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W.P.No.26107 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

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

W.P.No.26107 of 2024 and
WMP.No.28516 of 2024

1.P.Kanniappan
2.K.Rajasekhar

...Petitioners

Vs.

1.The District Collector,
Collectorate,
Chengalput,
Chengalput District
2.The Revenue Divisional Officer,
Tambaram,
Chengalput District
3.The Revenue Tahsildar,
Pallavaram Taluk,
Chengalput District
4.P.Thirupurammal

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders dated 30.05.2024 made in Na.Ka.No.1509/2024/M1 passed by the first respondent confirming the order dated 27.12.2023 made in Na.Ka.162/2023/A passed by the second respondent, quash the same and consequently direct the fourth respondent to work out her remedies in her suit in OS.No.87 of 2017 on



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the file of the Ld.Sub Court, Tambaram (now pending as OS.No.326 of 2021 Ld.Sub Court, Alandur).

For Petitioners : Mr.N.Manoharan

For Respondents

For R1 to 3 : Mr.P.Gurunathan,
Additional Government Pleader

For R4 : Mr.S.Mohanavadivelan

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 30.05.2024 thereby confirmed the order passed by the second respondent dated 27.12.2023 thereby ordered to pay a sum of Rs.5,000/- as monthly maintenance and to give one portion of the first petitioner's house for the fourth respondent's residence and also cancelled patta granted in favour of the first petitioner.

2. The first petitioner is the son of the fourth respondent and the second petitioner is the grandson of the fourth respondent. The property comprised in TS.No.170 (old SF.No.235 of 2019 part) admeasuring 1956 ½ sq.ft, Nellipettai Road, Jameen Pallavaram Village,



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Alandur Taluk, Chengalpet District was owned by the first petitioner's father and he was granted patta for doing conch service in the cremation ground. He had put up a shed and was living there till his demise on 02.01.1996. After his demise, the first petitioner is doing the conch service and therefore patta was transferred in his name in the year 2019 in respect of the subject property. Thereafter, the first petitioner had constructed house (ground+1) and is living there. While being so, on 17.12.2019, the first petitioner settled the subject property in favour of the second petitioner by way of settlement deed dated 17.12.2019 registered vide document No.11167 of 2019. While being so, the fourth respondent lodged complaint under Section 23 of Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 before the second respondent alleging that the fourth respondent was driven out from the matrimonial home and the first petitioner refused to maintain her. Therefore, she asked for maintenance. The second respondent after fulfilled enquiry, ordered that the first petitioner shall pay a sum of Rs.5,000/- as monthly maintenance and also directed to give right of residence to the fourth respondent to reside in one house of the



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petitioners. Aggrieved by the same, the petitioners as well as the fourth respondent filed appeal before the first respondent. In both the appeals, the first respondent passed common order dated 30.05.2024 thereby confirmed the order passed by the second respondent and also cancelled the patta issued in favour of the first petitioner for the subject property.

3. The learned counsel appearing for the petitioners would submit that the petitioners never denied maintenance of the fourth respondent. The first petitioner, being the son of the fourth respondent, is duty bound to maintain the fourth respondent. Accordingly, he is maintaining her. He had never driven out the fourth respondent from the subject property. In fact, at the instigation of the daughter of the fourth respondent, she lodged complaint before the second respondent. As directed by the second respondent, the first petitioner is continuously paying monthly maintenance without fail. However, the first respondent ordered to cancel the patta granted in favour of the first petitioner. As per the Maintenance And Welfare Of Parents And Senior Citizens Act, 2007, the first respondent has no jurisdiction to cancel the patta issued in



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favour of the first petitioner since no gift or settlement deed was executed in favour of the first petitioner by any senior citizen. After the demise of his father, because the petitioner is doing the service of conch and as such, the patta was transferred in favour of the first petitioner. That apart, at the instigation of her daughter, the fourth respondent and her daughter had instituted suit in OS.No.87 of 2017 for partition claiming 2/3 share in the subject property on the file of the Sub Court, Tambaram, which was subsequently transferred to Sub court, Alandur and renumbered as OS.No.326 of 2021, which is now pending. As per the direction, the first petitioner is paying maintenance of Rs.5,000/- and he is ready to pay monthly maintenance of Rs.10,000/-.

4. The learned counsel appearing for the fourth respondent would submit that without consent of the fourth respondent and her daughter, the first petitioner himself unilaterally transferred the patta in his favour. Thereafter, immediately the first petitioner had settled the subject property in favour of the second petitioner by way of settlement deed dated 17.12.2019, that too when the partition suit was very much



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

6. As rightly pointed out by the learned counsel appearing for the petitioners, the first respondent has no jurisdiction to cancel the patta issued in favour of the first petitioner. Admittedly, the first petitioner's father was issued patta for the subject property on his doing conch service. After demise of his father, the first petitioner is doing conch service and as such, patta in respect of the subject property was transferred in favour of the first petitioner. Whether the patta was originally issued in favour of the first petitioner's father for conch service or not, is the subject matter of the suit for partition. However, after demise of the first petitioner's father, patta was transferred in favour of the first petitioner. Likewise, whether the first petitioner, with or without consent of the fourth respondent, changed the patta in his name, is also the subject matter of the partition suit.



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7. In view of the above, the part of the order dated 30.05.2024 passed by the first respondent insofar as cancellation of patta alone cannot be sustained and the same is liable to be quashed. Accordingly, the part of the order dated 30.05.2024 passed by the first respondent insofar as cancellation of patta alone is quashed on condition that the monthly maintenance of Rs.5,000/- is enhanced to the tune of Rs.10,000/- payable by the first petitioner in favour of the fourth respondent. However, the remaining portion of the orders issued by the first and second respondents shall remain unaltered.

8. Accordingly, this writ petition is partly allowed. It is made clear that if the first petitioner fails to pay monthly maintenance of Rs.10,000/- and refuses to give residence, the order of cancellation of patta shall stand automatically restored. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.09.2024

Neutral citation: Yes/No

Index: Yes/No



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Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

lok

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