



WEB COPY



W.P.No.28685 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM:

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

W.P.No.28685 of 2024 and
WMP.Nos.31289 & 31290 of 2024

1.E.Mahendran
2.E.Manivarman

... Petitioners

-Vs-

1.The District Collector,
Thiruvallur District,
Thiruvallur
2.The Sub Collector, (RDO),
Ponneri,
Thiruvallur District
3.E.Muniammal

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records pertaining to the order COLREV-COLR-4189/2024/A1 dated 11.06.2024 passed by the second respondent herein and quash the same, it is illegal and arbitrary and against the principles of natural justice.

For Petitioners : Mr.Mohammed Nazar

For Respondents

For R1 & 2 : Mr.P.Gurunathan,
Additional Government Pleader

ORDER



W.P.No.28685 of 2024

This Writ Petition has been filed challenging the order passed by the second respondent dated 11.06.2024 thereby directed the petitioners and other two sons to pay a sum of Rs.4,000/-(each) as monthly maintenance to the third respondent and also the petitioners were directed to vacate their respective portions and hand over the vacant possession of the subject property in favour of the third respondent.

2. It is seen that the third respondent is the mother of the petitioners herein. The subject property originally owned by the husband of the third respondent. The properties are two independent houses located at Nattamaikaara Street, Gummidipoondi and one commercial building with two floors consisting 12 shops and three rooms located at Gummidipoondi market. The third respondent married one, Ellapa Reddiar and gave birth to five sons and three daughters. All got married and are doing their respective businesses. However, they are utilizing the rents for the shops and insofar as the agricultural land is concerned also, they are in possession and cultivating the same without maintaining the third respondent. After their marriage, the third respondent was driven out from her house and they failed to maintain her. Therefore, she was constrained to file complaint under Section 23 (1) of Maintenance and



W.P.No.28685 of 2024

Welfare of Parents and Senior Citizens Act, 2007 before the second respondent. The second respondent after due enquiry, allowed the complaint and directed the petitioners and other two sons to pay monthly maintenance. However, the petitioners were also directed to vacate and hand over the vacant possession of the residential portion in favour of the third respondent.

3. In this regard, the learned counsel for the petitioners would submit that the third respondent has sufficient means to maintain herself and she has other properties. The petitioners are residing in the subject property and all of sudden they cannot vacate the premises. In fact, there was oral partition between the family members and the property which was allotted in favour of the petitioners, they occupied and are now residing there. In fact, the second petitioner filed suit for injunction and it is pending as against the third respondent.

4. On perusal of the records, revealed that the third respondent also lodged complaint and the same has been registered in crime No.139/2024 for the offences under Sections 323, 352, 506(ii) and Section 34 of IPC and Section 4 of Women Harassment Act on the file of



W.P.No.28685 of 2024

the Inspector of Police, All Women Police Station, Gummidipoondi. It

shows that the third respondent was beaten by the petitioners and she was driven out from her house. Therefore, the third respondent rightly filed complaint under Section 23 (1) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the same was allowed with direction to pay monthly maintenance. However, the learned counsel for the petitioners specifically contended that in the application filed under Section 23 (1) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, eviction cannot be ordered in respect of the subject property. However, the power of the Maintenance Tribunal to pass an order of eviction has been extensively dealt with by the Hon'ble Supreme Court of India in the case of *S.Vanitha vs Deputy Commissioner* reported in **2021 (15) SCC 730**, wherein it is held as follows:

25. 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,



WEB COPY



W.P.No.28685 of 2024

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, 2007 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 parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertng to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favour of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the



W.P.No.28685 of 2024

lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father, fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the ongoing 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."

5. The above judgment is squarely applicable to the case on hand. As such, this court finds no infirmity or illegality in the impugned order and this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

26.09.2024
(2/2)

Neutral citation: Yes/No
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

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W.P.No.28685 of 2024

To
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W.P.No.28685 of 2024

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