

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6022 OF 2022

1. Ashwin Bharat Khater
Adult, Indian Inhabitant of Mumbai

2. Ruchi Ashwin Khater
Adult, Indian Inhabitant of Mumbai,

Both are residing at
U-7 Bungalow, Gulmohar Crossroad No.4,
Juhu Scheme, Mumbai, 400 049.

....Petitioners

Versus

1. Urvashi Bharat Khater
Adult, Indian Inhabitant of Mumbai,

2. Avinash Bharat Khater
Adult, Indian Inhabitant of Mumbai,

Both are residing at
Residing at 6th Floor, 'Imperial Windsor',
Plot No.25, the Vallabhnagar CHS Limited,
North South Road No.3, Juhu Scheme,
Mumbai 400 056.

....Respondents

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Mr. Mayur Khandeparkar a/w Ms. Shaheda Madraswala, Ms. Shikha Dharia i/by Vashi & Vashi, for Petitioners.

Mr. Simil Purohit i/by Mr. Manoj Pandit, for Respondents.

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CORAM : SANDEEP V. MARNE, J.

RESERVED ON : SEPTEMBER 1, 2023.

PRONOUNCED ON : SEPTEMBER 7, 2023.

JUDGMENT :

1. Challenge in this Petition is to the order dated 12 April 2022 passed by the Designated Officer of the Maintenance Tribunal constituted under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as for short “**Senior Citizens Act, 2007**”). Respondent No.1- Mother had filed an application under Sections 4, 5 and 23 of the Senior Citizens Act, 2007 against Petitioners, who are her younger son and daughter-in-law, broadly seeking four reliefs of revocation of two Gift Deeds, eviction of Petitioners from properties sought to be gifted, access to the Mother to bungalow and grant of monthly maintenance and medical expenses. The elder brother Avinash was impleaded as Respondent No.3 to the application. By the order impugned in the present Petition, the Tribunal has rejected the prayer for maintenance and medical expenditure. The prayer for eviction of Petitioners is also not granted. The Tribunal has however declared both the Gift Deeds dated 18 May 2017 as null and void. The Tribunal has also granted access to Respondent No.1 - Mother in the bungalow. The Tribunal has passed further orders restraining the Petitioners from causing mental and physical harassment to Mother and

has further directed that failure to comply with the Tribunal's directions would entail registration of complaints with police station.

2. Petitioners are not aggrieved by the direction issued by the Tribunal granting access to the Mother in the bungalow 'Avi-n-Ash'. They are however aggrieved by cancellation of two Gift Deeds dated 18 May 2017 and also by other incidental orders prohibiting them from causing mental and physical harassment and threats of registration of police complaint.

3. Before adverting to the submissions canvassed by the learned counsels for the parties, a brief narration of facts, as a prologue to the Judgment would be necessary. Khater family consisted of late Bharat Khater-Father, Mrs. Urvashi Khater-Mother (first Respondent), Mr. Avinash Khater-elder son (second Respondent) and Mr. Ashwin Khater-younger son (first Petitioner). Mrs. Ruchi Avinash Khater, second Petitioner, is the wife of younger son- Ashwin.

4. It is Petitioners' case that during lifetime of father – Bharat Khater, there were disputes between father and elder son Avinash, who is apparently unmarried. That a Deed of Family Settlement was executed on 9 January 2015, under which Avinash separated from Khater Family and was given a one-time settlement in the form of properties and liabilities described in various annexures to the Deed.

5. In November - 2016, Father - Bharat Khater fell ill and was eventually diagnosed with liver cancer. Petitioners claim that on 18 November 2016, Father-Bharat Khater executed a Will appointing Ashwin as sole executor and beneficiary of his estate, providing Mother with life interest in immovable assets and disentitling Avinash from any share in the estate. On the same day, Mother also executed and registered her Will. On 5 December 2016 a Power of Attorney was executed by Mother in favour of Ashwin empowering him to execute Gift Deeds or Partition Deeds or Rectification Deeds in relation to certain properties. On 10 December 2016, Father-Bharat Khater passed away. Ashwin filed Probate Petition of Father's Will and it is claimed that both Mother as well as Avinash filed consent Affidavits in the Probate Petition.

6. On 17 May 2017, two Gift Deeds were executed by the first Respondent -Mother in favour of Ashwin transferring her share in Bharat Bhavan properties as well as Flat No.11 at Vienna Building in favour of Ashwin. It appears that on 29 May 2018, a further Memorandum of Understanding was executed between Ashwin, Mother and Avinash, under which further settlement of properties took place between Ashwin and Avinash.

7. It is pleaded in the Petition that in September - 2018, Respondent No.1-Mother informed Petitioners that her Mother, who was residing at Peddar Road, had fallen extremely ill and expressed her desire

to stay with her Mother. Accordingly, Respondent No.1 went to stay with her Mother at Peddar Road. Her Mother passed away in January 2019. After demise of Mother of first Respondent, she started residing at Flat provided by Avinash at Imperial Windsor. Petitioners claim that at this time, the mother, after coming in contact with Avinash, started attempts to reverse her actions, at Avinash's instance.

