
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9223 OF 2024

State Bank of India

.. Petitioner

Versus

1. Manav Greys Exim Private Limited
2. Bharati Surendra Khandhar
3. Tahasildar and Executive Magistrate
4. State of Maharashtra
Through the Government Pleader,
High Court, Bombay.

.. Respondents

Mr. Charles Desouza a/w. Rajkumar Shukla, Saraswati Rajpurohit, Rupak Sawangikar, Shailja Shukla & Shantanu Ray i/b. Rajkumar K. Shukla, Advocates for Petitioner.

Mr. Chirag Modi a/w. Sarthak Solaskar i/b. N.K. Dayanandan, Advocates for Respondent No.2.

Ms S.D. Vyas, Addl.G.P. a/w. Ms. S.R. Crasto, AGP for Respondent Nos.3 & 4-State.

Mr. Prakhar Tandon, Advocate for Intervenor – Vidhi Tejas Khandhar.

Mr. Sambhaji Shelar, Resident Naib Tehsildar, Panvel is present.

CORAM:

**B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

Reserved on : December 10, 2024

Pronounced on : December 18, 2024

JUDGEMENT : (Per, Somasekhar Sundaresan J.).

1. Rule. Rule is made returnable forthwith. Respondents waive service. By consent, heard finally.

Factual Matrix and the Challenge:

2. This Petition is a challenge by the State Bank of India (“**SBI**”) to an order dated July 22, 2021 (“**Impugned Order**”) passed by the Maintenance Tribunal, Panvel, Raigad (“**Maintenance Tribunal**”), constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (“**Senior Citizens Act**”). The Impugned Order cancelled two gifts of land parcels made by a “senior citizen” to her son and daughter-in-law. For the reasons spelt out in this judgment, we have no hesitation in quashing and setting aside the Impugned Order insofar as it relates to the Gift Deed dated May 18, 2017 in relation to land situated at Survey No.62/1/A at Village Karnala, Taluka Panvel, District-Raigad (“**Subject Property**”).

3. Two gift deeds (dated November 10, 2009 and May 18, 2017, (collectively, “**Gift Deeds**”) had been executed by Ms. Bharati Surendra Khandhar (“**Bharati**”, Respondent No. 2). Under the Gift Deeds, land situated at Survey No. 62/1/B at Village Karnala, Taluka Panvel, District–Raigad, was transferred to Mr. Tejas Khandhar (“**Tejas**”),

Bharati's son, in 2009. The Subject Property was transferred to Ms. Vidhi Tejas Khandhar ("***Vidhi***"), wife of Tejas (Bharati's daughter-in-law), in 2017.

4. Manav Greys Exim Private Limited ("***Manav Greys***", Respondent No. 1), a company promoted and managed by the Khandhar family (Tejas and Vidhi), availed of a cash credit facility for Rs.9.75 crores on November 29, 2017. Vidhi mortgaged the Subject Property in favour of SBI to secure the indebtedness owed by Manav Greys. We are informed that Tejas too has mortgaged the land gifted to him (Survey No.762/1/B), in favour of another bank for another facility to finance a business run by the Khandhar family, but that detail is not really relevant for purposes of adjudicating this Petition.

5. The mortgage of the Subject Property in favour of SBI is said to have been registered on the Central Registry of Securitisation Asset Reconstruction and Security Interest of India ("***CERSAI***"), the portal created for purposes of public notice of security interests created in favour of secured creditors, and to enable potential enforcement measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("***SARFAESI Act***").

6. On October 28, 2018, due to defaults by Manav Greys, SBI

classified Manav Greys' loan account as a non-performing asset (“**NPA**”). The account was revived briefly, but was once again declared an NPA on February 27, 2020. On March 2, 2020, SBI initiated enforcement measures under the SARFAESI Act.

7. SBI issued a notice dated August 20, 2020, under Section 13(2) of the SARFAESI Act. Contemporaneously i.e. when the relationship between the borrower and lender was turning contentious, Bharati filed an application dated August 14, 2020 (“**Application**”) before the Maintenance Tribunal invoking Section 23 of the Senior Citizens Act, stating that as a “senior citizen” who gifted her property on the alleged promise of being maintained, she was entitled to seek cancellation of the Gift Deeds to reverse the transfer of title to the properties.

8. The Application claimed that Bharati and her 73-year old husband Mr. Surendra Khandhar (“**Surendra**”) were living in penury and were totally neglected by Tejas and Vidhi, although the Gift Deeds had been executed on the alleged promise of being provided for. Bharati's husband (who, she pleaded, shared her life of misery and penury, due to neglect at the hands of Tejas and Vidhi) did not join in filing the Application. The Application also did not make any claim for maintenance under Section 4 of the Senior Citizens Act. The Application pleaded that Bharati was left at the mercy of her other son

Mr. Gaurav Khandhar (“**Gaurav**”) who had a family of his own to support. In short, the Application had a single-minded focus on cancelling the Gift Deeds and reversing the transfer of title to the properties gifted.

9. Before the Maintenance Tribunal (essentially the Sub-Divisional Officer having territorial jurisdiction), Tejas and Vidhi did not enter appearance at any hearing. They filed a four-paragraph reply admitting that they could not maintain their mother since they were in a “financial mess”. They left it to the Maintenance Tribunal to pass “appropriate orders”. The Maintenance Tribunal passed the Impugned Order, allowing the prayer for reversal of the transfer of properties under the Gift Deeds, recording that Tejas and Vidhi had not appeared in the proceedings despite being given opportunities on various dates.

10. Manav Greys, Tejas and Vidhi filed Securitisation Application 189 of 2021 (“**SA 189**”) on before the Debt Recovery Tribunal (“**DRT**”), challenging the enforcement measures adopted by SBI. It is SBI’s case that at this stage, the filing of the Application was not disclosed by Tejas and Vidhi to the DRT.

11. Meanwhile, SBI had initiated measures to take possession of the Subject Property under Section 14 of the SARFAESI Act and obtained an order dated February 2, 2022 from the jurisdictional magistrate.

The Tahsildar (Respondent No. 3) whose responsibility includes execution and enforcement of orders under Section 14 of the SARFAESI Act, has refrained from executing the attachment order, on the premise that the Subject Property does not belong to Vidhi, who had mortgaged it in favour of SBI.

12. Eventually, on January 11, 2023, armed with the Impugned Order, Bharati filed Securitisation Application (Diary) No. 67 of 2023 (“**SA 67**”) before the DRT challenging the enforcement measures in respect of the Subject Property, which is pending.

13. SA 189 was heard on merits. In these proceedings, Manav Greys, Tejas and Vidhi produced the Impugned Order to argue that the security interest created by Vidhi on the Subject Property cannot be enforced, since Vidhi was no longer the owner of the property, and title had reverted to Bharati. The DRT, by an order dated March 17, 2023 (“**DRT Order**”), dismissed SA 189, comprehensively holding that the Order impugned in this Writ Petition was a product of an abuse of the Senior Citizens Act and a fraud, and that the mortgage that had been created before the reversal, could not be wished away.

14. An appeal against the DRT Order was filed by Bharati (not by Manav Greys, Tejas or Vidhi) before the Debt Recovery Appellate Tribunal (“**DRAT**”). She sought interim stay on the enforcement

against the Subject Property, which she claimed was now hers. The DRAT, by an order dated November 17, 2023, refused to grant any interim relief in respect of the DRT Order. The DRAT was of the *prima facie* view that Manas Greys, Tejas and Vidhi had not appealed because they would need to deposit 50% of the indebtedness owed as a pre-condition to the appeal. Bharati, to whom, the pre-deposit condition would not apply (not being a borrower or guarantor), had been propped up as the Appellant. Consequently, the prayer for restraining SBI from taking coercive action against the Subject Property was rejected.

15. Yet, the Tahsildar refrained from taking possession despite the direction of the magistrate under Section 14 of the SARFAESI Act. SBI, frustrated by its enforcement attempts drawing a blank on account of the Impugned Order, filed this Writ Petition to have it set aside.

Contentions of the Parties:

16. We have heard Mr. Charles Desouza, Learned Counsel on behalf of SBI, Mr. Chirag Modi, Learned Counsel on behalf of Bharati and Ms. S.D. Vyas, Addl. G.P. on behalf of the Tahsildar and the State of Maharashtra.

17. Mr. Desouza would submit that the entire exercise of filing the Application and procuring the Impugned Order is a demonstration of

the Khandhar family abusing the Senior Citizens Act, and frustrating the recovery of a secured debt, and enforcement of security interests by a commercial bank, necessitating the quashing of the Impugned Order. Mr. Modi would primarily submit that SBI has an alternate efficacious remedy in the form of an appeal under the Senior Citizens Act. He would also argue that SBI has come to this Court after undue delay. Consequently, Mr. Modi would submit that we should not exercise our discretionary jurisdiction under Article 226 of the Constitution of India. As an alternative, Mr. Modi would submit, the matter could be remanded to the Maintenance Tribunal for hearing the matter afresh, giving SBI an opportunity to present its case. Ms. Vyas, on instructions, submits that the Tahsildar had hesitated to execute the taking of possession in view of the confusion over title pursuant to the Impugned Order. An affidavit has been filed by the Tahsildar that he would indeed execute the order of the jurisdictional magistrate passed under Section 14 of the SARFAESI Act, and that it is scheduled for December 23, 2024.

