



W.P. No. 31503 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM

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

**W.P. No. 31503 of 2023
and
W.M.P. No. 31135 of 2023**

D. Mariyadoss

... Petitioner

-VS-

1. The District Collector,
Chengalpattu District.

2. The Executive Magistrate,
and Revenue Divisional Officer,
Chengalpattu District.

3. Johnson

... Respondents

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 of the order passed by the First Respondent in Na.Ka.No.9453/2023/M1 dated 07.09.2023 and the order passed by the Second Respondent in Na.Ka.No.A1/3146/2023 dated 24.04.2023, quash the same as illegal and arbitrary and further direct the Respondents to cancel the Settlement Deed vide doc No.3308/2009 dated 14.09.2009.



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For Petitioner : Mr. G.Mohammed Aseef
For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1 & R2)
Mr. K.Shanmugam, (for R3)

ORDER

Heard Mr. G.Mohammed Aseef, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Second Respondents and Mr. K.Shanmugam, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a Senior Citizen, had executed a settlement-deed dated 14.09.2009 registered as Document No. 3308 of 2009 in the office of the Sub-Registrar, Thiruporur transferring his property in favour of the Third Respondent, who is his son. He had made an application 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 that settlement-deed as void before the Second Respondent, who had declined to grant such relief, but directed the Third Respondent to pay a sum of Rs. 5,000/- per month towards



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maintenance to the Petitioner by Order in Na. Ka. No. A1/3146/2022 dated 24.04.2023 and has been confirmed in appeal under Section 16 of the Act by Order in Na. Ka. No. 9543/2023/M.1 dated 07.09.2023 passed by the First Respondent, which are challenged in this Writ Petition.

3. It is clear from the plain language of Section 23 of the Act 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 and he has refused or failed to carry out such condition, 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 avail the remedy in Section 23 of the Act mentioned supra is absent. *Afortiori*, the bar of jurisdiction of the Civil Court to entertain suit for such relief created under Section 27 of the Act would not arise.

4. In view of the aforesaid legal position, there does not appear to be any infirmity in the decision-making process of the First and Second Respondents in the impugned orders warranting interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution of



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India. However, it is hastened to clarify here that it would not preclude the Petitioner from working out his remedies under common law including Section 31 of the Specific Relief Act, 1963, for such relief. It is needless to add here that no view has been expressed by the Court on the merits of the controversy involved in the matter.

5. At the same time, the Third Respondent shall continue to pay the sum of Rs. 5,000/- per month as maintenance to the Petitioner, which shall be enforceable as if it is an order passed by the Concerned Authority under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and shall be without prejudice to the rights of the Petitioner to seek any further amount towards maintenance that he may be entitled under law.

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

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Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 17.04.2024.



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To

1. The District Collector,
Chengalpattu District.
2. The Executive Magistrate,
and Revenue Divisional Officer,
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P.D. AUDIKESAVALU, J.

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