

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

CWP No.894 of 2021

Date of decision: 14.01.2021

Gurudwara Guru Ravi Dass, Bhagat Ji

...Petitioner

Vs.

Additional Deputy Commissioner-cum-Collector, Jagraon and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sherry K. Singla, Advocate,
for the petitioner.

Ritu Bahri, J. (oral)

Petitioner-Gurudwara Guru Ravi Dass is seeking quashing of the order dated 30.10.2020 (Annexure P-3) passed by respondent No.1 as well as order dated 10.10.2019 (Annexure P-2) passed by respondent No.2, whereby petition under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, has been allowed and gift deed No.1045 dated 20.07.2017, executed in favour of the petitioner-Gurudwara, has been ordered to be set aside.

Brief facts of the case are that an application dated 11.07.2019 (Annexure P-1) was made by respondent No.3-Gurdial Kaur wife of Mela Singh to the SDM, Raikot, stating therein that a gift deed has been got executed by one Balvir Singh in favour of Gurudwara Guru Ravi Dass Bhagat Ji, village Ghuman. She (Gurdial Kaur) was 90-95 years of age and her husband was aged about 103 years. The aforesaid gift deed has been got executed without their knowledge and the same has caused injustice to them. It was further stated that the said gift deed has been got executed

keeping in view their old age. The said application has been allowed vide

orders dated 10.10.2019 and 30.10.2020 (Annexures P-2 and P-3) and both the Courts have held that gift deed in dispute was got executed in the presence of one Balvir Singh without the consent of applicant-Gurdial Kaur (respondent No.3 herein). Applicant (Gurdial Kaur) and her husband do not have any other residential house. The Naib Tehsildar, Raikot had also recommended cancellation of the above said gift deed as per his inspection report. Vide order dated 30.10.2020 (Annexure P-3), the Collector, Jagraon, has further observed that as per report dated 29.01.2020 given by Tehsildar, Raikot, a *bhog ceremony* of some person was being performed in Gurudwara Ravi Dass Bhagat and there was heavy gathering. The house, which had been gifted by Gurdial Kaur wife of Mela Singh, was situated opposite the said Gurudwara. The house was bolted from inside and the person, who was present at the spot, told that Gurdial Kaur and her husband Mela Singh are residing in that house and they are quite old, therefore, they cannot come out. On knocking by Tehsildar, Raikot, one boy opened the gate of the house. After entering into the house, it was seen that Gurdial Kaur was sitting on the cot and was in her full senses. Mela Singh was also lying on the cot. When asked about the gift deed of the house, Gurdial Kaur told that her brother had taken her to his village on the pretext of meeting and thereafter, he got executed the gift deed from her. She and her husband can be thrown out of the house any time by the persons of Gurudwara Sahib. Apart from this house, they are not having any other house. Gurdial Kaur stated that they do not have any child and are being taken care of by the grandson of the brother of Mela Singh. Mela Singh is an Ex-serviceman and is getting pension. They are leading their life with pension. In this backdrop, Tehsildar Raikot recommended cancellation of the gift deed.

Learned counsel for the petitioner has vehemently argued that under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the gift deed cannot be set aside. This argument is liable to be rejected. As per Section 23 of the Act, if any senior citizen, out of love and affection, gives his house or property to any loved one or legal heir for the reason that he (senior citizen) will be looked after by him/her, but subsequently, the senior citizens are not taken care of by that person(s), then the gift deed can be set aside. In **Sumesh Anand vs. Smt. Vinod Anand and others**, 2016 (5) RCR (Civil) 297, the Division Bench of this Court has examined a case, where mother had transferred her property in favour of one relation and had sought cancellation of that gift deed on the ground that the same had been executed on account of fraud. The Division Bench observed that the gift deed had been executed with a condition that the beneficiary will take care of the transferor and in case the beneficiary is unable to do so, the gift deed will be void. Having failed to take care of physical needs and basic amenities of the parents in their old age, avoidance of the transfer documents could not be made in terms of Section 22 of the Act. In **Harvinder Kaur Bawa vs. The Appellate Tribunal, Panchkula and others**, 2017 (1) RCR (Civil) 853, while examining the provisions of Section 23 (1) of the Act, this Court held as under:-

