

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7982 OF 2018**

- 1 Mrs. Nayana Sudhir Shah,
Adult, Indian Inhabitant,
Age 57 years,
Occupation : Business.
- 2 Mr. Samkit Sudhir Shah,
Adult, Indian Inhabitant,
Age 32 years,
Occupation : Business.
- 3 Miss Shraddha Sudhir Shah,
Adult, Indian Inhabitant,
Age 28 years,
Occupation : Business.
All Residing at 8/114, Adarsh Nagar,
Prabhadevi, Mumbai- 400 025 and
Presently Residing At 403, Vaitarna,
Sir Pochkanwalla Road, Worli,
Mumbai -400 030. ...Petitioners.

Vs.

- 1 Mr. Sudhir Premji Shah,
Adult, Indian Inhabitant,
Age 62 years, Occupation : Retired,
Residing At Room No.12, Vishwa Laxmi
Building, Todankar Wadi,

A.V Nagwekar Road, Prabhadevi,
Mumbai - 400 025.

- 2 Collector of Mumbai,
The Appellate Authority under the
Maintenance and Welfare of Parents
and Senior Citizens Act, 2007,
having its office at Old Customs House,
Fort, Mumbai - 400 001.
- 3 Deputy Collector & Presiding Officer,
Tribunal for Maintenance of Parents
and Senior Citizens, Mumbai City,
having its office at Old Customs House,
Fort, Mumbai - 400 001.

...Respondents.

Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. Vishal Narichania,
Mr.Chinmaya Acharya a/w Jaswandi Khatu i/by Mr. Susmit S. Phatale
for the Petitioners.

Mr.Shashank Thatte a/w Mr. Ranjit Agashe i/by Mr. Pankaj R. Thatte
for the Respondent No.1.

Ms. M.S. Bane, AGP for the Respondent Nos.2 and 3-State.

CORAM : A. S. GADKARI, J.
RESERVED ON : 27TH SEPTEMBER 2019.
PRONOUNCED ON : 19TH MAY 2020.

JUDGMENT:-

The present Petition under Article 227 of the Constitution
of India, takes an exception to the Order dated 31st January, 2017
passed by the Maintenance Officer and Assistant Commissioner Social

Welfare, Mumbai City (Appellate Authority) under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, "*the Said Act*"), the Respondent No.2 herein, dismissing the Appeal No.277/2016-2017 preferred by the Petitioners under Section 16 of the said Act and confirming the Order dated 12th August 2016 passed by the Deputy Collector and Presiding Officer, Tribunal for Maintenance Of Parents and Senior Citizens, Mumbai City, i.e. Respondent No.3 herein.

2 Heard Mr. Dhakephalkar, learned Senior Counsel for the Petitioners, Mr. Thatte, learned counsel for the Respondent No.1 and Ms. Bane, learned AGP for the Respondent Nos.2 and 3. Perused the entire record annexed to the Petition.

3 The Petitioner No.1 is the wife of the Respondent No.1. The Petitioner Nos. 2 and 3 are the major children of the Petitioner No.1 and the Respondent No.1. The record indicates that, the Petitioner No.1 wife along with major children i.e. Petitioner Nos. 2 and 3 are on one side, whereas the Respondent No.1 husband is on the other side, in the litigation.

 The subject matter of the present Petition comprises of three properties, namely-

- (i) Shop Nos.10 and 11, Bhiku Building, Veer Savarkar Marg, Prabhadevi, Mumbai-400 025 (the "*subject Property No.1*")
- (ii) Office No. 25, Bhiku Building, Veer Savarkar Marg, Prabhadevi, Mumbai- 400 025 (the "*subject Property No.2*") and
- (iii) Workshop No. 110, Municipal Industrial Estate, Dainik Shivner Marg, Worli, Mumbai-400 018 (the "*subject Property No.3*").

The Subject Property Nos.1, 2 and 3 above are collectively referred to as the "*Subject Properties*".

4 The record further indicates that, the Respondent No.1 had been conducting proprietary business of wooden furniture, marble idols and temples etc. under the name of 'Aakaar' at the subject property No. 1, on tenancy basis from original landlords since the year 1979 till 2001. That, by virtue of Deed of Conveyance dated 31st August, 2001 and 18th December 2002 respectively, the Respondent No.1 purchased the entire subject property No. 1 above. That, by virtue of Deed of Conveyance dated 23rd March 2004, the Respondent No.1 being Karta of Hindu Undivided Family (HUF), which was comprising of the Respondent No. 1 and the Petitioners herein, purchased the subject property No. 2 above. That, the subject property No.3 above was assigned completely in favour of the Respondent No.

