

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 05, 2018

Judgment delivered on: October 03, 2018

+ LPA 205/2017, CM No. 11669/2017

SUNNY PAUL

..... Appellant

Through: Mr. Viresh B. Saharya, Adv. with
Mr. Akshat Agarwal, Adv.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Satyakam, ASC (GNCTD) with
Mr. Mohit Kumar Bafna, Adv. for R-1
Ms. Aakanksha Kaul, Adv. for R-2 &
3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this appeal by the appellant is to the order dated March 15, 2017 passed by the learned Single Judge in W.P.(C) No. 10463/2015 whereby the learned Single Judge has upheld the order dated October 01, 2015 passed by the Maintenance Tribunal constituted under The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (for short 'Act of 2007') whereby the appellant and his brother were directed to

vacate H.No. 19A, Raj Niwas Marg, Civil Lines, Delhi-110054.

Suffice it to state that only one of the petitioners (before the learned Single Judge) namely Sunny Paul has filed the present appeal.

2. The facts as noted from the record are that the appellant and his brother Victor Dass are the two sons of the respondent Nos.2 and 3 namely Leelawati and William Dass. Respondent Nos. 2 and 3 had filed a petition under the Act of 2007 alleging that both of them have been physically assaulted, maltreated and harassed by their sons. It is their case that the appellant is an alcoholic, whose services have been terminated by the Delhi Police on the ground of misconduct and who had been convicted in a fraud case and against whom number of police complaints are pending in different police stations. It is further averred that they have already disowned and disinherited the appellant and his brother by way of publication in newspaper. It is noted, the Tribunal had issued the following directions: -

1. That the respondents (a) Sunny Paul (b) Victor Dass along with their respective family members shall vacate the entire rooms, store, toilets, open space of House No.19A, Raj Niwas Marg, Civil Lines, Delhi-54 to the extent that is under their unauthorised and illegal occupation within 10 days of the receipt of the order.

2. That all household goods, LCD, Almirah, Clothes etc. belonging to petitioners shall be handed over back by the respondents to the petitioners.

3. That the S.H.O., P.S. Civil Lines is directed to ensure enforcement/compliance of the directions (1) & (2) mentioned above, and also ensure that life and property of the petitioners is secured and no harassment is caused to them by the respondents and their family. Beat Staff be deputed for regular visits to the Senior Citizen petitioners, in order to safeguard the life and property of the Senior Citizen petitioners. Compliance report be sent to the tribunal within 15 days of the order.

3. It may be stated here that it is a conceded case of the appellant, as noted from the order of the learned Single Judge, that the Baptist Church Trust Association (for short 'BCTA') is the absolute owner of the property being H.No. 19A, Raj Niwas Marg, Civil Lines, Delhi-54. The property was allotted by BCTA to one Andrew Jacob, who was in their employment. In 1990, Suman Gaur who is the daughter of respondent Nos. 2 and 3, began residing in the property with the permission from Andrew Jacob. In 1995, Andrew Jacob died but Suman Gaur continued to reside in the property with the permission of the BCTA. In 2002, respondent No.3-William Dass father of the appellant / Victor Dass / Suman Gaur became an employee of the BCTA, and was allotted the property by BCTA. He was employed with BCTA

from 2002 till 2012, during which time respondents No. 2 and 3 were permitted by BCTA to reside in the property. It is a matter of record that BCTA filed a suit for taking over possession of the property, which is still pending. It is admitted by the appellant and his brother Victor Dass in their writ petition that the respondent Nos. 2 and 3 are the tenants in the property. It is noted by the learned Single Judge that the BCTA, which is the lessor paramount of the property, does not acknowledge any claim of the appellant and his brother to the property, and has stated that the appellant and his brother could claim only as children/legal representatives of respondent Nos. 2 and 3.

