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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1034-2024
Date of decision: 18.01.2024

Dharambir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.S. Dhaliwal, Advocate and
Mr. Sandeep Siwach, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for setting aside the order dated 21.12.2023 (Annexure P-8) passed by respondent No.2.
2. Brief facts of the present case are that a transfer deed dated 11.01.2021 (Annexure P-1) was executed by respondent No.4-Senior Citizen in favour of the present petitioner, who is his son, with respect to land measuring 26 kanals 14 marlas. In the said transfer deed, specific condition was recorded to the effect that the transferee i.e., present petitioner will provide all the basic amenities to the transferor i.e. senior citizen and in case of his failure to do so, the transferor will have the right to take back the property as per 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”). On 28.10.2021, respondent No.4 filed an application for cancellation of the said transfer deed dated 11.01.2021, in addition to the cancellation of the second transfer deed which was executed by respondent No.4 in favour of his other son-respondent No.5. In the said application, the age of respondent No.4 was stated to be 72 years and it was specifically averred in para 2 of the application that respondent No.4 was the owner in possession of the land in question, which has not been disputed in the reply (Annexure P-5) filed by the present petitioner inasmuch as, paras 2 and 3 of the application are stated to be correct in the said reply. It was further averred in para 4 of the said application that the petitioner had given confidence to respondent No.4 that he would serve respondent No.4 in his old age and would take care of his medicines and other medical needs and it was on the basis of the said statement that the land was transferred by virtue of the transfer deed in question by respondent No.4 in favour of the petitioner. It was averred that since the last six months preceding the filing of the application, the petitioner was not taking care of respondent No.4.

3. A reply was filed by the present petitioner in which, the aspect of respondent No.4 being senior citizen and having given the property to the petitioner was not disputed. It was pleaded by the petitioner that respondent No.4 was a mischievous person and used to pick quarrels in his old age and that even FIR No.188 dated 11.11.2020 under Sections 323, 427, 506, 307, 34 of IPC was registered against respondent No.4 and other persons. It was averred that the transfer deed was executed by respondent No.4 in favour of

the petitioner, out of his free will and consent. The Maintenance and Welfare of Parents and Senior Citizen Tribunal (hereinafter to be referred as “the Maintenance Tribunal”), had disposed of the application by directing the petitioner and respondent No.5 to pay Rs.5000/- per month to respondent No.4 and with a further direction to the petitioner and respondent No.5 not to quarrel with respondent No.4. It was noticed in the said order that the petitioner, during the pendency of the case, had transferred a part of the property to one Kiran Bala wife of Jagbir. A perusal of the said order would show that no reason was given as to why the main relief for cancellation of the transfer deed was not granted by the Maintenance Tribunal. Respondent No.4 filed an appeal against the said order which was allowed vide order dated 21.12.2023 (Annexure P-8) and it was ordered that the land which remained with the present petitioner be transferred back in favour of respondent No.4 and in view of the same, the petitioner was not required to pay the maintenance of Rs.5000/- per month. A perusal of the said order would show that it was observed by the Appellate Tribunal that the petitioner had made the life of respondent No.4 very difficult and had boycotted respondent No.4 socially and that the petitioner did not respect his mother and sisters nor had served respondent No.4 or his mother and sisters and had also not fulfilled his social duties. The argument on behalf of respondent No.4 to the effect that the petitioner had performed the marriage of his daughter and in the marriage card, the name of respondent No.4 or mother of the petitioner or his sisters had not been mentioned was noticed. In the said order, it was also noticed that when the case was fixed for arguments on 21.12.2023, the petitioner did not

choose to appear. Aggrieved against the said order dated 21.12.2023, the present writ petition has been filed.

4. Learned counsel for the petitioner has submitted that the petitioner was satisfied with the order dated 12.05.2023 passed by the Maintenance Tribunal, vide which, the amount of Rs.5000/- per month was ordered to be paid as maintenance by the petitioner and the petitioner did not file any appeal against the same and even today he is ready to comply with the said order or even pay an enhanced maintenance upto the amount of Rs.10,000/-. It is further submitted that on the basis of the said argument, the impugned order deserves to be set aside.

5. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the present writ petition is meritless and deserves to be dismissed for the reasons recorded hereinafter.

6. Respondent No.4 in the application dated 28.10.2021 was stated to be 72 years of age and a senior citizen. The fact that respondent No.4 is a senior citizen was neither disputed before the authority nor has been disputed before this Court. It was specifically averred in para 2 of the application dated 28.10.2021 that respondent No.4 was the owner of the land in question and the said averments made in para 2 have been stated to be correct in the reply dated 30.03.2022 (Annexure P-5) and thus, the ownership of respondent No.4 with respect to the property in question is also not in dispute. The transfer deed dated 11.01.2021 (Annexure P-1) clearly shows that a condition was incorporated in the said transfer deed to the effect that the transferee i.e. the petitioner, will have to provide all the basic amenities and fulfill the necessary needs of the transferor i.e.

respondent No.4 and in case of his not doing so, the transferor i.e. respondent No.4, would be entitled to take back the property in accordance with the provisions of Section 23 of the Act of 2007. It is the specific case of respondent No.4 that the petitioner has stopped taking care of him. The Appellate Tribunal had also taken note of the argument on behalf of respondent No.4 to the effect that the petitioner had sold a part of the property in question to one Kiran Bala wife of Jagbir during the pendency of the case and that the petitioner had performed marriage of his daughter and in the marriage card, neither the name of respondent No.4 nor the name of the mother and sisters of the petitioner, was mentioned. Keeping in view the above said facts, regarding which, no rebuttal was made by the petitioner before the Appellate Tribunal, it was observed by the Appellate Tribunal that the petitioner had no respect for respondent No.4, his mother and five sisters and neither had served respondent No.4 nor the aforesaid persons. The fact that during the pendency of the case, the petitioner had sold a part of the property to Kiran Bala shows the mala fide intent of the petitioner to create third party rights and the plea now sought to be raised that the petitioner is ready to pay maintenance upto Rs.10,000/- per month, is apparently an afterthought. Moreover, there is nothing on record to even remotely show that prior to the filing of the application dated 28.10.2021, the petitioner had transferred any money to respondent No.4 or his mother for their maintenance, rather the plea raised by the petitioner in para 1 of the reply dated 30.03.2022 to the effect that respondent No.4 was a mischievous person and used to pick quarrels, clearly shows that the petitioner has no respect for respondent No.4 and that there are disputes between them. The

criminal proceeding has also resulted into acquittal of respondent No.4. The Maintenance Tribunal had not given any valid reason for rejecting the main prayer of respondent No.4 with respect to cancelling the transfer deed and the Appellate Tribunal has rightly allowed the appeal of respondent No.4 as all the necessary ingredients of Section 23 of the Act of 2007 are met in the present case. The Appellate Tribunal had in fact, taken a lenient view in favour of the petitioner inasmuch as the property which had been transferred by the petitioner during the pendency of the application, although was hit by the principle of lis pendens, has not been ordered to be returned to respondent No.4 and the petitioner has not been bound to pay the maintenance, which the petitioner was otherwise duty bound to pay to respondent No.4 being his son.

7. Keeping in view the abovesaid facts and circumstances, the present writ petition being meritless, deserves to be dismissed and is accordingly, dismissed.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

18.01.2024
Pawan

(VIKAS BAHL)
JUDGE

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