18. We have had the benefit of hearing all the aforesaid counsel, and examining the record with their assistance. While we will deal with their contentions later in this judgment, a pertinent development must be recorded.

19. The matter was heard over a few dates and we had indicated our inclination to allow the petition. We listed the matter on December 10, 2024 for passing orders and for Mr. Modi to confirm if Bharati would give instructions to have the Impugned Order set aside by consent. On that date, Mr. Prakhar Tandon, Learned Counsel, entered appearance, with instructions from Vidhi to intervene in these proceedings. He expressed his client's desire to file an affidavit in the matter and proposed an adjournment for that purpose. Mr. Tandon's primary submission was that Vidhi had been declared insolvent and therefore, she is a protectee against any enforcement due to the moratorium under the *Insolvency and Bankruptcy Code, 2016* ("**IBC**"). According to him, Vidhi ought to have been made a party to the Writ Petition and SBI had deliberately kept her out of these proceedings, to suppress from this Court, her status as a protectee under the IBC.

20. When asked about Vidhi's submissions in relation to the Application (which had serious accusations of callous neglect of her mother-in-law); Vidhi's feeble counter against such allegations; and Vidhi's absence from hearings in the proceedings before the Maintenance Tribunal, Mr. Tandon would submit that he had instructions to state that the reply filed on Vidhi's behalf in those proceedings, was forged. This would mean that according to Vidhi, she not only refrained from attending hearings but also did not file any

reply in the Maintenance Tribunal, and now seeks to intervene in this Writ Petition. It led us to enquire what Vidhi had to say about her loss of the Subject Property to Bharati due to the Impugned Order. Mr. Tandon replied that he had instructions to state that his client was opposed to the reversal of the title to the Subject Property under the Impugned Order. In other words, he effectively supported SBI's prayer that the Impugned Order be set aside. Mr. Desouza would submit that such submission is contrary to Vidhi's submissions made before the DRT, and this would be evident from the face of the record.

Analysis and Findings:

21. We have no hesitation in concluding that the proceedings that led to the passing of the Impugned Order is a contrivance devised to abuse the Senior Citizens' Act. We would be remiss if we do not exercise our extraordinary and equitable jurisdiction to intervene and set things right, when we can see on the face of the record that a litigant has abused the rule of law.

22. However, we make it clear that we have restricted ourselves to determining the legality and validity of the Impugned Order under the Senior Citizens Act, and have not entered into the domain of addressing any issue that falls for consideration under the recovery proceedings pending under the SARFAESI Act, or for that matter, the import of the

insolvency claimed by Vidhi under the IBC. We leave it to the parties to pursue their rights as available in law under the respective legislation that govern their efforts. What is writ large on the face of the record is that the Impugned Order is a product of abject subversion of not only a well-intentioned ameliorative legislation such as the Senior Citizens Act, but also of the rule of law. That apart, the Maintenance Tribunal has not dealt with the core jurisdictional facts that would have to be determined before it can exercise its power under Section 23 of the Senior Citizens Act.

23. We do not think it necessary to delay the matter any further by letting Vidhi intervene and reply to the Petition merely because Mr. Tandon has submitted that Vidhi too would like the reversal of the gift under the Impugned Order to be undone. That being the stance, Vidhi's appearance would only support the Petitioner. Besides, Vidhi's claim of being a protectee of insolvency law need not detain our attention at all, since we are not pronouncing upon the law relating to insolvency and recovery of dues, and instead, we are restricting ourselves to the legality and validity of the Impugned Order.

Section 23 of Senior Citizens Act :

24. There are many reasons that would demonstrate our conclusion about the need to quash and set aside the Impugned Order, and that

too by a mere perusal of the material on record. However, at the threshold, it would be instructive to examine the provisions of Section 23 of the Senior Citizens Act, which read thus:

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 sub-sections (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.

[Emphasis Supplied]

25. A plain reading of the foregoing would show that Section 23(1) of the Senior Citizens Act empowers the Maintenance Tribunal with a power to pass declaratory orders that could render transfers of property void. The principle involved is failure of consideration owing to non-performance of the promise to maintain a senior citizen that is held out to induce the transfer of property by the senior citizen. To attract the jurisdiction of Section 23(1) to declare the transfer of property as void, the following ingredients are essential :-

- A) A transfer of property ought to be made by a “senior citizen” after the commencement of the legislation;
- B) Such transfer ought to have been made subject to a condition that the transferee shall provide ***basic amenities*** and basic ***physical needs*** to the transferor; and
- C) The transferee ought to have refused or failed to provide such amenities and physical needs.

Promise of Basic Amenities and Physical Needs:

26. Each of the aforesaid ingredients is essential for a reversal of transfer of property to be effected under Section 23(1). For convenience, we deal with the first requirement listed above, after dealing with the other two.

27. Mr. Modi would fairly state that the Gift Deeds do not contain an explicit clause stipulating the condition that the transferees would provide Bharati with basic amenities and basic physical needs. However, he would strenuously urge that numerous judgments have held that the absence of an explicit stipulation in the executed instrument of transfer is not essential. The existence of such a condition can be discerned from outside the document of transfer.

28. Courts have indeed held that the absence of an explicit and

express condition within the very instrument of transfer would not be fatal to the right to declaratory relief that a transfer of property ought to be reversed. It could be contained in contemporaneously executed instruments, and ought to be capable of being inferred from the evidence and material on record. It is for the senior citizen invoking the right to reverse a transfer to show evidence of such a condition. It is a necessary requirement for the Maintenance Tribunal to adjudicate and rule on the existence of such a condition.

29. Towards this end, Bharati has purported to rely on letter dated April 1, 2009, purportedly written by Tejas to her – some of the relevant contents are extracted below:

“Dear Mom,

I and Vidhi assure you that we will take proper care of you and Papa during your old age and we will take maximum efforts to see that your needs and wishes are fulfilled and your basic amenities and physical needs including food, clothing and medicine would be taken care and we will not back track from this obligation at any point of time.

Mom, please consider my request to execute Gift Deed in my favor to help me to develop a number one school of international standard in Panvel.

Mom, I know, you know little English but I do not know Gujarati writing and thus Papa will help to explain properly my letter and feelings.

[Emphasis Supplied]

30. It is remarkable that Tejas would use the very phrases chosen by

the legislature in Section 23(1), in a letter purportedly written in April 2009 – that Vidhi and he would provide for Bharati’s “*basic amenities*” and “*physical needs*”. Yet, inexplicably, when the actual legal instrument for the transfer was executed by Bharati in November 2009, nearly eight months later, Bharati would not incorporate that condition, even in differently-worded language, in either of the Gift Deeds. They do not even allude to the aforesaid letter. Even in May 2017, when the Subject Property was transferred by the next Gift Deed, such a condition would find no mention in the actual instrument of transfer executed by Bharati. When the Khandhar family members purport to have used the very same phrases as used in the law in a letter, they somehow did not adopt them in the very Gift Deeds that are the actual legal instruments of transfer. Such conduct raises doubts that the letter dated April 1, 2009 was created only to somehow bring the reversal of the Gift Deeds within the jurisdiction of the Maintenance Tribunal under Section 23(1) of the Senior Citizens Act.

31. Curiously, there is no letter containing such a promise, from Vidhi at all, whether contemporaneously with the second Gift Deed of 2017 or otherwise. Vidhi was not a giftee in 2009, when Tejas purported to promise on behalf of Vidhi and himself that they would take care of Bharati’s “basic amenities” and “physical needs”. Vidhi is purported to have written her own version of a “*Dear Mom*” letter on

June 1, 2017, but this letter contains no such promise or condition. Therefore, it begs the question as to whether the Gift Deed by which the Subject Property was transferred by Bharati to Vidhi could be said to have an implicit contemporaneous condition about providing for Bharati's amenities and physical needs. Mr. Tandon who appeared on behalf of Vidhi, seeking to intervene, submitted to us that Vidhi's signature on the reply filed before the Maintenance Tribunal was forged and she had not signed that reply. However, we note that the signature on Vidhi's purported letter dated June 1, 2017 has the same signature. Even a plain review of the material would present an inescapable picture of dressing-up of the evidence to somehow invoke Section 23(1) of the Senior Citizens Act, when the enforcement measures by SBI gained steam.

32. It is noteworthy that the Application filed before the Maintenance Tribunal was dated August 14, 2020, which is a date contemporaneous with SBI's notice dated August 20, 2020, under Section 13(2) of the SARFAESI Act. In short, when the relationship with SBI was getting sour, it is apparent that the *stratagem* of abusing the ameliorative provisions of the Senior Citizens Act was conceived, and Section 23 was invoked.

33. Both Tejas and Vidhi refer to and address Bharati as "Mom" in

their purported written letters, even while the letter from Tejas would state that Bharati knows little English while Tejas could not write Gujarati – indicating that Bharati could write and read Gujarati but not English. Tejas would ask Bharati, in his letter, to take Surendra’s help to understand his letter. While this may set up a strand to argue that Bharati does not personally comprehend anything she has signed in English, it is rather strange that Bharati would be called “Mom” in writing by the very offspring who insinuate that she knows little English.

