

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

**CWP-20685-2020 (O&M)
Date of Decision:21.01.2021**

Gurvir Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. J.K. Singla, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

As per pleadings on record, respondent No.3, Nahar Singh executed a transfer deed bearing No.370 dated 11.06.2019 in favour of the petitioner herein pertaining to land measuring 27 kanals 6 marlas. Petitioner is stated to be the daughter-in-law of one of the brothers of Nahar Singh and who in turn is himself issueless. Subsequent in point of time i.e. in the month of November, 2019, Nahar Singh preferred an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred to as 'the 2007 Act') before the Maintenance Tribunal/SDM, Mansa seeking cancellation of the transfer deed dated 11.06.2019. The same is pending final adjudication.

The instant petition is directed against the order dated 19.10.2020 (Annexure P-11) passed by the Collector-cum-Sub Divisional

Magistrate, Mansa, whereby interim directions have been issued during pendency of the application filed by respondent No.3 under Section 23 of the 2007 Act for the petitioner herein not to alienate/dispose of any part of the property in question.

Counsel has submitted that Nahar Singh/respondent No.3 was owner of 54 kanals of land. His wife has already pre-deceased him. Nahar Singh is issueless. On 11.06.2019, a transfer deed was executed pertaining to 50% share of his land holding i.e. 27 kanals 6 marlas in favour of the petitioner, who happens to be the widowed daughter-in-law of one of the brothers of Nahar Singh. Further urged that such transfer deed was executed out of love and affection and on account of fact that the 3rd respondent/ Nahar Singh was being looked after in his advanced age and was keeping residence with the petitioner. Further contended that the other 50% land holding had been transferred to respondents No.5 and 6 i.e. sons of Dhan Singh, who happens to be the other brother of Nahar Singh. In the month of November, 2019, respondent Nos.5 and 6 had taken away the senior citizen i.e. Nahar Singh to their residence and at their instance, a misconceived application under Section 23 of the 2007 Act has been filed. Further urged that the petitioner is still ready and willing to serve respondent No.3/Nahar Singh and to look after his needs. Yet another argument raised is that the impugned interim order dated 19.10.2020 at Annexure P-11 staying the alienation of the property in question is without jurisdiction as there is no provision under the 2007 Act on the strength of which such interim direction could have been passed.

Counsel has been heard at length and pleadings on record have

been perused.

In the considered view of this Court, the instant petition is wholly misconceived and sans merit.

It would be apposite to take note that in the application preferred by the senior citizen/respondent No.3 under Section 23 of the 2007 Act, an interim order dated 08.06.2020 to the same effect i.e. restraining the present petitioner from alienating the property in question had been passed. Such interim order dated 08.06.2020 was assailed by the petitioner by filing CWP-10445-2020. The primary ground of challenge set up in the afore noticed writ petition was that the interim order had been passed without affording an opportunity of hearing to the petitioner. The writ petition was disposed of on 23.07.2020 at Annexure P-10 by setting aside the interim order dated 08.06.2020 only on the ground that it had been passed in violation of the principles of natural justice. Direction was issued to the authority concerned to decide the application for interim direction afresh but after providing an opportunity of hearing to the petitioner herein, namely, Gurvir Kaur. It is towards compliance of the directions issued by this Court vide order dated 23.07.2020 in CWP-10445-2020 (Annexure P-10) that the impugned order dated 19.10.2020 has been passed after hearing both sides. At the stage of disposal of CWP-10445-2020 filed by the petitioner herein no objection had been raised with regard to the Tribunal lacking jurisdiction to pass any interim order. Rather the prayer of the petitioner was to be heard and thereafter for orders, if any, to be passed. The objection now being raised with regard to lack of jurisdiction, as such, is not well founded.

Section 23 of the 2007 Act reads as under:

“Section-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 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.”

Undisputedly, the senior citizen, who is now stated to be 83 years old has filed an application under Section 23 of the 2007 Act seeking cancellation of the transfer deed dated 11.06.2019 pertaining to 27 kanals 6 marlas and which is pending final adjudication. The competent authority during pendency of the proceedings has passed a restraint order in the shape of interim directions and whereby petitioner has been restrained from alienating the property in question. The 2007 Act had been enacted with the objective to provide for more effective provisions for the maintenance and welfare of parents and senior citizens. Chapter V of the Act deals with protection of life and property of senior citizens. The question as

regards cancellation of transfer deed is an issue which is pending consideration before the competent authority under the 2007 Act. In the meanwhile if the beneficiary i.e. the present petitioner proceed to alienate the property in question during the pendency of the proceedings under Section 23 of the 2007 Act, the same would certainly work to the prejudice of the senior citizen. Interim order dated 19.10.2020 would be construed to be in exercise of the inherent powers under Section 23 of the Act itself. Such interim orders would also be seen towards furtherance of the object for which the 2007 Act had been enacted. After all the competent authority would have to be alive to a possibility where the petitioner herein during pendency of the application filed under Section 23 of the 2007 Act filed by the senior citizens may choose to alienate the property and thereby create 3rd party interest. This would further complicate matters and add to the woes of the senior citizen i.e. respondent No.3, who is now 83 years old. No infirmity, as such, is found in the impugned order dated 19.10.2020 at Annexure P-11.

Insofar as the other submission raised by counsel as regards the application under Section 23 of the 2007 Act having been filed at the instance of private respondents No.5 and 6 and the petitioner still being ready to serve and look after the senior citizen is concerned, such submission ought to be raised before the competent authority where the application filed under Section 23 of the 2007 Act is still pending and for such authority to examine the same.

The present order declining to interfere in the impugned order was dictated in the presence of the counsel, who had joined proceedings

being conducted through Video Conferencing. Confronted with a situation where the writ petition was being dismissed, a request has been made for withdrawal of the writ petition. Such request can only be termed by this Court as unfair as also unfortunate. Counsel has taken a chance and has advanced submissions towards assailing impugned order dated 19.10.2020 at Annexure P-11. It is only at a stage when this Court was not agreeing with him that such a request has been made. The same cannot be accepted and is declined .

Writ petition is dismissed.

It is, however, clarified that the observations contained in this order would not have any bearing on the merits of the application filed by respondent No.3 under Section 23 of the 2007 Act.

21.01.2021*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |