

W.P.(MD)No.28446 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.28446 of 2024

S.Thangam

... Petitioner

Vs.

1.The District Collector Cum Appellate Authority,
under the Maintenance and Welfare of Parents and Senior
Citizens Act, 2007,
Kanyakumari District,
Nagerkovil.

2.The Maintenance and Welfare of Parents and
Senior Citizen Tribunal cum Revenue Divisional Officer,
Nagercoil, Kanyakumari District.

3.R.Ram Dinesh

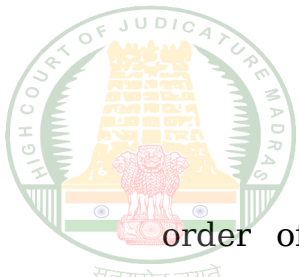
4.Cathrine Shyla

5.The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanyakumari District.

... Respondents

(R5 is suo motu impleaded
by this Court, by order dated 27.01.2025
in W.P.(MD)No.28446 of 2024 by LVGJ)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India
for issuance of a Writ of Certiorarified Mandamus, calling for the records
pertaining to the impugned order of the second respondent in
Moo.Mu.A5/320/2024 dated 30.04.2024 and consequential impugned



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order of the first respondent in Na.Ka.No.C3/ 2035597/2024 dated 03.09.2024 and quash the both as unconstitutional and illegal and consequently direct the 2nd respondent to pass orders ensuring the right of the petitioner to lead a peaceful normal life guaranteed under Sec 4 (2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as prayed by the petitioner vide her application dated 08.01.2024.

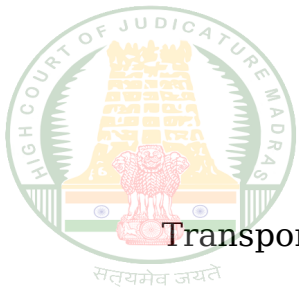
For Petitioner : Mr.J.Pooventherarajan
For Respondents 1 & 2 : Mr.S.Kameshwaran
Government Advocate
For Respondents 3 & 4 : Mr.S.C.Herold Singh

ORDER

Challenging the impugned order of the second respondent dated 30.04.2024 and the consequential impugned order of the first respondent dated 03.09.2024 and to direct the petitioner to lead a peaceful normal life guaranteed under Section 4(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, this Writ Petition is filed.

2.Heard the learned counsel on either side and carefully perused the entire materials available on record.

3.The petitioner is a differently abled senior citizen aged 63 years, who served in the Judicial Ministerial Service and retired on attaining her age of superannuation in the cadre of Examiner with effect from 30.06.2018. Her husband served as a Conductor in the Tamil Nadu



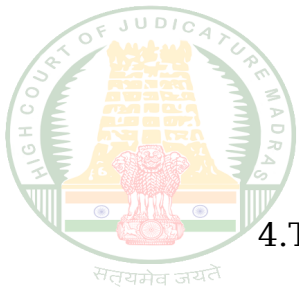
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Transport Corporation Limited and had retired from service. Both of them together draws a pension of Rs.48,000/- per month. The third respondent is the son of the petitioner and the fourth respondent is the daughter-in-law of the petitioner respectively. The petitioner and her husband have a daughter as well and their daughter is an Engineer, who is serving in a private concern, at Trivandrum and she is still unmarried. The third respondent is a Lawyer, who is an addicted alcoholic. The petitioner's husband has a house property in their native, namely, Karungal and had executed a Will in favour of the third respondent with respect to the house property, at Karungal. Another house bearing door No.511, at Kaliyankadu, Nagarkovil, is the exclusive property belonging to the petitioner and she is the owner in possession and title of the same. During corona period of June 2021, the respondents 3 and 4 requested the petitioner to permit them to reside in the upstairs portion of the said house property and the petitioner and her husband out of their love and affection permitted them to live in the upstairs portion of their property, despite having executed a Will in favour of the third respondent with respect to the house property, at Karungal. However, in due course of time, the respondents 3 and 4, after shifting their residence to the upstairs portion of the house situated at Kaliyankadu, slowly commenced a cynical design by indulging in emotional abuse, compelling the petitioner and her husband to vacate the house where they are residing as on today in the downstairs portion. Hence, after due consideration of



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the prevailing difficult situation and relationship between the petitioner, her husband and the respondents 3 and 4, the petitioner preferred an application on 08.01.2024, before the second respondent under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. The second respondent conducted an enquiry and passed an impugned order dated 30.04.2024, permitting the third respondent and his family to reside in the first floor of the petitioner's house at Kaliyankadu, with the condition that he should not interfere with the peaceful possession and enjoyment of the petitioner and her husband with respect to the house property in the downstairs portion, if violated the Inspector of Police, Vadasery Police Station, would take appropriate steps to ensure the peaceful living of the petitioner. Challenging the said conditional order, the petitioner preferred a Statutory Appeal before the first respondent under Section 60 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The first respondent, after enquiry passed an impugned order dated 03.09.2024, observing that the relief sought by the petitioner seeking to vacate the third respondent from the subject property would not arise under the Welfare Act, 2007. However, in this regard the second respondent was directed to initiate appropriate action and report back to the first respondent. Challenging the same, the petitioner is before me.



