

S/L 450(ML)
22.08.2022
Court. No. 19
GB

WPA 18028 of 2021

Jhuma Den
VS
The State of West Bengal & Ors.

Mr. Bhagat Chaudhuri..

...for the Petitioner.

*Mr. Raja Saha,
Mr. Shuvro P. Lahiri.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

It is alleged that the police authorities have not rendered assistance to the petitioner, although bound to do so under the law.

The petitioner claims reliefs, which are not available under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'said Act'), especially Section 23 of the said Act. Section 23 thereof, which is quoted below:-

“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 fail 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 organization referred to in Explanation to sub-section (1) of Section 5.”

The petitioner is 38 years old. The petitioner has allegedly gifted her share in her mother’s property to her brother and is aggrieved because the brother is not maintaining her father.

First of all, the father has not gifted the property. As such, Section 23 of the said Act, is not applicable in this case. Secondly, right of maintenance of the father has to be espoused by her father by filing an appropriate proceeding before the appropriate courts and tribunal. The petitioner cannot espouse the cause of the father.

It is informed by Mr. Lahiri, learned advocate appearing on behalf of the State respondents on instruction from the police authorities, that on the self-same issue a proceeding has been initiated under the Maintenance and Welfare of Parents and Senior Citizens Act. He has also raised a question of maintainability of this writ petition.

Thus, the writ petition does not deserve to be entertained and the same is disposed of without any orders.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)