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W.P.No.16479 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.16479 of 2024

and

W.M.P.No.18043 of 2024

Anusuya

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Petitioner

Vs

1.The District Collector, Chennai,
Appellate Authority for Maintenance and Welfare of
Parents and Senior Citizens Act,
Singaravelar Maligai, 4th Floor,
No.62, Rajaji Salai, Chennai – 600 001.

2.The Revenue Divisional Officer,
Chennai Central Division,
Anna Nagar West Extension,
Chennai – 600 101.

3.E.Srinivasan

....

Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 26.07.2023 bearing Ref.No.Na.Ka.No.1194/A1/2023 passed by the first respondent and quash the same and consequently direct the first and second respondent to cancel the settlement deed No.871/2022 dated 08.02.2022 on the file of the Sub-Registrar office at Konnur as null and void.



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For Petitioner : Mr.V.A.Pratheep Kumar

For R1 & R2 : Mr.M.S.Arasa Kumar
Government Advocate

For R3 : No appearance

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent, thereby dismissed the appeal filed by the petitioner on the ground of laches as against the order passed by the second respondent.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first and second respondents. Though notice has been served on the third respondent and name is printed in the cause list, none appeared on behalf of the third respondent either in person or through pleader.

3. The petitioner is the mother of the third respondent herein. The husband of the petitioner had purchased the property at Plot No.90, 3rd Cross Street, Sathya Nagar, Padi, Chennai, comprised in S.Nos.67/1 and 67/2 as per town survey land register Ward-H, Block No.13, Old



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Survey No.67/1A1C, 67/2D, Old T.S.No.286, New T.S.No.286/1 situated at Mogappair Village, Ambattur Taluk, Chennai, admeasuring an extent of 2600 sq.ft. together with a superstructure built thereupon, by a registered sale deed dated 14.02.1979 vide Document No.437/1979. While being so, the petitioner's husband died on 22.02.2017 leaving behind the petitioner, third respondent and two daughters as his legal heirs to inherit the subject property. After demise of her husband, the petitioner is residing in one portion of the subject property and the third respondent is residing in another portion.

4. While being so, the third respondent approached the petitioner and two other daughters informing that the subject property cannot be jointly enjoyed and it would be appropriate to sell the subject property and take over respective shares. The petitioner and her two daughters agreed to sell the property to a third party and the third respondent also introduced one person as buyer and he also entered into an agreement for sale. Since one of the daughter, viz., Jayanthi, was residing at California, United States of America, she had given power of attorney in favour of the petitioner to deal with the subject property. On false representation and after giving drug, the third respondent obtained



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petitioner's signature in a settlement deed as if she had settled her share and her daughters' share in the name of the third respondent. The said settlement deed was registered vide document No.871 of 2022. Immediately, the petitioner fell ill and admitted in hospital due to food poison.

5. Thereafter, she lodged a complaint that while in the registrar office, she was given some water added with some drug and therefore, the petitioner fell ill and utilizing the said circumstances, the third respondent obtained signature as if they are settling the property. Immediately, after execution of the settlement deed, the petitioner had not entered into the subject property showing that the property belongs to the third respondent by way of settlement deed. When it was questioned by another daughter along with the petitioner, they were attacked by the third respondent and injuries were also caused to them. Therefore, a criminal case was lodged against the third respondent before the Inspector of Police, Korattur Police Station and they were issued C.S.R.No.320 of 2022 dated 07.03.2022. Thereafter, the petitioner lodged a complaint under Section 23 of the Maintenance and Welfare of the Parents and Senior Citizen Act, 2007, before the second respondent.



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6. Unfortunately, the second respondent, instead of cancelling the settlement deed executed in favour of the third respondent, ordered maintenance of Rs.6,000/- as monthly maintenance payable by the third respondent in favour of the petitioner. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. However, the first respondent rejected the appeal on the ground of laches as the appeal ought to have been filed within a period of sixty days of the order.

7. A perusal of the order passed by the second respondent reveals that the claim of the petitioner for declaration declaring that the settlement deed executed in favour of the third respondent is barred was rejected on the ground that there is no specific clause in the settlement deed to maintain the petitioner. This issue is no more *res integra* as it has already dealt with by this Court in various judgements in a detailed manner.

8. Thus, in the absence of any other circumstances, it must be presumed that the settlor expects continuation of care and love from the settlee even after the execution of the settlement deed in the same manner as the settlor was taken care prior to the execution of the settlement deed.



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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 transaction was based on malice or fraud. Therefore, the condition referred under Section 23 of the Act 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.

9. 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. 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** made in *W.P.No.28190 of 2022* in which this Court,



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 counsel for the petitioner, held as follows:-

“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 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 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.



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 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 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 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 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 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 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.”



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The above case is squarely applicable to the case on hand. In respect of the judgment relied on by the third respondent 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 third respondent is of no avail as far as the present facts and circumstances of the case on hand is concerned.

10. A perusal of the complaint lodged by the petitioner revealed that the third respondent had driven out the petitioner from her house. Therefore, there are specific allegations in order to attract the provision under Section 23 of the Act. Unfortunately, both the respondents 1 & 2 failed to consider the above aspects and they had mechanically dismissed the complaint lodged by the petitioner. In view of the aforesaid reasons, this Court finds infirmity and illegality in the orders passed by the respondents 1 & 2 as such, the impugned orders cannot be sustained and are liable to be quashed.



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11. In view of the above, the order passed by the first respondent as well as the order passed by the second respondent cannot be sustained and both are liable to be quashed. Accordingly, both the orders are hereby quashed. The settlement deed executed in favour of the third respondent is declared as void and the complaint lodged by the petitioner is allowed. Consequently, connected miscellaneous petition is closed. No costs.

09.08.2024

Internet : Yes/No
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To

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