

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

222

**CWP No. 22569 of 2016
Date of Decision: 2.4.2018**

Kirpal Singh

.....Petitioner

v.

District Magistrate, Patiala and others

.....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Vikas Mehsempuri, Advocate, for the petitioner
Ms. Bhawna Gupta, DAG, Punjab
Mr. Vijay Sharma, Advocate, for respondent No.2
Mr. Harpreet Singh, Advocate, for
Mr. Gaurav Saini, Advocate, for respondent No. 3

RAKESH KUMAR JAIN, J.

The issue involved in this case is as to whether District Magistrate, as a persona designata, can deal with an application filed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') ?

Brief facts of the case are that the respondent No.2, mother of the petitioner, had transferred 4 bighas 8 biswas of agricultural land to the petitioner vide Transfer Deed dated 24.9.2015. She filed an application under Section 23 of the Act before the District Magistrate for annulling the Transfer Deed on the ground that the petitioner has refused to render services to her in lieu of which the transfer was made. The said application was allowed by the District Magistrate vide the impugned order dated 17.8.2016.

Learned counsel for the petitioner has submitted that the

legislature, while enacting Section 23 of the Act, has categorically conferred the powers upon the Maintenance Tribunal to declare a transfer void, in case the said transfer is made by the Senior Citizen, after the commencement of the Act, subject to the condition that the transferee shall be provided basic amenities. The 'Tribunal' is defined under Section 2(J) of the Act, which means the Maintenance Tribunal constituted under Section 7 of the Act. Section 7 of the Act further provides that the State Government shall within a period of six months from the date of the commencement of this Act, by notification, constitute one or more Tribunals as may be specified, for deciding the disputes regarding maintenance. It is also provided that the Tribunal shall be presided over by an officer not below the rank of Sub Divisional Officer and in case the senior citizen is not satisfied with the order of the Maintenance Tribunal, the legislature has provided the Appellate Tribunal under Section 15 of the Act against the order passed by the Maintenance Tribunal. Thus, the very scheme of the Act indicates that application filed under Section 23 of the Act would lie only before a Maintenance Tribunal and not before the District Magistrate as a *persona designata*.

In this case, the application has been filed by respondent No. 2 under Section 23 of the Act before the District Magistrate and not before the Tribunal. The District Magistrate has passed the order only keeping in view the fact that respondent No.2 is of old age and deserves the services to be rendered to him by the petitioner, who is the beneficiary of the transfer of the property and may be directed to return the possession of the property in dispute to respondent No.2.

The impugned order passed by the District Magistrate is totally

without jurisdiction as the application under Section 23 of the Act can only be dealt with by the Maintenance Tribunal and not by the District Magistrate. The District Magistrate in the scheme of the Act, if not acting as a persona designata, would be the Appellate Authority, if so provided under Section 15 of the Act for hearing the appeal filed under Section 16 of the Act.

Thus, in my considered opinion, the order passed by the District Magistrate is patently without jurisdiction and hence, the question posed in the beginning of the order, is answered in affirmative holding that the application filed under Section 23 of the Act before the District Magistrate, is not maintainable and the said application was maintainable only before the Maintenance Tribunal. The impugned order passed by the District Magistrate, Patiala is thus set aside.

Since, the writ petition is being allowed only on the ground that the application was filed before an authority having no jurisdiction and the Maintenance Tribunal is incompetent to decide the lis, liberty is granted to respondent No.2 to file a fresh application in accordance with law before the competent authority if so advised.

(RAKESH KUMAR JAIN)
JUDGE

2.4.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No