

W.P.(MD).No.4141 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.4141 of 2023
and W.M.P(MD).No.3964 of 2023

1.N.Nihal Ahamed
2.Nasrin Subaithal
Minor rep., by her father
As a natural Guardian
Naina Mohamed

... Petitioners

vs.

1.The District Collector,
The District Collector Office,
Madurai.

2.The Revenue Divisional Officer cum
The Head of Senior Citizen Maintenance
and Welfare Tribunal, Madurai.

3.Subaithal Beevi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining in Moo.Mu.No.1069/2020/J dated 07.03.2022 on the file of the second respondent and quash the same as illegal.



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For Petitioners : Mr.Ajmal Khan.S.A
For Respondents : Mr.S.Shaji Bino (for R1 & R2)
Special Government Pleader
Mr.Senthil Nathan (for R3)
for Mr.S.Rajasekaran @ Ragavan

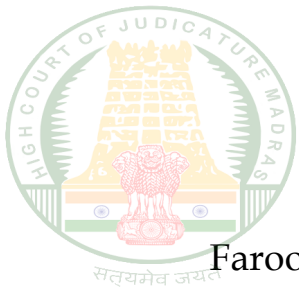
ORDER

The petitioner seeks the following relief:

“to call for the records pertaining in Moo.Mu.No. 1069/2020/J dated 07.03.2022 on the file of the second respondent and quash the same as illegal. “

2. The property situated in RS.No.37/4 at Kaathakinaru Village, Madurai North Taluk, Thamiraipatti Sub Registrar, Madurai District, belonged to one Alagar and his sons Deivendran and Krishnamoorthy. The owners executed a power of Attorney in favour of one Abdul Khadar. The said power of attorney is a registered document in Doc.No.66 of 1997 dated 09.07.1997. The said Abdul Khadar alienated the property in favour of Mohamed

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Farook. The said Mohamed Farook had married one Thirumathi.Subaidhal beevi. There are no children from their wedlock.

3. The petitioners are none else than the sister's grandchildren of Subaidhal Beevi. Out of natural love and affection, Mohamed Farook is said to have executed a settlement deed on 17.11.2017 in Doc.No.3606 of 2017, by this document, he conveyed the property in favour of the writ petitioners. As the writ petitioners were minors in 2017, their father viz., Naina Mohamed acted as their guardian.

4. Mohamed Farook died on 13.07.2020. The third respondent claimed that she had not been maintained properly by the writ petitioners and approached the second respondent invoking the provisions of maintenance of parents and Senior Citizen Act, 2007. The second respondent also issued summons for hearing and the petitioner's father appeared before the said



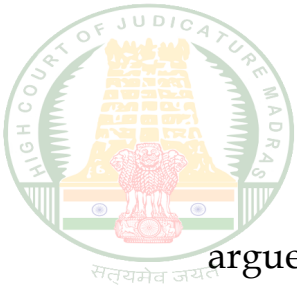
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authority on 11.01.2022. The petitioners plead that the matter was adjourned and thereafter, no further enquiry was conducted. They alleged that all of sudden on 01.04.2022, they received the impugned order dated 04.03.2022 stating that the settlement deed executed in their favour on 17.11.2017 is set aside. Aggrieved over the same, the present writ petition.

5. This Court entertained this writ petition and issued Rule Nisi on 28.02.2023 and also granted an interim order on the same day. Notice was ordered to the respondents.

6. Mr.S.Shaji Bino, learned Special Government Pleader, appears for the respondents 1 and 2 and Mr.M.Senthil Nathan appears for the third respondent.

7. Both the counsels for the respondents urge that against the order passed by the second respondent, an appeal is maintainable and therefore, the writ should not be entertained. They further



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argued that the writ petitioners having been benefitted with the property, have not maintained the third respondent, that constrained the second respondent to pass the impugned order. Hence, they urged that the writ petition must be dismissed with costs.

