

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

(104)

CWP-6509-2024

Date of decision: - 19.03.2024

Gulzar Singh

....Petitioner

Versus**State of Punjab and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Dr. Payel Mehta, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Article 226/227 of the Constitution of India in the nature of certiorari seeking setting aside of the order dated 17.10.2023 (Annexure P-1) passed by respondent No.2 in Case No.14 titled 'Gulzar Singh Vs. Swarn Kaur and another' and order dated 27.03.2023 (Annexure P-2) passed by respondent No.3 in Case No.02/Senior Citizen/Petition 03/2023 titled 'Swaran Kaur Vs. Jasbir Singh and another'.

2. Brief facts of the case are that respondent No.4, who is the mother of the present petitioner, had transferred ½ share each of the property in question, in favour of the present petitioner and the respondent No.5, who are the sons of respondent No.4, vide transfer deed dated 14.06.2017 (Annexure P-3). In the said transfer deed, it was stated that respondent No.4 is the owner of the property and that the transfer was

being made out of her free will and without any fear, with the further stipulation that the beneficiaries i.e. petitioner and respondent No.5 would provide services and basic needs of respondent No.4 according to Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to “Act of 2007”) and in case of failure of doing so, the transfer of the ownership would be cancelled. The petitioner and respondent No.5 having violated the said condition, respondent No.4 moved an application under Section 23 of the Act of 2007 for cancellation of the said transfer deed. The Sub-Divisional Magistrate, Derabassi, District SAS Nagar, vide order dated 27.03.2023 (Annexure P-2), after taking into consideration the fact that respondent No.4 was the owner of the property in question and was also unable to work due to her old age and also the fact that the petitioner and respondent No.5 were not providing the basic requirements, allowed the said application and cancelled the transfer deed. A perusal of the order dated 27.03.2023 (Annexure P-2) would show that the report of the tehsildar was called for and the jamabandi for the years 2011-12 with respect to the property in question was considered and on the basis of the same, it was held that respondent No.4 was the owner of the property in question. The petitioner had filed an appeal before the Additional Deputy Commissioner (J)-cum-Collector, SAS Nagar, who was the appellate authority and the said appeal was also dismissed, vide order dated 17.10.2023 (Annexure P-1). In the said order dated 17.10.2023, it was observed that respondent No.4 was entitled to claim back her property in accordance with provisions of Section 23 of the Act of 2007, which right was reserved by her at the time

of transferring the property. It was reiterated that respondent No.4 was the owner of the property in question. The arguments on behalf of respondent No.4 to the effect that the petitioner did not obey the law and always raised fights and also the fact that the petitioner had his own premises and was a government servant and had also purchased two plots, were also noticed. It is the said two orders, which have been challenged in the present writ petition.

3. Learned counsel for the petitioner has submitted that the impugned orders deserve to be set aside on two grounds. The first ground being that respondent No.4 was getting Rs.15,000/- per month as rent and also getting government pension of Rs.15,00/- per month and thus, her basic needs were being met from the said amount and it could not be said that respondent No.4 could not meet her basic needs. The second argument raised by learned counsel for the petitioner is that on equity, the impugned orders deserve to be set aside as in case the impugned order(s) are not set aside, then, subsequently, respondent No.4 would also have a right to seek possession from the petitioner.

4. 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 to be detailed herein after.

5. The fact that respondent No.4 is the owner of the property in question, which was transferred and was sought to be cancelled, has not been disputed. Further a perusal of order dated 27.03.2023 (Annexure P-2) would show that the relevant jamabandi has been taken into

