



W.P(MD)No.30934 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.30934 of 2023

and

W.M.P.(MD)Nos.26533, 26534 of 2023 & 5593 of 2024

S.R.Sivaranjani

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Uthamapalayam, Theni District.

2.S.Raja Padmanaban

3.S.R.Rajeshwaran

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st respondent proceeding in Na.Ka.No.4111/2022/A2 dated on 26.05.2023 and quash the same as illegal and arbitrary against the law.

For Petitioner : Mr.A.Senthilkumar

For Respondents : Mr.D.Sasikumar,
Additional Government Pleader for R1

Mr.B.Saravanan, Senior Counsel,
For Mr.M.S.Suresh Kumar for R2

Mr.R.Velmurugan for R3



W.P(MD)No.30934 of 2023

ORDER

Heard both sides.

2.The writ petitioner is the biological daughter of the second respondent.

The second respondent executed settlement deed dated 29.12.2016 settling the petition-mentioned property in her favour. It was also duly registered as Document No.94/2017 on the file Sub Registrar, Chinnamanur. The second respondent had also executed another settlement deed bearing Document No. 93/2017 in favour of the third respondent. Seeking cancellation of these two documents, the second respondent moved the Maintenance Tribunal (Revenue Divisional Officer, Uthamapalayam, Theni District). Enquiry was conducted. The Maintenance Tribunal passed order dated 26.05.2023 declining to cancel the documents. However, the third respondent herein (son) was mandated to bear the medical and maintenance expenses of the second respondent (father). A further direction was given enabling the second respondent to reside in the premises settled in favour of the petitioner during his lifetime and the petitioner was directed not to cause any interference.

3.Challenging the said order, the petitioner filed appeal before the District Collector, Theni (appellate authority). The appellate authority vide



W.P(MD)No.30934 of 2023

order dated 20.07.2023 allowed the appeal and set aside the order passed by the Maintenance Tribunal. Challenging the same, the second respondent herein (father) filed W.P.(MD)No.19929 of 2023. Applying the ratio laid down by the Hon'ble First Bench in the decision reported in AIR 2021 Mad 72 (K.Raju vs. UOI), I allowed the writ petition on 15.12.2023 on the ground that an appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 could have been filed only by the parent or senior citizen and not by the writ petitioner herein (daughter). Thereupon, the present writ petition came to be filed.

4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order.

5.The learned Senior Counsel for the second respondent submitted that the second respondent is seeking a very limited relief. He wants to reside in a portion of the property settled in favour of the writ petitioner. He gives an undertaking that he will not interfere with the possession of the person to whom the property had been leased out. It is pointed out that the second respondent is ready to convert the garage portion into a living room at his own cost and expenses. The learned senior counsel also relied on the following decisions:-



W.P(MD)No.30934 of 2023

WEB COPY

“(i) 2024 (2) TLNJ 471 (Civil) (Palanimuthu Vs. The Principal Officer, Maintenance Tribunal)

(ii) 2023 SCC Online Mad 8097 (Sankarappan Vs. Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007)

(iii) 2023 (2) CTC 828 (M.Mohamed Saffee Vs. District Collector, Collector Office, Thanjavur District)

(iv) 2022 SCC Online SC 1684 (Sudesh Chhikara Vs. Ramti Devi)

(v) (2021) 15 SCC 730 (S.Vanitha Vs. Deputy Commissioner, Bengaluru Urban District)

(vi) S.A.No.602 of 2020 dated 27.09.2022 (N.Nagarajan Vs. Schekar Raj)

(vii) W.P.No.6022 of 2022 dated 07.09.2023 (Ashwin Bharat Khater Vs. Urvashi Bharat Khater) ”

His contention is that the scope of Section 23(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 must be expansively considered in order to fulfil the statutory object. He called upon this Court to sustain the impugned order and dismiss the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. I must at the very out set clarify that I am not inclined to follow the decision reported in **2024 (2) TNLJ 471 (Civil) (Palanimuthu Vs. The Principal Officer, Maintenance Tribunal)** and the order passed by the Hon'ble Bombay High Court in W.P.No.6022 of 2022. This is because I have



W.P(MD)No.30934 of 2023

already taken a contra view in the decision reported in **2023 SCC Online Mad 8097 (Sankarappan Vs. Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007)**.

7.The Maintenance Tribunal had declined to set aside the settlement deeds executed by the second respondent. But the second respondent has not chosen to challenge the same. The only question that calls for consideration is whether the Tribunal was justified in permitting the second respondent herein to reside in the premises settled in favour of the petitioner. The petitioner had also been restrained from interfering with the second respondent after handing over possession. Virtually, an eviction order has been passed against the person presently in occupation. To answer this question, one has to examine the statutory scheme.

8.In the decision reported in **2023 (2) CTC 828 (M.Mohamed Saffee v. District Collector, Thanjavur District)**, I had upheld the power of the Maintenance Tribunal to order eviction. But the occupant of the premises belonging to the senior citizens/parent alone can be evicted. There are many cases in which the son/daughter/relative or even third party forcibly throw out the parent or senior citizen from their own premises. They are rendered



W.P(MD)No.30934 of 2023

homeless. To drive them to file a suit under Section 6 of the Specific Relief Act would be inequitable. That is why, Central Act 56 of 2007 provides for summary remedy. Once the Maintenance Tribunal comes to the conclusion that the senior citizen or parent has been thrown out of his or her premises, restoration of possession should be ordered.

9. But the aforesaid power cannot be exercised if the senior citizen or parent had already transferred the property in the first instance. If the transfer is nullified under Section 23(1) of the Act, the eviction order can be a consequential relief. The authority must render a finding that the transfer is void. In the case on hand, the authority has declined to cancel the settlement deed executed in favour of the petitioner. Having not cancelled the document, the eviction order alone could not have been passed. Under Section 23(1) of the Act, the right to reside could not have been conferred on the second respondent.

10. Probably, realising this legal position, the learned Senior Counsel placed reliance on Section 23(2) of the Act. He would argue that the expression “maintenance” would include the right to reside. Before I consider this contention, let me find out if Section 23(2) of the Act is applicable at all to the facts of this case. Section 23 (2) reads as follows :



W.P(MD)No.30934 of 2023

“23. Transfer of property to be void in certain circumstances

2. Where any senior citizen has a right to receive maintenance out of an estate and such estate or part , thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.”

Let me engage in what is known as parsing..

(a) the senior citizen has a right to receive maintenance out of an estate.

(b) such estate or part thereof is transferred.

(c) the right to receive maintenance may be enforced against the transferee, if the transferee has notice of the right or if the transfer is gratuitous.

(d) the right cannot be enforced against the transferee for consideration and without notice of right.

The second respondent himself had conceded in his representation to the authority that after the property was settled, the petitioner had leased out the same in favour of a third party for a sum of Rs.50 Lakhs. The transferee was not impleaded in the proceedings. Enforcing the order of eviction against the lessee which was obtained behind his back would be an egregious violation of the principles of natural justice. It is the petitioner who will be liable to face the consequences. She will have to return the lease amount. Therefore, on this ground, the impugned order has to be set aside.



W.P(MD)No.30934 of 2023

11. There are two more reasons. For Section 23(2) of the Act to apply, the first condition is that the transaction must involve transfer of an estate out of which the senior citizen/parent is entitled to receive maintenance. Here, what was transferred by the second respondent was his own property. Once the property has been transferred either by settlement or any other mode, it becomes the absolute property of the transferee. If there are conditions incorporated in the transfer deed and it is alleged that they have not been complied with, the transaction itself can be declared void. Thereafter, the applicant can be put in possession. If the transfer is not rendered void, unless the applicant can show that he has maintenance claim against the property, Section 23(2) cannot be applied. One cannot have claim of maintenance against one's own absolute property. There are two kinds of properties envisaged by the Senior Citizens Act. One is the absolute property of the senior citizen. The other is the property out of which he is entitled to receive maintenance. The first category is dealt with in Section 23(1) of the Act. The second category is dealt with in Section 23(2) of the Act. The case on hand falls under the first category and therefore, invoking Section 23(2) of the Act is not apposite.

12. Chapter II of the Act contains the provisions regarding the maintenance of parents and senior citizens. Section 4 of the Act is to the effect



W.P(MD)No.30934 of 2023

that a senior citizen can make an application under Section 5 of the Act, if he is unable to maintain himself from his own earning or out of the property owned by him. The expression “maintenance” has been defined in Section 2(b) of the Act as including provision for food, clothing, residence and medical attendance and treatment. The learned senior counsel for the second respondent would place considerable emphasis on the dimension of dignity attached to one's personality. It is seen that the second respondent is running quite few businesses including a liquor bar. It is categorically asserted by the petitioner that her father would be worth not less than Rs.10 Crores. I am therefore led to conclude that the second respondent may not have the right to maintain an application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 since he is able to maintain himself from his own earnings and out of the property owned by him.

13.I am therefore constrained to interfere with the impugned order to the extent it confers the right to reside in favour of the second respondent and restrains the petitioner from interfering with the said right. To this extent, the impugned order is set aside. I have decided the issue by approaching from a legalistic perspective. I expect the petitioner to reach out to her father. After



W.P(MD)No.30934 of 2023

all, it is the second respondent who on his volition had settled a very valuable property in her favour. I am certain that the petitioner is also having children.

The petitioner is a future senior citizen.

14.With this observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

25.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

The Revenue Divisional Officer,
Uthamapalayam,
Theni District.



WEB COPY



W.P(MD)No.30934 of 2023

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.30934 of 2023

25.06.2024