



W.P.No.25732 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

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

W.P.No.25732 of 2024
and W.M.P.Nos.28111 and 28112 of 2024

Monicka

... Petitioner

-Vs-

1. The District Collector,
Coimbatore District Collector Office,
Coimbatore.
2. The Revenue Divisional Officer,
(Magistrate For The Maintenance And
Welfare Of Parents And Senior Citizens Act, 2007)
Coimbatore North Zone, Coimbatore.
3. The Thasildar,
Tashildhar Office, Mettupalayam Taluk,
Coimbatore District.
4. Sub Registrar,
Mettupalayam, Mettupalayam Taluk,
Coimbatore.
5. The Village Administrative Officer,
Sirumugai Village,
Mettupalayam Taluk,
Coimbatore District.



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6. P. Balakrishnan

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for records pertaining to an Impugned order bearing No.O.Mu.2233/2024/A1 dated 23.07.2024, on the file of the second respondent and quash the same.

For Petitioner : Mr.S.Shiva Shanmugam
for Mr.K.Gangadaran
For R1 to R5 : Mr.M.S.Arasa Kumar
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 23.07.2024, thereby allowed the complaint lodged by the 6th respondent and set aside the settlement deed executed by the 6th respondent in favour of the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 5 and perused the materials available on record.

3. The petitioner is the daughter of the 6th respondent herein. The 6th respondent owned property comprised in S.F.No.714, Site Nos.20 and 15, Brindhavan Nagar, Bellepalayam Village, Mettupalayam Taluk,



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Coimbatore District. Apart from the said land, the 6th respondent owned another properties. While being so, the petitioner got married and thereafter, she got separated. While being so, the 6th respondent had executed a settlement deed in respect of the subject property to an extent of 2592 sq.ft comprised in Plot Nos.20 and part of 15 and comprised in S.No.714, Pallaepalayam, Mettupalayam Taluk, Coimbatore District, in favour of the petitioner on 15.09.2023 registered vide Document No.15183 of 2023. Thereafter, the 6th respondent lodged a complaint before the second respondent alleging that he is suffering from cancer and even without the knowledge of the 6th respondent, the petitioner got married and failed to maintain the 6th respondent. Now, he is struggling even for his medical expenses.

4. On receipt of the said complaint, the second respondent issued a notice to the petitioner and after ful-fledged enquiry, allowed the complaint and set aside the settlement deed dated 15.09.2023 executed by the 6th respondent in favour of the petitioner.

5. The learned counsel for the petitioner would submit that the



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complaint itself is not maintainable under Section 23(1) of the Maintenance And Welfare Of Parents And Senior Citizens Act, 2007. In order to exercise the provision under Section 23(1) of the Maintenance And Welfare Of Parents And Senior Citizens Act, 2007, there are two essential pre-conditions required to be satisfied viz., The settlement deed should have been executed after commencement of the Act or it should contain a clause imposing an obligation on the settlee or transferee to maintain the settlor or transferee. He further pointed out that the settlement deed dated 15.09.2023 does contain a specific clause and as such, the complaint itself is not maintainable. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 17 Scale 293** in the case of ***Sudesh Chhikara and Ramti Devi and another.***

6. 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 ***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



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of High Court, held as follows:-

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“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



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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



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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



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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



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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.



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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.”

7. In view of the above, this Court finds no infirmity or illegality in the order passed by the second respondent dated 23.07.2024 and the writ petition is devoid of merits and is liable to be dismissed.

8. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

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Internet: Yes
Index : Yes/No
Neutral Citation: Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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