



W.P. No. 19182 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

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

W.P. No. 19182 of 2023

and

W.M.P. No. 18418 of 2023

C.Sundararaj

... Petitioner

-VS-

1. The District Collector,
Coimbatore,
Coimbatore District.

2. The Revenue Divisional Officer (Coimbatore South) /
Presiding Officer,
The Parents and Senior Citizens Welfare and
Maintenance Tribunal,
Coimbatore, Coimbatore District.

3. Subbathal

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for records in order dated 30.11.2020 in Proceedings No. P.M.4763/2019/A1 on the file of the Second Respondent and consequential order dated 23.02.2023 in Na. Ka. No. 1570/2021/U1 on the file of the First Respondent and quash the same.



W.P. No. 19182 of 2023

For Petitioner : Mr. A.Sathasivam

For Respondents : Mr. S.J.Mohamed Sathik
Government Advocate (for R1 & R2)

Mr. P.K.Rajagopal (for R3)

ORDER

Heard Mr. A.Sathasivam, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Second Respondents and Mr. P.K.Rajagopal, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, who is a Senior Citizen, had executed a release-deed dated 22.08.2005 registered as Document No. 2356 of 2005 in the office of the (Joint-II) Sub-Registrar, Coimbatore transferring her share in the property in favour of the Petitioner, who is her son. She 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) before the Second Respondent for treating the said release-deed as void, which was granted by the Order No. Pa. Mu. 4763/2019/A1 dated 30.11.2020 and has been confirmed in appeal under Section 16 of the Act by Order in Na. Ka. No. 1570/



W.P. No. 19182 of 2023

2021/U1 dated 23.02.2023 passed by the First Respondent. The said orders are challenged in this Writ Petition.

3. The Division Bench of this Court in the authoritative pronouncement in ***K.Raju -vs- Union of India*** [(2021) 2 CTC 129] has ruled that the plain language of Section 16 of the Act is clear that only a 'Senior Citizen' or 'Parent' could invoke the right of appeal under that legal provision, and none else could avail such remedy. As its consequence, the Order in Na. Ka. No. 1570/2021/U1 dated 23.02.2023 passed by the First Respondent, which cannot be sustained, gets set aside, and the Order No. Pa. Mu. 4763/2019/A1 dated 30.11.2020 passed by the Second Respondent would revive.

4. At this stage, it must be highlighted that the plain language of Section 23 of the Act makes it clear 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 invoke Section 23 of the Act



W.P. No. 19182 of 2023

mentioned supra is absent. Yet another contention raised by Learned Counsel for the Petitioner is that on account of the words “after the commencement of this Act” contained in Section 23 of the Act, it would not be applicable to transfers of property made before 29.09.2008, when the Act came into force in the State of Tamil Nadu, like the present one executed on 22.08.2005 by the Third Respondent in favour of the Petitioner. These submissions made deserve acceptance. *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.

6. Consequently, the Order No. Pa. Mu. 4763/2019/A1 dated 30.11.2020 passed by the Second Respondent is also set aside with a clarification that it would not preclude the rights of the Third Respondent to work out her remedies under common law including Section 31 of the Specific Relief Act, 1963, for such relief.

7. It has been brought to notice that the Third Respondent has already filed a case in D.V.A. No. 210 of 2019 before the Judicial Magistrate No. 7, Coimbatore (hereinafter referred to as 'the Criminal Court' for short) against the Petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which is pending. Since the Petitioner is a Senior Citizen,



W.P. No. 19182 of 2023

it shall be incumbent upon the Criminal Court to ensure that there are atleast two effective hearings every month showing progress of the case and after affording full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, the said case is expeditiously disposed, uninhibited and uninfluenced by the observations in this order, and the orders of the First and Second Respondents, which stand set aside, and monthly reports in that regard shall be sent to the Registrar (Judicial) of the Court till it is disposed.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

25.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

gsa

To

1. The District Collector,
Coimbatore,
Coimbatore District.



W.P. No. 19182 of 2023

2. The Revenue Divisional Officer (Coimbatore South) /
Presiding Officer,
Parents and Senior Citizens Welfare and Maintenance Tribunal,
Coimbatore,
Coimbatore District.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.
2. The Judicial Magistrate No. 7,
Coimbatore.



WEB COPY



W.P. No. 19182 of 2023

P.D. AUDIKESAVALU, J.

gsa

W.P. No. 19182 of 2023

25.03.2024