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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CWP-618-2024  
Date of decision: 11.01.2024

Ajit Dahiya

...Petitioner

Versus

Deputy Commissioner-cum-Appellate Tribunal, Sonipat and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Vikram Singh, Advocate and  
Mr. Divyam Singh, Advocate for the petitioner.

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**VIKAS BAHL, J. (ORAL)**

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 21.12.2023 (Annexure P-6) passed by respondent No.1 and order dated 14.07.2023 (Annexure P-4) passed by respondent No.2.
2. Brief facts of the present case are that respondent No.3, who is a senior citizen aged more than 84 years had by virtue of a transfer deed dated 11.07.2019, transferred the house in question measuring 198 square yards in the name of the present petitioner who is the son of respondent No.3. In the said transfer deed, specific mention was made with respect to the provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the Act of 2007”)

and also mentioned that the transferee should provide for all the basic facilities for the maintenance of the transferor and would also fulfill the necessary requirements of the transferor and in case of not doing so, the transferor would have a right to take the property back and it was further stated in the said transfer deed that if any party to the transfer deed is guilty of violating any condition then the transfer deed would become void. Further perusal of the transfer deed would show that it was mentioned that respondent No.3 had purchased the property vide registered sale deed No.3438 dated 13.08.1997 and mutation regarding the same was sanctioned on 26.03.2018. Respondent No.3 filed an application dated 23.06.2022 (Annexure P-2) under the Act of 2007 against the present petitioner, wife of the petitioner (respondent No.4) and his second son Naresh (respondent No.5), on the averments that respondent No.3 was 84 years of age and was a Senior Citizen and in the year 1997, he had purchased the property in question and had constructed a house thereon and thereafter, had transferred the said property vide transfer deed dated 11.07.2019 in favour of the present petitioner. It was averred that for sometime, the petitioner and his wife were taking care of respondent No.3 and his wife but thereafter, they stopped taking care of them and did not treat them well. It was averred that even food was not served on time and wife of respondent No.3 was suffering from cancer and no proper care was given to her and thereafter, respondent No.3 was thrown out of the house. It was averred that thereafter, respondent No.3 went to live with his other son namely Naresh (respondent No.5) but the said respondent No.5 also did not serve respondent No.3 and told respondent No.3 that since he had transferred the house in favour of the

petitioner then he should go and stay with the petitioner and by placing reliance upon the provisions of Sections 22 and 23 of the Act of 2007 a prayer was made in the application (Annexure P-2) for cancellation of the transfer deed and further prayer was made for delivering the possession of the property to respondent No.3.

3. A joint reply was filed by the petitioner, respondent Nos.4 and 5 and a perusal of the said reply would show that the fact that respondent No.3 was a senior citizen was admitted as averments in para 1 of the application was stated to be true and correct and even the averments made in the application to the effect that 18 acres of land belonging to the grandfather of the petitioner had been transferred in favour of the petitioner and his brother-respondent No.5 had not been disputed. The SDM-cum-Maintenance Tribunal, Sonipat vide order dated 14.07.2023 (Annexure P-4), after hearing both the parties, accepted the said application and set aside the transfer deed dated 11.07.2019 and restored the ownership of respondent No.3-applicant and directed the Tehsildar/Sub Tehsildar Sonipat to enter the mutation in favour of respondent No.3. Further direction was given to the petitioner and respondent Nos.4 and 5 to behave properly with respondent No.3 and also provide facilities and medicines to respondent No.3. An appeal filed by the petitioner and respondent No.5 was dismissed vide order dated 21.12.2023 (Annexure P-6). A perusal of the said order would show that it was found that respondent No.3 was a senior citizen and was suffering from ailments and was living with his relatives for the last couple of years and it is the said relatives who are maintaining him. It was also found that respondent No.3 was the original owner of the property. A counselling report

which was, during the course of proceedings, directed to be prepared was also made a part of the said order and the said report has been annexed at running page 53 of the paper book. A perusal of the said report would show that during the course of counselling, the present petitioner and respondent No.5 had given a statement that they would not give even an inch of area to their father in their house and even suggestion made by the Counsellor that one room be given to respondent No.3 in the house, was not accepted. The statement of the petitioner to the above effect was recorded which was stated to be attached along with the said report. In the said report, it was also observed that respondent No.3 is a senior citizen and is living with his relatives for past several years and it is the relatives who are taking care of him. Specific finding on the basis of the statements of the petitioner and respondent No.5 was given that they have refused to keep respondent No.3 in their house. The said report was also relied upon in the order dated 21.12.2023. The statement annexed along with the said report has not been annexed along with the present writ petition. Aggrieved against the orders dated 14.07.2023 and 21.12.2023, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner has raised three arguments to challenge the impugned orders. First argument is that the impugned orders are non-speaking and thus, deserve to be set aside on the said ground. The second argument raised is that in the application dated 23.06.2022 filed by respondent No.3, the averment made is that on 14.05.2019, the petitioner had thrown respondent No.3 out of the house in question whereas transfer deed in the present case is dated 11.07.2019 and is subsequent to the said

date and thus, the said averment is incorrect. The third submission made by learned counsel for the petitioner is that the petitioner is ready to keep respondent No.3 in his house now. On the basis of said three arguments, learned counsel for the petitioner has submitted that the impugned orders be set aside.

5. This Court has heard learned counsel for the petitioner and has perused the paper book.

6. The fact that respondent No.3 is a senior citizen is not disputed before this Court. Even otherwise, a perusal of the memo of parties at page 6 of the present writ petition would show that respondent No.3 is shown to be 84 years of age. The fact that respondent No.3 is 84 years of age and is a senior citizen has been averred in para 1 of the application dated 23.06.2022 and the said averment has been admitted in para 1 of the reply. The original ownership of respondent No.3 of the property in question is also not disputed before this Court. A perusal of the transfer deed dated 11.07.2019 (Annexure P-1) would show that it has been specifically mentioned that respondent No.3 was the owner of the house in question by virtue of sale deed No.3438 dated 13.08.1997 and mutation No.13544 regarding the same had been sanctioned on 26.03.2018. The transfer deed was executed with the condition that the petitioner shall provide basic amenities and fulfill basic physical needs of respondent No.3 and in case of failure of the petitioner to provide the said amenities, respondent No.3 would have a right to take back the said property and this is also the summary of the averments made in the application. Moreover, the said aspect has not been disputed and no arguments regarding the same have been raised before this Court. The fact

that the petitioner has not taken care of respondent No.3 is apparent from the averments made in the application dated 23.06.2022 and also from the Counselling Report (page 53 of the paper book) which has been prepared in pursuance of the order passed by the Appellate Tribunal dated 12.12.2023 and has also formed a part of the order dated 21.12.2023 inasmuch as it was specifically recorded in the said report that the petitioner had refused to give even an inch in the house in question to respondent No.3 to live in and the suggestion given by the Counsellor to the effect that at least one room be given to respondent No.3 to live in, was also not accepted. It was also recorded that respondent No.3, in spite of having two sons, was living with his relatives for the past several years. The fact that respondent No.3 is not living in the house of the petitioner or in that of the other son i.e., respondent No.5 has not been disputed before this Court. In the application dated 23.06.2022, it has been specifically averred by respondent No.3 that after execution of the transfer deed, the petitioner and his wife-respondent No.4 stopped taking care of respondent No.3 and his wife and they did not even provide food on time and did not treat them properly and wife of respondent No.3 was suffering from cancer but no proper medical treatment was given. There is nothing on record to suggest that any amount has been paid by the petitioner to respondent No.3 for his maintenance. The Appellate Tribunal has also taken into consideration the fact that the petitioner is not ready to keep his father as per his own statement. All the ingredients contained in Section 23 of the Act of 2007 are met in the present case and thus, the application filed by the senior citizen was meritorious and in accordance with law and has been rightly allowed.

7. All the arguments raised by learned counsel for the petitioner are meritless. With respect to the orders being non-speaking, it would be relevant to note that the Appellate Tribunal vide order dated 21.12.2023 has not only given specific findings with respect to respondent No.3 being owner of the house in question and also the fact that respondent No.3 is a senior citizen but has also taken into consideration the Counseling Report which has been made a part of the order and the observations in the Counseling Report to the effect that the petitioner had refused to keep respondent No.3 in his house. The versions given by both the sides have been duly noticed. Even the order dated 14.07.2023 records the fact that Sub Divisional Magistrate-cum-Maintenance Tribunal is in agreement with the arguments raised on behalf of respondent No.3. Moreover, as has been stated hereinabove, this Court has considered the entire case and has come to the conclusion that the application filed by respondent No.3 dated 23.06.2022 complies with all the conditions enshrined under Section 23 of the Act of 2007 and thus, the impugned orders do not deserve to be set aside on the grounds raised by learned counsel for the petitioner. With respect to the second argument raised, it would be relevant to note that it has not been disputed that respondent No.3 is not residing with the petitioner. A perusal of the order dated 21.12.2023 as well as the Counseling Report which is at page 53 of the paper book would show that respondent No.3 is residing with his relatives for the last several years and the petitioner has refused to keep him in the house in question. Thus, the stand of respondent No.3 to the effect that he has been thrown out of the house stands prima facie established. Apparently, the date which has been mentioned in para 4 of the

application (Annexure P-2) is on account of some mistake as reading of the whole para 4 of the said application would show that events subsequent to 11.07.2019 have been mentioned in the same. Moreover, once the ingredients of Section 23 of the Act of 2007 are fulfilled, the question on which date the petitioner had thrown respondent No.3 out of the house, would pale into insignificance. As has been observed hereinabove, it is apparent that the petitioner has not taken care of the physical needs of respondent No.3 and even in case the petitioner had not evicted respondent No.3 from the house even then the application filed under Section 23 of the Act of 2007 would be maintainable as the said Section does not require the eviction of the senior citizen from the premises in question. Section 23 of the Act of 2007 is reproduced hereinbelow:-

***“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.”*

8. Thus, the second argument raised by learned counsel for the petitioner is also rejected. The third argument raised by learned counsel for the petitioner to the effect that the petitioner is now ready to keep respondent No.3, is apparently an afterthought. A perusal of the Counseling Report annexed at page 53 of the paper book would clearly show that the petitioner had given a statement that he is not ready to give even an inch of the house in question to his father and he is not even ready to give one room to him to live in. A perusal of the said counseling report would show that the statements of the parties were attached, however the said statements have not been annexed with the present writ petition and are also not disputed before this Court. Moreover, there is nothing on record to show that the petitioner ever gave any maintenance or paid any money to respondent No.3 to meet his basic needs and expenses more so, when it is the case of the petitioner himself that he is not residing with respondent No.3.

9. Keeping in view the abovesaid facts and circumstances, there is no illegality or infirmity in the impugned orders passed and thus, the present writ petition being meritless, deserves to be dismissed and is accordingly, dismissed.

11.01.2024  
Pawan

(VIKAS BAHL)  
JUDGE

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|-----------------------------|--------|
| Whether speaking/reasoned:- | Yes/No |
| Whether reportable:-        | Yes/No |