



WEB COPY



W.P. No. 35700 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. 35700 of 2023
and
W.M.P. No. 35674 of 2023**

K.Rasheeda Begum

... Petitioner

-VS-

1. The District Collector,
Chengalpattu District,
Chengalpattu.

2. The Revenue Divisional Officer,
Tambaram,
Chengalpattu District.

3. K.Siddique Basha

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari Mandamus for the records pertaining to the impugned order dated 08.06.2023 passed by the First Respondent in Na. Ka. No. 5009/2023/M.1 confirming the order dated 13.02.2023 passed by the Second Respondent in Na. Ka. No. 1325/2022/Aa and quash the same consequently direct the First Respondent to cancel the Settlement Deed dated 28.01.2022 registered as Document No. 1334 of 2022 at the office of the Sub-Registrar, Tambaram under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.



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For Petitioner : Mr. W.M.Abdul Azeez
For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1 & R2)
Mr. S.Sai Shankar (for R3)

ORDER

Heard Mr. W.M.Abdul Azeez, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Second Respondents and Mr. S.Sai Shankar, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had executed a settlement deed dated 28.01.2022 registered as Document No. 1334 of 2022 in the office of the Sub-Registrar, Tambaram transferring her property in favour of the Third Respondent, who is her son, and she had made an application dated 06.04.2022 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. Since the Third Respondent had undertaken to pay maintenance to the Petitioner, the Second Respondent by Proceedings No. Na. Ka. No.



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1325/2022/Aa dated 13.02.2023 had refused to treat that

settlement-

deed as void, which is assailed 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 avail the remedy in Section 23 of the Act mentioned supra is absent and on the contrary, there is an express recital in the aforesaid settlement-deed executed by the Petitioner in favour of the Third Respondent that it is irrevocable. *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. That apart, it is reflected from the affidavit filed in support of the Writ Petition that the age of the Petitioner as on 16.11.2023, when the Writ Petition was filed, was 57 years and her Aadhaar Card produced shows that she was born in the year 1966, meaning thereby that she has not attained the age of 60



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years in order to fall within the meaning of 'Senior Citizen' in terms of Section

2(h) read with Section 23 of the Act, which enables only a Senior Citizen to resort for such remedy under the Act.

5. In view of the aforesaid legal position, Learned Counsel for the Petitioner seeks permission of the Court to withdraw the Writ Petition reserving the right of the Petitioner to work out her remedies under common law including Section 31 of the Specific Relief Act, 1963, for such relief and he has made an endorsement to that effect in the court record.

6. Learned Counsel for the Third Respondent submits that the Second Respondent has directed the Third Respondent to pay Rs. 5,000/- every month and the said order would be complied and the arrears upto February 2024 would be paid by 31.03.2024 along with the amount falling every month on the due dates, 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.



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In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: (i) Issue order copy by 17.04.2024.

(ii) Registry is directed to return the impugned order under written acknowledgment after retaining a copy of the same for record.

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To

1. The District Collector,
Chengalpattu District,
Chengalpattu.
2. The Revenue Divisional Officer,
Tambaram,
Chengalpattu District.



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P.D. AUDIKESAVALU, J.

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