



WEB COPY



W.A.No.2728 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Mr. JUSTICE R.SAKTHIVEL

W.A.No.2728 of 2023
AND
C.M.P.Nos.22947 & 22950 of 2023

I.M.Quthrothulla

.. Appellant

Vs.

1.Q.Nizamuddin

2.State of Tamil Nadu
Rep. by Secretary to Government
Revenue Department
Fort St. George
Chennai 600 001

3.The Revenue Divisional Officer
Central Chennai Division
Office of Revenue Divisional Officer
Chennai

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

5.A.Ehtasham

.. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 01.02.2023 passed by the learned Judge in W.P.No.25887 of 2022.

For Appellant : Ms.N.Kalaivani
for Richardson Wilson
For RR2 to 4 : Mr.P.Sathish
Additional Government Pleader
For RR1 & 5 : No appearance

J U D G M E N T

(Delivered by S.S.SUNDAR, J.)

Heard the learned counsel for the appellant and the learned Additional Government Pleader appearing for the official respondents 2 to 4.

2. Despite service of notice on the private respondents *viz.*, respondents 1 and 5 and the names of their learned counsels having been printed in the cause list, none is present. Considering the scope of this writ appeal, this Court is inclined to dispose of this writ appeal on merits.

3. The appellant before this Court is the father of the writ petitioner, the 1st respondent herein. He filed a complaint before the 3rd respondent under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act,



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2007. The 3rd respondent, ignoring the power and jurisdiction of the officials under the Act, passed an order, which is impugned in the writ petition in W.P.No.25887 of 2022.

4. The following facts are not in dispute :

- i. The appellant filed a suit in O.S.No.6336 of 2013 on the file of the City Civil Court, Chennai, against his landlords for permanent injunction restraining them from interfering with the possession of the premises let out to him for running a chicken shop.
- ii. Though the said suit was dismissed after holding that such a relief cannot be granted to the appellant, on appeal, the judgment of the trial Court was reversed and the appellant got a decree in A.S.No.248 of 2016 on 31.01.2017, for permanent injunction. The decree of the lower appellate Court in A.S.No.248 of 2016 was confirmed by this Court in S.A.No.324 of 2018 by judgment dated 14.06.2018.
- iii. It was only thereafter, the appellant gave a complaint before the 3rd respondent under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.



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iv. It is to be seen that the appellant was found to be not in enjoyment of the property, but stated that he had permitted his son to run the chicken shop. It is stated that the appellant's son had agreed to pay a sum of Rs.1,000/- per day for running the said chicken shop and the appellant complained that his son had failed to pay the money as agreed and therefore, he is put to lot of harassment.

v. On the application of the appellant to ensure his livelihood, the 3rd respondent passed an order directing the appellant's son to hand over the chicken shop to the appellant. Further direction was also issued to the police officials to ensure compliance of the order passed by the 3rd respondent.

5. Having regard to the admitted facts, this Court is of the view that the 3rd respondent has passed an order, ignoring the object and the power conferred on him under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is to be noted that the *lis* is between the father and son, before the 3rd respondent. In the application for maintenance, a direction was issued by the 3rd respondent to hand over the shop to the appellant.



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6. The learned Single Judge, while disposing the writ petition filed by the son of the appellant, remitted the matter for fresh consideration. While doing so, this Court has held in paragraphs 13 and 16 as under :

“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 handed over 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.

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.”

7. Having regard to the nature of issues arose between the parties, this Court is of the view that the direction of the learned Single Judge that possession of the property should be handed over to the landlord of the premises, is not warranted. This order takes away the right of the appellant derived from the decree that was passed in O.S.No.6336 of 2013. The suit was dismissed by the trial Court and in the appeal, the judgment of the trial Court was reversed and the appeal suit was decreed. The judgment of the lower



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appellate Court was confirmed by this Court in the Second Appeal.

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8. The nature of the direction issued by the learned Single Judge in the writ petition is contrary to the judgment of the civil Court. In such circumstances, this Court while confirming the order of the learned Single Judge remitting the matter for fresh consideration by the 3rd respondent, set aside that portion of the order, particularly, paragraphs 13 and 16. Now, the 3rd respondent is directed to consider the application of the appellant on merits, after issuing notice to the landlord as well.

With the above direction, this writ appeal is partly allowed. No costs. Connected C.M.Ps are closed.

[S.S.S.R.,J.] [R.S.V.,
29.11.2024

J.]

Index : Yes/No

Neutral Citation : Yes/No

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To
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Fort St. George
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