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W.P.No.20797 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

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

W.P.No.20797 of 2022
and W.M.P.No.19873 of 2022

K.Yoganand

... Petitioner

-Vs -

1. The District Collector of Kancheepuram
cum Appellate Tribunal,
Office of the District Collector,
Kancheepuram – 631 502.

2. The Revenue Divisional Officer cum
Maintenance Tribunal under the
Maintenance and Welfare of
Parents and Senior Citizens,
Kancheepuram, - 631 502.

3. K.Kasthuri
4. Yogakumari
5. G.Yogeswari
6. Sub Registrar,
No.2, Joint Sub Registrar,
Kancheepuram – 631 502.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records from the first respondent herein pertaining to the impugned circular in Pa.Mu.No.1804/2022/M1 dated 19.07.2022 and quash the same.



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For Petitioner : Mr.S.Prabhu
For Respondents
For R1 & R2 : Mr.E.Vijay Anand
Additional Government Pleader
For R3 & R4 : Mr.M.R.Jothimanian
For Mr.G.Punniakotti

ORDER

This writ petition has been filed challenging order 19.07.2022, passed by the first respondent, thereby setting aside the order passed by the second respondent and allowed the complaint lodged by the third respondent under Section 23(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act”).

2. The third respondent is the mother. The petitioner and the respondents 4 & 5 are son and daughters. While being so, out of love and affection, the third respondent had settled her property, which was purchased by her by the registered sale deed dated 04.11.1981 vide document No.2967 of 198, in favour of the petitioner and the respondents 4 & 5 by the settlement deed dated 10.06.2020 registered vide document No.2425 of 2020. Immediately after execution of the settlement deed, the third respondent was thrown out from her house and she was not



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maintained by the petitioner. In fact, the petitioner in the drunken mode had beaten the third respondent and compelled her to execute the settlement deed. Therefore, under coercion and threaten, the third respondent executed settlement deed in favour of the petitioner and the respondents 3 & 4. Immediately, she was thrown out from her house and she is not in street. Fortunately, the fourth respondent had taken care of the third respondent viz., mother.

3. That apart, the petitioner has also stolen the jewels belongs to the third respondent. Therefore, the third respondent lodged complaint under Section 23(2) of the Act before the second respondent. After due enquiry and after giving opportunity to the petitioner as well as the respondents 3 to 5, the second respondent passed order dated 30.11.2021, thereby directed the petitioner to pay a sum of Rs.5,000/- as monthly maintenance and the respondents 4 & 5 are directed to pay a sum of Rs.2,500/- each in favour of the third respondent. Aggrieved by the same, the third respondent filed appeal before the first respondent. The first respondent also after conducting detailed enquiry and after recording the statements from the parties, passed order thereby declared the settlement deed executed in favour of the petitioner and the respondents 4 & 5 are



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void for the reason that the petitioner and the respondents 4 & 5 failed to maintain the third respondent. Hence, the petitioner filed the present writ petition with the above prayer.

4. The learned counsel appearing for the petitioner submitted that only on the instigation of the fourth and fifth respondents, the third respondent filed appeal before the first respondent as against the order passed by the second respondent and she has made statement only on the instigation of the respondents 4 & 5. In fact, the petitioner is sending Rs.10,000/- as monthly maintenance every month. However, the third respondent refused to receive the same. Now the petitioner is in abroad and no occurrence has been taken place as alleged by the third respondent. The petitioner is willing and ready to maintain the third respondent. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Sudesh Chhikara Vs. Ramti Devi*** in Order dated **06.12.2022** in ***Civil Appeal No. 174 of 2021***.

5. The third respondent appeared before this Court and deposed that whatever the statement made before the first and second respondents are correct and it was not made by her due to an instigation or



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compulsion of the respondents 4 & 5. She further submitted that she is now with the custody and maintenance of the fourth respondent and she is not allowed to enter into the property which was settled in favour of the petitioner.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. This Court already dealt with the issue in this petition, 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 Senior 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



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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



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“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.

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



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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.”

The above case is squarely applicable to the case on hand.

8. On perusal of records, during enquiry conducted by the first respondent the third respondent viz., mother deposed that the petitioner in the drunken mode had beaten her and compelled her to execute the settlement deed. Further, the petitioner had also stolen the jewels belongs to the third respondent. Therefore, the third respondent lodged complaint under Section 23(2) of the Act before the second respondent. Though the second respondent directed the petitioner to pay maintenance to the third respondent, the first respondent set aside the same and cancelled the settlement deed executed in favour of the petitioner. This Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be



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dismissed.

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9. Accordingly, the Writ Petition stands dismissed.

Considering the submission made by the third respondent, the petitioner is directed to hand over the vacant possession of the subject property to the third respondent forthwith. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

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To

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