4. It is the submission of Mr. Viresh B. Saharya, learned counsel for the appellant that the Act of 2007 is a special law and the jurisdiction and powers of the Tribunal are those which have been stipulated in terms of specific provisions in the Act, which have to be strictly construed. He stated, the jurisdiction and procedure for conducting the proceedings before the Maintenance Tribunal have been stipulated vide Section 6 and Section 7 respectively, for the purpose of adjudicating and deciding upon the order for maintenance. Section 8 postulates summary procedure and that the tribunal shall have all the powers of a

Civil Court for the purposes of taking evidence on oath and of enforcing the attendance of witnesses and for compelling the discovery and production of documents etc. It is his submission that specific provision is made for order of maintenance in section 9. According to him, various other provisions have been made for purposes connected with maintenance, in Chapter II of the Act. The respondents 2 and 3 had not invoked any of the statutory obligations of a child or relative; and they do not want maintenance from the appellant under Chapter II of the Act. He stated, any impression, observation, view concerning moral, pious or statutory obligation of a child or relative in relation to the respondents 2 and 3, would be irrelevant and ought to be set aside.

5. It was his submission in Chapter III (for establishment of old homes), Chapter IV (for medical care of senior citizens), Chapter VI (in respect of offenses and procedure for trial), Chapter VII (Miscellaneous matters, including power to make rules), there is no provision prescribing any obligation or liabilities or the enforcement thereof in respect of child or relative. He stated, Chapter V contains provisions for protection of life and property of senior citizens. In section 21 and section

22, there is no provision prescribing any obligation or liability of child or relative; nor provision is made for any role of the Tribunal. Section 23 postulates transfer of property under certain circumstances shall be declared as void. He stated, in the present case, the provisions of section 23 are not applicable. None of the specified circumstances and conditions have been invoked or proved by the respondents 2 and 3 in the proceedings before the Tribunal. In the application/petition filed by them before the Tribunal, no such case was pleaded nor proved and no relief was sought in terms of section 23. The Tribunal has not made any such declaration postulated under section 23. The provisions made in section 23 are not attracted and are wholly irrelevant for the purpose of adjudication and decision of the present appeal.

6. He further submitted that in the Act of 2007, no provision has been made for Tribunal's jurisdiction or Powers for the purpose of adjudicating and deciding upon matters of Civil nature, except for maintenance under Chapter II and transfer of Property in certain circumstances and that too for the limited purpose of declaring such transfer void. Section 3 stipulates that the "provisions of this Act" shall have overriding effect "notwithstanding anything inconsistent therewith contained in

any enactment other than this Act'. In the absence of such a provision regarding jurisdiction and powers of the Tribunal in respect of the subject matter under discussion, the question of "anything inconsistent therewith" in any other enactment, and the question of its overriding effect, do not arise for any further discussion. According to him, under section 27, jurisdiction of civil court is barred in respect of matters to which any provision of the Act applies. In the Act, there is no provision and the Tribunal has no jurisdiction or power for purposes of adjudication and deciding upon right, title, interest or status of the parties in respect of the property; to declare the appellant a trespasser; order him to vacate the property and / or direct police officers to evict him; and that too, not according to procedure established by law. The Tribunal was itself uncertain about its jurisdiction and powers to entertain and dispose of a matter of civil nature; but, this aspect of the case has been glossed over, not at all discussed, nor any finding has been recorded in the final order.

7. In the alternative, it is his submission that the Tribunal has improperly exercised jurisdiction by entertaining application / petition of respondents 2 and 3, in conducting the inquiry, directing and permitting production of documents and material

and relying upon inadmissible material, without giving opportunity to the appellant to challenge probity and veracity of such material, which is inconsistent with the provisions prescribed in the Act. Further, by relying upon inadmissible material; rather contrary to information furnished; recording extraneous and perverse findings on matters not even pleaded and beyond the prayer sought in the petition, the Tribunal has passed the eviction order.

8. It is also his submission that the respondents 2 and 3 did not make out a case and did not seek appellant's eviction in the application / petition filed before the Tribunal. According to him, in any event, an eviction order would be inconsistent with the object and scheme of various provisions made in the Act. An eviction order would render the legally binding obligation upon the child or relative, otiose. Order of eviction against child or relative would result in breakdown of traditional norms and values of the Indian Society and would perpetuate withering of the joint family system. Such an action would be ultra vires the Act. He stated, in fact, the appellant had been continuously residing in the property for a long time even much prior to commencement of the Act together with his entire family

including the respondents 2 and 3. The findings and observations made in the order of the Maintenance Tribunal, and, in the impugned judgment by the Ld. Single Judge are based upon conjectures and surmises. The same are not supported by any cogent material and/ or admissible evidence on record. The Ld. Single Judge has erred in the exercise of power of superintendence over the Tribunal's eviction order which is without jurisdiction, and/ or, improper exercise of its jurisdiction and, perverse findings recorded in the eviction order, which are inconsistent with material on record. He would rely upon the following judgments in support of his contention:-

