



W.P(MD)No.657 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.657 of 2023

and

W.M.P(MD)Nos.669, 670 & 15738 of 2023

1.Joseph Doss

2.David Thomson

... Petitioners

Vs.

1.The Maintenance Appellate Officer
and District Collector,
Sivagangai District,
Sivagangai.

2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

3.The Tahsildar,
Devakottai Taluk,
Sivagangai District.

4.The District Registrar,
Karaikudi,
Sivagangai District.



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5.The Sub Registrar,
Devakottai,
Sivagangai District.

6.Alangaram

7.A.Mathalen Mariyal

8.A.Prabu

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 18.08.2022 passed by the first respondent in his proceedings in Muu.Mu.P1/11299/2022 and quash the same as illegal and further direct the fifth respondent herein to remove the entry made in the encumbrance certificate in pursuant to the impugned order dated 18.08.2022 passed by the first respondent in his proceedings in Muu.Mu.P1/11299/2022 within a time stipulated by this Court.

For Petitioners : Mr.V.Meenakshisundaram

For Respondents : Mr.T.Villvan Kothai
Additional Government Pleader
for R.1 to R.5

Mr.VR.Shanmuganathan
for R.6 to R.8

ORDER

Heard both sides.



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2.Thiru.Alangaram / father of the first petitioner and the grandfather of the second petitioner is present in person before this Court. He had executed settlement deed dated 17.08.2021 in favour of his grandson / the second petitioner herein. The settlor thereafter filed a petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Maintenance Tribunal. The Maintenance Tribunal was dismissed the same on 14.03.2022. Aggrieved by the same, the sixth respondent filed an appeal before the first respondent. The appellate authority vide order dated 18.08.2022 set aside the order passed by the Maintenance Tribunal and allowed the appeal and cancelled the settlement deed dated 17.08.2021. Challenging the same, the petitioners filed W.P(MD)No.21516 of 2022. It was dismissed as withdrawn on 12.10.2022. Technically, the present writ petition mounting challenge to the very same order may not be maintainable.

3.The learned counsel appearing for the petitioners points out that since compromise was arrived at, the writ petition was withdrawn and



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subsequently the sixth respondent went back on the promise given earlier.

4.I am spared the trouble of going into further issues because the sixth respondent who is present in person before me categorically states that he does not want to stick to his earlier position and all that he wants is that he should be taken care by his son and grandson. I have also held earlier vide order dated 02.01.2024 made in W.P(MD)No.5276 of 2020 (R.Satheeshkumar & Another Vs The District Collector, Sivagangai & Others) that an appeal against an order passed under Section 23 of the Act may not be maintainable and it has to be challenged only by filing a writ petition under Article 226 of the Constitution of India.

5.That apart, the settlement deed executed by the sixth respondent in favour of the second respondent herein does not contain any condition as envisaged under Section 23 of the Act. Applying the ratio laid down 2022 SCC OnLine SC 1684 (*Sudesh Chhikara Vs. Ramti Devi & another*) dated 06.12.2022, I hold that the Maintenance Tribunal rightly negated the sixth respondent's application. The first respondent



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erred in interfering with a well considered order passed by the
Maintenance Tribunal.

6.The second petitioner / David Thomson is present in person before this Court. He gives an undertaking that during the lifetime of his grandparents (Alangaram and Amalapusam), he will not encumber or alienate the property settled in his favour. Joseph Doss is also present in person and he undertakes to maintain his parents till their last breath. The undertaking given in person by the first petitioner as well as the second petitioner is placed on record. The order impugned in this writ petition is set aside.

7.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

MGA

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