8. On 6 September 2018, first Respondent-Mother filed a Caveat in the Probate Petition alleging that father's Will was forged by Ashwin, that the consent Affidavit was not signed by her and that her signature is forged on the consent Affidavit.

9. In the aforesaid background, the first Respondent- Mother filed application under Sections 4, 5 & 23 of the Senior Citizens Act, 2007 before the Tribunal seeking *inter alia* revocation of Gift Deeds, eviction of Petitioners from 'Avi-n-Ash (U-7)' Bungalow, access to her to the Bungalow and monthly maintenance of Rs.2,00,000 in addition to medical expenditure of Rs.10,00,000. Petitioners filed reply to the application. The Tribunal after hearing both the sides, passed order dated 12 April 2022 partly allowing the application of the first Respondent-Mother. The Tribunal has declared both the Gift Deeds dated 18 May 2017 executed by the Mother in favour of first Petitioner-Ashwin as null and void. The Tribunal has directed Petitioners to allow access to Mother in bungalow named "Avi-n-Ash, (U-7)" located at Gulmohar Cross Road

No.4, JVPD Scheme, Juhu, Mumbai. The Tribunal has further directed Ashwin to handover all original documents of Mother's properties to her. The Tribunal has further restrained Petitioners from imposing any restrictions on any of employees and staff employed by Mother in the house. The Tribunal has further restrained Petitioners from indulging in any acts causing mental or physical agony to Mother. The Tribunal has permitted Mother to lodge complaint with Juhu Police Station, in the event of Petitioners' failure to comply with the directions. The rest of the prayers sought for by Mother have not been granted by the Tribunal. The Petitioners are aggrieved by Tribunal's order dated 12 April 2022 and have filed the present Petition.

10. Mr. Khandeparkar, the learned counsel appearing for Petitioners would submit that the order passed by Tribunal in annulling the two Gift Deeds is in direct contravention of provisions of Section 23 of Senior Citizens Act, 2007. He would submit that the condition of provision of basic amenities and basic physical needs to the transferor is a *sine qua non* of the gift or transfer, which can be annulled under the provisions of sub section (1) of Section 23 of the Senior Citizens Act, 2007. That the Gift Deeds in question nowhere indicate that the same were executed on a condition of Petitioners providing basic amenities or basic physical needs to the Mother. He would further submit that, even if it is assumed that such condition need not be specified in the Gift Deed, there is nothing on record to indicate that the Petitioners ever refused to

provide basic amenities or basic physical needs to the Mother. That the very fact of rejection of any monthly maintenance in favour of Mother would indicate availability of basic amenities and basic physical needs to the Mother.

11. Mr. Khandeparkar would further submit that the Petitioners' joined issue with the Respondent No.1 - Mother about existence of condition of provision of basic amenities and basic physical needs and once the issue is joined, the burden of proof is on the Mother to prove by adducing evidence that any basic amenities or physical needs were denied to her by Petitioners. That the Mother did not lead any such evidence despite Tribunal's power to take evidence on oath under Section 8(2) of the Senior Citizens Act, 2007. Resultantly, there is no evidence on record which could have been relied upon by the Tribunal for arriving at the conclusion that there has been any denial of provision of basic amenities or basic physical needs to the Mother.

12. Mr. Khandeparkar would further submit that Section 23 creates a deeming fiction and therefore tenor of the gift or the transferred document assumes importance. That therefore presence of condition or failure/refusal of provision cannot be lightly inferred. The conditions specified in Section 23 therefore must be strictly complied with. He would submit that under Section 27 of the Senior Citizens Act 2007, jurisdiction of the Civil Court is barred and therefore the Tribunal must

take due care before passing any order under Section 23(1) of the Senior Citizens Act, 2007. Since power conferred on the Tribunal under Section 23 of the Senior Citizens Act, 2007 is drastic in nature, exercisable as a summary or fast track proceeding, due care must be taken to ensure that there is strict compliance with the conditions specified in Section 23 of the Act. In fact, the Tribunal ought to have drawn a conclusion of provision of basic amenities or basic physical needs to the Mother in the light of its finding that the Mother does not need any monthly maintenance. Mr. Khandeparkar would take me through the findings recorded by Tribunal in the impugned order. He would submit that, once the Tribunal arrived at the conclusion that the Mother is having share capital as well as shares of several companies and crores of rupees are lying in her accounts, the inference of existence of condition of Section 23(1) of the Senior Citizens Act 2007 could not have been made. That Petitioners have never denied access to Mother in the bungalow, which is a finding recorded by the Tribunal. That even today, Petitioners do not wish to deny any access to the Mother in the bungalow. That Mother's ability to maintain herself coupled with availability of access to Bungalow raises natural presumption of non-denial of basic amenities and physical needs.