- (i) ***Rajesh Kumar Bansraj Gandhi v. State of Gujarat Special Civil Application No. 19040/2015 decided on May 05, 2016;***
- (ii) ***Motiben Jadavbhai Malani Education & Charitable Trust vs. State of Gujarat LPA No. 10/2000 March 13, 2012;***
- (iii) ***Shri Krishna Chandraji v. Shyam Behari Lal AIR 1955 ALL 177;***
- (iv) ***Harvinder Kaur Bawa v. The Appellate Tribunal Panchkula & Ors CWP No. 17482/2015 October 17, 2016;***
- (v) ***State of Himachal Pradesh & Ors v. Satpal Saini C.A. No. 1654/2017 February 08, 2017;***
- (vi) ***Lalappa Lingappa & ors v. Laxmi Vishnu Textiles Mills Ltd AIR 1981 SC 852;***

(vii) *Smt. Shrisht Dhawan v. Shaw Brothers AIR 1992 SC 1555;*

(viii) *B.S. Nat v. Bachan Singh AIR 1971 P&H 144;*

(ix) *State of West Bengal v. Atul Krishna Shaw AIR 1990 SC 2205;*

(x) *M/s Lalchand Bhagat Ambica Ram v. Commissioner of Income Tax, Bihar & Orissa AIR 1959 SC 1295.*

(xi) *Shadab Khairi & Anr. v. The State & Ors LPA 783/2017 decided on February 22, 2018.*

9. On the other hand, Ms. Aakanksha Kaul, learned counsel for the respondent No.2 (as we have been informed that respondent No.3 has since expired) would submit, that the claim for eviction before the Tribunal was maintainable under Section 23 of the Act of 2007 as admittedly, the respondent No. 3 was a tenant and the appellant had no claim qua the property in question. The appellant was at best living with the permission of his parent, respondent No.3, which permission stands long withdrawn. Bald disputes raised by the children challenging the title of the parent to the property are not sufficient to prevent the Courts from granting the relief. In such circumstances if the respondents were compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the

property, the very purpose of the Act of 2007 will stand defeated.

10. According to her, provisions of the 2007 Act, including Section 23, must be interpreted in light of the object of the Act. Since the Act of 2007 confers on the Tribunal the express power to declare a transfer of property void at the option of the transferor under Section 23, it has to be presumed that the intent of the Legislature is to empower the Tribunal to pass effective and meaningful orders including all consequential directions to give effect to the said order. The direction of eviction is a necessary consequential relief or a corollary to which a senior citizen would be entitled to upon a transfer being declared void. The interest of the respondent in the property, whether as licensee or tenant, falls within the definition of "property" under Section 2(i) and 23 of the Act of 2007. Definition of 'property' under Section 2(i) is wide and comprehensive to include any right or interest in any immovable property and not just ownership.' The meaning of "transfer" is not restricted to "actual transfer of title and ownership" and does not exclude "possession of property". Even if it is assumed that the appellant did not trespass and forcibly occupied the property and that he had been permitted to stay in the property, such permissive use would amount to

transfer of the property in question on the condition that appellant would not harm them physically or mentally. She would rely upon the following judgments in support of her contention:-

