

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

(104)

CWP-8182-2024

Date of decision: - 30.04.2024

Gurnam Singh

....Petitioner

Versus**Additional Deputy Commissioner, Ludhiana and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Aayush Gupta, Advocate,
for the petitioner.

Ms. Ashish Soi, Advocate
for caveator-respondent No.3.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari praying for setting aside the order dated 04.01.2024 (Annexure P-13) passed by respondent No.1.

2. Brief facts of the case are that respondent No.3, who is a senior citizen and is the mother of the present petitioner, had filed an application/petition under Section 23 of the Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred to as “Act of 2007”) for cancellation of the transfer deed dated 09.03.2017. In the said application, it was stated that respondent No.3 was born on 01.01.1943 and was thus a senior citizen and that she was the owner in possession of the property measuring 443 sq. yards, which was the property in question. It was further averred that the present petitioner had requested respondent No.3 to

transfer the said property in his favour and had assured respondent No.3 that he would take care of her and her husband till the end of their lives and would provide all kinds of basic amenities, physical needs and other necessities of life and it was on the said assurance that the transfer deed dated 09.03.2017 was executed by respondent No.3 in favour of the petitioner and a condition to the said effect was mentioned in the transfer deed. It has further been averred that after a short span of the execution of the transfer deed, the petitioner stopped providing even the basic amenities, basic needs and necessities of life to respondent No.3 and her husband and compelled them to lead a miserable life and further started harassing, humiliating and torturing them and even threatened to dispossess them from the property in question and that the petitioner did not even provide them medicines or medical treatment from the doctors and they were on the verge of starvation. Reply dated 16.08.2022 (Annexure P-2) was filed by the petitioner to the said application, in which, the fact that respondent No.3 was a senior citizen and was also the owner of the property was not disputed. No specific averment or document was annexed along with the reply to show that any monthly maintenance was being paid to respondent No.3 or to her husband by the petitioner to take care of their basic needs.

3. The Sub-Divisional Magistrate-cum-Maintenance Tribunal, vide order dated 23.09.2022 instead of ordering the cancellation of the transfer deed directed the petitioner to pay Rs.7,500/- per month to respondent No.3. While passing the said order, no legally sustainable reason was given as to why the prayer of respondent No.3 for cancellation of the transfer deed had not been allowed and the transfer deed had not been cancelled. A perusal of the said order would show that both the parties were

called and respondent No.3 had reiterated her stance and the arguments raised on her behalf to the effect that she was not provided with household necessities and medicines and other expenses were noted. Respondent No.3 being aggrieved with the order dated 23.09.2022 filed an appeal against the said order and the Appellate Tribunal vide order dated 04.01.2024 (Annexure P-13) allowed the appeal of respondent No.3 and cancelled the transfer deed dated 09.03.2017. A perusal of the said order would show that it was observed by the Appellate Tribunal that the relief granted by the Maintenance Tribunal was not in consonance with the prayer made by respondent No.3 and was also not in consonance with law. The arguments raised on behalf of respondent No.3 to the effect that respondent No.3 was a senior citizen and was being forced to live at the mercy of their relatives and that the petitioner was not paying for her medical expenses etc. was noticed. It was also observed that the Appellate Tribunal, had vide order dated 19.01.2023 stayed the sale of the disputed property until the decision of the appeal and that in the transfer deed it was specifically stated that the petitioner would take care of his mother and would be bound to fulfill her basic and medical needs and that subsequently the petitioner had started misbehaving with the respondent No.3. The fact that Satnam Singh brother of the petitioner committed suicide and an FIR under Section 306 IPC had been registered against the petitioner and also the fact that respondent No.3 was residing with sons of Satnam Singh was also noticed.

4. Aggrieved against the order dated 04.01.2024 (Annexure P-13), the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner has submitted that the impugned order deserves to be set aside on three grounds. It is first argued

that the petitioner has love and affection for respondent No.3 and is ready to take care of her and has been complying with the order dated 23.09.2022 (Annexure P-12) and further undertakes to pay maintenance to respondent No.3. The second ground raised by learned counsel for the petitioner is that the present case has been instituted by respondent No.3 at the behest of brother of the petitioner i.e. Satnam Singh with which the present petitioner is in litigation. The third ground of challenge is that a lease deed dated 22.07.2010 (Annexure P-14) was executed by respondent No.3 along with Satnam Singh and Paramjit Kaur in favour of the present petitioner and in furtherance of the said lease deed the petitioner has further given a lease to M/s Hindustan Petroleum Corporation Limited for a period of 29 years 11 months.

6. Learned counsel for respondent No.3-Caveator has opposed the present writ petition and has submitted that the order dated 04.01.2024 (Annexure P-13) is in accordance with law and the present writ petition deserves to be dismissed. It is further submitted that respondent No.3 is living with sons of Satnam Singh as the petitioner had not taken care of respondent No.3 after the execution of the transfer deed in the year 2017 and it was only after waiting for a period of almost five years that respondent No.3 had moved the application dated 09.08.2022 under the 2002 Act. It is submitted that all the arguments now sought to be raised by the petitioner are an afterthought and are raised only to hold on to the property in question and that the rights of the parties are required to be adjudicated on the date when the application is filed.