1 by Deed of Assignment dated 16th May 1994.

It thus clearly reveals that, the aforestated subject properties are self acquired properties of the Respondent No.1 and/or the Respondent No.1 has exclusive rights in the said properties, presently occupied by the Petitioners.

5 It is the case of the Petitioners that, on account of ill health of the Respondent No.1 and his inability to attend the business, he executed a General Power of Attorney (hereinafter referred to as, 'POA') dated 3rd October, 2002 in favour of the Petitioner No.1. That, thereafter since the health of the Respondent No.1 further deteriorated the Respondent No.1 executed an Agreement-Cum-Irrevocable POA dated 5th January, 2005 in favour of the Petitioner No.1. That, the business of 'Aakaar' multiplied manifold since the Petitioner No.1 was in complete charge of the said business from 3rd October 2002. Some time in the year 2006, the Petitioner No.1 started conducting business in the name of 'Aakaar Exquisites'. The relations between the Petitioner No.1 and the Respondent No.1 got strained and there was a discord between them. That, the Respondent No.1 abandoned his family and his obligation towards the Petitioners and in the year 2008 left the family home at Prabhadevi and the

business.

6 The Petitioner No.1 in pursuance of and on the basis of the POAs granted in her favour as mentioned hereinabove, entered into Tenancy Agreement dated 29th December 2008 and tenancy in favour of the Petitioner Nos.2 and 3 pertaining to subject property No.1 above was created. Likewise, the Petitioner No.1 in furtherance of and on the basis of the POAs given to her by the Respondent No.1, entered into Tenancy Agreement dated 29th December, 2008 with the Petitioner Nos.2 and 3 with respect to subject property No.2 above and created tenancy rights in their favour.

7 After coming to the knowledge of the said acts of the Petitioner No.1, the Respondent No.1 cancelled POA dated 5th January, 2005 by a Notice-cum-Declaration dated 2nd January 2009 (page No.118 to the Petition).

 The Petitioner No.1 thereafter entered into a Deed of Partnership dated 20th January, 2009 with the Petitioner Nos.2 and 3 for conducting the business of '*Aakaar Exquisites*' with effect from 1st January, 2009. It is the contention of the Petitioner No.1 that, she retired from the said business by a Deed of Retirement dated 31st January, 2009 to take care of the Respondent No.1's health. The

record further reveals that, the Petitioner No.1 on the basis of the aforestated POA's entered into a 'Leave and Licence Agreement' dated 30th January, 2009 with the Petitioner Nos.2 and 3 pertaining to subject property No.3.

8 The Respondent No.1 after coming to the knowledge that, despite cancellation of POA, the Petitioner No.1 is using the same, issued a Notice dated 12th November, 2009 to the Sub-Registrar of Assurances to initiate an Inquiry for the purpose of cancellation or deregistration of the Tenancy Agreement in favour of the Petitioner Nos.2 and 3 in relation to subject property No.1 above, as it was registered on the basis of a forged and invalid POA dated 3rd October, 2002. The record further indicates that, after hearing the parties to the said complaint, the Competent Authority, i.e. the Deputy Inspector General (Registration) dismissed it, by an Order dated 5th February, 2013, holding that, the Tenancy Agreement in relation to subject property No.1 was incapable of being deregistered under the provisions of Registration Act, 1908 and the proper remedy is before a Court of Competent Jurisdiction challenging the validity of the said Tenancy Agreement.

9 The Respondent No.1 therefore, filed an Application under

Section 5 read with Section 23(1) of the said Act before the Competent Authority established under the said Act i.e. the Respondent No.3 herein for declaration that, the transfer of subject properties in favour of the Petitioner Nos.2 and 3 by the Petitioner No.1 in pursuance of the aforestated POAs given by him, be declared void, as those transfers were effected by playing fraud on the Respondent No.1. The said Application was numbered as Application No.04 of 2015. In said Application, the Respondent No.1 has alleged that, the Petitioners have colluded with each other and have fraudulently dispossessed the Respondent No.1 of his business, properties etc. and fraudulently registered Tenancy Agreements in respect of the subject property Nos.1 and 2 and the 'Leave and Licence Agreement' in relation to the subject property No.3.