- (i) *Spring Meadows Hospital and another v. Harjolahluwalia through K.s. Ahluwalia and another Civil Appeals No. 7708/1997 and connected appeal decided on March 25, 1998;***
- (ii) *Nasir v. Govt. of NCT of Delhi & Ors. W.P.(C) No. 9717/2015 decided on October 13, 2015;***
- (iii) *Justice Shanti Sarup Dewan, Chief Justice (Retired) and another v. Union Territory, Chandigarh and others LPA No. 1007/2013 decided on September 26, 2013;***
- (iv) *Promil Tomar and others v. State of Haryana and others CWP 20072/2013 decided on December 06, 2013;***
- (v) *Jayantram Vallabhdas Meswania v. Vallabhdas Govindram Meswania, Special Civil Application No. 13954/2012 decided on October 18, 2012;***
- (vi) *Union of India and another v. Paras Laminates (P) Ltd. (1990) 4 SCC 453;***
- (v) *Gurpreet Singh v. State of Punjab & Ors. CWP No. 24508/2015 decided on December 01, 2015;***
- (vi) *Harpreet Kaur & Anr. v. State of Punjab & Ors. SLP© No. 10742/2016 decided on April 25, 2016.***

11. Having heard the learned counsel for the parties, the issue which has been decided by the learned Single Judge is whether

the Act of 2007 provides for a remedy to Senior Citizens / parents of monetary maintenance by the children / relative and / or does it provide for eviction of adult children in case of parental abuse. The said question has been answered by the learned Single Judge by referring to various judgments as relied upon by both the parties. It is noted that in the impugned order, the learned Single Judge has also answered the question whether a claim for eviction before the Maintenance Tribunal is maintainable under Section 23 of Act of 2007 and that too on allegations of forcible ouster and in the absence of a claim for maintenance. The learned Single Judge concluded that Sections 4 and 23 are separate and distinct remedies. In other words, the claim for maintenance is not a condition precedent for passing an order of eviction under Section 23 of the Act of 2007. He referred to two judgments of the Punjab & Haryana High Court in the case of *Promil Tomar and others v. State of Haryana and others (supra)* and *Justice Shanti Sarup Dewan, Chief Justice (Retired) and another v. Union Territory, Chandigarh and others (supra)* in coming to the aforesaid conclusion. We have also considered the aforesaid aspect. On a perusal of the provisions of the Act of 2007, it is seen that the same has been

enacted to provide for effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto. The necessity of framing the Act is because of the erosion of joint family system resulting in the elderly parents and senior citizens getting neglected by the children including lack of physical and financial support from them. Section 3 of the Act of 2007 gives the overriding effect over any other enactment / instrument. Chapter II of the Act deals with the maintenance of parents and senior citizens. Section 4 of the Act enables a senior citizen including parent who is unable to maintain himself from his own earnings or out of the property owned by him to make an application under Section 5 for his / her maintenance so that he / she can lead a normal life. Chapter V of the Act of 2007 deals with protection of life and property of senior citizens. Section 23(1) under Chapter V confers a power on the Tribunal to declare transfer of property in certain circumstances as void. Section 23(2) inter-alia stipulates that a senior citizen has a right to receive maintenance out of an estate and if such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the

transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right. There is nothing in Section 23, which pre-supposes an application for maintenance as a prerequisite for seeking a relief under it. The scope of Section 23 is to declare the transfer of property by a senior citizen with an intent that the transferee shall provide the basic amenities and physical needs to the transferor and if such transferee refuses or fails to provide such amenities and physical needs, in such an eventuality, the transfer of property can be declared void by the Tribunal. A senior citizen may be contended if the transfer of property effected is treated as void so as to enable him to maintain himself from the estate, for which a senior citizen may not seek maintenance. So the plea of the learned counsel for the appellant that in the absence of a claim for maintenance by the respondent Nos.2 and 3, a petition under Section 23 shall not be maintainable, is without any merit. Further, the Delhi Government had initially framed Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, which have been amended in the year 2016, whereby Sub Rule 3(1)(i) has been incorporated to Rule 22 of the Rules. The same reads as under: -

“(i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate(DM) of his district for eviction of his son and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.

XXXXX

XXXXX

XXXXX”

12. The said Sub Rule has undergone an amendment in the year 2017 to the following extent:-

“(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self-acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.”

13. The said Sub Rule 3 has been incorporated in Rule 22 of the Rules to give effect to Section 23 of the Act and not to Section 4 of the Act. So, it follows that it is not necessary that to invoke Section 23, one has to seek maintenance under Section 4.

