government may issue from time to time for the protection of life and property of senior citizens.'

9. In the light of the above, this Court finds that the 2nd respondent has rightly ordered eviction of the petitioner from the property, in which the 3rd respondent resides. In such a view of the matter, there is no infirmity or illegality in the order passed by the 2nd respondent. Therefore, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking/Non-Speaking Order

Neutral Citation: Yes/No.

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