13. He would submit that Tribunal has not made any discussion with regard to presence of conditions necessary under Section 23(1) of the Senior Citizens Act 2007 and has annulled the Gift Deeds on

considerations alien to Section 23. That alleged torture by Petitioners to Mother cannot be a ground for annulment of Gift Deeds under Section 23 of the Act. Lastly Mr. Khandeparkar would submit that Mother's prayer for monthly maintenance is already rejected. That Petitioners have never in the past and do not intend to prohibit access to Mother in the bungalow. He would submit that the order of Tribunal annulling Gift Deeds must be set aside as it is the elder brother – Avinash, who has instigated Mother to file false complaints against Petitioners. He would further submit that the gag order issued by the Tribunal to restrain Petitioners from harassing Mother physical or mentally is unnecessary in absence of any proof of such harassment being caused in the past and that therefore the said directions must go. That Petitioners cannot be made to live under threat of police complaints as per direction No.7 of the operative portion of the order.

14. In support of his contention Mr. Khandeparkar would rely upon following Judgments:

- i) Sudesh Chhikara Vs. Ramti Devi and Another¹.
- ii) Vikas Prabhakar Patil (Shewale) Vs. Prabhakar Dawal Shewale and Another².
- iii) Ranjana Rajkumar Makharia Vs. Mayadevi Subhakaran Makharia & Others³.
- iv) Arun Kumar and Others Vs. Union of India and Others⁴.

1 2022 Online SC 1684

2 2021 SCC OnLine Bom 11846

3 2020(3) Mh.L.J.]

4 (2007) 1 SCC 732

15. Mr. Purohit the learned counsel would appear on behalf of Respondent No.1 and would oppose the Petition and support the order passed by the Tribunal. He would take me through the definition of the term 'maintenance' to submit that the definition is inclusive and not exhausted. That it is obligatory for Petitioners to provide maintenance to the Mother under Section 4 and the moment there is failure to maintain, the cause for filing application for maintenance under Section 5 triggers. He would submit that Section 3 of the Senior Citizens Act, 2007 has overriding effect on all other statutes.

16. Mr. Purohit would further submit that the conditions of provision of basic amenities and basic physical needs need not be specified in the Gift Deeds. That sub section 1 of Section 23 uses the words 'transferred by way of gift or otherwise' and therefore the transfer need not be in writing or in a particular form. That there is no statutory requirement that the transferring document must contain a covenant that the transfer is being effected in consideration of provision of basic amenities or basic physical needs. That since there is statutory objective of providing maintenance to senior citizens, such condition of providing basic amenities and basic physical needs is inherent in every transfer of property. That the Gift Deeds in question have been effected out of natural love and affection of Mother to Petitioner No.1 and the moment such love and affection vanishes, Mother would be entitled to seek back

her properties by having recourse to Section 23 of the Senior Citizens Act, 2007.

17. Mr. Purohit would then invite my attention to the Deed of Family Settlement containing the covenant that the properties mentioned therein would be given to Petitioner No.1 - Ashwin only after Mother's death. That therefore Petitioner No.1 -Ashwin could not have usurped the properties during Mother's lifetime. That Petitioner No.1 is unlawfully holding on to the original documents of properties owned by his Mother. That Petitioner No.1 is gaining undue benefits out of proceeds of properties owned by Mother and she is left with monthly amount of Rs.44,000/- which is being paid in pursuance of order passed by this Court on 26 November 2019 in Commercial Arbitration Petition No.1119 of 2019. That there are specific findings of fact recorded by the Tribunal that Petitioners are torturing the Mother and usurping her property. That such findings of fact need not be interfered by this Court in exercise of its writ jurisdiction. In support of his contention, Mr. Purohit would rely upon the Judgment of the Apex Court in **S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and Others**⁵.

18. Rival contentions of the parties now fall for my consideration.

5 2020 SCC Online SC 1023

19. It must be observed at the very outset that Mother's prayer for monthly maintenance and medical expenditure has been rejected by the Tribunal. Similarly, the other prayer for eviction of Petitioners from various properties has also not been granted by the Tribunal. The Tribunal has essentially granted in favour of the Mother: (i) annulment of two Gift Deeds dated 18 May 2017, (ii) grant of access to Bungalow 'Avi-n-Ash (U-7)', (iii) return of original title deeds of properties, (iv) injunction against causing mental or physical agony to the Mother and (v) liberty to the Mother to file police complaint in the event of violation of the order by Petitioners. Mr. Khandeparkar has submitted that the Petitioners are not challenging the direction granted by the Tribunal to allow access to Mother in the bungalow 'Avi-n-Ash (U-7)' to herself or to her staff and employees. The challenge in the present Petition is restricted only to the three directives contained in Paragraph Nos. 2, 4 & 7 of the operative portion of order dated 12 April 2022. This means that the challenge in the present Petition is restricted only to the annulment of the two Gift Deeds, direction for handing over original title deeds of properties, liberty granted to Mother to file police complaint and general direction restraining Petitioner from causing mental or physical harassment to the Mother.

