

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

**CWP No.7525 of 2020 (O&M)
Decided on: 20.04.2021**

Ishwar Devi

... Petitioner

Versus

Appellate Tribunal Chaired by District Collector Fatehabad and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Abhimanyu Batra, Advocate, for the petitioner.

Mr.R.K.S.Brar, Addl.A.G., Haryana.

Mr.Gaurav Jain, Advocate, for respondents No.2 & 3.

G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the order of the District Collector, Fatehabad dated 11.02.2020 (Annexure P-1) whereby the appeal filed by respondent No.2 against the order dated 19.08.2019 (Annexure P-4), passed by the SDM, was partly allowed, to the extent that cancellation of the transfer deed dated 04.09.2015 (Annexure P-3) was annulled on the ground that it was not within the jurisdiction of the said Tribunal. However, directions had been issued to respondent No.2 to give subsistence allowance as per the orders passed and not to restrict the petitioner from living in her house and further, to take action under IPC in respect of the land which had been got transferred by respondent No.2 by making fraud.

The reasons for setting aside the order are strangely silent.

The operative part of the same reads as under:

“I have carefully perused the file and also perused the documents and evidence available on the file. Arguments of both the counsels have been heard. After hearing the arguments, I have come to the conclusion that the orders passed by the Sub Divisional Magistrate Tohana is correct to the extent that as far as the monthly subsistence allowance given to the respondent, in addition to this the orders passed by it to cancel the Transfer Deed No.2749 dated 04.09.2015, the same come U/s 22 and 23 under the provisions of Parents and Senior Citizen Maintenance and Welfare Rules, 2009 which is not in its jurisdiction, the same is set aside and orders are given to the appellant (Ramesh) to give the subsistence allowance as per the orders passed from time to time passed by the Ld. Court below and not to restrict the respondent for living in her house and land and instructions are given to the Sub Divisional Magistrate Tohana to take action under IPC in respect of the land which has been transferred by the appellant by making fraud. Application is disposed of.

Order pronounced in the open court today on dated 12.02.2020.”

In such circumstances, this Court is of the opinion that the said order cannot be sustained and rather the order passed by the Tribunal under the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (for short, the 'Act') was well justified and is liable to be maintained. The reasons for maintaining the said order dated 19.08.2019 (Annexure P-4) would be clear on account of the discussion of facts which are as under.

The transfer deed dated 04.09.2015 (Annexure P-3) was executed of the 2 shops bearing Municipal Committee Nos.926 & 927/3, situated on the Ratia Road, Tehsil Tohana, measuring 32.22 sq.yards having covered area of 290 sq.feet. Petitioner being the wife of Ram

Chand was a beneficiary vide registered Will dated 16.11.2000 left by her husband which was further acted upon by the Municipal Committee, Tohana in her favour. Her husband had purchased the said property on 16.01.1978, as per the sale deed. On account of love and affection with her son, it is apparent that the transfer deed was effected in his favour without any sale consideration and without payment of any stamp as the property was transferred to the blood relations, which would be clear from its perusal.

After the transfer, the behaviour of respondent No.2 seems to have changed in as much as he also closed the access to the house for the petitioner which was next to the shops in question. Resultantly, she filed representation dated 26.11.2018 (Annexure P-2) that she had been ousted from the property in question. While taking cognizance on the said representation, notice was given to respondent No.1 and it was noticed that there was no dispute against the elder son, Radhey Shyam and he had no concern with the house and the shops.

Spot inspection was also made in the presence of the parties and the petitioner was represented by her daughter and son-in-law. It was noticed that the passage to the house had been included in the shops and respondent No.2 owned a separate house measuring 220 sq.yards to the south of the house of the petitioner, in which he lives with his children and wife. It was noticed that on account of conduct of respondent No.2, daughters of the petitioner were also having difficulty in coming and meeting their mother and the defence of respondent No.2 was also taken

into consideration that he was ready to keep his mother and that he was making payment of the land measuring 4 killas for the last 5 years. However, he did not want to allow his mother to live separately as it was necessary for some person to look after her due to her old age.

While keeping in view the provisions of Section 23 of the Act, the SDM, while exercising his jurisdiction, cancelled the transfer deed No.2749 dated 04.09.2015 and directed that the said shops be transferred back in the name of the petitioner and possession be granted back to her. The Tehsildar, Tohana was also authorized and directed to ensure compliance of the said order. Further direction was given that the petitioner would live in new House No.926 on the back-side of the shops No.926-927 till her lifetime and a sum of Rs.2000/- per month would be paid as subsistence allowance to her for her medicines from the month of December, 2018 under Section 16 of the Haryana Parents & Senior Citizens Maintenance Rules, 2009. The said directions had been issued in the facts and circumstances, after the SDM had personally interacted with the parties and come to the conclusion that the conduct of respondent No.2 was not above board and he was not looking after his mother and was not providing the basic amenities despite the fact that the property was transferred in his name. Resultantly, powers under Section 23(1) were exercised since the property had been transferred after the enforcement of the 2007 Act and no fault can be found in the said action.

As noticed, the order of respondent No.1 dated 11.02.2020 (Annexure P-1) is bereft of any reason and nothing could be

demonstrated by counsel for respondent No.2 as to how the said order is justifiable. Section 23 of the Act read 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 by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

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 organisation referred to in Explanation to sub-section (1) of section 5.”

The said provision thus shows that the jurisdiction as such existed with the SDM and who had passed a reasoned order.

This Court in **Fruit & Merchant Union Vs. Chief Information Commissioner & others 2013 (1) PLR 387** has held as under:

“12. A perusal of the aforesaid order shows that the same is totally non-speaking. It is lacking not even in reasons for which it was opined that the information sought by the

applicant herein does not amount to personal information or trade secrets of a third party, even the facts of the case have not been referred to in detail. In the absence of brief facts and the reasons contained in the order, it is not possible for the next higher court to appreciate as to what weighed with the authority in reaching the conclusion and as to whether there was application of mind by the authority or the order is arbitrary. Hon'ble the Supreme Court in *Kranti Associates Private C.W.P. No. 4787 of 2011* [5] *Limited and another v. Masood Ahmed Khan and others*, (2010) 9 SCC 496, while referring to its earlier judgments in *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwala*, AIR 1961 SC 1669; *Som Datt Datta v. Union of India*, AIR 1969 SC 414; *Bhagat Raja v. Union of India*, AIR 1967 SC 1606; *Travancore Rayon Ltd. v. Union of India*, (1969) 3 SCC 868; *Mahabir Prasad Santosh Kumar v. State of U. P.*, (1970) 1 SCC 764; *Keshav Mills Co. Ltd. v. Union of India*, (1973) 1 SCC 380; *Union of India v. Mohan Lal Capoor*, (1973) 2 SCC 836; *Woolcombers of India Ltd. v. Workers Union*, (1974) 3 SCC 318; *Siemens Engg. And Mfg. Co. of India Ltd. v. Union of India*, (1976) 2 SCC 981; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Rama Varma Bharathan Thampuram v. State of Kerala*, (1979) 4 SCC 782; *Gurdial Singh Fijji v. State of Punjab*, (1979) 2 SCC 368; *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.*, (1979) 4 SCC 642; *Bombay Oil Industries (P) Ltd. v. Union of India*, (1984) 1 SCC 141; *Ram Chander v. Union of India*, (1986) 3 SCC 103; *Star Enterprises v. City and Industrial Development Corpn. Of Maharashtra Ltd.*, (1990) 3 SCC 280; *S. N. Mukherjee v. Union of India*, (1990) 4 SCC 594; *Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi*, (1991) 2 SCC 716; *M.L. Jaggi v. MTNL*, (1996) 3 SCC 119 and *Charan Singh v. Healing Touch Hospital*,

(2000) 7 SCC 668 opined that every order passed by quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a speaking order. It must not be like the "inscrutable face of a sphinx". The superior court cannot effectively exercise its power of judicial review unless in the order impugned, facts and reasons have been stated in detail. Merely giving an opportunity of hearing is not enough. Wherever an order can be subject to appeal or judicial review, the necessity to record reasons is even greater. It ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant facts and the law. It enables an aggrieved party to demonstrate before the higher court that the reasons on which his claim has been rejected, are erroneous. It operates as a deterrent against possible arbitrary action by any authority invested with judicial power. The aim is to C.W.P. No. 4787 of 2011 [6] prevent unfairness or arbitrariness in reaching conclusions. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. The faith of the people in administrative authorities can be sustained only if they act fairly and dispose of the matters before them by well-considered orders. The aforesaid judgment was followed by Hon'ble the Supreme Court in [ORYX Fisheries Private Ltd. v. Union of India and others](#), (2010) 13 SCC 427."

Resultantly, this Court is of the opinion that the order dated 11.02.2020 (Annexure P-1) passed by respondent No.1 is not justified since on one hand, it has come to the conclusion that the proceedings under IPC were liable to be initiated due to the act and conduct of respondent No.2 but on the other hand, had wrongly interfered in the order of the Tribunal.

Resultantly, in view of the above discussion, the present writ

petition is allowed and the order dated dated 11.02.2020 (Annexure P-1) is set aside, restoring the order passed by the SDM dated 19.08.2019 (Annexure P-4). It shall be open to the petitioner to get the said order enforced as per the directions issued by the SDM.

20.04.2021
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No