10 After receipt of summons, the Petitioner Nos. 2 and 3 filed their reply dated 18th May, 2015 to the said Application. It is to be noted here that, in the reply, the Petitioner Nos. 2 and 3 have categorically contended that, 'unfortunately they have been bearing the burnt of and now are used to their father's mental illness and the filing of the said Application comes to them as no surprise'. That, their father has taken the opportunity to exploit and misuse a genuine

and Social Welfare Act. The Petitioner Nos.2 and 3 have denied all the allegations made by the Respondent No.1 in their reply. The Petitioner No.1 also filed her reply dated 18th May, 2015 to the said Application filed by the Respondent No.1 and has denied all the allegations. She has also specifically contended that, the filing of said Application by the Respondent No.1 is nothing but an outcome of untreated mental depression, poor health and physical constraints which does not allow the Respondent No.1 to think and behave rationally. The said condition is further deteriorating with age, self imposed exile, confused state of mind and self frustration which are the result of an untreated genetic bipolar disease. The Petitioner No. 1 has also made other allegations about the behaviour of the Respondent No.1 in the reply.

11 The Respondent No.1 filed his response/rejoinder dated 28th July, 2015 to the reply dated 18th May, 2015 filed by the Petitioners. In his rejoinder, the Respondent No.1 has categorically alleged that, the purported POA dated 3rd October, 2002 is a fabricated document. That, the POA dated 5th January, 2005 executed by him in favour of the Petitioner No.1 did not contain the power to dispose off his business or the properties and therefore, the motive of

the Petitioner No.1 seems to be mischievous, as she had plans to transfer/dispose off his properties.

12 The Respondent No.3 after perusing the material before it and after hearing the parties to the said Application No.04 of 2015, allowed it by its impugned Order dated 12th August, 2016. By the said Order dated 12th August, 2016, the Respondent No.3 under Section 23 of the said Act has held that,

- "(i) The Tenancy Agreement having registration No. 9560/2008 for transfer of Shop No.10 and 11, Bhiku Building, Veer Savarkar Marg, Prabhadevi, Mumbai-400 025 is treated as unauthorized.*
- (ii) The Tenancy Agreement having registration No. 9561/2008 for transfer of Office No.25, Bhiku Building, Veer Savarkar Marg, Prabhadevi, Mumbai-400 025 is treated as unauthorized.*
- (iii) The Leave and Licence Agreement having registration No. 1259/2009 for transfer of Workshop No. 110, Municipal Industrial Estate, Shivner Dainik Marg, Worli 400 018 is treated as unauthorized."*

The Respondent No.3 further directed the Petitioners to give

possession of the said three properties to the Respondent No.1 within a period of three months from the date of passing of the said Order.

13 Feeling aggrieved by the said Order dated 12th August, 2016 passed by the Respondent No.3, the Petitioners preferred an Appeal under Section 16 before the Appellate Authority i.e. the Respondent No.2 herein. The Respondent No.2, by an Order dated 31st January, 2017 disposed off the said Appeal, holding that, as per Section 16 of the said Act, it is only the Senior Citizens or the Parents, as the case may be, aggrieved by an Order of Tribunal, may prefer Appeal, however, the Petitioners cannot prefer the same. The said Orders dated 31st January, 2017 passed by the Respondent No.2 and dated 12th August, 2016 passed by the Respondent No.3 are impugned herein.

14 Mr. Dhakephalkar, learned Senior Counsel for the Petitioners submitted that, the Respondent No.2 i.e. Appellate Authority has committed a serious error in not entertaining the Appeal preferred by the Petitioners under Section 16 of the said Act, holding that, in view of Sub-section (1) of the said Section, it is only the 'Senior Citizen or a Parent', is entitled to file an Appeal, being aggrieved by an Order of Maintenance Tribunal. He submitted that,

in view of Sub-Section (5) of Section 16, the Appellate Tribunal ought to have heard the Petitioners before disposing off their Appeal under Section 16 of the said Act.

Mr. Dhakephalkar further submitted that, the Tribunal has not recorded any finding that, the transferee/Petitioners have refused to take or neglected to take care of the Respondent No.1. The Tribunal has also failed to record a finding that, the properties in question whether 'gifted or otherwise' and given into possession of the Petitioners by the Respondent No.1 subject to condition that, the transferee shall provide basic amenities and basic physical needs to the Respondent No.1 and the Petitioners have refused or failed to provide such amenities and physical needs. He submitted that, words mentioned in Section 23 i.e. '*gift or otherwise*' includes transfer of tenancy rights, which the Petitioner No.1 in furtherance of Power of Attorneys granted to her by the Respondent No.1, has in fact done while creating tenancy in favour of the Petitioner Nos. 2 and 3. He further submitted that, the term '*Transfer*' mentioned in Section 23(1) of the said Act will apply only when the said transfer was or is made by a '*Senior Citizen*' i.e. a person who has attained the age of 60 years on the date of such a transaction or transfer and not otherwise. That,

if the transferor has transferred the said property in question prior to his attaining age of 60 years then, Section 23 of the said Act will have no application and cannot be applied. He submitted that, the transaction must be a voluntary transaction and the basis of transaction would be that, the transferee would be maintaining the transferor (Respondent No.1), as stated in Section 23 of the said Act. He submitted that, the Petitioner No.1 attained age of 60 years on 24th March, 2015, the Power Of Attorney was executed by the Respondent No.1 in favour of the Petitioner No.1 on 3rd October, 2002 and therefore, the provisions of the said Act cannot be made applicable to the present case.

He further submitted that, the Trial Court after recording submissions of both the sides has directly passed an operative Order without giving and/or recording any finding for arriving at the said conclusion.

In support of his contentions, he relied on three decisions of various High Courts namely (i) *Suranjan Chowdhury Vs. The State of West Bengal & Ors. reported in 2017 SCC OnLine Cal 6127* (ii) *Priti Dhoundial & Ors. Vs. Tribunal (Under Maintenance and Welfare of The Parents and Senior Citizens Act, 2007) & Anr. reported in 2010*

114 DRJ 362 : 2009 (0) Supreme (Del) 1343 and (iii) M. Venugopal Vs. The District Magistrate Cum District Collector, Kanyakumari District and Ors., reported in 2014 (5) CTC 162 : 2014 4 LW 412 : 2014 0 Supreme (Mad.) 2522.

He therefore prayed that, the present Petition may be allowed by setting aside the impugned Orders passed by the Respondent Nos.2 and 3 respectively.

15 Mr. Thatte, the learned counsel appearing for the Respondent No.1, in opposition to the Petition submitted that, the Power of Attorney dated 3rd October, 2002 (page 62 of the Petition) is a sham and bogus document, as no number of Notarial Register appears thereon. He submitted that, the Advocate/Notary who has notarized the said document does not enjoy good reputation. That, on an earlier occasion, a Compliant bearing No. 6 of 2005 was filed against him for notarizing a similar type of document and the Law and Judiciary Department, Mantralaya, Mumbai by its Order dated 25th February, 2008, while dismissing the said complaint, had admonished the said person and had warned him to be careful in future while notarizing documents. He tendered across the bar and produced on record photocopies of the said Complaint bearing No. 6 of 2005 and

the Order dated 25th February, 2008 passed therein by the Law and Judiciary Department, Mantralaya, Mumbai. He submitted that, no tenancy could have been created in favour of Petitioner Nos. 2 and 3, on the basis of such a Power of Attorney. He pointed out, the replies filed by the Petitioners to the Complaint filed by the Respondent No.1, wherein it has been pleaded by them that, the Respondent No.1 was suffering from mental depression, poor health and physical constraints which did not allow him to think and behave rationally. That, the Respondent No.1 is suffering from mental illness and has taken an opportunity to exploit and misuse a genuine Social Welfare Act. He submitted that, if the Petitioners were aware of the fact that the Respondent No.1 was not in a good and proper mental condition then, said Power of Attorney dated 3rd October, 2002 ought not have been used further at all by the Petitioners.

