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

CWP-23333-2022 (O&M)
Date of decision: 30.05.2024

Ram Kumar

...Petitioner

Versus

Deputy Commissioner-cum-Appellate Tribunal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Amandeep Joshi, DAG, Haryana.

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 01.09.2022 (Annexure P-4) passed by respondent No.1 vide which appeal of respondent No.3 (Annexure P-3) has been allowed and the order passed by respondent No.2 dated 30.03.2022 (Annexure P-2) has been set aside.

2. Brief facts of the present case are that the petitioner who is a senior citizen and is father of respondent No.3 had filed an application dated 08.04.2021 for the cancellation of the transfer deed dated 26.12.2019 (Annexure P-1) and the subsequent mutation, which was executed by the petitioner in favour of his son-respondent No.3. In the said application, it



was specifically stated that the petitioner was 63 years of age and was a senior citizen and was the owner of the property in question by virtue of a sale deed 22.12.2004 and had constructed a two storey building/house on the plot. It is further stated that respondent No.3 had assured the applicant-petitioner that he would provide the petitioner with all the basic needs and would also maintain him and on the said assurance, the property was transferred by the petitioner in favour of respondent No.3. It is further averred that after the said transfer, the real character of respondent No.3 came out and he became cruel towards the petitioner and started misbehaving and disrespecting him and even started beating up the petitioner and threw him out of the house in question after locking the door of the house and threatened the petitioner that in case, he comes to the house then he would break his legs and since then, the petitioner has been staying in a rented accommodation. It is further averred in the said application that the petitioner has a lung infection and is diabetic and is undergoing treatment at Tulip Hospital, Sonipat and is regularly taking medicine. A reply was filed to the said application in which the aspect of the petitioner being a senior citizen and also being owner of the said property was not disputed. It was further averred in the said reply that the petitioner was residing with the other son and daughter-in-law in a rented accommodation and thus, it was admitted that the petitioner is not residing with respondent No.3. The transfer deed has also been annexed alongwith the present writ petition as Annexure P-1 and a perusal of the same would show that in the said transfer deed, it was specifically mentioned that in case of non-maintenance of the petitioner, the petitioner would have a right to



cancel the document and take back the property under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the 2007 Act'). The SDM-cum-Chairman, Maintenance Tribunal, Sonipat vide order dated 30.03.2022 (Annexure P-2) had come to the conclusion that the property was transferred by petitioner to respondent No.3 on the condition that respondent No.3 would provide basic amenities to the petitioner which he had refused to provide and that the petitioner was suffering from a lung infection and also had sugar problem and required constant medication and since the petitioner was the owner of the property and the transfer was conditional, the application was allowed and the transfer deed was cancelled and it was further observed that respondent No.3 would handover the possession of the property in question to the petitioner. The appeal filed by respondent No.3 was allowed by the Collector, Sonipat vide order dated 01.09.2022 (Annexure P-4) on the grounds which were beyond the ambit of Section 23 of the 2007 Act. Aggrieved against the said order, the petitioner has filed the present writ petition.

3. Notice of motion was issued in the present writ petition by the Co-ordinate Bench of this Court on 12.10.2022 and operation of the impugned order was stayed. On 17.08.2023, the matter was referred to the Mediation and Conciliation Centre on the basis of the submissions made by learned counsel for respondent No.3 to the effect that there is a possibility of compromise. The order dated 17.08.2023 is reproduced hereinbelow:-

“Learned counsel for respondent No.3 has prayed that there is a possibility of compromise between the parties and



the matter be sent to the Mediation and Conciliation Centre of this Court.

Learned counsel for the petitioner has also prayed that the matter be sent to Mediation and Conciliation Centre of this Court.

In view of the above, both the parties are directed to appear before the Mediation and Conciliation Centre of this Court on 29.08.2023.

For awaiting the report of the Mediator, adjourned to 31.10.2023.”

4. Thereafter, when the matter was taken up on 31.10.2023, it was pointed out that from the last two dates, respondent No.3 had not come present and thus, the matter could not be compromised. On the said date, no one had appeared on behalf of respondent No.3 and since then, none had appeared on behalf of respondent No.3 to oppose the present writ petition.

