



W.P.No.20644 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM:

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

W.P.No.20644 of 2024
and W.M.P.No.22569 of 2024

A.Chanma

... Petitioner

Vs

1. The District Collector,
Tiruvannamalai District.

2. The Tribunal for Maintenance and Welfare of Parents
and Senior Citizens (Sub-Collector),
Revenue Divisional Office, Tiruvannamalai,
Tiruvannamalai District.

3. Sub-Registrar-Joint-1,
Tiruvannamalai – 606601.

4. Ansar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned orders dated 17.07.2023 passed by the 2nd respondent in Case No A4 / 10317 / 2022, as confirmed by the 1st respondent vide order dated 29.10.2023 in Appeal case No.A4 / 837/ 2022 and quash the same and consequently direct the 1 to 3 respondents to cancel the Settlement deed 05.03.2022, registered as



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Doc. No:942 / 2022 on the file of 3rd respondent / SRO, for violation of the undertaking dated 05.03.2022 given by the 4th respondent, under Sec 23 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 and to refix the monthly maintenance amount of Rs.10,000/- as Rs 30,000/-.

For Petitioner	: Mr.R.Mubarak Basha
For R1 to R3	: Mr.S.J.Mohamed Sathik Government Advocate
For R4	: Service awaited, No appearance

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 17.07.2023, thereby dismissed the complaint lodged by the petitioner under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter called as “the Act”) and the order passed by the first respondent dated 29.10.2023, thereby dismissed the appeal, confirming the order passed by the second respondent.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 3 and perused the materials available on record.

3. The petitioner is the mother and the fourth respondent is her



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son. The petitioner got married to one Alapakazh and gave birth to one daughter and one son, who is the fourth respondent herein. The daughter got married and living separately. The house property consisting of land and building to an extent of 1380 sq.ft, situated at Tiruvannamalai town, was originally owned by the petitioner's father and the same was settled in favour of the petitioner by the registered sale deed dated 24.05.1994. Thereafter, the petitioner and her husband constructed a building in the said plot and they were living there. While being so, the fourth respondent added some drug in the food and administered to the petitioner and her husband. Thereafter, they were brought to the Register Office and obtained their signature in the settlement deed and registered the same as settlement deed in favour of the fourth respondent in respect of the subject property on 05.03.2022. Immediately thereafter, the petitioner and her husband were driven out from the said house. Therefore, the petitioner and her husband could not maintain themselves and lodged a complaint before the second respondent.

4. The second respondent dismissed the complaint, on the ground that the settlement deed does not contain a specific clause that the



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settlement deed was executed in favour of the fourth respondent, on condition that the fourth respondent shall maintain the petitioner and her husband. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was partly allowed, thereby directed the fourth respondent to pay a sum of Rs.10,000/- as monthly maintenance to the petitioner.

5. On issuance of notice by this Court to the fourth respondent, it was returned as “no such person”. It revealed that the fourth respondent is very much residing in the said address and wantonly returned the notice as if there is no such person. It shows that the fourth respondent evaded the service of notice.



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6. Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides that when a property has been transferred by way of 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 that such transfer was void. In the case on hand, the mother of the petitioner had settled the subject property to the son out of love and affection and as a reward for the respect, reward and care that the son had shown to the mother.

7. It is relevant to rely upon the portion of the settlement deed vide Document No.942 of 2022 dated 05.03.2022 as follows:-

“ நீ எனது ஒரே மகன் ஆவாய்.
உன் மீது எனக்கு இருக்கும் அன்பின்
பிரியத்தினாலும், விகவாசத்தினாலும், நீ என்னிடம் நடந்து
கொள்ளும் தன்மையின் பேரிலும் என்னால் உனது பெயருக்கு ஒரு
சொத்து ஆதரவினை செய்து வைக்க வேண்டும் என்ற எண்ணம்
கொண்டு...”

8. A perusal of the settlement deed, it reveals that being pleased



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with the care, love, affection, respect and good behaviour, the mother of the petitioner had executed a settlement deed as a reward in favour of her son and in discharge of his responsibilities towards the son, she has also given future security to the son. 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.

9. 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



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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 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.

10. 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.

11. This issue was already dealt with by this Court in the case of ***Mohamed Dayan Vs. District Collector.***, order dated **08.09.2023** made in



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W.P.No.28190 of 2022 in which this Court, after discussing various judgments of the Hon'ble Supreme Court of India and various judgments of High Court, 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



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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.



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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



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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



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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



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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



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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.”

12. In view of the above, the impugned orders cannot be sustained are liable to be quashed. Accordingly, the impugned orders dated 17.07.2023 passed by the 2nd respondent in Case No.A4 / 10317 / 2022 and the order passed by the 1st respondent vide order dated 29.10.2023 in Appeal case No.A4 / 837/ 2022, are hereby quashed.

13. The settlement deed executed in favour of the fourth respondent dated 05.03.2022 registered vide Document No.942 of 2022, is hereby declared as null and void. The fourth respondent is directed to handover the vacant possession of the subject property in favour of the petitioner, forthwith.

14. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. No costs.



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Internet: Yes

Index : Yes/No

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Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

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Tiruvannamalai District.
2. The Tribunal for Maintenance and Welfare of Parents
and Senior Citizens (Sub-Collector),
Revenue Divisional Office, Tiruvannamalai,
Tiruvannamalai District.
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