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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

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

W.P. No. 31912 of 2023
and
W.M.P. No. 31497 of 2023

1. Gowri

2. Suseela

3. Devi … Petitioners

-vs-

1. The Revenue Divisional Officer,
   Madurantagam,
   Chengalpet District.

2. Parthasarathy Mudaliar

3. P.Jothilingam

4. P.Ravi Sankar ... Respondents
   (R3 and R4 are impleaded vide per order dated 22.01.2024 in W.M.P. No. 32684 of 2023)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings passed in Ni. Mu. No. 3142/2023/B dated 10.08.2023 on the file of the First Respondent herein, in so far as it relates to the award of maintenance is concerned.

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For Petitioners : Mr. K. Govi Ganesan

For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1)

Mr. R. Abdul Mubeen (for R2)

No appearance (for R3 and R4)

O R D E R

Heard Mr. K.Govi Ganesan, Learned Counsel for the Petitioners, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First Respondent and Mr. R. Abdul Mubeen, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. Though notice has been served, the Third and Fourth Respondent have not entered appearance either in person or through Counsel till date in this case.

3. The Second Respondent, who is a Senior Citizen, had executed a settlement-deed dated 26.12.2006 registered as Document No. 5310 of 2006 in the office of the Sub-Registrar, Cheyyur, Kanchipuram District, transferring his property in favour of the Petitioners, who are his daughters. He had cancelled

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the said settlement-deed by an instrument dated 25.07.2008 registered as Document No. 3039 of 2008 in the office of the Sub-Registrar, Cheyyur, Kanchipuram District. The Petitioners had filed a suit in O.S. No. 237 of 2009 on the file of the District Munsif Court, Maduranthakam for declaration of their title to that property and for permanent injunction in which a decree was passed in their favour against which appeal in A.S. No. 10 of 2013 has been preferred before the Sub-Court, Maduranthakam by the Second Respondent. The Writ Petition in W.P. No. 28834 of 2013 was filed by the Petitioners challenging the Proceedings No. Na. Ka. 2738/2013/B2 dated 05.09.2013 cancelling the patta granted in their names, which was set aside by this Court by order dated 03.03.2022 restoring the patta in their joint names with a clarification that the Second Respondent may make fresh application for cancellation of patta, if he succeeds in the pending appeal and there is no legal impediment to do so.

4. While the matter stood as narrated supra, the Second Respondent made a representation before the First Respondent invoking Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) for treating the settlement-deed executed by him in favour of the Petitioners as void, who had declined to grant such relief, but directed the Petitioners and the Fourth and Fifth Respondents, who are the

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sons of the Second Respondent to pay a sum of Rs. 2,000/- each every month aggregating to Rs. 10,000/- towards maintenance of the Second Respondent by Order in Ni. Mu. No. 3142/2023/Aa dated 10.08.2023, which is challenged in this Writ Petition.

5. Learned Counsel appearing for the Petitioners strenuously pleads that the Petitioners, who are women, are dependent upon their respective husbands for their livelihood and that they cannot be mulcted with any responsibility for the maintenance of the Second Respondent, who is under the care and custody of the Fourth and Fifth Respondents. It is further contended that in a proceeding under Section 23 of the Act, the First Respondent, has exceeded his jurisdiction by requiring the Petitioners to pay maintenance to the Second Respondent, particularly when a separate machinery has been provided under Sections 4 to 9 of the Act. The Petitioners also ventilate the grievance that the First Respondent has hastily proceeded to dispose the representation made by the Second Respondent by directing the Petitioners to pay maintenance without even furnishing them with its copy, which is in gross violation of the principles of natural justice.

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6. Having regard to the aforesaid submissions made, which deserve acceptance, it is not possible to sustain the impugned order, which is set aside. However, it would not preclude the Second Respondent from making a proper application following the prescribed procedure under Sections 4 to 9 of the Act or under any other law and no view has been expressed by this Court on the merits of the controversy in that regard.

In the result, the Writ Petition is ordered with the aforesaid clarifications. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 22.05.2024.

gsa

To

The Revenue Divisional Officer,
Madurantagam,
Chengalpet District.

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P.D. AUDIKESAVALU, J.

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