He submitted that, the Agreement-Cum-Irrevocable POA dated 5th January, 2005 purportedly executed by the Respondent No. 1 in favour of the Petitioner No.1 also lacks of Notarial Registration number on it. That, only stamp or seal of the concerned Notary has been affixed on it and therefore, the said POA also cannot be treated as a proper or valid document in the eyes of law. He submitted that,

for execution of a document/agreement in the year 2008, a POA could not have been executed by the Respondent No.1 in the year 2002, which also clearly demonstrates that, the first POA dated 3rd October, 2002 is a bogus and/or doubtful document. He submitted that, Section 4 of the said Act has to be read in consonance with Section 23 read with Sections 2(b), 2(f), 2(g) and 2(h) of the said Act. He submitted that, the said Act is a social legislation enacted by the Legislature and the provisions of the said Act are to be interpreted liberally. In support of his contention, he relied on a decision of this Court in the case of *Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and Others*, reported in 2018 (5) AIR Bom R 159 : 2018 AIR (Bom.) 229 : 2019 (2) Bom. C.R. 181 : 2019 (1) All M.R.700. He submitted that, in view thereof, there are no merits in the contentions of the learned senior counsel for the Petitioners.

He further submitted that, both the Authorities below have rightly evaluated the provisions of law and material placed before it, while passing the impugned Orders. He therefore submitted that, there are no merits in the present Petition and it may be dismissed.

16 In response to the submissions made by learned counsel for the Respondent No.1, Mr. Dhakephalkar, learned Senior Counsel

for the Petitioners, in his rejoinder submitted that, there was no pleading before the Tribunal at the first instance and whatever has been pleaded by the learned counsel for the Respondent No.1 herein, is being pleaded for the first time before this Court. While reiterating his submissions, he submitted that, the Tribunal has not offered any findings in its impugned Order. He submitted that, the Judgment cited upon by the learned counsel for the Respondent No.1 in the case of *Dattatrey Shivaji Mane (Supra)* cannot be applied to the present case, as it differs on facts. He further submitted that, the Respondent No.1 on 6th February, 2016 has filed a Civil Suit in the City Civil Court at Mumbai with similar prayers as in the Application filed under Sections 4, 5 read with Section 23(1) of the said Act. He submitted that, the Respondent No.1 is trying to approach various foras at same point of time. He therefore, again prayed that, the present Petition may be allowed.

17 Mr. Thatte, learned counsel for the Respondent No.1 in response submitted that, in the plaint of the Suit filed before the City Civil Court, in paragraph No.29, the Respondent No.1 has clearly disclosed the said fact of filing of an Application under the provisions of the said Act before the Tribunal i.e. Respondent No.3 and has not

suppressed anything from any Authority. He submitted that, the Respondent No.1 has been cheated by the Petitioners by creating bogus document in their favour and therefore, the Respondent No.1 was having no other option, but to approach all the legally permissible foras.

He submitted that, in his rejoinder dated 20th July, 2015 which was filed in response to the replies of the Petitioners to the Application under Sections 4, 5 read with Section 23 of the said Act, the Respondent No.1 in paragraph No. (d) of internal page No.7 has categorically pleaded that, the said POA dated 3rd October, 2002 has been fabricated by the Petitioners. That, the POA dated 5th January, 2005 did not give powers in favour of Petitioner No.1 to dispose off his business or the properties. He submitted that, the Respondent No.1 has placed all his pleadings before the Tribunal at the first instance and there is no merit in the submission of learned Senior Counsel appearing for the Petitioners that, the said facts are being pleaded for the first time before this Court. He therefore, again prayed that, the present Petition may be dismissed in its entirety.

18 Having heard the learned counsel for the Respective parties and considered the rival submissions, I think it appropriate to

first deal with the various provisions that would be relevant for examining and deciding the controversy in the present case.

19 While introducing The Maintenance and Welfare of Parents and Senior Citizens Bill in the Parliament, in its introduction, it is stated that, ageing has become a major social challenge because of decline in the joint family system. A large number of elderly persons, particularly widowed women are not being looked after their families. They are forced to spend their twilight years all alone and are exposed to emotional neglect and are not being provided financial support. To combat this social challenge there is a need to give more attention to the care and protection for the older persons. Though there is a provision in the Code of Criminal Procedure, 1973 under which parents can claim maintenance from their children but the procedure is time consuming and expensive. It is desired that simple, inexpensive and speedy provisions may be made to claim maintenance by the suffering parents. To cast an obligation on the persons who inherit the property of their aged relatives to maintain them and to make provisions for setting up oldage homes for providing maintenance to the indigent older persons and to provide better medical facilities to the senior citizens and to make provisions for

protection of their life and property the Bill was introduced.

20 The Statement of Objects and Reasons of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is as under:-

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. *The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up oldage homes for providing maintenance to the indigent older persons.*

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. *The Bill, therefore, proposes to provide for:-*

(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalization of a suitable mechanism for protection of life and property of older persons;

(d) setting-up of oldage homes in every district.

