

AD-05
Ct No.09
03.01.2023
TN

WPA No. 27407 of 2022

Md. Rafiqul Islam
Vs.
The State of West Bengal and others

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee,
Mr. Soumik Dey

.... for the petitioner

Ms. Sweta Mukherjee,
Mr. Sayak Chakraborty

.... for the State

Mr. Tapodip Gupta

.... for the respondent nos.5 & 6

The grievance of the petitioner is that the Sub-Divisional Magistrate, Jangipur passed an order under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the 2007 Act”), thereby cancelling a deed of gift merely on the basis of the consent given by one of the donees, that is, the petitioner’s stepmother, without recording any satisfaction at all as to the yardsticks stipulated in Section 23 having been fulfilled.

Learned counsel appearing for the respondent-authorities submits that the present petitioner was duly served but failed to appear at the hearing.

Learned counsel appearing for the private respondents submits, in unison with the State, that

service was duly effected on the present writ petitioner and, since the order was passed *ex parte*, there arose no further question of taking evidence or otherwise looking into any materials on record.

It is seen even from a cursory perusal of Section 23 of the 2007 Act that the same casts a duty on the authority adjudicating the issue to satisfy itself as to whether a senior citizen has by way of gift or otherwise transferred his property subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and as to whether the transferee refused or failed to provide such amenities and physical needs, upon which due orders would be passed.

However, in the present case, a perusal of the entire order-sheet of the proceeding-in-question reveals no such satisfaction being recorded by the Sub-Divisional Magistrate, Jangipur. Although it is seen from the order dated September 22, 2022 that opposite party no. 1 therein, that is, the other donee had no objection to the cancellation of the deed and that the other OP, that is, the present writ petitioner had not presented himself to the forum despite repeated reminders, mere non-recording of such satisfaction on the yardsticks of Section 23 is itself sufficient to vitiate the entire order.

Although the forum below did not enter into the merits of the matter, it was incumbent upon the Sub-Divisional Magistrate to consider and appreciate the materials before the said authority before coming to a reasoned conclusion that the criteria stipulated in Section 23 of the 2007 Act were fulfilled.

Hence, WPA No. 27407 of 2022 is allowed, thereby setting aside the impugned order dated September 22, 2022 passed by the Sub-Divisional Magistrate, Jangipur in Miscellaneous Case No. 122/Misc/2021 (*Faijuddin Sk. vs. Sabina Khatun and others*) and directing the Sub-Divisional Magistrate to decide the matter afresh and, upon giving a fresh opportunity of hearing to the parties, to come to a reasoned conclusion as regards whether the petitioner before the Sub-Divisional Magistrate is entitled to an order under Section 23 of the 2007 Act. In doing so, the Magistrate shall furnish reasons as to whether and why the tests laid down in Section 23 of the 2007 Act are satisfied in the instant case. The entire exercise, it is expected, shall be completed by the Sub-Divisional Magistrate within four weeks from the date of communication of this order to the Sub-Divisional Magistrate.

The parties as well as all concerned shall act on the communication of the learned Advocates for the

parties, accompanied by server copies of this order, without insisting upon prior production of a certified copy thereof.

Needless to say, any action, if taken subsequent and consequent to the impugned order (which has been set aside herein), stand automatically abrogated and withdrawn.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)