7. This Court has heard learned counsel for the parties and has perused the paperbook.

8. It is not in dispute that respondent No.3, who is mother of the petitioner, was a senior citizen on the date the application under Section 23 of the Act of 2007 was filed. In para No.1 of the application, it was stated that the date of birth of the petitioner is 01.01.1943 and that she was 79 years of age on the date of filing of the said application and the averments made to the said effect have not been denied in the reply (Annexure P-2). Even the fact that respondent No.3 was the owner of the property in question has been specifically stated in para No.2 of the application, which fact has also not been denied in the reply. The above-said two aspects have not been disputed before this Court also. A perusal of the application (Annexure P-1) would show that it was specifically averred that the conditions, as required under Section 23 of the Act of 2007, were incorporated in the transfer deed. The transfer deed has not been annexed so as to rebut the said averments in the application nor any argument on the said aspect has been raised. It is, thus, clear that the transfer was made by respondent No.3 in favour of the petitioner on the assurance given by the petitioner that the petitioner would provide the basic amenities and basic physical needs and other necessities of life to respondent No.3 and her husband till the end of their lives. It is the specific case of respondent No.3 that after some time of the execution of the said transfer deed, the petitioner stopped providing the basic needs and necessities of life and also stopped paying the medical expenses and rather started harassing, humiliating and torturing respondent No.3 and her husband and even threatened to dispossess them from the property in question. Learned counsel for the petitioner during the course of arguments has fairly stated that there is nothing on record to show that prior to the filing of the application dated 09.08.2022, the petitioner had paid any monthly

expenses to respondent No.3 to meet her basic needs and expenses. The Appellate Tribunal after considering the statement of the parties had observed that after the execution of the transfer deed, the present petitioner had started misbehaving with respondent No.3 and had stopped paying her the required expenses for meeting the basic needs and thus, the Appellate Tribunal had rightly passed the order of cancellation of transfer deed.

9. It is a matter of settled law that once the conditions under Section 23 of the Act of 2007 are fulfilled as in the present case, it was incumbent upon the authorities to allow the application of the senior citizen and order the cancellation of the transfer deed. The arguments raised by learned counsel for the petitioner do not in any way further the case of the petitioner. The argument raised to the effect that the petitioner after the passing of the order dated 23.09.2022 has been paying maintenance in compliance of order dated 23.09.2022 and was ready to take care of respondent No.3 does not call for setting aside the impugned order, inasmuch as, it is apparent that till 09.08.2022 the petitioner had not taken care of respondent No.3 and had rather misbehaved with respondent No.3 and that with filing of the application dated 09.08.2022, the rights of respondent No.3 had crystalized. Moreover, the payment of maintenance in pursuance of the orders passed by the authorities would not be a ground for either dismissing the application of the senior citizen or for setting aside the impugned order. Even the arguments raised by learned counsel for the petitioner to the effect that the application has been filed at the behest of the brother of the petitioner Satnam Singh is neither substantiated nor furthers the case of the petitioner. It is not in dispute that the application has been signed by respondent No.3. A perusal of the order dated 23.09.2022

(Annexure P-12) would show that respondent No.3 had even come to the Court and reiterated the fact that the present petitioner was not taking care of her basic needs. Once the mother, who had given birth to the petitioner, during her life time had transferred the property in favour of the petitioner, the very fact that respondent No.3 had approached the Court and given the statement against the petitioner, would *prima facie* establish that the petitioner has not been taking care of respondent No.3. There is no reason for a mother to proceed against one son at the behest of another when the said mother had willingly transferred her property to the present petitioner during her life time. It would be relevant to note that it is not in dispute that the said Satnam Singh, who was the brother of the petitioner, had committed suicide and is no more living and still respondent No.3 is not residing with the petitioner and is residing with the sons of Satnam Singh. An FIR under Section 306 IPC has also been registered against the present petitioner.

10. As far as the argument with respect to there being a lease in favour of the petitioner, who as per his case, has further leased it to the M/s Hindustan Petroleum Corporation Limited and is getting rent from the M/s Hindustan Petroleum Corporation Limited, is concerned, suffice it to say that the present case is for transferring back the ownership of the property from the petitioner to respondent No.3 and by virtue of the cancellation of the transfer deed, it is the ownership of the property, which would be transferred back in favour of respondent No.3 and merely because the petitioner or some third party had leasehold rights, the rights of respondent No.3 to get the transfer deed cancelled cannot be fettered. Moreover, the cancellation of the transfer deed by virtue of the passing of the impugned order which is being upheld by this Court would not be deemed to be a cancellation of the lease

deed.

11. The impugned order dated 04.01.2024 (Annexure P-13) is in accordance with law and calls for no interference. The present writ petition is meritless, deserves to be dismissed and is accordingly dismissed with the clarification that the present order or the impugned order would not be deemed to be cancelling the leasehold rights of the petitioner or the subsequent transferee i.e. M/s Hindustan Petroleum Corporation Limited and the rights of the parties with respect to the said lease deed would be considered and adjudicated before the appropriate forum if raised by any of the parties.

April 30, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes