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**IN THE CIRCUIT BENCH OF CALCUTTA
HIGH COURT AT JALPAIGURI
Civil Revisional Jurisdiction**

C.O. 140 of 2022

Tapan Mandal

-Versus-

Shri Khagen Mandal

Mr. Bikramaditya Ghosh

Ms. Supriya Singh

...For the Petitioner

Mr. Hirak Barman

Mr. Bikash Singha

...For the Opposite Party

Assailing the order dated 21st September, 2022 passed by the Appellate Tribunal created under Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the present application has been preferred by the petitioner/son.

The background of the present application is that after father/opposite party had executed a Deed of Gift on 21st February, 2017 in favour of the petitioner/son Tapan Mandal. By that Deed of Gift 57 decimals of land was transferred to the petitioner and accordingly his name has been recorded in L.R. Record of Right. Further case of the petitioner is that there has been no discord or disharmony within the family members which can prompt the opposite party, being the father of the petitioner to take harsh legal remedies.

However, to his utter surprise, the opposite party herein preferred an application before the learned

Sub-Divisional Magistrate at Alipurduar under the provisions of Section 23 of the Act of 2007. Learned Tribunal while disposing of the said application recorded the the opposite party / son / petitioner's submission that he is willing to maintain his father, whereas his father only wants to get back his property by cancellation of the Deed. Accordingly, the Tribunal directed the father/petitioner to move the matter before the appropriate forum and thereby he disposed of the application.

Being aggrieved by that order father/opposite party herein preferred aforesaid appeal before the Appellate Tribunal constituted under the Act and by an order dated 10th August, 2022, the Appellate Tribunal annulled the aforesaid Deed of Gift which was executed in the name of son Tamal Mandal by father/opposite party herein, invoking his jurisdiction under Section 23 of the Act of 2007 and thereby directed to handover the land as per Deed of Gift in favour of the appellant after issuing a fresh Deed in favour of the father/opposite party, after observing all necessary formalities.

Being aggrieved by the said order Mr. Bikramaditya Ghosh, learned Counsel appearing on behalf of the petitioner submits that the specific Rule in

respect of the Senior Citizenship Act, being West Bengal Maintenance and Welfare of Parents and Senior Citizen Rules, 2008 provides adequate measures for computation of maintenance to be paid in such cases. He further submits that from the order of the Tribunal it is palpably clear that the son is all along willing to maintain his father and as such the question of invoking jurisdiction under Section 23 does not attract in the present case as Section 23 comes into play only when the transferee of the Deed refused or fails to provide such maintenance and/or basic amenities / needs, which is not the case in the present context. Accordingly, he prays for setting aside the order impugned.

Mr. Hirak Barman, learned Counsel appearing on behalf of the opposite party raised strong objection contending that the Appellate Tribunal has recorded that neither the son nor the daughter of the opposite party / father use to maintain or used to provide basic amenities to the father and as such the Tribunal below annulled both the Deeds executed in favour of the present petitioner as well the other Deed executed in favour of his daughter. His daughter has accepted such cancellation but the petitioner/son herein though did not provide any maintenance or basic amenities to his father

and thereby is on the same footing, has sought for cancellation of the order without considering as to how the father / opposite party would survive, who admittedly resides separately. Accordingly, he submits that the order impugned is quite justified and Section 23 clearly attracts in the present context and as such the order impugned does not call for interference invoking jurisdiction under Article 227 of the Constitution of India in the present case.

I have considered the submissions made on behalf of the parties. Before going to further details, let me reproduce the relevant portion of the order impugned passed by the Appellate Tribunal :

“Keeping in view the appellant’s prayer and fact, the Appellate Trinunal is hereby annulled the Gift Deed bearing No. I-851 of 2017 in the name of Tapan Mandal and Gift Deed bearing No. I-852 of 2017 in the name of Smt. Basanti Mandal executed by the Additional District Sub-Registrar, Alipurduaron 10.03/2017 as per section 23 of the ‘Maintenance and Welfare of Parents and Senior Citizens Act, 2007’.”

On bare perusal of the aforesaid order it is palpably clear that the Appellate Tribunal has not recorded whether he has considered son’s willingness to maintain his father before invoking his power under

Section 23 of the Act of 2007. It is needless to reiterate that even in cases of passing an order by a Tribunal, it must record reason.

Appellate Tribunal has not even discussed in the order impugned as to what prompted him to come to a conclusion that transferee/son had refused or failed to provide basic amenities and physical needs to the transferor/senior citizen, which is the main ingredient for invoking Section 23 of the Act of 2007. In this context it is also to be mentioned that Rule 7 of the West Bengal Maintenance and Welfare of Parents and Senior Citizens Rules, 2008 prescribes powers and procedure of Tribunal. Rules 7(3) of the said Rules prescribes that the Tribunal may if it consider necessary refer the matter to a Conciliation Officer for submitting his findings within one month from the date so referred and if an amicable settlements has been arrived at, the Tribunal shall consider such report of the Conciliation Officer and shall pass an order to that effect. In the present context also when the issue of looking after senior citizen and paying maintenance or providing basic amenities is the core issue in controversy, in my opinion, the Tribunal ought to have taken recourse to Rule 7(3) of the Rules of 2008 as the statute always intend to keep family together with

peace of mind. Before invoking power power under Section 23 of the Act, Tribunal should be fully convinced that senior citizen's action is not based on anger or fear. Parties should be given opportunity to think calmly and the basis of pure emotions before drawing a line in the sand.

Having considered the aforesaid facts and circumstances of the case and that the Tribunal below has come to a finding without assigning proper reason, the order impugned is hereby set aside. The Tribunal below is hereby directed to hear both the parties afresh and to pass a reasoned order in respect of the issue raised in the present proceeding.

This is also made clear that before arriving at a final decision, the Tribunal below will be at liberty to give option to the parties to go for conciliation under Rule 7(3) of the Rules of 2008.

The present application, being C.O. 140 of 2022 is accordingly disposed of.

The Tribunal below is hereby directed to dispose of the said appeal at the earliest in the light of aforesaid observations.

Urgent photostat certified copy of this, if applied for, be given to the parties, on priority basis,

upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)