

25.01.2023
sayandeep
Sl. No. 05
Ct. No. 05

WPA 134 of 2023

Md. Kuddus Ali
-Versus-
The State of West Bengal & Ors.

Mr. Golam Mastafa
Mr. Samimul Sardar

....for the petitioner

Mr. Amal Kr. Sen
Ms. Ashima Das (Sil)

.....for the State

Mr. Balai Lal Sahoo
Md. Ali Mansoor

.....for the private respondent

The petitioner claims to be a senior citizen and has challenged an order passed by the Sub-Divisional Officer, Domkal, Murshidabad on 19th January, 2022 by which the petition filed by the petitioner before the authority was rejected as not being maintainable. The petition was filed under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and particularly under Section 23 thereof. The order records that the Deed does not contain any condition which is required to be mentioned in the Deed under Section 23 of the Act.

Upon hearing learned counsel appearing for the parties, it is clear from Section 23 of the Act that a deed of gift of the property of a senior citizen, made after the commencement of the Act, can be declared void by the Tribunal provided the condition contained in the deed of

the transferee providing basic amenities and basic physical needs to the transferor (senior citizens) has not been fulfilled by the transferee. In that case, the transfer of property shall be deemed to have been made by fraud, coercion or under undue influence and the transferor shall have the option of seeking declaration of the deed as void by the Tribunal. A careful reading of Section 23 would indicate that the deed of gift must contain the condition that the transferee shall provide the basic amenities/physical needs to the transferor. The declaration of the Deed as void by the Tribunal is premised on such condition and the subsequent refusal of the transferee to fulfil and comply with such condition.

In the present case, even though the petitioner claims to be a senior citizen and claims to have executed a deed of gift in favour of the respondent No. 5, the admitted position is that the Deed does not contain any condition of the respondent No. 5/transfree providing for the basic needs and amenities of the petitioner. In the absence of such condition, this Court is unable to find any lacunae in the impugned decision of the SDO.

The contention of learned counsel appearing for the petitioner that the petitioner, as a senior citizen, has a right to be maintained by the persons mentioned in Section 4 is not applicable in the present case since the

petitioner applied under Section 23 of the Act before the Tribunal and not under Section 4.

In view of the above facts, this Court does not find any reason to interfere with the impugned order dated 19th January, 2022. Needless to say, the petitioner shall be at liberty of invoking the provisions of the 2007 Act for appropriate relief from the Tribunal.

WPA 134 of 2023 is accordingly dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)