20. The main contest between the parties is over direction issued by the Tribunal annulling two Gift Deeds. The directives are issued by

the Tribunal by exercising its power under Section 23 of the Senior Citizens Act 2007. It would therefore be necessary to refer to provisions of Section 23 which reads thus:

“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.”

21. Sub section 1 of Section 23 a creates deeming fiction, under which the transfer of property is deemed to have been made by fraud or coercion or under undue influence and can, at the option of the transferor, be declared void by the Tribunal. To exercise power of declaration of a transfer as void under Section 23 (1) of the Senior Citizens Act, 2007, following conditions must be satisfied:

- i) The property must belong to a senior citizen,
- ii) transfer in question must be made by the senior citizen after commencement of Senior Citizens Act, 2007,

- iii) transfer must be made by way of a Gift or otherwise,
- iv) transfer must be made subject to a condition that the transferee shall provide basic amenities and basic physical needs to the transferor,
- v) transferee has refused or failed to provide such basic amenities and basic physical needs to the transferor and
- vi) transferor has exercised an option to declare such a transfer as void.

Once all the above conditions are met, the Tribunal is empowered to make a declaration of transfer being void under Section 23 (1) of the Senior Citizens Act, 2007.

22. The Apex Court in *S. Vanitha* (supra) has dealt with the legislative scheme of Senior Citizens Act, 2007 and has held in Paragraph Nos. 14, 18, 19 and 20 as under:

“14. Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act 2007 which have a bearing on the present controversy. 'Maintenance' is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment. In defining the expression 'property', the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property.” Overriding effect is given to the provisions of the enactment by Section 3. Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior Citizen”. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal procedure, 1973, the procedure is both time – consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

18. Of particular relevance to the facts of the case at hand is Chapter V, which enacts provisions for protecting the life and property of a senior citizen. Section 23 proceeds in the following terms:

19. Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be

enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...”. On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression 'transfer' would include

not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include “rights or interests in such property”. The expression 'transfer' not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of section 23 speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.

20. The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a 'right to receive maintenance out of an estate' and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law, i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favor of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-

payment of dues. Their daughter has sought admission to an engineering degree course however her father - Fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the on-going matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.”

23. In the present case, there is no dispute to the position that Mother is a senior citizen and that she has made a transfer after commencement of the Senior Citizens Act, 2007. The dispute is about non-fulfillment of two eventualities i.e. (i) existence of a condition in the gift deed about provision of basic amenities and basic physical needs and (ii) refusal or failure on the part of the transferee to provide such basic amenities and basic physical needs. It is Petitioners' contention that neither any condition is present in the Gift Deeds nor there is any failure or refusal on their part to provide basic amenities or basic physical needs to their Mother. Petitioners therefore contend that since the said two eventualities are not present in the case, neither Mother had an option to seek a declaration nor the Tribunal had any occasion to make such a declaration under Section 23(1) of the Senior Citizens Act 2007.

24. Though it was initially sought to be suggested during the course of submissions that the condition of provision of basic amenities and basic physical needs must be stipulated in the form of a covenant in the Gift Deed, Mr. Khandeparkar, in his usual fairness, has later conceded that he does not want to press an extreme argument that in every case

such a condition must be included in the Gift Deed. He however submits that even if such condition need not be included in the Gift Deed, there must be pleading and proof on the part of senior citizen that the Gift or transfer was executed subject to a condition that the transferee would provide basic amenities and basic physical needs to the transferor. In this connection he has placed reliance on the judgment of the Supreme Court in the Case of *Sudesh Chhikara* (supra) in Paragraph Nos.12 and 15 the Supreme Court held as follows:

“12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

- a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and
- b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

15. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.”

In the case before the Apex Court, there was no pleading to the effect that the Gift Deed was executed subject to condition that a transferee would provide basic amenities and basic physical needs to Respondent No.1 therein. In the present case Respondent No.1 - Mother has pleaded in Paragraphs 4-O & 4-P of her application as under:

" 4O. Applicant was alone and with no choice but to take help from her Younger Son/the Respondent No.1. As the Applicant was dependent on Respondent No.1 and the exerted undue influence, relying upon the aforesaid assurances, she was coerced to execute Gift Deed in the favour of Respondent No.1 and the same was executed in May, 2017, with false promises that the Respondent Nos.1 & 2 will take her care of her for the entire life.

4P. In furtherance of the assurances given by the Respondents to safeguard her future, the Applicant was persuaded into gifting her 2 (two) Properties/Shares or Joint-Ownership in the 2 (Two) Properties, in favour of the Respondent No.1 herein, when she was alone and was not in the right frame of mind and was ailing."

25. Thus, there are specific pleadings made by the first Respondent-Mother in her application that two Gift Deeds were executed in furtherance of assurance given by Petitioners that they would take care of her during her entire life. Mr. Khandeparkar has fairly not contested the issue of absence of pleading. He however submits that it was incumbent upon the Mother to prove by leading oral evidence that the Gift Deed was executed subject to a condition of Petitioners providing basic amenities and basic physical needs to Mother. The requirement of the aspect of leading oral evidence by senior citizen in

support of application is being discussed in latter portion of the Judgment. However, so far as applicability of the Judgment in ***Sudesh Chhikara*** (supra) in the present case is concerned, I am of the view that the Apex Court was persuaded to set aside the order of Maintenance Tribunal essentially on account of lack of pleadings by Respondent No.1 therein that the Release Deed was executed subject to a Condition for providing maintenance. Since the condition is pleaded by Mother in her application, the judgment in ***Sudesh Chhikara*** would not support Mr. Khandeparkar's submission that there was no material before the Maintenance Tribunal to arrive at a finding that the Gift Deeds were executed subject to such a condition.

26. In fact Mr. Purohit has rightly drawn my attention to the following finding recorded by the Apex Court in ***Sudesh Chhikara*** (supra) in Paragraph 14 of the Judgment which reads thus:

“14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.”

27. The Apex Court has thus held that the existence of condition can even be established before the Tribunal. This would in fact indicate

that the existence of such condition need not be reflected in the Deed itself in the form of a covenant or a recital and the same can be established before the Tribunal.

28. Now I proceed to examine whether Respondent-Mother established before the Tribunal existence of condition as required in sub section (1) of Section 23 of the Senior Citizens Act, 2007. As observed above, she pleaded in her application that execution of two Gift Deeds was done by her in furtherance of assurance given by Petitioners that they would take care of her during her entire life. Respondent No.1- Mother has specifically pleaded that Petitioner No. 1 made a representation to her that all the properties and business needs to be in the name of one person for better control, which is the reason why she executed Power of Attorney and later Gift Deeds in the name of Petitioner No.1. She additionally pleaded the case of threats given by Petitioner No.1 to execute Gift Deeds on the basis of Power of Attorney procured from her when her husband was on deathbed in the ICU. She further pleaded that after obtaining Gift Deeds in his favour, Petitioners started fighting with her and were disrespectful and abusive towards her. This is the foundation placed by the Mother before the tribunal to establish presence of a condition.

29. It is contended by Mr. Khandeparkar that the Tribunal has all the powers of the Civil Court under sub section (2) of Section (8) of the

Senior Citizen Act, 2007 and that the Respondent No.1 - Mother ought to have led evidence on oath in support of her contention on existence of a condition. Section 8 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reads thus:

" 8. Summary procedure in case of inquiry. -

(1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry."

30. Thus, under Section 8, the Tribunal is expected to conduct a summary procedure while holding an inquiry under Section 5 of the Senior Citizens Act, 2007. It is not expected to conduct a detailed trial as if it is a Civil Court. Though a party can lead oral evidence under sub section (2) of Section 8, however it cannot be said that in every case, parties must lead oral evidence or that in absence of oral evidence, the application must meet the fate of rejection. The contents of the application have been verified by Respondent No.1-Mother stating on

solemn affirmation that the contents of the application are true to her knowledge. Thus, the Tribunal cannot be faulted for taking into consideration contents of the application filed by Respondent No.1- Mother for recording its findings. The observation of failure to lead oral evidence is made by the Apex Court in ***Sudesh Chhikara*** (Supra) in the light of absence of pleading. However, in the present case there are specific pleadings about existence of condition. Therefore, in my view mere failure on the part of Respondent No.1 - Mother to lead oral evidence could not have been a ground for the Tribunal to presume absence of a condition required under sub section (1) of Section 23 of the Act. Existence of such a condition can also be gathered from circumstantial evidence that the Mother was residing in the Bungalow for 30 long years and within 5 months of her husband's demise, she thought of gifting that bungalow to her son, without knowing that a day would come when she would be out of her own house. A Mother executing gift of her residential bungalow in favour of her son is bound to expect that the son would let her reside in that bungalow. Therefore existence of condition of providing the basic amenity to permit mother to reside in the bungalow is required to be assumed in the facts and circumstances of the present case. Thus, Respondent No.1 -Mother established the existence of condition required under sub section (1) of Section 23 of the Senior Citizens Act, 2007 before the Tribunal.