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

6. From the perusal of the pleadings, it is apparent that the fact that the petitioner is a senior citizen and is also the owner of the property is not disputed. Reference in this regard can be made to paras 1 and 2 of the application filed by the petitioner (Annexure P-7) before the Tribunal and the corresponding reply to the said paragraphs filed by respondent No.3 (Annexure P-8) before the Tribunal. A perusal of the transfer deed (Annexure P-1) would show that it has been specifically provided in the same that in case, respondent No.3 does not take care/maintain the petitioner, then the petitioner would have a right to get the said transfer deed cancelled in accordance with Section 23 of the 2007 Act. The averments to



the said effect have also been made in paragraph 4 of the application filed by the petitioner (Annexure P-7). It is the specific case of the petitioner, as has been detailed hereinabove, that respondent No.3 did not provide basic amenities to the petitioner and also started to fight with the petitioner and even threw him out from the house in question and had also told him that he would break his legs in case, he tries to enter the house. The averments made by the petitioner in the application to the effect that he has been residing in a rented accommodation since then has been admitted in paragraph 5 of the reply filed by respondent No.3. There is nothing on record to show that respondent No.3 has ever paid any maintenance to the petitioner either prior to the filing of the application or subsequent thereto. Thus, it is proved that respondent No.3 has not taken care of the petitioner and has not provided the basis amenities to the petitioner after execution of the transfer deed. The SDM-cum-Chairman, Maintenance Tribunal, Sonipat vide order dated 30.03.2022 (Annexure P-2) had rightly come to the conclusion that in the said circumstances, the transfer deed deserves to be cancelled and respondent No.3 deserves to be evicted from the house in question. The Appellate Tribunal has illegally reversed the said order by making observations which are *dehors* the provisions of Section 23 of the 2007 Act. Section 23 of the 2007 Act 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 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.”

7. Once it is prima facie established that the petitioner is a senior citizen and had transferred the property by way of gift or otherwise after the commencement of the Act subject to the conditions that the transferee shall provide the basic amenities and basic physical needs to the transferor and in case transferee fails to do so then as per the said provision, the transfer would be deemed to have been made by fraud or coercion or under undue influence and would be at the option of the transferor be declared void by the Tribunal. Since, all the ingredients of Section 23 of the 2007 Act were met in the present case, thus, it was incumbent upon the authorities to have allowed the application filed by the petitioner under Section 23 of the 2007 Act. The observations by the Appellate Tribunal to the effect that the dispute is of giving and taking of the money and of evicting respondent No.3 from the house in question to pressurize him, are alien to the present case as well as to the provisions of Section 23 of



the 2007 Act.

8. With respect to the wife of the petitioner, learned counsel for the petitioner, on instructions from the petitioner, has very fairly submitted that the petitioner has all love and affection for his wife and would provide all the medical facilities to his wife and has also undertaken to pay an amount of Rs.10,000/- per month into the account of his wife for her maintenance. It is further submitted that the petitioner only seeks cancellation of the transfer deed executed in favour of the son and eviction of the son and would wish that the wife of the petitioner resides in the same house. This statement made on behalf of the petitioner meets the concern of the Court with respect to the well being of the wife of the petitioner.

9. Even a perusal of the various orders passed in the present writ petition would show the unfair conduct of respondent No.3. After the respondent No.3 had appeared through counsel, counsel for respondent No.3 had prayed that the matter be referred to Mediation and Conciliation Centre as there was a possibility of compromise. It is thereafter that the counsel for respondent No.3 stopped appearing and it was also reported that respondent No.3 had not appeared before the Mediation and Conciliation Centre on the last two dates and thus, the matter could not be compromised. Thereafter, no one had appeared on behalf of respondent No.3 to rebut the arguments made by learned counsel for the petitioner.

10. Keeping in view the abovesaid facts and circumstances, the present writ petition is allowed and order dated 01.09.2022 (Annexure P-4) is set aside and the order dated 30.03.2022 (Annexure P-2) is upheld. The petitioner would be bound by the statement made before this Court of taking

care of his wife and permitting his wife to stay alongwith him in the house in question and will also take care of her health and well being and would regularly deposit an amount of Rs.10,000/- per month into the account of his wife. In case of the petitioner not doing so, it would be open to the wife of the petitioner to move an application for recalling of the present order.

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

30.05.2024
Pawan

(VIKAS BAHL)
JUDGE

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