4. *The Bill seeks to achieve the above objectives.*

21 Section 3 of the said Act makes it expressly clear that, the Act to have overriding effect on the provisions of any other Acts, which are inconsistent with the provisions of the present Act. Section 3 of the said Act states that, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

22 Section 4 of the said Act reads thus-

- “4. Maintenance of parents and senior citizens - (1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an Application under Section 5 in case of-*
- (i) parent or grand-parent, against one or more of his children not being a minor;*
 - (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.*
- (2) The obligation of the children or relative as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.*
- (3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.*
- (4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:*
- Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.”*

An Application for maintenance under Section 4 can be made under Section 5 of the said Act. Section 5 gives powers to the Tribunal to entertain, decide the proceedings under the said Act.

23 Sub-Section (1) of Section 16 permits '*any Senior citizen or a parent as the case may be*' aggrieved by an Order of a Tribunal, to prefer an Appeal to the Appellate Tribunal. A plain reading of the said Section would clearly disclose that, '*children*' under Section 2(a) or '*relative*' under Section 2(g) of the said Act, are precluded from preferring an Appeal against an Order of Tribunal. It is only the '*Senior Citizen*' or '*a parent*' as the case may be, is permitted to prefer an Appeal to the Appellate Tribunal under Section 16 of the said Act.

24 Section 23 of the said Act reads as under:-

"23. Transfer of property to be void in certain circumstances.-

(1) Where any senior citizen who, after the 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 undue influence and shall at the option of the transferor be declared void by the Tribunal.

- (2) *Where any senior citizen has a right to receive maintenance out of an estate and 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.*
- (3) *If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5."*

25 It is thus clear that, the Tribunal has been empowered under Section 23 of the said Act to declare certain transactions as void. Considering the intention of the Legislature and laudable object of the said Act, Section 23 of the Act must receive expansive interpretation to hold that, while declaring a transfer of property to be void under Section 23 of the said Act, the power to order for return of property relating to the said transfer also flows from it.

As noted earlier, Section 3 of the said Act has overriding effect of the provisions of any other Acts, which were inconsistent with

the provisions of the present Act. Section 4 of the said Act puts an obligation upon children and/or relative of the Senior Citizen to maintain him. The Application for maintenance under Section 4 can be made under Section 5 of the said Act. Section 5 gives powers to the Tribunal to entertain and decide the proceedings under the said Act. The Tribunal has been empowered under Section 23 of the said Act to declare certain transactions as void.

26 It is the settled position of law by a catena of Judgments that, a statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the '*intention*' of its maker. A statute is to be construed according to the intent of them, that make it and the duty of judicature 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, in other words the '*legal meaning*' or '*true meaning*' of the statutory provision. The statute must be read as a whole in its context. It is now firmly established that, the intention of the legislature must be found by reading the statute as a whole.

The statute to be construed to make it effective and workable and the Courts strongly lean against a construction which reduces a statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative. The Courts should therefore, reject that construction which will defeat the plain intention of the Legislature even though there may be some inaccuracy or inexactness in the language used in a provision. Every provision and word must be looked at generally and in the context in which it is used. Elementary principle of interpreting any word while considering a statute, is to gather the intention of the Legislature. The Court can make a purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order to defeat the intention of the Legislature wholly or in part. By now, it is well settled principle of law that, it is to be presumed that, each and every word used by the Legislature has been used with an intention and the Courts are bound to give effect to the Legislative intent.

27 The relevant provisions of this Act which have been quoted /reproduced hereinabove therefore will have to be construed harmoniously to promote the cause of the '*Senior Citizens*' under this Act. The Act is enacted for a particular class of citizens i.e. Senior

Citizens and Parents, with an avowed object to provide them maintenance by adopting simple inexpensive and speedy remedy. It is the settled position of law that, the provisions of a statute has to be interpreted in a manner which will give ultimate effect to the intention of legislature in enacting it and not to frustrate it.

