

25.09.2024
Court No.09
Item no.35
CP

WPA No. 4475 of 2022

Smt. Dipali Chandra
Vs.
The State of West Bengal & ors.

Mr. Rudranil De
Mr. Gopal Chandra Das
Ms. A. Das

....for the petitioner.

Mr. Rajarshi Basu
Mr., Parikshit Goswami

.....for the State.

Mr. Manik Das
Mr. Falguni Majhi

.....for the respondent nos. 4 & 5.

The petitioner is a senior citizen who claims that the Sub-Divisional Officer, Burdwan Sadar, Purba Bardhaman, has failed to exercise jurisdiction under the law by denying the prayer of the petitioner to set aside a deed of gift.

The petitioner submits that the learned Civil Judge (Junior Division), 2nd Court, Burdwan cannot act as a delegatee of the Sub-Divisional Officer. The Sub-Divisional Officer was duty bound to discharge his function under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

From the order passed by the Sub-Divisional Officer, it appears that the petitioner's sole allegation was that her brother and her nephew pressurized her to execute a deed of gift in their favour although the petitioner wanted to transfer only two rooms on the

first floor of the building. Taking advantage of the simplicity of the petitioner, the whole property stood transferred. Since then, the brother and the nephew has been misbehaving with the petitioner and torturing her.

The petitioner prayed for cancellation of the deed of gift. It appears that a civil suit on the self-same cause of action is pending. Thus, the matter was disposed of with a direction that the petitioner should be allowed to reside in the house peacefully and the petitioner should not be disturbed by anyone. The police authorities were also directed to ensure safety and security.

Section 23 of the said Act is quoted below:-

‘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 subsections (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.'

The allegation of the petitioner was that by taking advantage of her simplicity, her brother and the nephew had coerced and tricked her into executing the deed of gift. A suit is also pending. The cancellation of such deed of gift cannot be done by the Sub-Divisional Officer under Section 23 of the said Act as this was not a deed of gift which was executed by the senior citizen in favour of the relatives on the promise that the relatives would support the donor by providing the basic amenities and physical needs. In such a case, the deeming provision would not apply.

Under such circumstances, the writ petition is disposed of without any orders.

The direction upon the respondent nos. 4 and 5 to ensure protection of the petitioner is upheld. The said respondents shall not disturb the petitioner in any way.

The police authorities shall keep a strict vigil to ensure that the petitioner is safe.

This order shall not prejudice the pending suit.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)