

AD-04  
Ct No.09  
23.04.2024  
TN

WPA No. 9550 of 2023

Sri Subrata Mondal  
Vs.  
The State of West Bengal and others

Mr. Debajyoti Deb,  
Mr. Tamal Ghosh,  
Mr. Dhiman Mondal

.... for the petitioner

Mr. Somnath Ganguli, Ld. AGP,  
Ms. Sangeeta Roy

.... for the State

Mr. Subir Banerjee,  
Mr. S. Misra

.... for the respondent nos. 6 & 7

1. Learned counsel for the petitioner contends that the petitioner is the son of the private respondent nos. 6 and 7. A gift deed was executed by the private respondent-father in favour of the petitioner. The petitioner has assailed an order passed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the 2007 Act"), holding the gift deed to be void, which is utterly devoid of reasons. It is contended that without consideration of any of the yardsticks stipulated in the Act or the facts of the case, the Tribunal has declared the deed of gift void.
2. Learned counsel appearing for the private respondents contends that the gift deed itself will justify the case of the private respondents. That apart, the private respondents have taken out a different writ petition

where a direction has been passed directing possession of the property to be given to the private respondents.

3. A perusal of the impugned order justifies the claim of the petitioner that the same is utterly devoid of reason. Reason is the soul and spirit of any order. The impugned order, passed by a quasi-judicial authority having serious implications, taking away the rights of a person conferred by a registered deed, has serious implications. Despite repeated perusal of the impugned order, I fail to observe that a single line of reasoning has been attributed for declaring the gift deed-in-question to be void.
4. Section 23 of the 2007 Act stipulates that where any senior citizen after the commencement of the 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.
5. In the present case, the gift deed itself has not been considered by the Tribunal at all. There is no reflection in the impugned order either that the Tribunal adverted to whether the transfer was on the condition that the transferee shall provide the basic amenities

and physical needs to the transferor and as to whether the transferee actually refused to provide such amenities and physical needs.

6. In the absence of any consideration of the yardsticks stipulated in Section 23 and/or to the factual premise of the case, the impugned order is palpably vitiated in law.
7. The contention of the private respondents that in a different writ petition, a direction has been passed by a coordinate Bench for handing over possession of the property to the private respondents, is of no consequence in the present context. Such direction, if any, does not *per se* justify the order impugned herein, which had to satisfy the parameters as stipulated in the 2007 Act.
8. In view of the above observations, WPA No. 9550 of 2023 is allowed on contest, thereby setting aside the order dated March 14, 2023 passed in Maintenance Tribunal Case No. 01/23 by the Sub-Divisional Officer and Tribunal Officer, Maintenance Tribunal at Canning, South 24 Parganas and directing the said Tribunal to re-hear both parties and adjudicate the application of the private respondents under Section 23 of the 2007 Act afresh on merits, in accordance with law and adverting to the facts of the case as well as applying the legal yardsticks stipulated in the 2007 Act.

- 9.** It is expected that such re-adjudication shall be concluded at the earliest, positively within two months from the date of communication of this order to the said Tribunal.
- 10.** There will be no order as to costs.
- 11.** 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.)