28 Though, the learned single Judge of the Madras High Court in the case of *M. Venugopal Vs. The District Magistrate Cum District Collector, Kanyakumari District and Ors. (Supra)* by relying on a decision of the Hon'ble, the Supreme Court in the case of *N. Kannadasan Vs. Ajoy Khose and Ors. Reported in 2009(7) SCC 1* and by adopting the interpretative tools of Constitutional provisions and statutory provisions has held and observed that, the words '*aggrieved child or relative*' in Section 16 of the said Act is only an unconscious omission by the parliament and by applying the principle of '*casus-omissus*', it should be held that, such a right of Appeal is available for the aggrieved son/daughter/relative as well. The learned Judge, therefore, with a hope, had requested the Legislature to take note of the said anomaly and rectify the defect in drafting of Section 16 of the said Act.

It clearly appears that, till today sub-Section (1) of Section 16 of the said Act has not been amended by the Legislature and therefore, as of today, it is only '*Senior Citizen*' or '*the parent*' as the case may be, are only permitted to prefer an Appeal to the Appellate Tribunal under the said Section. The submission of the learned counsel for the Petitioners that, in view of Sub-Section (5) of Section 16 the Appellate Tribunal ought to have heard the Petitioners before disposing off their Appeal under Section 16 of the Act, therefore cannot be accepted.

29 Learned Single Judge of this Court in the case of *Dattatrey Shivaji Mane (Supra)* while dealing with Sections 4 and 23 with other related provisions of the said Act, by referring to and relying upon the decision of Delhi High Court in the case of *Nasir Vs. Government of NCT of Delhi & Others, reported in 2015 (153) DRJ 259* and the decision of Gujrat High Court in the case of *Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania, reported in 2013 AIR (Guj.) 160*, has held that, Section 4 of the said Act permits a senior citizen including parent who is unable to maintain himself from his earning or out of property owned by him and if such senior citizen is unable to lead a normal life, to apply for such relief not only against

his children but also the grand children. That, the provisions of Section 4 of the said Act permit such application for eviction of child and grand-child if the condition set out in that provision read with other provisions are satisfied. While rejecting the submissions made by the learned counsel for the petitioner therein, it is held that, in view of the Court, there is no substance in the submission of the learned counsel for the Petitioner that, the Order of eviction cannot be passed by the Tribunal under Section 4 read with other provisions of the said Act.

While expressing agreement with the decision rendered by the Gujrat High Court in the case of *Jayantram Vallabhadas Meswania (Supra)* and Delhi High Court in the case of *Sunny Paul & Anr. Vs. State NCT of Delhi & Ors., in WP (C) No.10463 of 2015 decided on 15th March, 2017*, the learned Judge has reiterated that, the claim for eviction is maintainable under Section 4 read with various other provisions of the said Act by a senior citizen against his children and also the grand-children. It is further held that, the provisions of the said Act are to be liberally construed as the primary object is to give social justice to parents and senior citizens. It is further held that, the provisions of Section 23 of the said Act cannot be, and need not be,

read in isolation or by divorcing the said provision from other provisions, particularly Section 4 read with Sections 2(b), 2(f), 2(g) & 2(h) of the said Act. The learned Judge has further held that, Section 4 of the said Act cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. After analyzing the said relevant provisions, the learned Judge has held that, Senior Citizen can apply for declaration of such transaction to be void and can even apply for recovery of possession from children or grand-children. It is assertively held that, a senior citizen can certainly apply for recovery of vacant possession of the property and for a relief restraining such child or grand-child or his other family members who are claiming through such child from entering upon the property of such senior citizen or parents.

I concur with the views expressed by the learned Single Judge of this Court in the case of *Dattatrey Shivaji Mane (Supra)* and respectfully agree with it.

30 In the present case, it is an admitted fact on record that, the subject properties involved in the present Petition are the self acquired properties and/or the Respondent No.1 has exclusive rights

in the said properties. The subject properties are presently occupied by the Petitioners.

The Petitioner Nos. 2 and 3 in their replies to the Application filed by the Applicant under Section 5 read with Section 23(1) of the said Act before the Competent Authority i.e. the Tribunal, have categorically contended and averred that, they have been bearing the burnt of and now are used to their father's mental illness and the filing of the said Application comes to them as no surprise. That, their father has taken an opportunity to exploit and misuse a genuine and Social Welfare Act.

The Petitioner No.1 in her reply has also specifically contended that, the filing of the said Application by the Respondent No.1 is nothing but an outcome of untreated mental depression, poor health and physical constrains which does not allow him to think and behave rationally. That, said condition is further deteriorating with age, self imposed exile, confused state of mind and self frustration which are the result of an untreated genetic bipolar disease.