14. The learned Single Judge is right in relying upon the judgments in the case of **Promil Tomar (supra)** and **Justice Shanti Sarup Dewan, Chief Justice (Retired) and another (supra)** by holding as under:-

*36. The Courts have repeatedly acknowledged the right of the senior citizens or parents to live peacefully and with dignity. In **Promil Tomar***

(supra) the Punjab and Haryana High Court has held that peaceful living for the senior citizens in their property is the apparent objective of the Maintenance Act.

37. In the present case, though the allegation of the respondents No. 2 and 3 is of the trespass and forcible occupation of the property by the petitioners, yet even if it is presumed, as alleged by the petitioner No. 1, that he had been permitted to stay in the property, then also it would amount to transfer of the property in question. Needless to state, that even this permissive use amounts to transfer and that too on the condition that petitioner No.1-son would not harm them physically or mentally. In fact, in the Indian context, there would be a presumption that the transfer was subject to petitioner No.1-son providing all the basic necessities and looking after the physical needs of the senior citizens. Since the Maintenance Tribunal has found that the petitioner No.1-son has committed acts of physical assault and mental cruelty on the senior citizens, the pre-conditions mentioned in Section 23 stand satisfied.

38. There is nothing in the language or purported intent of Section 23 of the Act 2007 to indicate that the Tribunal has the power to declare a transfer of property void if and only if the senior citizen is seeking maintenance under the Act from the opposite party.

39. In **Justice Shanti Sarup Dewan** (*supra*), the Punjab & Haryana High Court passed an eviction order under the Act, 2007 where not only no maintenance had been sought by the senior citizen, but in fact the senior citizen had volunteered to pay Rs.10,000/- as monthly maintenance to his son.

40. Consequently, Section 4 and Section 23 are

separate and distinct remedies and the claim for maintenance is not a condition precedent for passing an eviction order under Section 23 of the Act, 2007.”

15. Insofar as the submission of the learned counsel for the appellant that the Tribunal did not have the jurisdiction to direct the appellant to vacate the property is concerned, suffice to state, that as stated above, the Government of NCT of Delhi has framed Rules called Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The same were amended in December, 2016, whereby Sub Rule 3 was incorporated to Rule 22, which stipulates as under: -

"(3)(1) Procedure for eviction from property/residential building of Senior Citizen/Parents -

(i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate(DM) of his district for eviction of his son and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.

(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.

(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy

Commissioner/DM for LPA 783/2017 Page 7 final orders within 21 days from the date of receipt of the complaint/application.

(iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are , or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof.

(2) Eviction Order from property/residential building of Senior Citizens/Parent. –

(i) If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of

being heard, the Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for LPA 783/2017 Page 8 reasons to be recorded therein, directing that the property/residential building shall be vacated;

(3) Enforcement of Orders,

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;

(ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.

(iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.

(iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month."

16. A further amendment has been carried out to Sub Rule 3 to Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 in the year 2017, which amendment has already been reproduced above. The aforesaid Rules also deal with enforcement of orders passed by the Tribunal.

17. A reading of the Rules framed by the Government of

NCT clearly reflect that a senior citizen can file an application seeking eviction of his son and daughter or legal heir from his self acquired or ancestral property on the ground of ill-treatment or non maintenance. The vires of these Rules has not been challenged by the appellant. The limited challenge is to the jurisdiction of the Maintenance Tribunal to order an eviction under the Act of 2007. So noting the limited challenge to the order passed by the Tribunal and keeping in view the fact that the enactment being a social legislation and the same requires to be given liberal interpretation to achieve the mandate of the Act of 2007 i.e for the welfare of the parents and senior citizens and for the protection of their life and property, there is no doubt that the Tribunal does have the jurisdiction to direct vacation by the children of any property in which the senior citizen has a right of residence / possession. In this regard, we may refer to the judgment of the Supreme Court in ***Board of Muslim Wakfs, Rajasthan v. Radha Krishna and Ors (1979) 2 SCC 468*** wherein it was held that the construction which tends to make any part of the Statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the Statute should be accepted.

18. In *Hindustan Lever Ltd vs Ashok Vishnu Kate & Ors* **1995 SCC (6) 326**, it was held that words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced.

