



W.P(MD)No.3415 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.3415 of 2023

and

W.M.P(MD)No.3173 of 2023

L.V.Sarojini

... Petitioner

Vs

1.The District Collector,
Parents and Senior Citizen, Maintenance and
Welfare Appellate Tribunal,
Thoothukudi.

2.Sub Divisional Magistrate cum Sub Collector,
Parents and Senior Citizen, Maintenance and
Welfare Tribunal,
Kovilpatti,
Thoothukudi District.

3.The Deputy Superintendent of Police,
Maniyachi, Kovilpatti,
Thoothukudi District.

4.Padmavathi

5.Srinivasan

6.M/s.Port City Benefit Fund,
Represented by its Manager,
Head Office: 21-D/2, W.G.C Road,
Tuticorin.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.C1/E-40102/2022 dated 07.10.2022 passed by the first



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respondent and quash the same as it is arbitrary and illegal and direct the second respondent to handover the benefits derived by the respondents 4 and 5 from the scheduled mentioned fixed deposit accounts belonging to the petitioner.

For Petitioner : Mr.R.Anandharaj
for Mr.AK.Athiban Vijay

For RR 1 & 2 : Mr.M.Sarangan
Additional Government Pleader

For R – 3 : Mrs.M.Aasha
Government Advocate Criminal Side

For RR 4 & 5 : Mr.J.Parekh Kumar

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed by the first respondent dated 07.10.2022, thereby rejecting the appeal filed by the petitioner aggrieved by the order passed by the second respondent dated 05.07.2022, thereby rejecting the claim of the petitioner and directed the fourth respondent to maintain the petitioner till her lifetime as per her wish.

2.The petitioner is the mother and the fourth respondent is the daughter and the fifth respondent is the son-in-law of the



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petitioner ie., husband of the fourth respondent. The petitioner got married one Lingaswamy and gave birth to the fourth respondent and a son L.V.Muralidharan. While her husband was alive, he made a fixed deposit in Kovilpatti Dhanalakshmi Srinivasan Company to the tune of Rs.80,00,000/- and made a deposit in Sattur Branch of Port City Benefit Fund Limited to the tune of Rs.90,00,000/-. In both the deposits, the petitioner was the nominee. After fixed deposit, her husband died and the petitioner is being the nominee all the deposits were transferred in her name. While being so, the fourth respondent and her brother entered into a memorandum of understanding and they had divided all the properties equally including the fixed deposits and undertake to pay interest for the fixed deposits to the petitioner. After a period of sometime, the petitioner was not paid any interest by the fourth respondent. Therefore, the petitioner enquired and found that her signature was obtained fraudulently and transferred all fixed deposits in the name of the fourth respondent. The petitioner was not maintained by the fourth respondent as undertaken by her. Therefore, the petitioner lodged a complaint under Section 23 of 'the Maintenance and Welfare of Parents and Senior Citizens Act, 2007' (in short hereinafter referred to as 'the Act, 2007' before the second respondent. The second respondent conducted a detailed enquiry



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respondent is also ready and willing to maintain her till her lifetime.

No signature was obtained from the petitioner fraudulently and in fact, she is also witness to the memorandum of understanding entered between the fourth respondent and her brother. That apart, insofar Rs.20,00,000/- of deposits is concerned, it is still lying in the name of the petitioner and she is receiving interest for the said deposit. He further submitted that the deposits and other jewels are not coming under the provision under Section 23 of the Act, 2007. Section 23 of the Act, 2007 would attract only in respect of immovable properties.

5.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6.The claim of the petitioner is that the deposits which were made by her husband were transferred in her name after his demise, since the petitioner is nominee for all fixed deposits made by her husband. Thereafter, the fourth respondent and her brother had entered into a memorandum of understanding and thereby they themselves divided the shares and properties equally in their favour. Further, the fourth respondent and her brother undertake to pay



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interest from the fixed deposits to the petitioner and also maintain the petitioner till her lifetime.

7. On perusal of the complaint lodged by the petitioner would reveal that the fourth respondent fraudulently obtained a signature from the petitioner and transferred all the fixed deposits in her favour. That apart, the fourth respondent stopped the payment of interest to the petitioner after a period of some time. Therefore, she is struggling for her livelihood and filed a complaint under Section 23 of the Act, 2007. It is relevant to extract Section 23 of the Act, 2007, which reads as follows:

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

1. Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.



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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.*

3. *If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”*

Therefore, if the settlee failed to provide basic amenities and basic physical needs to the settlor and such settlee refuses or fails to provide such amenities and physical needs, the said settlement of subject property shall be deemed to have been made by fraud or coercion or under undue influence.”

8.The learned counsel appearing for the respondents 4 and 5 relied upon the Judgment of theHon'ble Supreme Court of India in the case of **Sudesh Chhikara Vs. Ramti Devi** in Order dated **06.12.2022** in **Civil Appeal No. 174 of 2021**, which reads as follows:-



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“12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

13. If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

15. Careful perusal of the petition under Section 23 filed by respondent no. 1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no. 1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned



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order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition.

16. We have perused the counter affidavit filed by respondent no. 1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.

17. There is an application for intervention on behalf of a developer. The intervenor claims that he is a bona fide buyer of a part of the land subject matter of the release deed from the appellant and that he has carried out substantial work of development. It is not necessary for us to deal with the rights claimed by the intervenor. All questions regarding the rights claimed by the intervenor are left open to be decided in appropriate proceedings.”



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Thus, it is clear from the above judgment that there are two essential preconditions in order to invoke the provisions of Section 23 of the Act, 2007 and that the documents should have been executed after coming into force of the Act, 2007 and it should contain a clause imposing an obligation on the settlor or transferee to maintain settlor or transferee.

9. Section 23 of the Act, 2007 provides that when a property has been transferred by way of gift or otherwise by the senior citizen on the condition that the transferee or owner shall provide the basic amenities and basic physical needs to the transferor or the owner, but such transferee or owner subsequently fails to provide such amenities, then it would be deemed that the transfer was made by fraud, or coercion or under undue influence and the transferor would have the option of obtaining declaration that such transfer was void.

10. In the case on hand, the deposits which were transferred in the name of the petitioner were fraudulently transferred in favour of the fourth respondent. The fourth respondent also had entered into a memorandum of understanding



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with her brother and obtained the signature of the petitioner as a witness and she also undertook to pay interest from the fixed deposits. Admittedly, the fourth respondent failed to pay any interest to the petitioner. Therefore, the fourth respondent violated the undertaking given in the memorandum of understanding.

11. Even assuming that the petitioner had agreed to transfer the fixed deposits in favour of the fourth respondent and her son it must be presumed that the settlor expects continuation of the care and love from the settlee even after the execution of the settlement deed in the same manner, the settlor was taken care prior to the execution of the settlement deed. Further, the intention of the Legislature and terms of the Act would declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, the Legislature thought that such transaction could be declared as void, as the conduct leading to the transaction was based on malice or fraud. Therefore, the condition referred under Section 23 has to be understood based on the conduct of the settlor and not with reference to the specific stipulation in the deed of transfer.



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Therefore, it is sufficient if the settlee breached the promise given to the settlor at the time of execution of the settlement deed.

12.Further, sub-Section 2 of Section 23 of the Act envisages the situation where a senior citizen has a right to receive the maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced, where the estate or a portion of it is transferred against a transferor, who has noticed the right or if the transfer is gracious. The right however cannot be enforced against a transferee for consideration without notice of right. It is also relevant to rely upon the judgement of this Court in the case of **Mohamed Dayan Vs. District Collector.,** order **dated 08.09.2023** made in **W.P.No.28190 of 2022** in which this Court, after discussing various judgements of the Hon'ble Supreme Court of India and various judgements of High Court including the cases referred by the learned Senior Counsel for the petitioner, held as follows:-

“33. Close reading of the principles considered by the various High Courts and the Supreme Court, there is no ambiguity with reference to the purpose and object sought to be achieved under the provisions of the Senior Citizen Act. Section 4(2) of the Act, unambiguously stipulates that the obligation of the children or



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the relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

34. In the context of the adoption of the phrase “lead a normal life” Rule 20(2)(i) of the Maintenance of Senior Citizen Rules, enumerates that “it shall be the duty of the District Collector to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity”. Therefore, normal life includes security and dignity. Thus the normal life as indicated under Section 4(2) of the Act, is not mere life, but a life with security and dignity. In the context of Article 21 of the Constitution of India, life includes decent medical facility, food, shelter with dignity and security. All such combined necessities of human life is falling under the term “Normal Life” emboldened under Section 4(2) of the Senior Citizen Act. Therefore, simply providing food and shelter would be insufficient. But life includes providing of decent medical facilities, food, shelter and other requirements with dignity in commensuration with the status of the family and taking into consideration of the living style of the senior citizen throughout.

