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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 01.02.2018

+ C.M. APPL. Nos.28421/2017 & 34087/2017 in W.P.(C)
4698/2017

MAHESH SYAL

..... Petitioner

Through: Mr. V.K. Ohri, Adv.

versus

THE STATE (NCT OF DELHI) & ORS.

.....Respondents

Through: Mr. Devesh Singh, ASC for
R-1&2.

Mr. Manish Vashisht, Ms.
Trisha Nagpal and Ms.
Astha Gupta, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1) In this writ petition, the following substantive prayers have
been sought for by the petitioner:

(a) Direct the Respondent no.3 to remove herself and
her son from the property no. Must. No. 46, Killa nos.
3(4-02) 4 (4-16), 5/2 (3-18) 6 Min (3-08), 7 (4-16) & 8/1
(1-100), now known as Syal Farm, 6, Green Avenue,
Vasant Kunj, New Delhi so that the Petitioner and his
wife can stay peacefully at the self acquired above
mentioned property in their old age;

(b) a Writ of Mandamus or any other Writ of the similar nature directing the Respondent no.1 to constitute Appellate Tribunal as per the Act;

(c) Pass an order to recover the Cost of proceedings from the Respondent no. 1;

2) The record shows that the grievance of the petitioner emanates from the order dated 12 /30 January 2017 passed by the Tribunal of Maintenance of Parents and Senior Citizens (hereafter referred to as 'Tribunal'). By virtue of this order, the writ petitioner's petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short "2007 Act") has been closed.

3) A perusal of the impugned order would show that even while the Tribunal noted the stand of the petitioner's husband that respondent no.3 and her son were mentally and verbally abusing him and the petitioner herein (i.e., Ms. Meera Syal), it proceeded to close the petition after recording the fact that a gift deed dated 30 March 2010 had been executed in favour of respondent no.3. Furthermore, the Tribunal went to observe in the very same order that respondent no.3 was the only daughter of petitioner and had been separated from her husband.

3.1) It appears what persuaded the Tribunal to close the petition was the fact that a gift deed had been executed in favour of respondent no.3 and that she and her son had no other place to reside in but the Sayal Farm.

3.2) From the point of view of the petitioner the only positive direction which was issued was that respondent no.3 was restrained from indulging in any abusive behaviour vis-a-vis petitioner and his wife.

4) The Tribunal, to my mind lost sight of the provision of Section 23 of 2007 Act. Section 23 of 2007 Act provides that where any senior citizen has transferred by way of gift deed or otherwise, his property, the said transfer shall be deemed to have been made by way of fraud or coercion or undue influence, if allegations are made by such transferor, i.e., the senior citizen that he has been deprived of basic amenities and basic physical needs. The provision confers an option on the transferor to have such transfer of property being declared void by the Tribunal.

4.1) In other words, even in case of valid transfer, the legislature has provided for a deeming fiction that the transfer would be treated as one which is impregnated with fraud or coercion or undue influence, if, the transferor is in position to establish deprivation of basic amenities and physical abuse.

4.2) The Tribunal, in this case, has not returned any finding either way on the pleas made by the petitioner's husband that he and his wife (i.e., Ms. Meera Syal) were deprived of basic amenities and/or were subjected to physical abuse.

4.3) The Tribunal as it appears was burdened by the fact that a gift deed had been executed by the petitioner in favour of respondent no.3 and because of maintenance was not sought, the subjected gift deed could not be cancelled.

5) According to me, the Tribunal misdirected itself in law and, thus, wrongly closed the petition. To my mind, the Tribunal will have to re-adjudicate upon the petition and return a finding of fact vis-a-vis the allegations made in the petition. If the allegations are found true, then, the Tribunal would have to proceed further in accordance with the provisions of 2007 Act which would include the provision of Section 23 of the very same Act. Since, the order is cryptic and does not deal with this crucial aspect of the matter, in my view, it would have to be set aside.

5.1) Needless to say, while deciding the application, the defence of the respondent no.3 that there was no denial of basic amenities or physical abuse would have to be taken into account.

5.2) It is made clear that the Tribunal will also take into account all contentions advanced before it relating to the facts and law before coming to a final conclusion in the matter. Consequently, the order dated 12 /30 January 2017 is set aside. The matter is remanded to the Tribunal for a fresh adjudication. The matter will be placed before Tribunal on 12.02.2018 at 02: 00 pm for directions. The parties and their counsels shall appear before the Tribunal on the said date. The Tribunal will thereafter fix a timeline for disposal of the petition.

6) In the passing, I may also indicate that respondent no.3 and another (possibly her) son have filed a civil suit on the original side of this Court, which is, numbered as CS(OS) No.194/2016. In this suit an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) was filed by the husband of the petitioner

i.e., Mr. Mahesh Syal and another seeking rejection of the plaint on the ground that a suit was barred by virtue of the provisions of Section 27 of the 2007 Act.

6.1) By an order dated 11.4.2017 this application was dismissed on the ground that it had become infructuous in view of the Tribunal having closed the petition preferred under Section 23 of the 2007 Act vide the order impugned in these proceedings, that is, order dated 12/30 January 2017.

6.2) However, while dismissing the application, the Court did observe that the petitioner's husband and others who are arrayed as defendants in the aforementioned suit could apply for rejection of the plaint if they were to succeed in having the order dated 12/30 January 2017 set aside.

6.3) Besides this, the learned Single Judge by the very same order, *inter alia*, has framed issues in the suit including an issue as to whether respondent no.3 herein (who is arrayed as plaintiff no.1 in the said suit) was entitled to a declaratory relief qua the gift deed dated 25 January 2016. This gift deed has apparently been executed by the petitioner herein in favour of her son and the brother of respondent no.3.

6.4) According to respondent 3, the gift deed dated 25 January 2016 has been executed in derogation of a family settlement dated 5.1.2010.

6.5) I have adverted to these circumstances as a measure of good order and record. To my mind, the pendency of the suit filed by respondent no.3 and her son cannot take away the jurisdiction

vested in the Tribunal under the 2007 Act.

7) The Tribunal is, thus, requested to dispose of the petition at the earliest, though, not later than three months from today.

7.1) I make it clear that whatever has been said hereinabove will not impact the final decision in the matter, which is, required to be taken by the Tribunal.

8) *Dasti*

RAJIV SHAKDHER, J

FEBRUARY 01, 2018

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