“16. Reverting back to the facts of this case, the application has been filed by the petitioner under Section 23(1) of the Act. In my considered opinion, the said application can only be filed in order to avoid a document by which title of the property has been transferred, without filing a suit for declaration in the Civil Court. All that has to be proved by the senior citizen/parent is that he/she had transferred the title of the property to the other party with a condition that the said party shall provide basic amenities and basic physical needs and has to prove that the said party has refused or failed to provide such amenities and physical needs. The

parent/senior citizen is also required to prove that the said transfer of the property has been made after commencement of the Act, meaning thereby any transfer of the property prior to the commencement of this Act cannot be avoided by filing an application under Section 23(1) of the Act. The Tribunal, as constituted under Section 7 of the Act, has to follow a summary procedure and may declare that the transfer by the senior citizen/parent in favour of the other party was either an act of fraud or coercion or undue influence.”

In **Gurmeet Kaur vs. State of Punjab and others**, 2020 (2)

RCR (Civil) 868, this Court had upheld cancellation of the transfer deed made in favour of the daughter consequent upon an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It was observed as under:-

“7. In the case of **Promil Tomar and others vs. State of Haryana and others**, 2014(1) RCR (Civil) 403, this Court has examined the provision elaborately and ratio of law laid down is applicable in the present case. Perusal of **Section 23** (1) of the Act provides that “where any **senior citizen** has transferred by way of gift or otherwise, his property, and the transferee refuses or fails to provide amenities and physical needs, the said transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.” The transfer by a senior citizen referred to in first part of **Section 23** (1) of the Act could be a gift or otherwise. The property transferred by gift or otherwise would include the transfer of the possession of a property or part of it by a **senior citizen**. The word “otherwise” used under Section 23 (1) of the Act by the legislation would include transfer of ownership and possession by way of a lease deed, mortgage, gift or sale deed. Even a transfer of possession to a licensee by a senior citizen will also fall under the ambit of **Section 23** (1) of the Act. The word “otherwise” cannot be ignored from the objective of **Section 23** (1) of the Act. In context to the objectives of the Act, “transfer” would mean that transfer of property by **senior citizen** need not be a gift only but it could be any transfer within the meaning of Transfer of Property Act or would even include transferring of any right of the nature of title or possession. **Section 23** (1) of the Act further provides that if the transfer is subject to a condition that transferee shall provide basic amenities and basic physical needs to the transferor and if transferee

refuses to do so, the transfer of property would be deemed to be the result of fraud, coercion or undue influence and would be declared so by the Maintenance Tribunal on the option of transferor. A **senior citizen** who had transferred his right, title or interest to any other person by gift or otherwise (which would include transfer of possession by lease, mortgage or licence) would become void in the event of transferee refusing to provide amenities and physical needs. The said transfer in such circumstances would be termed as result of fraud, coercion or undue influence and would be void.”

In the facts of the present case, as per detailed report given by the Tehsildar, Raikot, on doing spot inspection, it was found that the house of Gurdial Kaur was situated near the Gurudwara and was left locked from outside. When Tehsildar went inside the house, Gurdial Kaur and her husband-Mela Singh were in full senses and were sitting on a cot. They were not aware about the gift deed executed by her brother in favour of the Gurudwara. On asking, Gurdial Kaur stated that Mela Singh was an ex-serviceman and he was getting pension. Grandson of the brother of Mela Singh was looking after them. Since execution of the gift deed was not found to be genuine, both the Courts have rightly set aside the gift deed as per Section 23 of the aforesaid Act. As per the judgments, referred to above, object of cancellation of gift deed/transfer deed is to secure the interest of the senior citizens. In the present case, as per report of the Tehsildar, apart from this house, Gurdial Kaur and her husband-Mela Singh do not have any other residential house. In these circumstances, the gift deed has been rightly ordered to be cancelled.

In view of the above discussion, having examined the impugned orders, no ground is made out to interfere therein.

No merits. Dismissed.

(RITU BAHRI)
JUDGE

14.01.2021
ajp