35. Therefore, the children defending their case merely on the ground that they are willing to provide food and shelter, cannot be taken as a ground for the purpose of sustaining the Settlement Deed executed by the senior citizen. The requirement of the provisions are to be complied in its real spirit and in the event of an iota of doubt, the Authority Competent is empowered to cancel the Settlement Deed or Gift Deed, as the case may be, in order to protect the normal life of senior citizen.



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36. Section 4(3) denotes, the obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parents may lead a normal life. Therefore, it is an obligation on the part of the children to maintain his or her parents and ensure the parents to lead a normal life. In the event of complaint, the Authorities Competent are expected to ensure that the senior citizen and their life and dignity are protected. The above provision is to be read in conjunction with the Rules framed under the Act.

37. Rule 20 of the Maintenance of Senior Citizen Rules, provide duties and powers of the District Collector. The District Collector is casted upon the duty to ensure that the life and property of citizens of the District are protected and other people to live with security and dignity. Therefore, it is the statutory duty on

the part of the District Collector to protect the safety and security of senior citizens in his District. Thus the complaint filed by the senior citizen, cannot be treated lightly. Such complaints are to be enquired into in a pragmatic manner, so as to understand the real grievances of the senior citizen and accordingly, all appropriate actions are to be initiated to provide safety, security and to protect the dignity of the senior citizen.

38. The Kerala High Court observed in the case of Radhamani and Others (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical



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needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be

declared void by the Tribunal”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.

39. To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the person in favour of whom such Gift or Settlement Deed has been executed.

40. “Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or coercion or undue influence. When the deeming clause has been incorporated under



the provisions of Section 23(1) of the Act, 'Love and Affection' to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence.

41. The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express condition in the document, “Love and Affection” being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.

42. The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-so, they are intending to visibly express their love and affection towards their children by settling



their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their oldage. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.

43. Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or Settlement, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement.

44. In respect of the judgment relied on by the petitioner in the case of Sudesh Chhikara vs. Ramti Devi and Another (cited supra), the Three Judges Bench of the Hon'ble Supreme Court of India in the case of S.Vanitha vs. Deputy Commissioner, Bengaluru Urban and District and Others (cited supra) is to be followed. There are several judgments to establish that the purpose and object of the Senior Citizens Act, is to be complied with in its letter and spirit in order to protect the life, security and dignity of senior citizens. Thus the judgment relied on by the petitioner is of no avail as far as the present facts and circumstances of the case on hand is concerned.”



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The above case is squarely applicable to the case on hand.

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13. Recently, the Hon'ble Supreme Court in India held in **Civil Appeal No.10927 of 2024, dated 02.01.2025** in the case of **Urmila Dixit Vs. Sunil Sharan Dixit and others** held that the beneficial legislation must receive a liberal construction in consonance with the objectives that the concerned Act seeks to serve. The beneficial legislation must be in line with a purposive construction, keeping in mind the legislative purpose. It must be interpreted in favour of the beneficiaries when it is possible to take two views. Therefore, it is apparent that the Act, 2007 is a beneficial piece of legislation, aimed at securing the rights of senior citizens, in view of the challenges faced by them. Further, after relying upon the Judgment of the Hon'ble Supreme Court of India in the case of **Sudesh Chhikara Vs. Ramti Devi and another** reported in **2022 SCC Online 1684**, the Hon'ble Supreme Court of India held as follows:

*“21. Furthermore, in **Sudesh** (supra) for attracting the application of Section 23(1), the following essentials were expounded:*



(a) The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

(b) The transferee refuses or fails to provide such amenities and physical needs to the transferor.

