



W.P.No.11532 of 2020 and W.P.No.25163 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11532 of 2020 and W.P.No.25163 of 2021

and

W.M.P. No.14095 of 2020

W.P.No.11532 of 2020

Minor.Jeeva Rithwik.S

S/o.K.Sukumar,

Represented by his Mother and

Natural Guardian, S.Lavanya,

... Petitioner

Vs

1. The Sub-Collector/Sub-Divisional Magistrate,
Presiding Officer,
Tribunal for Maintenance and Welfare of Parents and Senior Citizens,
Pollachi.

2. Krishnasamy @ A.Nanjappa Gounder

3. K.Sukumar

(R-3 *suo motu* impleaded as per order dated
09.02.2024 in W.P.No.11532 of 2020)

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in R.C.No.41 of 2020 dated 15.06.2020 and quash the order in R.C.No.41 of 2020 dated 15.06.2020.



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For Petitioner : Mr.M.Sivavarthanan
For Respondents : Mr.S.J.Mohamed Sathik,
Government Advocate (for R1)
Mr.R.Bharathkumar (for R2)

W.P.No.25163 of 2021

K.Sukumar ... Petitioner
Vs

1. The District Collector/Presiding Officer
Appellate Tribunal for Maintenance and Welfare
of Parents and Senior Citizens,
Coimbatore.
2. The Sub-Collector,
Presiding Officer,
Tribunal for Maintenance and Welfare of Parents and Senior Citizens,
Pollachi.
3. Krishnasamy @ A.Nanjappa Gounder ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in R.C.No./11409/2020/Ool dated 24.03.2021 and the records of the second respondent in R.C.No.41/2020 dated 15.06.2020 and quash the orders.

For Petitioner : Mr.V.Ayyadurai,
Senior Counsel
for D.R.Raghunath



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

Mr.R.Bharathkumar (for R3)

COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the Tribunal for Maintenance and Welfare of Parents and Senior Citizens, Pollachi (hereinafter referred to as 'the Tribunal' for short) dated 15.06.2020, thereby, the petition filed by the grandfather of the petitioner and the father of the petitioner in both the Writ Petitions respectively were allowed and also the order passed by the Appellate Tribunal for Maintenance and Welfare of Parents and Senior Citizens, Coimbatore (hereinafter referred to as 'the Appellate Tribunal' for short) dated 24.03.2021, thereby confirming the order passed by the Tribunal.

2. The petitioner in W.P.No.11532 of 2020 is the minor grandson of the second respondent. The third respondent in W.P.No.11532 of 2020 and the petitioner in W.P.No.25163 of 2021 is the son of the second



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respondent in W.P.No.11532 of 2020 and the third respondent in W.P.No.25163 of 2021 (hereinafter called as 'the grandfather' in short).

3. The grandfather owned the land ad-measuring 3.38 acres comprised in S.F.No.220/2B2 situated at Zamin Uthukuli Village, Pollachi Taluk, Coimbatore District. He settled the said property in favour of his minor grandson represented by his guardian, viz., son, out of love and affection, by settlement deed dated 13.03.2019, registered, vide Document No.2588 of 2019. Thereafter, the grandfather filed a petition under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) before the Tribunal. Thereafter, the settlement deed was executed in favour of his grandson due to the compulsion of his son and also by fraud and misrepresentation. It was allowed by the Tribunal and aggrieved by the same, the grandfather's son (guardian) of minor grandson filed the appeal before the Appellate Tribunal and the same was dismissed, confirming the order passed by the Tribunal, thereby, the settlement deed executed by the grandfather in favour of his grandson was cancelled.