consideration to observe that respondent No.4 was the owner of the property. Even a perusal of the transfer deed dated 14.06.2017 (Annexure P-3) shows that it has been stated therein that respondent No.4 was the owner of the property, which was the subject matter of transfer. A perusal of para No.2 of the order dated 17.10.2023 (Annexure P-1), which records the arguments of learned counsel for the petitioner, would also show that it was the argument raised on behalf of the petitioner that respondent No.4 had transferred the ownership of the property held by her by way of transfer deed dated 14.06.2017. Even the fact that Swaran Kaur/respondent No.4, who is the mother of the petitioner, is a senior citizen, has also not been disputed before this Court. A perusal of the transfer deed would show that it was specifically mentioned therein that the beneficiaries which included the petitioner would provide the services and basic needs of the senior citizen according to Section 23 of the Act of 2007 and in case of the beneficiaries failing to do so, transfer of ownership would be liable to be cancelled. Although, the pleadings of the parties i.e., application filed by the senior citizen and reply filed by the petitioner have not been annexed along with the present petition, but a perusal of the impugned order dated 17.10.2023 (Annexure P-1) (at page 10) would show that it was the case of respondent No.4 that the petitioner did not obey the law and used to raise fights with respondent No.4. Even while passing the order dated 27.03.2023 (Annexure P-2) it had been observed by the Sub-Divisional Magistrate, Derabassi, District SAS Nagar that the petitioner was not taking care of respondent No.4 and had also not fulfilled her basic needs. Moreover, nothing has been annexed

along with the present writ petition to even remotely show that any maintenance, much less per month maintenance, was being provided by the petitioner to respondent No.4. Thus, all the necessary components, as required under Section 23 of the Act of 2007, were fulfilled in favour of respondent No.4 and both the authorities had rightly passed the orders in favour of respondent No.4. Section 23 of the Act of 2007 is reproduced herein below: -

“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.”

6. A perusal of the same would show that once a senior citizen had transferred the property subject to the condition that the transferee would 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 would be deemed to have

been made by fraud or coercion or under undue influence and would at the option of the transferor be declared void by the Tribunal. As has been observed herein above, all the ingredients as required under Section 23 of the Act of 2007 have been fulfilled in the present case.

7. Both the arguments raised on behalf of the petitioner are meritless and deserve to be rejected. Whether respondent No.4 has any independent income or not is not the relevant factor to be considered while deciding an application filed by the senior citizen for setting aside the transfer deed. The relevant to be considered is as to whether the beneficiary provided the basic amenities and basic physical needs to the transferor, more so, when the transfer was made subject to the said condition. There is nothing on record to even remotely show that the said basic amenities were being provided by the petitioner to respondent No.4. Moreover, even with respect to the fact of rent and pension being received by respondent No.4, there is nothing on record to remotely show that any such amount was actually being received by respondent No.4 and sole reliance in this regard has been placed on the oral argument(s) raised on behalf of the petitioner in the order dated 27.03.2023 (Annexure P-2). Neither any pleadings in respect of the same nor any document in support of the said argument has been referred to or annexed along with the present writ petition. At any rate, as has been observed above, the said argument would not in any way further the case of the petitioner. The second argument raised by learned counsel for the petitioner to the effect that it would be equitable to set aside the impugned order is also meritless. In fact equity demands that the impugned orders be upheld.

Respondent No.4, who is a senior citizen and mother of the petitioner, had transferred her share in the property in question out of love and affection vide transfer deed dated 14.06.2017 during her lifetime and the very fact that respondent No.4 had to file an application seeking for cancellation of the transfer deed, *prima facie*, shows that the conduct of the petitioner towards respondent No.4 was not that as should have been of a son towards his mother. It was the duty of the petitioner to take care of his mother even in case respondent No.4 had not transferred any property in favour of the petitioner as she had given birth to him. Both the authorities had rightly come to the conclusion that the application of respondent No.4 was meritorious and have thus, rightly passed the orders, which have been challenged in the present writ petition.

8. Keeping in view the above-said facts and circumstances, the impugned orders dated 17.10.2023 (Annexure P-1) and dated 27.03.2023 (Annexure P-2), being legal, deserve to be upheld and the present writ petition being meritless, deserves to be dismissed and is accordingly dismissed.

March 19, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes