



W.P. No. 11189 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

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

W.P. No. 11189 of 2023

and

W.M.P. No. 11058 of 2023

M.V. Rajagopal

... Petitioner

-VS-

1. The District Collector,
Singaravelar Maligai,
No.62, Rajaji Salai,
Chennai 600 001.
2. The Revenue Divisional Officer,
Chennai Central Zone,
Anna Nagar,
Chennai 600 102.
3. The Sub-Registrar,
Virugambakkam,
Chennai.
4. Baskaran
5. Uma Maheswari
6. Rajalakshmi
7. Kanchanmaala
8. Manjula
9. Malathi

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 08.12.2022 in S.Mu.Na.Ka.No.2206/A1/2022 passed by the 1st respondent and quash the same as illegal and consequently direct the respondent authority to cancel the deed of settlement vide document no.523 of 2016 dated 03.02.2016 on the file of the 3rd respondent in the light of The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 within the time frame fixed by this Court.

For Petitioner : Mr. N.Manokaran

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

Mr. P.K. Ganesh (for R5 to R7 and R9)

Mr. P.Krishnan (for R8)

ORDER

Heard Mr. N.Manokaran, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First to Third Respondents, Mr. P.K.Ganesh, Learned Counsel for the Fifth to Seventh and Ninth Respondents and Mr. P.Krishnan, Learned Counsel for the Eighth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. The Petitioner, who is a Senior Citizen, had executed a settlement-deed dated 03.02.2016 registered as Document No. 523 of 2016 in the office of the Sub-Registrar, Virugambakkam transferring his property in favour of the Fourth to Ninth Respondents, who are his children. 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, who had declined to grant such relief by Order in Na. Ka. 3491/2022/A4 dated 15.09.2022 and has been confirmed in appeal under Section 16 of the Act by Order in S.Mu.Na.Ka.No.2206/A1/2022 dated 08.12.2022 passed by the First Respondent. The said orders are challenged in this Writ Petition.

3. 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, the requisite clause to avail the remedy in Section 23 of the Act mentioned supra is absent and on the contrary,



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there is an express recital in the aforesaid settlement-deed executed by the Petitioner that it would take effect only after his lifetime. *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. In view of the same, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition reserving the right of the Petitioner along with his wife to work out their remedies under common law including Section 31 of the Specific Relief Act, 1963, for that relief claimed and an endorsement to that effect has been made in the court record.

In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarifications. It is needless to add here that nothing said in the impugned orders shall inhibit or influence while considering any relief that may be sought by the Petitioner in future legal proceedings. Consequently, connected Miscellaneous Petition is closed. No costs.

22.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.03.2024.

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To

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P.D. AUDIKESAVALU, J.

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