22. Adverting to the facts at hand, we find that there are two documents on record. One, a promissory note dated 07.09.2019 which records that the promisor (Respondent) shall serve the Appellant and her husband till the end of their life, and in the absence of him fulfilling such obligation, the subsequent deed can be taken back by the Appellant. Second, the Gift Deed dated 07.09.2019 also records a similar condition, i.e. the donee maintains the donor, and the former makes all necessary provisions for the peaceful life of the Appellant-donor. Both these documents were signed simultaneously.

23. The Appellant has submitted before us that such an undertaking stands grossly unfulfilled, and in her petition under Section 23, it has been averred that there is a breakdown of peaceful relations inter se the parties. In such a situation, the two conditions mentioned in Sudesh (supra) must be appropriately interpreted to further the beneficial nature of the legislation and not strictly which would render otiose the intent of the legislature. Therefore, the Single Judge of the High Court and the tribunals below had rightly held the Gift Deed to be cancelled since the conditions for the well-being of the senior citizens were not complied with. We are unable to



agree with the view taken by the Division Bench, because it takes a strict view of a beneficial legislation.

24. Before parting with the case at hand, we must clarify the observations made vide the impugned order qua the competency of the Tribunal to hand over possession of the property. In S. Vanitha (supra), this Court observed that Tribunals under the Act may order eviction if it is necessary and expedient to ensure the protection of the senior citizen. Therefore, it cannot be said that the Tribunals constituted under the Act, while exercising jurisdiction under Section 23, cannot order possession to be transferred. This would defeat the purpose and object of the Act, which is to provide speedy, simple and inexpensive remedies for the elderly.

25. Another observation of the High Court that must be clarified, is Section 23 being a standalone provision of the Act. In our considered view, the relief available to senior citizens under Section 23 is intrinsically linked with the statement of objects and reasons of the Act, that elderly citizens of our country, in some cases, are not being looked after. It is directly in furtherance of the objectives of the Act and empowers senior citizens to secure their rights promptly when they transfer a property subject to the condition of being maintained by the transferee.

14.The above Judgment is squarely applicable to the case on hand. Though the learned counsel appearing for the respondents 4 and 5 contended that the immovable properties



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cannot attract the complaint under Section 23 of the Act, 2007, it is relevant to extract the definition of property under Section 2 of the Act, 2007 which reads as follows:

"2. Definitions:

In this Act, unless the context otherwise requires -

a. "children" includes son, daughter, grandson and grand-daughter but does not include a minor

b. "maintenance" includes provision for food, clothing, residence and medical attendance and treatment

c. "minor" means a person who, under the provisions of the Majority Act, 1875 is deemed not to have attained the age of majority

d. "parent" means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen

e. "prescribed" means prescribed by rules made by the Stale Government under this Act

f. "property" means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property



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g. "relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death

h. "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above

i. "State Government";, in relation to a Union territory, means the administrator thereof appointed under article 239 of the Constitution

j. "Tribunal" means the Maintenance Tribunal constituted under section 7

k. "welfare" means provision for food, health care, recreation centres and other amenities necessary for the senior citizens"

15. Therefore, the fixed deposits and the jewels are coming under the definition of property in the Act, 2007 and the complaint under Section 23 of the Act, 2007 filed by the petitioner in respect of the return of fixed deposits and the jewels is very much maintainable. In view of the above, the orders passed by the second respondent, dated 05.07.2022 and first respondent, dated 07.10.2022 are liable to be quashed and accordingly, the same are quashed. The complaint lodged by the petitioner is hereby allowed. The fourth respondent is directed to transfer all the fixed deposits, which were already transferred in her favour from the petitioner's



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name, in favour of the petitioner and the fourth respondent is also directed to return the jewels which were taken from the petitioner's custody, within a period of four weeks from the date of receipt of a copy of this order.

16. With the above direction, this Writ Petition is allowed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

1. The District Collector,
Parents and Senior Citizen, Maintenance and
Welfare Appellate Tribunal,
Thoothukudi.
2. Sub Divisional Magistrate cum Sub Collector,
Parents and Senior Citizen, Maintenance and
Welfare Tribunal,
Kovilpatti,
Thoothukudi District.
3. The Deputy Superintendent of Police,
Maniyachi, Kovilpatti,
Thoothukudi District.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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