Failure or Refusal to provide amenities and needs:-

34. The next ingredient for the transferor to have the option to reverse the transfer at the hands of the Maintenance Tribunal under Section 23(1) is that the transferee ought to have violated the condition of providing for the transferor’s basic amenities and basic physical needs. In other words, the transferee ought to have refused or failed to keep the promise on which the transfer of property was effected by the transferor. Put differently, there would be a failure of consideration for the transfer – the consideration being the condition that the transferor’s basic amenities and physical needs would be provided for.

35. On this count, the conduct of parties is revealing. Typically, in such cases, the transferee would be expected to contest the existence of

such a condition, and where a condition inexorably exists, the transferee would argue that the condition was not violated. The transferee would be expected to bring to bear every effort to contest the transferor's demand for reversal of title.

36. In sharp contrast, in the instant case, the transferees have conveniently confirmed such a condition was indeed involved, and that they have not performed the condition, citing a “financial mess”. It is all too convenient, and this would be clear even to a lay reader of the material on record, that the 19-paragraph dramatic Application is replied to in four paragraphs admitting to the grounds on which a reversal may be declared by the Maintenance Tribunal, also conveniently volunteering that “appropriate” orders may be passed. The material on record would lead to any reasonable person appraising it, to see that the proceedings are evidently collusive. There is no contest in the proceedings, not even one that can be placed in the realm of sparring or shadow-boxing.

37. Faced with such observations, also made by us in open court, Mr. Tandon has been fielded on the last date when the matter was listed for passing orders, to state that Vidhi would desire to intervene, for which the matter may be adjourned. Mr. Tandon would even disown the four-paragraph reply, and verbally level a serious allegation

that the reply was forged.

38. Upon a review of the record, it is seen that the reply is a joint one; both Tejas and Vidhi have signed it; and on the face of it, her signature is the same as the signature on her version of the “*Dear Mom*” letter. For Mr. Tandon’s request to have any credibility, Vidhi ought to have, at the least, filed a written intervention application, affirming what she had to state on oath, and seek to make out a case for intervention. It is apparent that the verbal request to intervene is only the last roll of the dice to somehow attempt to gamble a postponement of the matter, to see if one could live to fight another day.

Transfer by a ‘Senior Citizen’:

39. Finally, we allude to the very first ingredient for invoking Section 23(1) of the Senior Citizens Act. This is the requirement that the transfer sought to be reversed ought to have been made by a senior citizen, after the commencement of the Senior Citizens Act. The transfers under the Gift Deeds were made in 2009 and 2017. Bharati has filed an Affidavit-in-Reply dated November 27, 2024, where she has affirmed that she is currently aged 65 years. That would imply that Bharati was aged 50 in 2009 and 58 in 2017, and therefore was not a “senior citizen” (defined¹ as a person aged 60 years or more) when the

¹ Section 2(h) of the Senior Citizens Act

transfers were effected. It would stand to reason that after this Court started scrutinizing the record and put Bharati to notice (through Learned Counsel) that *prima facie* it appeared to us that abuse of the Senior Citizens Act is writ large on the record, even greater care would have been taken with the contents of the Affidavit-in-Reply. In such circumstances, it would stand to reason that something as basic as the age of the “senior citizen” would not be inaccurately set out. Therefore, if Bharati was not even a senior citizen when the Gift Deeds were executed, there could have been no invocation of Section 23(1) by her in the first place.

40. However, in this judgment, we are not pronouncing upon this facet of the matter in the form of a finding of fact on Bharati’s age at the time of transfer of the Subject Property. We do note that the Application before the Maintenance Tribunal was affirmed on August 14, 2020, and at that time, Bharati claimed to be aged 63 years. If that affirmation were true (and the affirmation before us were inaccurate), she could have been a senior citizen when she made the gift in 2017 (depending on her precise date of birth). Since we are not ruling on this issue of fact, our analysis is based on an assumption that in 2017, Bharati was a senior citizen, ignoring the age affirmed by Bharati on oath in the affidavit filed before us.

Impugned Order is Arbitrary:

41. We articulate all the foregoing facets only to show how these fundamental jurisdictional facts ought to have been dealt with, before using the declaratory power conferred on the Maintenance Tribunal under Section 23(1) of the Senior Citizens Act. However, in the Impugned Order, there is no consideration of these issues to return findings of jurisdictional fact. It is indeed true that the Maintenance Tribunal is required to adopt a summary procedure and even lawyers are not permitted to participate, but that is no license for not ruling on, even adopting the summary procedure, jurisdictional facts that lie at the foundation of the power to reverse closed property transfers.

42. The Maintenance Tribunal has simply accepted at face value whatever is pleaded before it. When a matter is heard *ex parte*, the burden of responsibility on the forum is heightened due to the lack of assistance from one side of the dispute. The peculiar absence of one party from hearings, in a jurisdiction that is otherwise publicly known to be fraught with intense and highly contested emotional conflict, ought to have aroused the suspicion of the Maintenance Tribunal even more, before declaring that the transfers of property ought to be reversed. It was incumbent on the Maintenance Tribunal to ascertain the existence of jurisdictional facts before exercising jurisdiction to

declare a position as severe as reversing transfers of property made over eleven years and three years before the proceedings were initiated. None of that having been done, the exercise of power in the Impugned Order is evidently without proper exercise of jurisdiction, which would render the Impugned Order to be arbitrary, for being devoid of reason, and therefore liable to be quashed and set aside.

43. In *Sudesh Chhikara Vs. Ramti Devi & Anr.*² the Supreme Court dealt with a somewhat similar case of a senior citizen releasing her interest in her property in favour of her son. The son, in turn, had transferred the property for value to third parties. The mother filed a Petition under Section 23 of the Senior Citizens Act, stating that offspring were not maintaining her, and that the release deed must be declared to be illegal and void. That Application was accepted by the Maintenance Tribunal. The case eventually reached the Supreme Court. Supreme Court has ruled that for attracting Section 23(1) of the Act, the transfer ought to have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and the transferee ought to have refused or failed to provide such amenities and physical needs to the transferor. The Supreme Court has explicitly ruled that when it is alleged that the conditions stipulated in Section 23(1) are attracted, it is imperative for

² 2022 SCC Online SC 1684

the Tribunal to establish the existence of such conditions.

44. We do not think it is necessary to burden this judgment, with the whole range of the decisions of various other High Courts submitted by the parties. What is clear is that the essential requirement i.e. of the existence of a condition that the transferee would maintain and provide the basic needs and amenities of the senior citizens who transferred the property, has to necessarily be proved. Thereafter, the refusal or failure in complying with the condition has to be proved. Neither has the same been done in this case, nor has any serious effort been put in by the transferee to rebut the allegations.

Other Facets of the Sham Dispute:

45. There are other elements that point to the conduct of Bharati in particular and her family members in general, that are contrary to ordinary and normal human conduct, which undermine the pleadings before the Maintenance Tribunal.

46. Bharati has pleaded that she and Surendra, her 73-year old husband, are living in penury because of the neglect by Tejas and Vidhi . However, the Application does not have a whisper of a prayer for maintenance – a basic expectation one would have from a senior citizen invoking the very legislation that primarily deals with an

obligation to maintain parents. Inexplicably, Surendra has neither joined Bharati in pursuing the Application nor filed his own application for maintenance. The primary charging provision of the Senior Citizens Act is Section 4, which creates a statutory entitlement for parents to be maintained by their “children” (defined³ essentially to mean two generations of offspring excluding minors).

47. Bharati’s pleadings in the Application are that she had bought the properties gifted under the Gift Deeds from the hard-earned savings of Surendra, who is said to have had a flourishing tax consulting practice in his prime. Therefore, it would stand to reason that Surendra is a stakeholder in the properties that had been gifted by his wife Bharati. The contemporaneous letter from Tejas to Bharati purporting to promise that her amenities and needs would be provided for, holds out the promise to Bharati and Surendra. Being a fellow promisee that Bharati and he would be provided for, one wonders how a former thriving tax consultant would be indolent about his own legal entitlements under such strong beneficial legislation, and that too the very legislation that his wife Bharati has invoked.

48. Faced with this query, Mr. Modi would argue that Section 4 and Section 23 are two independent entitlements in the Senior Citizens Act, and one does not necessarily have to make a claim for maintenance

³ *Section 2(a) of the Senior Citizens Act*

only because one is invoking the right to reverse a property transfer. It was Bharati who had transferred properties, and according to him, she was entitled to seek a reversal. In our opinion, the most charitable view of such submission is that it is fallacious. It would stand to reason that a senior-citizen couple that claims to be living in “penury” (in simple English, the state of living in *extreme poverty*) would make a claim for maintenance, which is the fundamental entitlement under the Senior Citizens Act. The response by Learned Counsel is evidently fashioned in a manner of interpretation of tax statute in a defence by a tax consultant in tax litigation, rather than demonstration of normal human conduct when pushed to penury by neglecting children, and that too in the course of invoking entitlements under ameliorative legislation.