31. The next issue is whether the Petitioners have failed to provide basic amenities and basic physical needs to Mother, which is again prerequisite for exercise of jurisdiction under sub section (1) of Section 23 of the Senior Citizen Act, 2007. Based on material before it, the Tribunal has recorded findings of fact that Petitioners have prevented access to the Mother in her residential bungalow. Prior to execution of the Gift Deeds, she was the owner of 50% share in bungalow 'Avi-n-Ash, (U-7)'. It is her case that she agreed to execute Gift Deeds in favour of son Ashwin on a promise that he will take care of her during her entire life time. In her application, the Mother has pleaded as under:

"4U. In the month of September 2018, the Applicant's 90 years old Mother's health was serious and she was to be admitted to Jaslok Hospital. While Applicant's Mother was admitted in Jaslok Hospital and as the Respondent No.1 had threatened the Applicant with dire consequences to her life and deprived her of the shelter of her home of 3 decades and thus fearing for her life, the Applicant stayed at her Mother's residence at Peddar Road, since 6th September 2018. Soon thereafter, the Applicant came to know that the Respondent No.1 has taken control of her room, which was the Applicant's Bedroom for 3 decades, in the said Bungalow. The Applicant's room in the said Bungalow was locked from outside but the Respondent No.1 forcibly and without the Applicant's consent, (used her Late Husband's Keys) and entered in to the room and started using the said room, without informing her or taking her permission. The Applicant has full right an/or title and and/or interest in the said room but it was very conveniently & forcibly taken away by Respondent No.1. The Respondent No.1 and 2 committed a two-fold act of oppression by taking away her shelter and her clothes and belongings, that were lying out.

4V. The facts mentioned in the foregoing paragraphs were not known to the Applicant at relevant time. When the Applicant reached

her home i.e. the said Bungalow, she found that her belongings from the room were shifted to a place where she had no knowledge of. The Respondent No.1, by removing her belongings in her room, tried to erase the Applicant's existence/memories of 3 decades, in the said Bungalow. The Applicant was restrained from entering her home/the said Bungalow that was supervised by the servants and bouncers. It came to the knowledge of the Applicant that Respondent No.1 has started work related to the renovation of the house/the said Bungalow and had left the responsibility of the house/the said Bungalow on servants as he was in Dubai during that time. It was very surprising for the Applicant that the Respondent No.1 has not informed the Applicant or taken the Applicant's permission for the said renovation and he put responsibility of the said Bungalow on the servant that too when the Applicant was in Mumbai."

32. Thus, the Mother made out a specific case that her access to the bungalow was not only denied to her but her belongings were also removed by Petitioners. While denying the said contentions raised by Mother, the Petitioners have contended that the Mother left the house out of her own violation and started residing at Peddar Road at his grandmother's residence. The Tribunal has however believed the case put forth by the Mother by relying on E-mails and messages sent by Mother to Petitioner No.1. Some photographs are placed on record by the Mother in support of her contention that her belongings were removed from room.

33. Respondent No.1 - Mother has specifically referred to an incident of the year 2018 when Petitioner No.1 abused her in intoxicated state. That Petitioner No.2 did not stop Petitioner No.1. Respondent

No.1 - Mother has specifically alleged that Petitioner No.1 made an attempt to take possession of Mother's bedroom which was being occupied by her for 30 long years by removal of her belongings. That she was required to approach Juhu Police Station when she was prevented from locking the bedroom with a view to protect her belongings. Mother further stated that after her Mother's death in 2019, she was without any residence and was required to take shelter with the other son Avinash, who while expressing his inability to participate in disputes between Petitioners and Mother, arranged for a rental flat for Mother's residence. The Mother has given various instances where she was prevented from entering into her residential Bungalow 'Avi-n-Ash (U-7)'. The Maintenance Tribunal has taken into consideration allegations levelled by the Mother of ill treatment. It is an admitted position that Mother is not residing in the Bungalow Avi-n-Ash (U-7) but is made to reside in a rented flat. The Tribunal has considered the position that the Mother is made to leave her own residential Bungalow 'Avi-n-Ash (U-7)', where she was residing for 30 long years and has emotional connection to the said house. These findings recorded by Maintenance Tribunal cannot be treated as perverse in any manner. The contentions raised by Respondent No.1 - Mother about ill treatment are supported by various contemporaneous documents on record including police complaints made from time to time. These findings of fact that Mother was illtreated and was denied access to her residential house recorded by the Tribunal is

based on material placed before it and does not suffer from the vice of perversity. Adequacy of such material is something which would fall outside the scope of jurisdiction of this court. Therefore, these findings cannot be interfered while exercising the jurisdiction under Article 227 of the Constitution of India.

