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W.P. No. 32 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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

**W.P. No. 32 of 2024
and
W.M.P. No. 20 of 2024**

R.Muniyammal

... Petitioner

-VS-

1. The District Collector/Appellate Tribunal,
Collectorate,
Dharmapuri District,
Dharmapuri.
2. The Sub Collector/Sub Divisional Magistrate,
Dharmapuri,
Dharmapuri District.
3. Perumal

... 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 relating to the impugned order dated 12.09.2023 made in Se. Mu. Na. No. 997/A1/2022 passed by the First Respondent confirming the order dated 12.05.2023 made in Ni. Mu. 461/2023/A1 passed by the Second Respondent, quash the same, and consequently direct the First and Second Respondents to cancel the disputed settlement deed dated 06.12.2021 (Doc. No. 6495/2021-SRO, Dharmapuri West) stands in the name of the Third Respondent.



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For Petitioner : Mr. N.Manokaran
For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1 & R2)
Mr. B.Gopalakrishnan (for R3)

ORDER

Heard Mr. N.Manokaran, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First and Second Respondents and Mr. B.Gopalakrishnan, 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 15.12.2021 registered as Document No. 6495 of 2021 in the office of the Sub-Registrar, Dharmapuri West transferring her property in favour of the Third Respondent, who is her son, and she 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 by Order No. Ni. Mu. 461/2023/A1 dated 12.05.2023 and has been confirmed in appeal



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under Section 16 of the Act by Order in Se. Mu. Na. Ka. No. 997/A1/2022

dated 12.09.2023 passed by the First Respondent. The said orders are challenged in this Writ Petition.

3. According to Learned Counsel for the Petitioner, the date of birth of the Petitioner had been mistakenly entered as '03.04.16967' instead of '03.04.1957' which has been subsequently rectified in her Aadhaar Card and as such, the impugned orders require to be set aside and the matter has to be considered afresh by the Second Respondent.

4. However, 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 and on the contrary, there is an express recital in the aforesaid settlement-deed executed by the Petitioner in favour of the Third Respondent



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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.

5. In view of the foregoing discussions, this Court is not inclined to interfere with the impugned order in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution of India. At the same time, it is hastened to add here that the Petitioner is not precluded from working out her 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.

6. At this stage, Learned Counsel for the Third Respondent submits that the Third Respondent would pay a sum of Rs. 5,000/- every month as maintenance to the Petitioner and he has made an endorsement to that effect in the court record, 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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WEB COPY 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/Appellate Tribunal,
Collectorate,
Dharmapuri District,
Dharmapuri.
2. The Sub Collector/Sub Divisional Magistrate,
Dharmapuri,
Dharmapuri District.



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P.D. AUDIKESAVALU, J.

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