It is thus clear that, the Petitioners were well aware of the fact that, the Respondent No.1 was either suffering from mental illness or instability. It thus clearly appears that, the Petitioners

colluded with each other and have created documents dated 29th December, 2008, pertaining to the subject property Nos. 1 and 2. That, the Petitioners even after cancellation of POA dated 5th January, 2005 by the Respondent No.1, have further executed Deed of Partnership dated 20th January, 2009 for conducting the business of '*Aakaar Exquisites*'. The said documents are executed in furtherance of POAs' dated 3rd October, 2002 and 5th January, 2005 executed by the Respondent No.1 in favour of the Petitioner No.1. It further appears that, taking undue advantage of the situation arising out of mental instability of the Respondent No.1 and with a view to usurp the subject properties during the life time of the Respondent No.1, the Petitioners, with a view to satisfy their greed of property, executed the said three documents.

The said fact can clearly be discern from the fact that, despite cancellation of POA dated 5th January, 2005 by Notice-cum-Declaration dated 2nd January, 2009 by the Respondent No.1, the Petitioner No.1 thereafter entered into a Deed of Partnership dated 20th January, 2009 with the Petitioner Nos. 2 and 3 for conducting the business of '*Aakaar Exquisites*' w.e.f. 1st January, 2009.

31 It is to be further noted here that, POA dated 3rd October, 2002 appears to be not only a defective document but leads to draw a safe inference that, it is a sham and bogus document as no number of Notarial Register appears thereon. There is another reason to accept the contention of the learned counsel for the Respondent No.1 that, for execution of document/Agreement in the year 2008, POA could not have been executed by the Respondent No.1 in the year 2002, which also persuades to hold that, POA dated 3rd October, 2002 is not a genuine document. I therefore, find substance in the contention of the learned counsel for the Respondent No.1 in that behalf.

 It therefore, further clearly appears to this Court that, the said transfer of properties by the Petitioner No.1 in favour of the Petitioner Nos. 2 and 3 in furtherance of POA dated 3rd October, 2002, is made by fraud and therefore, the Tribunal has rightly passed an Order under Section 23 of the said Act, holding the said Agreements as unauthorized and directed the Petitioners to give possession of the said properties to the Respondent No.1.

32 As far as the submission made by the learned counsel for the Petitioners that, the provisions of the said Act cannot be made applicable to the present case as the Respondent No.1 has attained

age of 60 years on 24th March, 2015 and the first POA which was executed by him in favour of the Petitioner No.1 on 3rd October, 2002 is concerned, the said submission cannot be accepted for the plain and simple reason that, the Act contemplates filing of an Application under Section 4 along with other provisions by a '*senior citizen*' who has attained the age of 60 years on the date of filing of the Application under this Act and not otherwise. If the submission of the learned Senior Counsel for the Petitioners is accepted, it will have frustrating effect on the intention of the Legislature in enacting the said social Legislature.

33 In view of the scheme of the Act, the contention of the Petitioners that, the term '*transfer*' mentioned in Section 23(1) of the said Act will apply only when the said transfer was or is made by a '*Senior Citizen*' i.e. a person who has attained the age of 60 years on the date of such a transaction or transfer and not otherwise, cannot be accepted. As noted earlier and at the cost of repetition, it is to be noted here that, the provisions of the said Act are applicable to a '*Senior Citizen*' who has attained the age of 60 years on the date of filing of the Application under Section 4 read with the other provisions of the said Act and not otherwise.

34 A minute perusal of entire record clearly indicates that, the impugned Order passed by the Tribunal i.e. Respondent No.3 is within conformity of the powers bestowed upon it under Section 4 read with Section 23(1) and other related provisions of the said Act. The Appellate Authority i.e. Respondent No.2 has also exercised its powers in conformity with Section 16(1) of the said Act. This Court finds no error in the impugned Orders.

In view thereof, I find no merits in the Petition. Petition is accordingly dismissed.

(A.S. GADKARI, J.)

35 At this stage, Mr. Phatale, learned counsel for the Petitioners submitted that, the Petitioners are intending to challenge the present Judgment and Order before the Hon'ble the Supreme Court and therefore, the operation and implementation of the Order may be stayed for a period of four weeks from today.

In view of the present situation arising out of COVID-19 pandemic, the operation of the present Judgment and Order is stayed for eight weeks from today.

(A.S. GADKARI, J.)