19. On a similar proposition, the Supreme Court in *State of Bihar & Ors. V. Anil Kumar and Ors* **AIR 2017 SC 2716** has by relying upon *National Insurance Co. Ltd. v. Laxmi Narain Dhut* **(2007) 4 SCALE 36** held as under: -

“68. A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting

a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See District Mining Officer and Ors. v. Tata Iron & Steel Co. & Anr. JT 2001 (6) SC 183). It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside.

(emphasis supplied)

69. It was also opined:

More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the

Reading of Statutes (47 Columbia Law Reports 527), observed that,

"legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose".

20. The learned Single Judge has also relied upon the judgments of the Punjab & Haryana High Court and Gujarat High Court in the case of ***Justice Shanti Sarup Dewan, Chief Justice (Retired) and another (supra)*** and ***Jayantram Vallabhdas Meswania (supra)***.

21. In para of ***Justice Shanti Sarup Dewan, Chief Justice (Retired) and another (supra)***, the Punjab & Haryana High Court has held as under:-

"37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an over-riding effect qua any other enactment in view of Section 3 of the said Act. Infact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus LPA No. 1007 of 2013 (O&M) required to move out

of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No.1. Infact, that is the very objective of respondent No. 7.”

22. Further, in **Jayantram Vallabhdas Meswania (supra)**, in paras 14 & 15, the Division Bench of Gujarat High Court has held as under:-

“14. It, however, appears that respondent’s children are not taking sufficient care and are not providing proper and sufficient maintenance for the respondent and that therefore so as to maintain himself the respondent needs sufficient earning/income whereby he can maintain himself and provide for his own food, clothing, medical attendance and treatment, etc. Therefore, the respondent asked the petitioner to handover the possession of the part of the premises (property) wherein the petitioner is staying with his wife. However, the petitioner declined to handover the possession of the part of the premises which is in his possession. In view of such conduct and action of the petitioner the respondent was compelled to file the application wherein the authority passed the impugned order. It appears that in his application the respondent requested the authority to take appropriate measures as per Section 23 so as to get the possession of the part of the premises. The petitioner opposed the application and has now challenged the impugned orders on the ground that

the same are beyond the scope and purview of Section 23. Emphasis is placed on the expression “transfer of property” in the said provision. It is claimed that the respondent has not transferred the property in his favour and therefore the provision would not be applicable and could not have been invoked.

14.1. However, the petitioner conveniently overlooks the provision under Section 4 of the Act. Sub Section (1) of Section 23 provides, inter alia, that where a senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide basic amenities and physical needs to the transferor then the transfer may be declared void if the transferee refuses or fails to provide such amenities. Sub Section (2) of Section 23 provides, inter alia, that where a senior citizen has right to receive maintenance out of an estate which is transferred, the right to receive maintenance may be enforced against the transferee provided that the transfer is not made for “consideration”.

14.2. As mentioned above, it is not in dispute that the petitioner is in possession and occupation of part of the property/premises.

14.3. It is also not in dispute that the petitioner is “in possession of property” without consideration.

14.4. It also does not appear to be in dispute that as an elder son of the respondent the petitioner also would inherit right/interest in the property.

15. The question which, therefore, arises is whether the term “transfer” in Section 23 of the Act should be construed so as to mean only actual transfer of ownership and title or the said expression should be

construed, having regard to the object of the Act and the provisions under Section 2(b), 2(d), 2(f), 2(h) and Section 4, so as to also include possession of the property as well.

15.1. It is noticed earlier that Sub Section (4) of Section 4 provides, inter alia, that any person who would inherit the property (which includes right or interest in such property) and is “in possession of property” shall maintain such senior citizen which includes the needs of such senior citizen to lead normal life.

15.2. Having regard to the object of the Act and the intention of the legislature, there is no reason or justification or indication to restrict the meaning and scope of the term “transfer” so as to mean only “actual transfer of title and ownership” and to exclude “possession of property” from the purview of Section 23 and/or from the term “transfer” employed in Section 23 of the Act.

15.3. There is no provision in the Act to suggest or to indicate that the said term carries very narrow, and literal meaning so as to mean only actual transfer of title and ownership and the concept of possession, which is recognized by the Act – particularly under Section 4 of the Act, has to be kept out.

