

Nachammai Vs. the Revenue Divisional Officer, Devakottai and Another

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Court : Chennai Madurai

Decided On : Aug-22-2012

Judge : K. Chandru

Appeal No. : W.P.(MD)NO. 9390 OF 2012 & M.P.(MD) NOS. 1 & 2 OF 2012

Appellant : Nachammai

Respondent : The Revenue Divisional Officer, Devakottai and Another

Advocate for Pet/Ap. : For the Petitioner: M. Venkateseshan, Advocate. For the Respondents: R1 - V. Muruganandam, AGP. R2 - J. Anand Kumar, Advocate.

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records pertaining to the impugned Notice in A1-3000-2012, dated 28.05.2012 issued by the 1st respondent and to quash the same.)

ORDER

1. This writ petition is filed by the petitioner challenging the impugned notice dated 28.05.2012 issued by the 1st respondent.
2. The petitioner is the wife of one Chiidambaram, whose mother is the 2nd respondent herein.

3. The 2nd respondent filed a complaint to the 1st respondent / Revenue Divisional Officer, Devakottai, alleging that she is 83 years old and her husband is no more and there is a matrimonial dispute between her son and the petitioner herein and it is pending before the Family Court and the petitioner also filed a maintenance application. The petitioner has also given a complaint against the 2nd respondent and her son before the All Women Police Station and 2nd respondent's son is working in Malasia. Further, the petitioner came to the house of the 2nd respondent on 27.4.2012 along with the Police and demanded to handover all the keys of the lockers and the 2nd respondent handedover all the keys and the petitioner took away all the jeweleries kept in the house. Therefore, she requested that the jeweleries should be recovered from the petitioner and given to her.

4. The said application of the 2nd respondent was treated as a complaint under the provisions of the Maintenance and Welfare of the Parents and Senior Citizens Act 2007 (Central Act 56/2007). The said Act was enacted to provide more effective provisions for the maintenance and welfare of the parents and senior citizens guaranteed and recognized under the Constitution. The term "parent" mentioned under Section 2(d) of the said Act will include 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. The term "relative" as defined in Section 2(g) of the Act includes the legal representatives of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

5. The authority constituted under Section 7 of the said Act, as Tribunal, is entitled to enquiry into the complaint and can also order maintenance in terms of Section 9 of the said Act. The term "maintenance" includes provision for food, clothing, residence and medical attendance and treatment.

6. On receipt of the complaint from the 2nd respondent, the 1st respondent issued a summon dated 28.05.2012 purporting to be under the provisions of the said Act, directing the petitioner to appear along with 26 sovereigns and 900 grams of jeweleries before the 1st respondent on 18.06.2012 and to hand over the jeweleries to the 2nd respondent and failing which, for giving mental torture to the

2nd respondent, proper legal action will be taken against the petitioner. Apparently, the 1st respondent has issued the impugned notice, as a Tribunal, under Section 7 of the said Act. The Tribunal has been empowered with the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of document and material objects. The Tribunal will have the power to adjudicate and decide any claim for maintenance under Section 8(3) of the said Act. Therefore, in the normal circumstances, the 1st respondent should have given a summon to the petitioner thereby fixing a date for enquiry and directing the parties to produce the documents and materials in support of their claims. Therefore, the 1st respondent must act like a Tribunal in deciding the lis between the 2nd respondent and the petitioner.

7. Primary contention in this writ petition is that the direction to produce the jeweleries and to hand over the same to the 2nd respondent is amounting to allowing the main complaint made by the 2nd respondent and for that no enquiry has been held and no adjudication has been taken place. In that premise, the writ petition came to be filed.

8. When the matter came up on 10.07.2012, while ordering notice to the parties, this Court granted interim stay. Interim stay was also extended two times. Aggrieved by the same, the second respondent filed M.P.(MD).No.2 of 2012, together with supporting counter affidavit dated 21.08.2012, seeking to vacate the interim order.

9. In the counter affidavit it is stated that the 1st respondent has got power to issue notice and conduct an enquiry on the complaint given by a Senior Citizen and the complaint made by the 2nd respondent attracts the provisions of the said Act.

10. But even without conducting an enquiry, directing the petitioner to produce all the jeweleries before the Office of the 1st respondent-Tribunal and to handover the same to the 2nd respondent is, at this stage, really not called for without waiting for a detail enquiry. Hence, the 1st respondent must conduct an enquiry in terms of the provisions of the said Act and give opportunity to the petitioner. Therefore, the said portion of the notice calling the petitioner to handover the

jeweleries to the 2nd respondent is unwarranted. Maybe the 1st respondent is of the view that jeweleries shall be kept intact. For that purpose, proper orders may be passed by the 1st respondent to keep the jeweleries under safe custody with additional security for the jeweleries.

11. Under such circumstances, the petitioner is directed to appear for the enquiry and abide by the orders to be passed by the 1st respondent. Ultimately, the aggrieved party can also prefer an appeal to the appellate Tribunal, namely, District Collector. Since the summon issued by the 1st respondent is under stay, the 1st respondent is directed to issue fresh summon within two weeks from the date of receipt of copy of this order and to proceed with the matter in accordance with law.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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