

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

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**CWP No.24259 of 2016
Date of Decision: 4.4.2018**

Kuljit Singh

.....Petitioner

v.

The State of Punjab and others

.....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. S.S. Rangi, Advocate, for the petitioner
Ms. Bhawna Gupta, DAG, Punjab
Mr. J.S. Bhinder, Advocate, for the respondents

RAKESH KUMAR JAIN, J.

The petitioner is aggrieved against order dated 30.8.2016 passed by the District Magistrate, Patiala, by which he has directed the petitioner to vacate the house in question.

In brief, the petitioner is the son of respondent No.5 who has given the property in dispute to the petitioner by way of a registered Gift Deed dated 22.12.2006. The respondent No.5 filed an application under Sections 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') against the petitioner on the ground that he is not rendering any service to him in lieu of the property given by way of gift. The said application was dismissed by the Maintenance Tribunal vide its order dated 28.8.2014. Respondent No.5 did not challenge the said order by way of appeal though provided in terms of Section 16 of the Act. However, he filed another application for seeking cancellation of the Gift Deed and also for eviction of

the petitioner from the property in dispute. The said application has been allowed by the District Magistrate, Patiala, vide impugned order dated 30.8.2016.

Learned counsel for the petitioner has submitted that respondent No.5 could not have invoked Section 23 of the Act in respect of the Gift Deed dated 22.12.2006. In this regard, he has referred to Section 23 of the Act which read as under -

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

(1) Where any senior citizen who, after commencement of this Act, has transferred 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.”

It is submitted that Section 23 of the Act categorically provides that if a senior citizen, after the commencement of the Act, has transferred 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.

It is submitted that the Act came into force w.e.f. 13.12.2007 whereas the registered Gift Deed was executed on 22.12.2006.

Learned counsel for the petitioner has further submitted that since the order passed by the Tribunal was not further challenged by respondent

No.5, therefore, the said order had become final between the parties. The petitioner is presumed to be the owner of the property in question by way of Gift Deed. However, respondent No. 5 filed an application before the District Magistrate for seeking eviction of the petitioner on the ground that he is an old person and the petitioner has failed to provide him the basic amenities.

In this regard, learned counsel for the petitioner has submitted that District Magistrate has committed a patent error of law in passing the order of eviction and has referred to the provisions of Action Plan which were notified by the State of Punjab on 13.3.2015 in which the procedure has been laid down for seeking eviction from the property. It is submitted that the District Magistrate has been empowered to pass order of eviction but, in case, where any son or daughter or legal heir is in unauthorised occupation of the property.

Learned counsel for the petitioner submits that the petitioner is not in unauthorised occupation of the property rather he is the owner of the property by virtue of the Gift Deed. Therefore, it is submitted that District Magistrate without looking into the basic provisions of the Action Plan passed the impugned order probably charged by emotions.

Learned counsel for the respondents has submitted that no doubt respondent No.5 has gifted the property in dispute to the petitioner but the petitioner is not looking after him, therefore, at this stage of his life, he has no place to go and the property in question has been let out by the petitioner.

I have heard learned counsel for the parties and after taking into consideration the facts and circumstances of the case, am of the considered opinion that there is a patent error of law in the approach of the District Magistrate, Patiala, in passing the impugned order. The District Magistrate can

initiate an action on an application filed under Section 22 of the Act, if he is of the opinion that the person occupying the premises of the parents/senior citizen is in unauthorised possession but in the present case, the petitioner is the owner of the property by virtue of the registered Gift Deed. It is altogether a different matter that the petitioner, who is the son of respondent No.5, has a pious duty to look after his father but as far as the law is concerned, he is the owner of the property and cannot be evicted.

Thus, the present petition is hereby allowed and the impugned order dated 30.8.2016 is set aside.

(RAKESH KUMAR JAIN)
JUDGE

4.4.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No