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4.The petitioner's husband has already executed a Will in favour of the third respondent with respect to a house property in their native namely, Karungal and as such, the third respondent cannot claim that he do not have a house as on date to reside along with his family. There would not be any impediment for the third respondent to utilize the house property situated at Karungal. As far as the absolute property belonging to the petitioner is concerned, the petitioner and her husband are in door No.511-A3, MS Road, Kaliyankadu, Vettoornimadam, Nagarkovil, Kanyakumari District. Only on the permission given by the petitioner and her husband, the third respondent's family was permitted to live in the upstairs portion of the said house. However, in due course of time, it is established by the petitioner that the third respondent and his family are indulging in unpleasant activities, disturbing the peaceful possession and enjoyment of the subject house property by the petitioner and her husband creating a lot of ruckus in their day to day life. Only under such circumstances, the petitioner requiring to direct the third respondent and his family to remove themselves from the subject property, the petitioner has made an application before the second respondent. However, by the impugned order, the second respondent has passed a conditional order, directing the third respondent and his family to continue living in the said upstairs portion of the subject house, however, with the condition not to meddle with the peaceful possession and enjoyment of the downstairs portion of the said house by the



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petitioner. Pursuant to the order, the petitioner had preferred an Appeal, to set aside the condition in the aforesaid order and direct the third respondent to be evicted from her house. However, the first respondent has directed the second respondent again to look into the matter to ensure the petitioners peaceful living in the subject house property.

5.The Maintenance and Welfare of Parents and Seniors Citizens Act, 2007, is a beneficial legislation enacted with the laudable object of ensuring the safety, security, maintenance and livelihood of senior citizens of this country during their old age. Courts, while interpreting a beneficial legislation should resort to a functional interpretation of the welfare statutes towards materializing the purpose, for which the said enactment has been made by the lawmakers of this Country. A beneficial legislation akin to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, should not be interpreted within a narrow compass defeating the wide amplitude of the object of the said legislation. The Senior Citizen Act, 2007, is obviously, an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. The fundamental duty guaranteed under Article 51A of the Constitution of India, promotes to value and preserve the rich heritage of our composite culture. Article 21 of the Constitution of India guarantees the life and liberty of the citizens of India. The petitioner is a differently abled senior



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citizen and her right to life and peaceful living would enforce a fundamental duty on the third respondent to maintain her in terms of Senior Citizen Act, 2007. Section 2B of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, defines that the maintenance would include provision for food, clothing, residence, medical attendance and treatment.

6.In the instant *lis* is concerned, the petitioner is a pensioner. As far as the right of her residence is concerned, the property to which she claims an exclusive possession without interference from the third respondent is her absolute property and our Country is known for its rich tradition and culture grounded for centuries with a reciprocal duty of every child of a parent to take care of them and ensure them with a peaceful life till they breathe last. However, the petitioner is not claiming any right to be maintained as far as food, clothing and residence is concerned, but her only cry is to ensure her peaceful living without any disturbance during her old age. In the presence of another house to be enjoyed by the third respondent and his family and that too in the circumstances, in which the petitioner's husband has already executed a Will in favor of the third respondent with respect to the house property situated in the native Village, namely, Karungal, the third respondent ought to have led a peaceful life in the upstairs portion of the house belonging to the petitioner, which is situated in Kaliyankadu. Having not

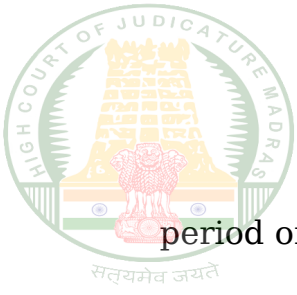


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done so and having indulged in petty quarrels as well as serious interference with the peaceful possession and living condition of the petitioner and husband as far as the subject house property in Kaliyankadu is concerned, the third respondent automatically cannot claim any right of living or right to continue residence in the said house property and the second respondent ought not to have passed a conditional order permitting the third respondent and his family to occupy the upstairs portion of the petitioner's house property.

7. Accordingly, the impugned orders dated 30.04.2024 and 03.09.2024, passed by the second and first respondent respectively, are hereby quashed. The Inspector of Police, Vadasery Police Station, Nagercoil, Kanyakumari District, is *suo motu* impleaded as a fifth respondent and Mr. Gnanasekaran, learned Government Advocate takes notice for the fifth respondent. The Registry is directed to carry out the necessary amendments in the cause title of this Writ Petition.

8. This Court hereby direct the second respondent to forthwith take necessary steps to evict the third respondent and his family from the upstairs portion of the petitioner's house property bearing door No.511-A3, MS Road, Kaliyankadu, Nagarkovil, Kanyakumari District and the fifth respondent is directed to accord appropriate police protection to the second respondent to enforce and implement this order swiftly within a



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period of one week from the date of receipt of copy of this order.

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9.In view of the same, the Writ Petition is allowed. There shall be no order as to costs.

27.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

*Note : The Registry is directed to carryout
the necessary amendments in
the cause title.*

To

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L.VICTORIA GOWRI, J.

Mrn

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