49. It is noteworthy that Section 23 of the Act sits amidst a range of other provisions that collectively provide a consolidated scheme of protection for maintenance of senior citizens. The term “*maintenance*”⁴ and “*welfare*”⁵ are defined and comport to the ingredients of the condition contained in Section 23. Section 4 creates an entitlement in favour of every senior citizen who is unable to maintain herself from her own earnings or out of property owned by

⁴ Section 2(b) defines it to include provision for food, clothing, residence and medical attendance and treatment;

⁵ 2(k) to means provision for foods, health care, recreation centres and other amenities necessary for the senior citizens.

her. We are of the view that Section 23 is a provision in aid of the wider scheme and scope of the Act. Even if the structure of the legislation were as Mr. Modi would like us to hold, the conduct of Bharati and Surendra (and indeed, the larger Khandhar family, which is resisting enforcement by lenders) is contrary to the reasonable and natural human behavior expected from those placed in the unfortunate position of having to enforce entitlements under the Act.

50. Section 23(2) (extracted earlier) is also a pointer to the intended scope of the Senior Citizens Act. It provides that where there is any right to receive maintenance out of an estate that has been transferred, such right to be maintained may be enforced against the transferee if the transferee has notice of that right. Put differently, Section 23(2) is also an entitlement to maintenance from the property that has been transferred. According to Bharati (and admitted by Tejas and Khandhar) Bharati had executed the Gift Deeds in consideration of a contemporaneous condition that she and her husband would be provided for by the transferees. When a senior citizen seeks a reversal of the transfer of property under Section 23(1), an obvious corollary would be an alternative prayer that the senior citizen must be maintained from the fruits of such property. There is not a whisper of such a prayer or even a pleading in the Application, which only has a single-minded focus on undermining the title of transferee, who is a

mortgagor to a bank, and against whom recovery proceedings were intensifying.

51. For someone who has claimed ignorance of the mortgage by Vidhi and its enforcement, in her Affidavit-in-Reply, Bharati has made some combative comments and submissions about SBI's recovery efforts against Manav Greys, Tejas and Vidhi. For instance, she would submit that having once declared the Manav Greys account as an NPA in 2018, SBI's act of reviving the cash credit facility in 2019, without a part-payment or assurance of payment, was not a "sound banking practice". She has also accused SBI of inordinate delay in initiation of enforcement measures under the SARFAESI Act.

52. Likewise, in conflict with her professed ignorance of the mortgage, with a view to deal with the contention that Tejas and Vidhi had suppressed the mortgage from the Maintenance Tribunal, Bharati has claimed in the Affidavit-in-Reply that Tejas and Vidhi had indeed written to the Maintenance Tribunal on November 2, 2020 that a mortgage had been created over the Subject Property. Incidentally, this letter too bears the very same signature of Vidhi. Although Bharati has sought to bring this letter on record, there is nothing to show any acknowledgment of receipt of that letter by the Maintenance Tribunal, or any proof that the letter was indeed served in the proceedings. The

Impugned Order does not contain a whisper of either the mortgage or any letter dated November 2, 2020 from Tejas and Vidhi. It stands to reason that if the mortgage had indeed been disclosed by such letter, the Maintenance Tribunal would have issued notice to each of the mortgagees including SBI, before ruling on the prayer for reversing the title.

53. It is evident that Bharati, is willing to affirm and sign documents that further legal arguments to support the Khandhar family, and to robustly defend the rights of the very son and daughter-in-law who are allegedly callous towards her and have kept her in a state of penury, necessitating her request for reversal of the gift of properties to them.

54. The collusive element of the four-paragraph summary reply before the Maintenance Tribunal by Tejas and Vidhi in response to Bharati's Application, is underlined by the nature of the allegations made in the 19-paragraph long Application. These allegations would make any reasonable person want to rebut and contest the allegations, at the least, to maintain one's decency for the record. Such allegations would at least inspire a bare denial. In the matter at hand, on the contrary, there has been a tacit admission of failure to keep the purported promise of maintenance, which was the alleged condition

attached to the transfer of property.

55. We find that it is all very convenient and self-serving for the Khandhar family to adopt this subterfuge. The only focus of the proceedings was to secure the reversal of the property transfers. A heart-rending and dramatic Application is made seeking reversal of long-completed property transfers. In reply, a terse and tacit admission is made, and the Maintenance Tribunal is invited to pass such appropriate orders. The Maintenance Tribunal is forced to conduct an *ex parte* documents-only proceedings, only to return findings, based solely on the say-so of the pleadings, without further scrutiny, to culminate in reversal of title to properties that have been mortgaged to banks.

56. Considering the serious nature of the declaratory power under Section 23, we find that the due skill, care and diligence that ought to apply to any interference by the State with the right to own property has not been brought to bear. In our opinion, Section 23 could never be a license to reverse transactions lightly, without determining the existence of facts, even while adopting the statutorily-stipulated summary procedure. There has not been even a simple scrutiny of whether third-party interests have been created over the property as part of the summary procedure. For instance, in the instant case, a

simple CERSAI search would have revealed SBI's mortgage over the Subject Property.