34. Merely because Respondent No.1 - Mother is in receipt of certain amounts would not be a reason enough to draw an inference that there is no refusal or failure to provide basic amenities and basic physical needs to her. As rightly contended by Mr. Purohit, definition of the term 'maintenance' is not restricted only to making available money. The definition reads thus:

"maintenance" includes provision for food, clothing, residence and medical attendance and treatment

Denial of access to Mother's own residential house would undoubtedly amount to denial of basic amenities and basic physical needs within the meaning of sub section (1) of Section 23 of the Senior Citizens Act, 2007. In fact, the very objective behind enacting the Senior Citizens Act, 2007 is to ensure that Senior Citizens are not deprived of their own properties at the instance of their children. It would be apposite to refer to the relevant portion of Statement of Reasons and Objectives to the Act, which are highlighted by the Apex Court in its judgment in ***Vanitha***.

It reads thus:

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support.

(emphasis and underlining supplied)

35. It appears that the Petitioners were not originally residing at the Bungalow 'Avi-n-Ash (U-7)' and started residing in the same little before the father's death. Today the position is that while Petitioners are occupying the Bungalow, the Mother who has stayed in the same for 30 long years, is out of the same. In the light of this position, it is incomprehensible as to what more material Petitioners expect the Tribunal to rely upon for drawl of a conclusion of denial of basic amenity to the Mother. In my view therefore, even the second test of failure or refusal to provide basic amenities and basic physical needs to the Mother as required under sub section (1) of Section 23 is satisfied.

36. It is sought to be contented by Mr. Khandeparkar that the Tribunal has proceeded to annul the Gift Deeds not on the ground of refusal to provide basic amenities or basic physical needs but on the ground that Petitioners caused mental and physical torture to the Mother. This submission may not be entirely right as the Tribunal has also

recorded finding of failure to provide basic amenities and basic physical needs in the form of denial of access to residential house to the Mother. Therefore, cause of mental and physical torture is not the sole ground relied upon by the Tribunal for annulling the Gift Deeds.

37. The submission of Mr. Khandeparkar that the Mother has premised her case for annulment of Gift Deeds not on the ground of existence of condition or failure to provide basic amenities or basic physical needs but on twin grounds of alleged misrepresentation and coercion. True it is that the Respondent No.1- Mother has also made detailed pleadings about background in which she was misrepresented and coerced by Petitioner No.1 into executing Gift Deed, however it would not mean that the case of existence of condition required under sub section (1) of Section 23 was not pleaded by her. I have already arrived at a conclusion that there is specific pleading about existence of such condition in application filed by Respondent No.1-Mother. The requirement of failure to provide basic amenities and basic physical needs has also been met on the basis of pleadings and material placed before the Tribunal. Therefore, this submission made on behalf of the Petitioners is not well founded.

38. The submission of Mr. Khandeparkar about strict requirement of existence of condition in the light of drastic nature of

measure adopted under Section 23 becomes academic in the light of findings recorded to the effect that the Respondent No.1 - Mother did establish a case of existence of condition before the Tribunal.

39. Mr. Khandeparkar has strenuously contented that once the Tribunal has rejected Mother's request for grant of monthly maintenance and medical expenditure, it must be inferred that the condition as well as failure/refusal required under sub section 1 of Section 23 did not exist. I am unable to agree. Existence of condition of provision of basic amenities and basic physical needs cannot be inferred only on the basis of ability of Mother to maintain herself. She has made out a specific case before the Tribunal that the Petitioners represented to her that they were look after her during her entire lifetime and acting on that representation she executed Gift Deeds. She further made out a case before the Tribunal that she was deprived of basic amenities and basic physical needs and access to her own residential house after execution of Gift Deeds. In my view therefore merely because the Mother is in receipt of some regular income would not be sufficient to infer that either condition did not exist or that there has been absence of failure or refusal as contemplated in sub section 1 of Section 23 of the Senior Citizens Act, 2007.

40. Petitioners have alleged that brother-Avinash has instigated the Mother to file the proceedings for annulment of Gift Deeds. While it

is not necessary to determine correctness of this allegation, it is seen that the Mother has placed material on record in support of her allegations of ill-treatment, torture, denial of basic amenities and physical needs. Her allegations supported by contemporaneous documents on record cannot be brushed aside on the basis of Petitioners' allegation that brother-Avinash has instigated the Mother to seek annulment of two Gift Deeds. Neglect of mother stems out of series of events occurring over a period of long time that it is difficult to believe that the mother filed complaint with the Maintenance Tribunal without any reason and only because of instigation by her other son-Avinash. When a widowed mother approaches the Tribunal complaining about ouster from her house, ill-treatment, torture and denial of basic amenities/physical needs, the Tribunal could not have closed doors on her by accepting Petitioners' specious plea that Avinash has orchestrated the entire episode.

