

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

W.P.A 1013 of 2023

Amar Nath Dutta

vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Dhananjay Banerjee, Adv.
Mr. Tanmoy Khan, Adv.
Ms. Oindrila Ghosh, Adv.

For the respondent no.6 : Mr. Tapas Kumar Ghosh, Adv.
Mr. Tanmoy Chowdhury, Adv.

For the State : Mr. Amal Kumar Sen, Adv.
Mr. Lal Mohan Basu, Adv.

Last Heard on : 23.03.2023.

Delivered on : 24.03.2023.

Moushumi Bhattacharya, J.

1. The petitioner has challenged an order of the Sub-divisional Magistrate and Competent Authority under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The order impugned is dated 30.11.2022 and was passed in an application filed by the private respondent no. 6 whereby the private respondent no. 6 sought for revocation of a gift deed. The private respondent executed the Deed of Gift dated 3.7.2019 consisting of his residential building in favour of the petitioner herein. The petitioner was the opposite party no. 1 before the Tribunal.

2. By the impugned order, the Tribunal allowed the application and directed the petitioner to return the original copy of the Gift deed to the Tribunal within 7 days. The Tribunal declared the Deed of Gift to be void and accepted the arguments for revocation of the Deed as urged by the private respondent no. 6. The Deed was revoked under section 23 of the Act.

3. The relevant facts are briefly stated. The private respondent no. 6 is an octogenarian, whose wife died intestate on 4.9.2013. The private respondent no. 6 inherited the two-storey building (the property in question) after the death of his wife. The private respondent does not have any children. The petitioner and the private respondent no. 7, claiming to be a married couple were inducted as tenants in the said building in 2014. The private respondent no. 6, being alone and an aged widower became dependent on the petitioner and the respondent no. 7 and treated the petitioner and the respondent no. 7

as his children. The petitioner, the private respondent no. 7 and the private respondent no. 6 (the donor) became close to one another. The private respondent no. 6 later came to know that the petitioner was already married before and had a married daughter and a son. The Deed of Gift executed by the private respondent no. 6 in favour of the petitioner was dated 3.7.2019. A declaration was issued within a week thereafter on 10.7.2019 between the private respondent no. 6 and the petitioner incorporating a condition that the petitioner would look after the daily needs including medical needs of the private respondent no. 6. However, the petitioner and the respondent no. 7 refused to look after the private respondent no. 6 and treated him with cruelty. The private respondent no. 6 accordingly approached the Tribunal for revoking the Deed of Gift. The impugned order was passed in the said proceedings and is a subject matter of challenge in the present writ petition.

4. The only issue which falls for consideration is whether the order of the Tribunal revoking the Deed of Gift is amenable to challenge under section 23(1) of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

5. Section 23(1) provides for declaration of a transfer of property to be void in certain circumstances. This would apply where a senior citizen transfers his property by way of gift or otherwise subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and the transferee refuses to provide such amenities and physical needs to the transferor. In such circumstances, the transfer of property shall be deemed to

have been made through coercion and in a fraudulent manner and the transferor shall have the option of seeking the transfer to be declared as void by the Tribunal. The Supreme Court in *Sudesh Chhikara vs. Ramti Devi*; 2022 SCC OnLine SC 1684 held that if the conditions under section 23 of the Act are satisfied, the transfer shall become voidable at the instance of the transferor. This provision has also been interpreted in several decisions including by a Division Bench of this Court in *Debashish Mukherjee @ Zenacharya vs. Dr. Sanjib Mukherjee*, 2018 (1) CHN (CAL) 481 relied on by a Co-ordinate Bench in *Mita Panda vs. Minati Chakraborty*, 2019(1) WBLR (Cal) 668.

6. It is clear from the decisions that the Deed of Gift can be declared as void and be revoked on that basis if the transferee refuses to care for and look after the basic needs of the transferor where the Deed contains a specific condition for such. In the present case, the Deed of Gift dated 3.7.2019 did not contain any specific condition that the petitioner (transferee) would look after the needs of the respondent no. 6 (transferor). However, the Deed of Gift was followed by a declaration within 7 days, i.e., on 10.7.2019 which was signed by both the petitioner and the respondent no. 6 as the transferor that the petitioner would look after the food, daily needs and medical requirements of the respondent no. 6. The declaration is in the form of an undertaking given by the petitioner containing the specific condition that the petitioner would look after the basic amenities and basic physical needs of the respondent no. 6 / transferor. Hence, the declaration / undertaking should be taken as a continuation and part and parcel of the Deed of Gift. This is all the more so, since the

declaration makes a specific reference to the Deed of Gift dated 3.7.2019 and both parties have put their signatures on it.

7. The attending circumstances are also to be taken account of. It is evident from the submissions made and the material shown on behalf of the parties that the petitioner is seeking to take advantage of the first conveyance of 3.7.2019 not containing the clause that the petitioner would look after the basic needs of the respondent no. 6. The facts are stark and stares at the face; the respondent no. 6, being an aged issueless man has been taken advantage of by the petitioner and the respondent no. 7, posing to be a married couple.

8. Section 23(1) requires a specific condition in the Deed of Gift. As opposed to the other decisions of this Court and the Division Bench, where there was no such condition in the Deed of Gift, the present case involves a declaration and an undertaking given by the transferee containing a specific clause that the transferee would look after the transferor. This is a crucial difference in facts when compared to the decisions mentioned above. The transferee / petitioner cannot take advantage of the first deed and urge that the transferee has no such obligation since the specific clause as required by section 23(1) is contained in the declaration.

9. The order passed by this Court in *Hirendra Nath Maitra vs. The State of West Bengal*; WPA 934 of 2023 was passed on different facts. The writ petition was dismissed in that case since the Deed of Gift did not contain any provision required under section 23(1). The petitioner before the Court had sought for

revocation of the Deed before the Tribunal which was rejected by the Tribunal. More important, there was no accompanying declaration or undertaking given by the transferee in the facts of that case.

10. Sections 122 and 123 of the Transfer of Property Act, 1882 provides for the procedure for giving effect to a transfer in case of gifts. These provisions do not assist the petitioner since in the present case, the declaration / undertaking given by the petitioner can be treated as a supplement to the Deed of Gift. The petitioner gave a specific declaration and also put his signature on the declaration / undertaking.

11. Therefore, this Court does not find any infirmity in the conclusion arrived at in the impugned order. The order records the unfortunate circumstances of the respondent no. 6 and the fact that the petitioner and the respondent no. 7 harassed the respondent no. 6 and failed to provide maintenance to the respondent no. 6 contrary to the specific undertaking given by the petitioner.

12. Upon finding that the impugned order does not warrant any interference, WPA 1013 of 2023 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)