15.4. On overall consideration and having regard to the provision under Sections 2(b), 2(d), 2(f), 4 and the object of the Act, the said term should receive wider meaning so as to include possession/occupation of property, as well. The said concept is already recognised, accepted and internalised by the Act vide Section 4 of the Act.

15.5. It is not in dispute that the property is in name

of the respondent and he has the right to receive maintenance i.e. income/earning from the said property.

15.6. In view of the said provisions, the term “transfer of property” should receive wide and liberal construction so as to include an act of allowing possession and/or occupation of premises or part of the premises provided, of course, the possession is not allowed for consideration (including rent).

15.7. Sub Section (2) of Section 23 contemplates a situation where the transferor has right to receive maintenance from such property then such transferor can enforce the right to receive maintenance from the transferee.

15.8. For the purpose of the said provision the transferee would mean person who is allowed possession and/or occupation of the premises/property or part of the premises/property from which the transferor i.e. the owner of the premises/property can, otherwise, receive income/earning i.e. maintenance.

15.9. The provisions under Section 23 of the Act cannot be, and need not be, read in isolation or by divorcing the said provision from other provisions, particularly Section 4 of the Act read with Section 2(b), 2(f), 2(g) & 2(h) of the Act.”

23. We agree with the conclusion arrived at by the High Courts in the aforesaid judgments. At the cost of repetition, we may state here that having regard to the object of the Act (i) the term “*transfer*” shall include actual transfer of title or ownership;

the act of allowing possession of property / allowing stay in the property or in part of property from which the Senior Citizen / Parents can earn income to maintain themselves and (ii) similarly the term “*transferee*” shall mean the children / legal heir in whose favour the property, is transferred or is in possession of or are staying in the property or part of the property (but without consideration).

24. In fact, we find a Coordinate Bench of this Court in the case of ***Shadab Khairi & Anr. (supra)***, has, by referring to the judgment, which is under challenge i.e ***Sunny Paul & Anr. v. State of NCT of Delhi & Ors*** in paras 18 to 20 held as under;-

“18. A plain reading of the above extracted Rules clearly reflect that a senior citizen is entitled to institute an application seeking eviction of his son, daughter or other legal heir from his self-acquired property on the ground of ill-treatment and non-maintenance.

19. It must be observed that in instant proceedings, neither the vires of the Act nor the Rules framed thereunder have been assailed on behalf of the appellants. What is assailed is the competence of the Maintenance Tribunal to render an order of eviction under the Act. Further, it is canvassed that the Act does not contemplate eviction per se. Alternatively, it has been urged that respondent No.3 being possessed of sufficient means and assets was disentitled from maintaining an application seeking

maintenance within the meaning of the provisions of the Act.

20. We do not agree. At the outset, we had elaborated on how beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare State. The object for which the Act as well as the subject Rules, extracted hereinabove, were brought into force, namely, for the welfare of parents and senior citizens and for protection of their life and property, leave no manner of doubt that the Maintenance Tribunal constituted under the Act has the power and jurisdiction to render the order of eviction. (emphasis supplied)”

25. In the case in hand, it is an admitted case of the appellant that the property was allotted by the BCTA to the respondent No.3-the late father of the appellant being an employee of the said Trust. It clearly imply that the appellant herein has no right to reside in the property contrary to the wishes of the respondents 2, more particularly when there are serious allegations against the appellant of ill-treatment, misbehavior with respondent Nos.2 and 3, (who is no more). They had rightly filed a petition before the Tribunal.

26. During the course of the submissions, the learned counsel for the appellant stated that the Tribunal could not have granted a relief, which was not sought by the respondent Nos.2 and 3 in

their compliant. He draws our attention to the complaint itself to contend that the same was primarily for registration of an FIR against the appellant. We are unable to accept such a plea of the learned counsel for the appellant for the simple reason, the relief sought in the complaint, as can be seen from page 97 of the paper book and which reads as under, it is clear that the respondent Nos.2 and 3 did seek an order of enjoyment of the property to the exclusion of the appellant. So, the Tribunal could have granted the relief as given.