41. What remains now is to deal with few more Judgments relied upon by Mr. Khandeparkar:

- i) In **Vikas Prabhakar Patil (Shewale)** (supra) this Court arrived at a conclusion that there was no condition in the concerned Sale Deed that the same was executed subject to the condition that the transferee shall provide basic amenities and basic physical needs to the transferor. In the present case relying on the Judgment of the Apex Court in ***Sudesh Chhikara*** (supra), I have already held that

existence of such condition need not be present in the Deed itself and the same can be established even before the Tribunal. Even Mr. Khandeparkar has fairly conceded to this position that such a condition must not be included in the Deed itself.

ii) In **Ranjana Rajkumar Makharia** (supra) this Court has held in Paragraph 7 of the Judgment as under:

“7. So far as Section 23 of the Act is concerned, it does not admit of any doubt that it provides for declaring transfers of property covered by it as void only in stated circumstances. Firstly, it envisages such transfer of property by way of gift or otherwise by a senior citizen. Secondly, it envisages that such transfer must be subject to a condition that the transferee shall provide basic amenities or basic physical needs of the transferor. The third condition is that such transferee must have refused or failed to provide such amenities or needs. It is only when all three conditions are met that an application lies to the senior citizen Tribunal constituted under Section 7 to declare any transfer of property to be void under the deeming provision of section 23 on the ground that such transfer has been vitiated by fraud, coercion or undue influence and thus, rendered voidable at the option of the transferor. The declaration may then be followed by an appropriate order of recovery of possession from, or ousting of, the transferee.”

There can be no dispute to the proposition that unless all the conditions specified in sub section (1) of Section 23 are met, such declaration cannot be made by the Tribunal. In the present case, I have arrived at a conclusion that all the conditions specified in sub section 1 of Section 23 have been met.

iii) **Arun Kumar** (supra) is relied upon by Mr. Khandeparkar in

support of his contention that existence of jurisdictional fact is *sine qua non* or a condition precedent for exercise of power by a Court of limited jurisdiction. There can be no dispute to this proposition. In the present case however, I do not find that the Tribunal has erroneously assumed existence of any jurisdictional fact. The judgment therefore would not assist Petitioners' case

42. Resultantly, I find that the Tribunal has correctly appreciated the pleading and material produced before it and has arrived at a conclusion that the Petitioners have failed to provide basic amenities and basic physical needs to Respondent No.1 - Mother subject to which the Gift Deeds were executed in favour of Petitioner No.1 by her. The declaration made by the Tribunal under Subsection 1 of Section 23 therefore does not suffer from any jurisdictional error.

43. Since Mr. Khandeparkar has fairly submitted that the Petitioners do not wish to deny access to the Mother to the bungalow 'Avi-n-Ash, (U-7)', therefore correctness of the directions of the Tribunal in that regard need not be examined.

44. So far as the direction issued by the Maintenance Tribunal not to cause mental or physical agony to the Mother is concerned, I do not find any error in the same. This direction is issued by the Tribunal taking into consideration Petitioners' conduct of denying access to own

residential house of Mother and removing her belongings, etc. The Tribunal has recorded a finding that the Mother has been subjected to torture. After arriving at a finding that there has been neglect of mother by Petitioners, the Tribunal was bound to issue direction injuncting Petitioners from mentally or physically torturing her. Similar is the position with regard to the liberty granted by the Tribunal to the Mother to file complaint before the Police Station in the event of violation of directives issued by it. These directives have been issued to act as a sufficient deterrent to Petitioner and so as to ensure that the Mother does not have to undertake detailed litigation for every act of neglect committed by Petitioners.

45. In my view, the Tribunal's order in restoring ownership of gifted properties with the aim of ensuring smooth access to her own residence, subserves the objective behind the Senior Citizens Act, 2007. The Gifts were executed out of natural love and affection towards son, which was the only possible consideration for execution thereof. Inbuilt in such love and affection is the duty of the son to provide basic amenities and physical needs to the widowed mother. The events that have occurred post execution of gift deeds so indicate that such love and affection between the Mother and son no longer exists. Along with love and affection, the son has perhaps failed to perform the duty of providing the basic amenities and physical needs to his mother. It was never son's

property. He had no right to seek gift thereof. The Mother however gifted it to him under a hope that she would continue to receive son's love and affection and would never deny her the basic amenity of her own residence. Upon being driven out of her house, she approached the Tribunal. By Tribunal's order, the ownership of gifted properties is restored in Mother's favour. This may not be an irreversible situation in every case. Mother's love and affection can be won back. At the moment, however, the extreme measure of restoration of gifted properties to Mother, in my view, was warranted in the facts and circumstances of the case.

46. After considering the entire conspectus of the case, I am of the view that the Order passed by the Maintenance Tribunal does not suffer from the vice of perversity. No case of jurisdictional error or patent illegality is made out by Petitioner.

47. For the reasons aforesaid, I find no merit in the writ petition. It accordingly stands dismissed. In the facts and circumstances of the case, there shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

LATER :

48. After the Judgment was pronounced, the learned Counsel

appearing for the Petitioner would request for continuation of interim order of status quo granted on 18 May 2022.

49. The order of status quo dated 18 May 2022 shall continue for a period of six weeks from today.

(SANDEEP V. MARNE, J.)