Conclusions:

57. For all the foregoing reasons, we are satisfied that the Impugned Order is a contrivance that has been caused by the device adopted by the promoters of Manav Greys (the Khandhar family) to defeat the obligations owed to SBI. The *stratagem* of invoking Section 23 of the Senior Citizens Act has been cynically adopted. It is apparent to us that the proceedings conducted under the Senior Citizens Act have been a sham with a uni-dimensional focus on undermining the title of the mortgagor to the Subject Property, and thereby jeopardizing the interest of the mortgagee. By securing the Impugned Order, Bharati's attempt has been to disrupt and delay the enforcement proceedings, by bringing in a new controversy over the very title of Vidhi, the mortgagor, to the Subject Property.

58. While there has been no attempt to seriously defend the allegations of Bharati in the Application, there also appears to have been no reasonable effort on the part of the Maintenance Tribunal to examine the veracity of Bharati's claims. There appears to be no regard to how someone living in penury would survive and be maintained merely by reversing a property transfer. Since Bharati subverted the

wider ambit, scope and scheme of the Act, the Maintenance Tribunal too lost sight of the scheme and scope of the law, thereby resulting in abuse of the law.

59. We are not inclined to accept Mr. Modi's suggestion that SBI should be relegated to the alternate remedy of an appeal before the appellate tribunal under the Act, or that the matter be remanded for fresh consideration by the Maintenance Tribunal. It is trite law that the doctrine of alternate remedy is a function of self-restraint by constitutional court. In our opinion, considering the facts of this case, we would be failing in our duty if we did not take note of the abuse of the law, and the abject absence of adjudicating the existence of jurisdictional facts, to quash and set aside the Impugned Order.

60. As stated earlier, we have solely restricted ourselves to adjudicating whether the Impugned Order is sustainable in law. For the reasons articulated above, we are of the clear view that the Impugned Order is materially lacking in adjudication of foundational and jurisdictional facts. That apart, the collusive and dishonest conduct of the proceedings before the Maintenance Tribunal, is writ large on the face of the record, necessitating our intervention by way of quashing and setting aside the Impugned Order.

61. Dealing with such abusive conduct, the Supreme Court laid

down the principles succinctly in *S.P. Chengalvaraya Naidu vs. Jagannath*⁶ in the following words:-

“5.....The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's [sic] case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

[Emphasis Supplied]

62. In these circumstances, we have no hesitation in quashing and setting aside the Impugned Order insofar as it relates to the Subject Property, with costs, which we have dealt with below.

Consideration of Costs:

63. Before parting with this matter, we must deal with the consequences of such cynical and abusive conduct on the part of litigants who perceive no self-restraint in subverting the rule of law. The proceedings before the Maintenance Tribunal have inflicted a public cost too that goes beyond lenders and borrowers. The Maintenance Tribunal is manned by the Sub-Divisional Officer, who has serious day-to-day executive work to handle as an administrator

⁶(1994) 1 SCC 1

apart from administering the Maintenance Tribunal, dealing with genuine cases. The Impugned Order has had implications for the judicial burden at the DRT and DRAT too, not to mention, on this Court. Precious judicial time is spent on litigation by parties who come to Court with unclean hands. The time and resources that such cases inflict on the system could be more productively spent on really deserving cases.

64. The abuse of a well-intentioned piece of ameliorative legislation also has the effect of undermining its legislative objectives and social impact. Proceedings such as the one initiated by Bharati, lead to a perception that such legislation, aimed at special protection for specially-disadvantaged and weak members of society, are prone to abuse. Such misperception can undermine the standing of the merits of the cases pursued by genuine senior citizens who may invoke their entitlements. The approach and attitude of society towards those seeking enforcement of rights under such legislation also gets moulded with a cloud of non-genuineness.

65. We are also conscious that Bharati has perhaps not personally been the driving force behind the Application and has been the front for machinations by others, who are not before us. Therefore, while we believe that exemplary costs are warranted, we have persuaded

ourselves, purely as a matter of mercy to Bharati, that it would be just and proper that costs in the sum of Rs. 1 lakh shall be donated by her to a charitable organisation that works for the maintenance and welfare of genuinely neglected senior citizens. Accordingly we direct that on or before 19th January, 2025, costs in the sum of Rs. 1 lakh shall be paid by Bharati as a donation to Helpage India (<https://www.helpageindia.org>), after which she shall be obliged to file an affidavit confirming that the costs have been paid.

66. Rule is made absolute in the aforesaid terms. The Writ Petition is disposed of accordingly.

67. Although the Writ Petition is disposed of, we list the matter for reporting compliance, on January 20, 2025.

68. All actions required to be taken pursuant to this judgment shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]