“In view of the facts and submission made above in brief, it is therefore, most respectfully requested to register FIR against the accused persons named above and to be arrested them and punished under the provisions of law and to grant protection to the old aged complainant and his wife so that the complainant and his wife may enjoy their remaining life peacefully alongwith his daughter at her house who are taking care and lookafter and providing all the necessities of life on humanitarian grounds for this kind act the complainant shall be highly thankful to you.”

27. Insofar as the judgments relied upon by the learned counsel for the appellant are concerned, in **Rajesh Kumar Bansraj Gandhi (supra)** the Gujarat High Court was considering the legality of order dated October 30, 2015 passed by the Sub Divisional Magistrate exercising his powers under the Act of

2007, whereby SDM directed the petitioners before the High Court to handover the possession of the house property described as B/1, Santosh Nagar Society, Camp Road, Shahibaug, Ahmedabad to the second respondent. From the order, it is noted the only reasoning given by the Tribunal is that since the petitioners were harassing the applicant, i.e., respondent No.2, possession of the house in question was liable to be handed over to the said respondent. The High Court was of the view that the reason, tantamount to no reason, much less a valid reason. It held that the order is cryptic and illegal and on that ground, has set aside the order and remanded the matter back to the Maintenance Tribunal to take up the case afresh and pass an order after keeping in view inter-alia the object of the Act of 2007 for grant of maintenance. The judgment is distinguishable being in peculiar facts of that case.

28. The judgment in the case of ***Motiben Jadavbhai Malani Education & Charitable Trust (supra)*** was relied upon by the learned counsel for the appellant only in support of his contention that in the absence of any pleading or specific prayer, no directions could have been issued by the learned Single Judge for cancelling grant in aid of the appellant as institution. Suffice it to

state, in view of our finding in para 26 above, this judgment has no applicability to the issue in hand.

29. The judgment in the case of *Shri Krishna Chandraji (supra)* is on similar lines as the case of *Motiben Jadavbhai Malani Education & Charitable Trust (supra)*. This judgment will also have no relevance to the issue in question.

30. Insofar as the case of *Harvinder Kaur Bawa (supra)* is concerned, we note that the said judgment has been referred to and dealt with by the learned Single Judge. In the said case, the prayer of the petitioner was rejected by the learned Single Judge of the Punjab & Haryana High Court by holding that the petitioner was required to file an application under Section 22 (2) of the Act of 2007, and not much less under the Action Plan, which is altogether different procedure to be followed. The judgment is distinguishable on facts.

31. Similarly in *State of Himachal Pradesh & Ors (supra) v. Satpal Saini (supra)*, wherein the challenge was to a direction of a Division Bench of the High Court directing the State Government to amend the provisions of Section 118 of the HP Tenancy & Land Reforms Act, 1972 within a period of 90 days and thereby allowing the writ petition challenging the order dated

April 23, 2014 of the Revenue Authorities. In effect, the direction of the High Court to the State was to attest the mutation by treating the respondent as an agriculturist. The appeal before the Supreme Court was primarily to the extent of challenging the direction to amend the legislation. The Supreme Court has allowed the appeal holding that such a direction is manifestly unsustainable. According to us, the said judgment has no relevance to the issue, which falls for consideration in this case.

32. In *Lalappa Lingappa & ors v. Laxmi Vishnu Textiles Mills Ltd (supra)*, the reliance placed by the learned counsel on paras 13 and 14 of the judgment wherein it was held that in construing a social welfare legislation, the Court should adopt a beneficent rule of construction. If a section is capable of two constructions, that construction should be preferred which fulfills the policy of the Act and is more beneficial to the persons in whose interest, the Act has been passed. The said proposition of law is squarely applicable to the issue in hand, as noted by us in the aforesaid paragraphs. This judgment would not help the case of the appellant.

33. The judgment in the cases of *Smt. Shrisht Dhawan v. Shaw Brothers (supra)*, *State of West Bengal v. Atul Krishna*

Shaw (supra) and *M/s Lalchand Bhagat Ambica Ram v. Commissioner of Income Tax, Bihar & Orissa (supra)* have no relevance to the issue in question, more so in view of our conclusion above.

34. In view of the discussion above, we do not see any merit in the appeal. The same is dismissed. No costs.

CM No. 11669/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 03, 2018/ak