



WEB COPY



W.P. No. 34277 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

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

W.P. No. 34277 of 2023

and

W.M.P. Nos. 34167 and 34169 of 2023

1.Tousifa Kouser

2.Asifa Kouser

3.Akifa Kouser

4.Mohamed Imran

... Petitioners

-VS-

1. The District Collector,
District Collector Collectorate,
Thirupathur District,
Pincode 635 601.

2. Sayed Ismail Saibu
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records pertaining to the issuance of the impugned order Se.Mu.Na.Ka.No.571/Aa1/2023 dated 12.09.2023 passed by the First Respondent and quash the same.

For Petitioners : Mr. R.Ilanchizhiyan

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



W.P. No. 34277 of 2023

Mr. Sathish Rajan (for R2)

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ORDER

Heard Mr. R.Ilanchizhiyan, Learned Counsel for the Petitioners, Mr. S.J.Mohamed Sathik, Learned Government Advocate for the First Respondent and Mr. Sathish Rajan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who is a Senior Citizen, had executed settlement-deeds dated 10.09.2020 registered as Document Nos. 4999 and 5000 of 2020 in the office of the Sub-Registrar, Vaniyambadi, transferring his properties in favour of the Fourth Petitioner, who is his son, and the First to Third Petitioners, who are his daughters. 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 those settlement-deeds as void before the Revenue Divisional Officer, Vaniyambadi, Tirupattur District, who had declined to grant such relief by Order No. RDOVNB/372/2023-A1 dated 23.06.2023. However, on appeal preferred by the Second Respondent under Section 16 of the Act before the First



W.P. No. 34277 of 2023

Respondent, the aforesaid settlement-deeds executed by the Second Respondent

in favour of the Petitioners have been declared as void by Order in Se. Mu. Na.

Ka. No. 571/A1/2023 dated 12.09.2023, which is 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, 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. Though a vain attempt is made by Learned Counsel for the Second Respondent to persuade that even in the absence of a specific clause, a Senior Citizen, like the Second Respondent, could establish from attending circumstances that while transferring the property the obligation to look after the Senior Citizen could be inferred, it is borne out from the recitals of the settlement-deed in this case that the Second Respondent has agreed not to revoke it. Consequently, it would not be possible to sustain the impugned order passed by the First Respondent, which is set aside. *Afortiori*,



W.P. No. 34277 of 2023

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. As such, the Second Respondent is not precluded from working out his remedies under common law including Section 31 of the Specific Relief Act, 1963, for adjudging that document as void and order it to be delivered up and cancelled, and no view has been expressed by this Court on the merits of the controversy involved in this regard.

4. Taking into account the relationship between the contesting parties, *status quo* as existing today shall be maintained by them till 30.06.2024, so that the Second Respondent could in the meanwhile approach the jurisdictional Civil Court.

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

25.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 23.05.2024.

gsa/pal



W.P. No. 34277 of 2023

To

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1. The District Collector,
Chengalpattu District.
2. The Revenue Divisional Officer,
Madurantakkam Taluk,
Chengalpattu District.



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W.P. No. 34277 of 2023

P.D. AUDIKESAVALU, J.

gsa

W.P. No. 34277 of 2023

25.03.2024