

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-14623-2023

Date of decision : 25.07.2023

Surinder Kumar Sharma

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.H.S.Dhindsa, Advocate
for the petitioner.

Mr.Rohit Bansal, Sr.DAG, Punjab
for respondents no.1 to 3.

Mr.Gurminder Singh, Senior Advocate with
Ms.Harpriya Khaneka, Advocate
for LR's of respondent no.4.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ especially in the nature of certiorari for setting aside the order dated 17.03.2022 (Annexure P-4) passed by respondent no.3 along with the order dated 21.02.2023 (Annexure P-7) passed by respondent no.2 vide which the application (Annexure P-3) filed by Baldev Krishan for declaring the transfer deed dated 21.04.2016 as null and void, has been allowed and the appeal filed by the petitioner has been dismissed.

2. On 13.07.2023, this Court was pleased to pass the following order:-

*“Inter alia, contends that the appeal filed by the petitioner has
been dismissed primarily on the ground that the said appeal is not*

*maintainable on behalf of the petitioner as he is not a senior citizen/parent. It is further contended that as per the judgment of the Division Bench of this Court in **"Paramjit Kumar Saroya Vs. Union of India and another, reported as 2016(3) RCR 146,** an appeal would be maintainable on behalf any effected party.*

Notice of motion for 20.07.2023.

On the asking of the Court, Ms. Palika Monga, DAG, Haryana, appears & accepts notice on behalf of respondents No.1 to 3 and seeks time to file reply.

Liberty is granted to the petitioner to serve the LRs of respondent No.4 through dasti process as well.

To be taken up at 1.45 PM.

July 13, 2023

*(VIKAS BAHL)
JUDGE"*

3. Learned senior counsel appearing for legal representative of respondent no.4 has submitted that although in view of the judgment passed by the Hon'ble Division Bench of this Court in ***Paramjit Kumar Saroya Vs. Union of India and another***, reported as ***2016(3) RCR (Civil) 146***, an appeal can be filed by the petitioner before the appellate Tribunal, Fazilka but there are several other grounds, on which, the appeal deserves to be dismissed. It is submitted that in the present case, the senior citizen had filed an application under Sections 23 read with Sections 4, 5 & 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rule 2012 seeking cancellation of transfer deed dated 21.04.2016 and vide order dated 17.03.2022, the said application was allowed and the transfer deed was ordered to be cancelled and thereafter the senior citizen had died on 08.06.2022 after executing a Will in favour of Anoop Lata, who has been impleaded as respondent no.4(i) in the present writ petition. It is further submitted that the right conferred by the statute is a personal right given to a senior citizen and once the senior citizen has died, the authority becomes functus officio and thus, the appeal deserves to be rejected on the said ground alone. It is stated that the property by virtue of the Will has been

transferred to the daughter of the deceased and on the said ground also, the appeal deserves to be dismissed. It is further stated that the impugned order was passed on 17.03.2022 whereas the appeal has been instituted on 04.10.2022 after much delay and that the said appeal deserves to be dismissed on the said ground of delay and laches as well. It is submitted that the petitioner was proceeded against ex-parte and instead of filing an application for setting aside the ex-parte order, an appeal has been filed and on the said ground also, the appeal is not maintainable. It is further submitted that even in case the matter is remanded in view of the ***Paramjit Kumar Saroya's*** case (supra), all the said pleas be kept open for consideration of the appellate Tribunal.

4. Learned counsel for the petitioner has submitted that the appeal before the appellate Tribunal would survive even after the death of the senior citizen and that he also be granted liberty to rebut all the pleas, which have been raised on behalf of LRs of respondent no.4 and the appellate Tribunal after considering the arguments of both the sides, may finally adjudicate the matter.

5. Keeping in view the above said facts and circumstances, moreso, the fact that the Hon'ble Division Bench of this Court in ***Paramjit Kumar Saroya's*** case (supra), has observed that an appeal would be maintainable on behalf of any affected party, thus, the observation of the appellate Tribunal to the effect that the appeal filed by the petitioner is not maintainable, is in the teeth of the said judgment, the appeal is partly allowed and the impugned order dated 21.02.2023 is set aside and the appellate Tribunal is directed to decide the appeal filed by the petitioner afresh after hearing both the parties and after considering all the pleas raised

Court. The parties through their counsel would appear before the appellate Tribunal on 17.08.2023.

6. It is clarified that this Court has not expressed any final opinion on the merits of the case and it would be open to the appellate Tribunal to decide the appeal, in accordance with law, after considering the arguments raised on both sides.

July 25, 2023

Davinder Kumar

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No