



W.P.No.23266 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM:

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

W.P.No.23266 of 2024

1.Kannan

2.Sasikala Kannan

.... Petitioners

Vs

1.The District Collector,
4th Floor, M.Singaravellar Maligai,
62, Rajaji Salai,
Chennai Collectorate,
Chennai – 600 001.

2.The District Revenue Officer,
Office of District Revenue Officers,
4th Floor, M.Singaravellar Maligai,
62, Rajaji Salai,
Chennai Collectorate,
Chennai – 600 001.

3.Revenue Divisional Officer,
Anna Nagar West Extension,
Anna Nagar Post Office,
Chennai – 600 101.

4.The Tahsildar,
Anna Nagar West Extension,
Anna Nagar Post Office,
Chennai – 600 101.



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5. Gunaselvi
6. Rahul
7. P.Meera
8. Kumaran
9. Soni

.... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the order in Se.Moo.Ma.Ka.No.1264/AA1/2024 dated 08.07.2024 on the file of the first respondent and quash the same as illegal, irregular and without jurisdiction and further direct the respondents 1 to 4 to recover the possession of the property from 5th and 6th respondents situated at No.25, 2nd Cross Street, Anu Apartments, D Block, 1st Floor, Collectorate Colony, Aminjikarai, Chennai – 600 029.

For Petitioner	: Mr.Avinash Wadhwani
For R1 to R4	: Mr.S.J.Mohammed Sathik Government Advocate
For R5 & R6	: Mr.N.Nikhilesh
For R7 to R9	: No appearance

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 08.07.2024, thereby confirming the order passed by the second respondent dated 17.03.2023, thereby dismissed the complaint lodged by the petitioner under Maintenance and Welfare of Parents and Senior Citizen Act, 2017 (hereinafter referred to as “the Act”).



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2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioners are the father-in-law and mother-in-law of the fifth respondent and grand parents of the sixth respondent. The respondents 7 to 9 are the relatives of the fifth respondent. The petitioner had purchased a property situated in Door No.11, 2nd Cross Street, Collectorate Colony, Aminjikarai, Chennai registered vide Document No.2455 of 2004 dated 25.06.2006. They have two sons and one daughter. The fifth respondent got married with their elder son and gave birth to sixth respondent. The another son is living in abroad and their daughter got married and living separately with her family. Their elder son was engaged a business and the fifth respondent is working a teacher. While being so, the elder son and his family members went to reside the property owned by the petitioner on condition that they shall pay the rent. However, they have not paid any rent. While being so, their elder son fell ill and passed away on 05.04.2017. Thereafter, the behaviour of the fifth and sixth respondents completely changed and the petitioners were not maintained by them and also they beaten the petitioners. Now they could not meet out their medical expenses and for their livelihood. They mainly depend upon the rent from the premises, which is now occupied by the fifth and sixth



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respondents. That apart, the petitioners had already settled another property, which is situated in Tiruvarur in favour of the fifth respondent. In fact, the petitioners were brutally attacked by them and as such, the petitioners lodged a police complaint before the Aminjikarai Police Station on 16.10.2022 and they issued CSR. Subsequently, the petitioner lodged a complaint under Maintenance and Welfare of Parents and Senior Citizen Act, 2007 before the second respondent.

4. The main allegation of the petitioners is that the subject property was rented out to the fifth and sixth respondents. After demise of the petitioners son, the fifth and sixth respondent failed to pay the rent and also beaten the petitioners. After due enquiry, the second respondent, by an order dated 17.03.2023, rejected the request made by the petitioners to evict the fifth and sixth respondents from the premises owned by them and directed the fifth respondent and another son along with their daughter to maintain the petitioners by providing all facilities including medical expenses. Aggrieved by the same, the petitioners preferred an appeal before the first respondent and the same was also rejected and the order dated 08.07.2024 passed by the second respondent was confirmed.

5. The only point to consider in this writ petition is that whether



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the respondents 1 and 2 have the jurisdiction or power to order eviction under the Act. In this regard, it is relevant to rely upon the Judgement of the Hon'ble Supreme Court of India in the case of S.Vanitha Vs. The Deputy Commissioner and others in Civil Appeal No.3822 of 2020, dated 15.12.2020, in which, the Hon'ble Supreme Court of India held as follows :

“16. Of particular relevance to the facts of the case at hand is Chapter V, which enacts provisions for protecting the life and property of a senior citizen. Section 23 proceeds in the following terms:

23. Transfer of property to be void in certain 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



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(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 to sub-section (1) of section 5."

Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence, Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is Imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to



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receive 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 notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely "where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...". On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression "such estate or part thereof is transferred". Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-



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existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression 'transfer would include not only the absolute transfer of property but also



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transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include "rights or interests in such property. The expression 'transfer not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficial object and purpose of its provisions. Sub-section (2) of section 23 speaks of the enforcement of the "right to receive maintenance" which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.

17. The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law, According to the submission, the power to order eviction is implicit in the provision guaranteeing a 'right to receive maintenance out of an estate' and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act



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place cannot be viewed in isolation from the context of the on-going matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.”

6. Thus, it is clear that the respondents 1 and 2 under the Act may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parents. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. Further the provision under Section 4 of the Act cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(f), 2(g) and 2(h) of the Act. Therefore, the petitioners are entitled for their possession in respect of the property which is now acquired by the fifth and sixth respondents for the purpose of generating income or to lead a normal life. In these circumstances, the petitioners cannot be directed to file a civil suit for recovery of possession of the property from their daughter-in-law and grandson who are not maintaining the petitioners, but they are beaten them to the core, the whole purpose and objects of the said Act would be frustrated. In fact, the petitioners had already settled a property situated in Tiruvarur in favour of the fifth respondent.



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7. The learned counsel appearing for the fifth and sixth respondents submitted that they were not provided the copy of the settlement deed so far by the petitioners.

8. In view of the above, the order passed by the first and second respondents cannot be sustained and it is liable to be quashed and the complaint lodged by the petitioners is allowed. Accordingly, the order passed by the first and second respondents are hereby quashed. The fifth and sixth respondents are directed to handover the vacant possession of the subject property situated at Door No.11, 2nd Cross Street, Collectorate Colony, Aminjikarai, Chennai, to the petitioners forthwith on condition that the petitioners shall handover the original settlement deed which was already executed in favour of the fifth respondent in respect of the Tiruvarur property forthwith.

9. In the result, this writ petition stands allowed. No costs.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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