

D/L.5.
March 12, 2024.
MNS.

WPA No. 9437 of 2022

Sri Parijat Pattanayak and another
Vs.
The State of West Bengal and others

Mr. Ajoy Debnath,
Mr. Debranjana Das,
Ms. Aratrika Sah

... for the petitioners.

Mr. Manas Das

...for the private respondent.

1. Learned counsel for the private respondent submits that the original affidavit-in-opposition affirmed by the private respondent has been misplaced. Accordingly, learned counsel seeks to leave of the court to file a photocopy thereof.
2. On query of court, learned counsel for the petitioners submits that he has no objection for the said copy to be treated as the original.
3. Accordingly, a copy of the affidavit-in-opposition filed today in Court be kept on record and the same be treated as the original.
4. Learned counsel for the petitioners submits that the petitioners do not want to use any affidavit-in-reply.

5. Accordingly, the writ petition is taken up for hearing.
6. The petitioner no. 1 is the son of private respondent no. 4 and the petitioner no. 2 is the wife of petitioner no. 1.
7. Learned counsel for the petitioners contends that since no appeal is provided to the son under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short "2007 Act"), an order passed under the 2007 Act in favour of the mother has been challenged by way of present writ petition.
8. Learned counsel for the petitioners argues that the respondent no. 4 had initiated a suit as well as the present proceeding under the 2007 Act.
9. That apart, it is disputed that the petitioner no. 1 was served proper notice before the matter being decided *ex parte*.
10. Learned counsel for the respondent no. 4 argues that there is no bar in parallel proceedings being initiated under the 2007 Act and before the civil court; but the civil suit may not be maintainable.
11. Learned counsel for the respondent no. 4 further points out that in terms of the clauses of the gift deed executed by the respondent no. 4 to the petitioner no. 1, the petitioner no.

1 is living with the respondent no. 4 and also looking after her. In fact, the consideration of the transfer was, apart from natural love and affection, the fact that the petitioner no. 1 was looking after her. Hence, it is argued that the ingredients of Section 23 of the 2007 Act are satisfied and as such no interference with the impugned order declaring the gift deed executed by respondent no. 4 void is called for.

12. Upon hearing learned counsel for the parties, it transpires that the relevant clause in the gift deed appearing in the last paragraph of internal page 5 of the same indicates that the donor, *“became a lady of old and desirous to Gift the said plot of land together with 2 storied building thereon the land unto and in favour of her youngest son Sri Parijat Pattanayak who is living with her and also look after her”*.

13. Thus, a component of “looking after her” is incorporated in the clause, which may include providing basic amenities and physical needs, thus, arguably coming within the purview of Section 23, which stipulates that the transfer has to be subject to the condition that the transferee shall provide basic amenities and

basic physical needs to the transferor and fails to do so.

14. However, the Sub-Divisional Officer (SDO), Barasat (Sadar) Sub-Division, North 24 Parganas, while passing the impugned order, has not attributed any reason or basis for coming to the conclusion that the petitioner no. 1 is not looking after his mother.

15. More importantly, even without going into the realities of whether service was actually effected on the petitioner no. 1 or not, in view of the serious effect of the impugned order on the petitioner no. 1, the petitioner no. 1 ought to have been given an opportunity of hearing before passing the said order.

16. In deference to the principle of *audi alteram partem*, which is in-built in the concept of natural justice, the SDO ought to have been given another opportunity to the petitioner no. 1 to file his written objection and contest the matter.

17. In such view of the matter, even without going into the counter allegations between the parties, WPA No. 9437 of 2022 is allowed on contest, thereby setting aside the impugned order dated September 30, 2019 passed by the SDO, Barasat(Sadar) Sub-Division, North 24 Parganas and remanding the matter to the

SDO for giving an opportunity of filing written objection and/or hearing to the petitioner no.1.

18.The SDO shall, after granting a short opportunity to the petitioner no. 1 to file his written objection, fix a date of hearing and give opportunity of being heard to both the parties. Thereafter, the SDO shall decide the matter afresh in accordance with law on its own merits without being influenced in any manner by any of the observations made herein and by a reasoned order.

19.The entire exercise, it is expected, shall be completed by the SDO as expeditiously as possible, positively within eight weeks from the date of communication of this order to the SDO.

20. There will be no order as to costs.

21. 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.)