



W.P. No. 31921 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 31921 of 2023
and
W.M.P. No. 31505 of 2023**

N. Kumar

... Petitioner

-VS-

1. The District Collector,
Collectorate Office,
Chengalpet District.
 2. The Sub Divisional Magistrate,
cum Revenue Divisional Officer,
Tribunal for Parents and Senior Citizens Welfare Maintenance Act, 2007,
Tribunal office of the RDO,
Coimbatore North, Coimbatore District.
 3. The Sub-Registrar,
Office of the Sub-Registrar,
Mettupalayam 641 301,
Coimbatore District.
 4. Yesodha
 5. N.Ramaraj
 6. R.Karthik
 7. Ramkumar
 8. Minor Agnishka
Rep. by her father/guardian Ramkumar
 9. Minor Aaruthra
Rep. by his father Ramkumar
- Respondents

...



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to order Paa.Moo.No.21274/2021/U2, dated 23.05.2023, passed by the First Respondent and quash the same as unlawful, illegal and ultra vires and directing the Second and Third Respondents to cancel the entries made in E.C. Pursuance to the order dated 21.05.2020 of the Second Respondent under his Na.Ka.No.2742/2018/A1 to the Petitioner and to restore the right of the Petitioner in accordance with law.

For Petitioner	: Mr. P.Veeraraghavan
For Respondents	: Mr. S.J.Mohamed Sathik (R1 to R3) Government Advocate Mr. M.Mohamed Riyaz (R4 to R9)

ORDER

Heard Mr. P.Veeraraghavan, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First to Third Respondents and Mr. M.Mohamed Riyaz, Learned Counsel for the Fourth to Ninth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is the son of the Fourth Respondent, viz., Yasodha, and her husband, viz., T.Narayanasamy. It is borne out from the materials on record that the settlement-deed dated 20.01.2015 registered as Document No. 308 of



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2015 had been executed by said T.Narayanasamy in favour of the Petitioner in

respect of the property situated at S.F.No.875/A1 (Acre 7.68) in this Site No. 9

(Part No.85) in Ward No.9, Mahadevapura 1st Street, Mettupalayam Town,

Chikkadasampalayam Village, Coimbatore District. Similarly, another

settlement-deed dated 20.01.2015 registered as Document No. 309/2015 had

been executed by the Fourth Respondent in favour of the Petitioner in respect of

the property situated at S.F. No. 909/6, Natham Nila Vari Patta No. 4120 in

Ward No. 8, Nellithurai Road (Ooty Road to Mahadevapuram Road),

Mettupalayam Town and Taluk, Coimbatore District. The Fourth Respondent

had made an application on 28.08.2018 for cancellation of the said

settlement-deeds invoking Section 23 of the Maintenance and Welfare of

Parents and Senior Citizen Act, 2007 (hereinafter referred to as 'the Act' for

short). The Second Respondent by Order No. 2742/2018/A1 dated 21.05.2020

declared the said settlement-deeds as void in respect of both the properties. The

Petitioner had earlier filed the Writ Petition in W.P. No. 9755 of 2020

challenging the same, but this Court by order dated 27.07.2021 disposed the

said Writ Petition granting liberty to the Petitioner to prefer an appeal under

Section 16 of the Act. The First Respondent before whom such an appeal was

filed, confirmed that order by Proceedings in Paa. Moo. No. 21274/2021/U2

dated 23.05.2023, which is assailed in this Writ Petition.



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3. The Division Bench of this Court in the authoritative pronouncement in

K.Raju -vs- Union of India [(2021) 2 CTC 129] has ruled that Section 16 of the Act enables only a 'Senior Citizen' or 'Parent' to invoke the right of appeal under that legal provision, and none else could avail such remedy. This would obviously mean that the appeal preferred by the Petitioner before the First Respondent was not maintainable and the Order in Paa. Moo. No. 21274/2021/U2 dated 23.05.2023 passed by the First Respondent is *non est* in the eye of law. As its consequence, the validity of the Order No. 2742/2018/A1 dated 21.05.2020 passed by the Second Respondent remains for consideration.

4. At this stage, it must be highlighted that the plain language of Section 23 of the Act makes it clear that its benefit would be applicable only when there is a specific clause in the instrument of transfer that the transferee has an obligation to provide the basic amenities and needs of the senior citizen, which he has refused or failed to carry out, which is fortified by the ruling of the Hon'ble Supreme Court of India in the decision in **Sudesh Chhikara -vs- Ramti Devi** (Order dated 06.12.2022 in Civil Appeal No. 174 of 2021) holding the field. In this case, the requisite clause to invoke Section 23 of the Act mentioned supra is absent and on the contrary, there is express recital in the aforesaid settlement-deeds executed by the said T.Narayanasamy and the Fourth



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Respondent in favour of the Petitioner that they are irrevocable. *Afortiori*, the bar of jurisdiction of the Civil Court under Section 27 of the Act would not arise for entertaining a suit to adjudge the document as void and order it to be delivered up and cancelled in terms of Section 31 of the Specific Relief Act, 1963. It is also not explained as to how the Fourth Respondent could make an application on 28.08.2018 for declaration of the settlement-deed dated 20.01.2015 executed by the said T.Narayanasamy in favour of the Petitioner as void, when he was alive and had died later on 10.02.2022. In such circumstances, the Order No. 2742/2018/A1 dated 21.05.2020 passed by the Second Respondent is also set aside with a clarification that it would not preclude the rights of the Fourth Respondent and the other legal heirs of the said T.Narayanasamy to work out their remedies under common law including Section 31 of the Specific Relief Act, 1963, for such relief.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.05.2024.

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To

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P.D. AUDIKESAVALU, J.

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