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W.P. No. 17351 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM

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

**W.P. No. 17351 of 2022
and
W.M.P. No. 16680 of 2022**

J. Nargis

... Petitioner

-VS-

1. The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Kallakurichi.

2. Hairoonbi ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records of the proceeding in Na.Ka.A6/1528/2021, dated 21.06.2022 pending on the file of the 1st respondent under the Maintenance and Welfare of Parents and Senior Citizens Act 2007 and to quash the same as illegal.

For Petitioner : Ms. Gopika Nambiyar

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

Mr. C. Iyyapparaj (for R2)



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ORDER

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Heard Ms. Gopika Nambiyar, Learned Counsel for the Petitioner, Mr. S.J. Mohamed Sathik, Learned Government Advocate appearing for the First Respondent and Mr. C. Iyyapparaj, Learned Counsel appearing for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who is a Senior Citizen, had executed a settlement-deed dated 19.07.2004 registered as Document No. 1172 of 2004 in the office of the Sub-Registrar, Thiyyagadurgam transferring her property in favour of the Petitioner, who is her daughter. 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) for treating that settlement-deed as void before the First Respondent, who had issued Notice No. Na. Ka. A6/1528/2021 dated 21.06.2022 calling upon the Petitioner to appear for the enquiry fixed at 3.00 p.m. on 30.06.2022, which is challenged in this Writ Petition.



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3. The primordial attack on the impugned order 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 19.07.2004 by the Second Respondent in favour of the Petitioner. The said submission made deserves acceptance.

4. That apart, 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 invoke Section 23 of the Act mentioned supra is absent and on the contrary, there is an express recital in the aforesaid settlement-deed executed by the Second Respondent in favour of the Petitioner that it is irrevocable. *Afortiori*, the bar of jurisdiction of the Civil Court under Section 27 of the Act would not arise for entertaining a suit to adjudge the document as void and order it to be



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delivered up and cancelled in terms of Section 31 of the Specific Relief Act,

1963.

5. In the aforesaid circumstances, the impugned Notice No. Na. Ka. A6/1528/2021 dated 21.06.2022 issued by the First Respondent, which cannot be sustained, is set aside, and the application made by the Second Respondent before the Second Respondent would stand rejected. However, it is hastened to clarify here that this would not preclude the Second Respondent from working out her rights under common law including Section 31 of the Specific Relief Act, 1963, for appropriate relief, and neither this order nor the impugned order shall inhibit or influence the adjudicating authority while determining the rights of parties in such adjudication in accordance with law.

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

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

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To

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The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Kallakurichi.



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P.D. AUDIKESAVALU, J.

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