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4. The learned Senior Counsel appearing for the petitioner in W.P.No.25163 of 2021 and the learned counsel for the petitioner in W.P.No.11532 of 2020 submitted that the grandfather failed to make an application in the form as prescribed under the Act. The application was submitted during the grievance day and the grandfather never alleged that his son or minor grandson failed to maintain him. There was no specific clause in the statement that the subject property was settled in favour of the minor grandson on condition that they should maintain the grandfather. The grandfather also simultaneously filed a suit for declaration declaring that the settlement deed is null and void. Therefore, the grandfather cannot maintain two petitions for the same relief. Section 27 of the Act barred the jurisdiction of the Civil Court in respect of the matter to which any provisions under the Act applies and no injunction shall be granted by the Civil Court. In fact, in the plaint filed in support of the suit also, there is no specific allegation that the son or minor grandson failed to maintain the grandfather.

5. In support of his contentions, the learned Senior Counsel for the



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petitioner in W.P.No.25163 of 2021 relied upon the judgement of the Hon'ble Supreme Court of India in the case of (***Sudesh Chhikara -vs- Ramti Devi***) in 2022 SCC OnLine SC 1684, wherein it was held that in order to attract the provisions under Section 23 of the Act, the two conditions must be fulfilled i.e. the transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and the transferee refuses or fails to provide such amenities and physical needs to the transferor. Both the conditions should be established before the Tribunal. If both the conditions are not fulfilled, the order passed by the Tribunal cannot be sustained and the conditions incorporated under the provisions of sub-clause (1) of Section 23 of the Act, are not fulfilled.

6. He also relied upon the judgement of the Madurai Bench of this Court in the case of ***Sankarappan -vs- Appellate Authority*** (Order dated 10.11.2023 in W.P. (MD) No.27135 of 2023), wherein it was held that there is no condition obliging the settlee to provide for the basic amenities and basic physical needs of the settlor. The settlement deed was executed out of



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love and affection. The settlor had undertaken not to cancel the settlement deed for any reason and the transfer is unconditional and absolute. It was further held that in order to invoke Section 23 of the Act, there must be an express recital in the settlement deed that the settlee is under an obligation to provide the basic amenities and basic physical needs to the settlor. If this condition is not expressly incorporated or found in the settlement deed, the jurisdiction of the Tribunal will not be available under Section 23 of the Act.

7. The common counter-affidavit was filed by the second respondent in W.P.No.11532 of 2020 and third respondent in W.P.No.25613 of 2021, viz., the grandfather. The learned counsel for the said respondents respectively submitted that the Writ Petition filed by the grandson representing by his mother and natural guardian, is not at all maintainable. Since the mother of the minor son is not entitled to file the Writ Petition, she is not the natural guardian, when his father is the natural guardian as per Section 6-A of the Hindu Minorities and Guardianship Act, 1956. The subject property is the self acquired property of the grandfather and his son persuaded to execute the settlement deed and inspite of his resistance, he



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had taken him to the Registrar Office and made him to sign the said settlement deed. The grandfather never intended to execute any settlement deed. He actually intended to execute a Will granting the life estate to his wife and the vested remainder in the subject property to pass on his son and daughter equally. When he expressed his intention, to his son, he insisted to transfer half share of the property in his favour. Even then, the grandfather refused and his son insisted him to execute atleast in favour of his grandson. Therefore, he was taken to the Registrar Office at about 7.45 p.m. and obtained his signature. Thereafter, he was not maintained by them and as such, he is suffering even for his day-to-day needs. Now, he is under the maintenance by his daughter.

8. Heard both sides and perused the materials available on record.

9. The grandfather had executed the settlement deed in favour of his grandson in respect of the entire property, which was purchased by him. Subsequently, the petitioner was not maintained either by his son or grandson and the grandfather is suffering even for his day-to-day needs. The



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settlement deed was executed in favour of the minor grandson represented by his guardian, viz., his father. Therefore, the grandfather filed the petition before the Tribunal seeking maintenance under the Act by invoking Section 23 of the Act. Though the petitioner did not allege that he was not maintained by his son or grandson, the petitioner himself filed the petition seeking maintenance as against his son, who is guardian of minor grandson in whose favour the settlement deed was executed by the grandfather. The grandfather was examined and he categorically deposed that he was not maintained by his son and under coercion and undue influence, his son had taken him to the Registrar Office and obtained his signature in the settlement deed. Thereafter, the grandfather was not maintained either by his son or by his grandson. Therefore, the Tribunal cancelled the settlement deed executed in favour of his grandson and the same was also confirmed by the Appellate Tribunal.

10. In the above context, it is relevant to extract the provisions of Section 23 of the Act, which reads as follows:-

“23. Transfer of property to be void in certain



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circumstances.—(1) Where any senior citizen who, after the commencement of this Act, has transferred 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 influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right. (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation



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to sub-section (1) of section 5.”

11. Section 23 of the Act provides that when a property has been transferred by way gift or otherwise by the senior citizen on the condition that the transferee or ownee shall provide the basic amenities and basic physical needs to the transferor or the owner, but such transferee or ownee subsequently fails to provide such amenities, then it would be deemed that the transfer was made by fraud, or coercion or under undue influence and the transferor would have the option of obtaining declaration from Tribunal that such transfer was void. In the case on hand, the grandfather has gifted the subject property to the grandson represented by his son out of love and affection and as a reward for the respect, reward and care that the grandson had shown to the grandfather.

12. On a perusal of the settlement deed, it reveals that being pleased with the care, love, affection, respect and good behaviour, the grandfather had executed gift deed as a reward in favour of his grandson and in discharge of his responsibilities towards the grandson, he has also



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given future security to the grandson. Further, though no consideration was passed for execution of settlement deed, the consideration for executing the settlement deed is based on human conduct, caring and conscious. The transfer was made admittedly out of love and affection. The settlor in the settlement deed would expect in the natural course of human conduct that the settlee continues to behave in the same manner as behaved before execution of the settlement deed. Therefore, it would form part of condition of the transaction for future conduct as well.

13. Thus, in the absence of any other circumstances, it must be presumed that the settlor expects continuation of the care and love from the settlee even after the execution of the settlement deed in the same manner, the settlor was taken care prior to the execution of the settlement deed. Further, the intention of the Legislature and terms of the Act would declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, the Legislature thought that such transaction could be declared as void, as the conduct leading to the



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transaction was based on malice or fraud. Therefore, the condition referred under Section 23 has to be understood based on the conduct of the settlor and not with reference to the specific stipulation in the deed of transfer. Therefore, it is sufficient if the settlee breached the promise given to the settlor at the time of execution of the settlement deed. Further, sub-Section 2 of Section 23 of the Act envisages the situation where a senior citizen has a right to receive the 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 noticed the right or if the transfer is gracious. The right however cannot be enforced against a transferee for consideration without notice of right.

14. It is also relevant to rely upon the judgement of this Court in the case of *Mohamed Dayan -vs- District Collector* (Order dated 08.09.2023 in W.P.No.28190 of 2022) and after discussing various judgements of the Hon'ble Supreme Court of India and various judgements of High Court including the cases referred by the learned Senior Counsel for the petitioner, it was held as follows:-



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“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



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a life with security and dignity. In the context of Article 21 of the Constitution of 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



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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 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.



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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



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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 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



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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 coercion or undue influence. When the



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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



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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.

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



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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



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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.

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.”



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15. The above case is squarely applicable to the case on hand. The specific case of the grandfather is that under compulsion and coercion, he was compelled to execute the settlement deed in favour of his grandson. Now, he specifically made statement before the Tribunal that his son failed to maintain him and he is in dire need of money even for his day-to-day needs. Further, the grandfather had executed the settlement deed out of love and affection to support the grandson and for the betterment of his future life. When such being the recital, the natural expectation of a grandfather should be maintained by his son till his life time. Therefore, the recital shown in the settlement deed would be enough to satisfy the requirements of Section 23(1) of the Act. Hence, this Court finds no infirmity or illegality in the orders passed by the Tribunal as well as the Appellate Tribunal.

16. In the result, these Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.04.2024



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Index: Yes/No
Neutral Citation: Yes/No
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G.K.ILANTHIRAIYAN, J.

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