8. I have carefully considered the submissions and gone through the records.

9. The relationship between the parties is not in dispute. The factum of execution of a document by the husband of the third respondent in favour of the writ petitioners is also not in dispute. Alleging that she was not maintained properly, she has lodged a complaint with the second respondent. It is the plea of the writ petitioners that the third respondent has other properties and therefore, the question of maintenance does not arise.



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10. I am not agreeable to the said submission made by Mr.Ajmal Khan in the light of the view taken by the Division Bench of this Court in the case of *S.Mala Vs., District Collector, Nagapattinam and others, 2025 2 CTC 373 (DB)*, wherein it was held that once the neglect of the senior citizen is proved and it is coupled with the implicit expectation of care, these two are sufficient to invoke Section 23(1) of Act 56 of 2007. The document, having been executed in a hope that the third respondent, would be maintained, she is certainly entitled to approach the third respondent, in case of neglect, neglect includes not only the financial aspect, but also other social and emotional aspect. A senior citizen, for the mere fact that she is wealthy does not mean, she can be ignored by the relatives, who have benefitted from her and refuse to give her a care in her old age.

11. Be that as it may, these are matters, which the Revenue Divisional Officer would have to go into at the time of trial to take a call on the application. In so far as the plea on alternate remedy



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is concerned, I have to point out under Section 16, an appeal is maintainable against an order passed by the tribunal only at the instance of a senior citizen or a parent. For an order under Section 23, the Act does not reveal an appellate provision. Even otherwise as the petitioners were not heard before the orders were passed, it amounts to violation of principle of natural justice. As vital rights over immovable property are involved, interest of justice demands that the writ petitioners are heard before passing of the order.

12. As the second respondent has not heard the petitioners, I am constrained to interfere.

13. When I pointed out to Mr.Ajmalkhan that the third respondent being a senior citizen and as not been maintained from the year 2022, Mr.Ajmalkhan undertook to file an affidavit by the first respondent and the guardian of the second respondent to the effect that they will pay a sum of Rs.10,000/- per month from March-2022 to till date.



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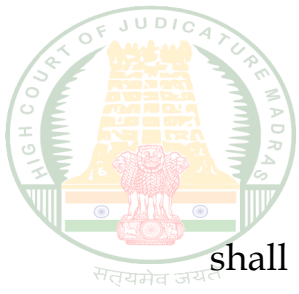
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14. The matter was adjourned to enable Mr.Ajmalkhan to file an affidavit. The undertaking affidavit has been filed post lunch today and which reads as follows:

"I state that I am ready to give the maintenance amount to my mother/3rd respondent for the sum of Rs.10,000/- per month. Further, I will pay the 37 months arrears of maintenance amount Rs.3,70,000/- to third respondent in two installments. I will pay the amount of Rs.1,85,000/- to the third respondent as first installment within 24.05.2025 and balance Rs.1,85,000/- will be pay within 24.06.2025 to the third respondent as second installment."

15. In view of the above discussion, impugned order passed by the second respondent dated 07.03.2022 is set aside and the matter is remitted to the file of the second respondent. The second respondent shall take up the matter for enquiry, once it is confirmed that the terms of para 3 of the undertaking affidavit are complied with.

(ii) In case, no compliance is reported, the second respondent



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shall deem that the petitioners have not maintained the third respondent and pass appropriate orders on the application filed under Section 23.

(iii) In case, undertaking is complied with, the second respondent shall conduct an enquiry and pass orders.

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

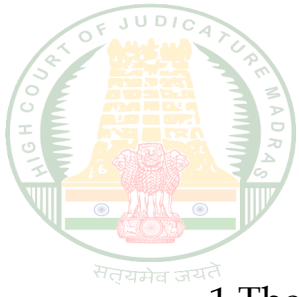
No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Rmk

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To

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V. LAKSHMINARAYANAN, J.

Rmk

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