



CWP-29818-2024

106

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

**CWP-29818-2024(O&M)
Date of decision: 06.11.2024**

Tarlochan Singh

...Petitioner

Versus

District Magistrate-cum-Maintenance Appellate Tribunal Mansa and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Prikshit Thakur, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of Constitution for issuance of writ in the nature of *certiorari* for quashing of impugned order dated 07.06.2023 (P-1) passed by respondent No.2 whereby learned Tribunal partly allowed the petition filed by petitioner under Section 23 of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (for short 'the Act') and granted Rs.1000/- per month as maintenance and the same to be paid by respondent Nos. 3 & 4 in equal shares and further for quashing of impugned order dated 28.02.2024 (P-2) passed by respondent No.1 whereby appeal filed by petitioner under Section 16 of the Act, was dismissed.

2. BRIEF FACTS

2.1 Petitioner is a 76-year-old senior citizen, having three sons from his wife (since deceased), namely, Gulzar Singh-respondent No. 3, Nirmal Singh-respondent No. 4 and Jagtar Singh. He is having property measuring 3 Kanals and 8 Marlas situated at Khalsa Tailor Street, near Minda Bhawan,

**CWP-29818-2024**

Mansa and includes 375/6800 share where constructed house exists (herein after referred to 'property in question').

2.2 After death of wife of petitioner, respondent No.3-Gulzar Singh continued to serve him. Petitioner being happy with the services and care rendered to him by respondent No.3-Gulzar Singh executed a transfer deed on 24.07.2019, vide which ownership of a part of his property, specifically 3.75 Marlas (a part of house built on 3 Kanals & 8 Marlas) transferred in favour of respondent No. 3 through gift deed no. 2217 dated 24.07.2019, as a reward for his care and service with the hope that he will take care of petitioner in future as well.

2.3 However, after the said transfer, his behaviour changed completely towards him. He even stopped giving him basic amenities, because of which petitioner was constrained to file an application under Section 23 of the Act seeking maintenance to the tune of Rs.10,000/- and to get property vacated from respondent No.3.

2.4 Learned Tribunal vide its impugned order dated 07.06.2023 (P-1) partly allowed the application and granted Rs. 1000/- as maintenance to be paid by respondent Nos. 3 & 4 in equal shares, but learned Tribunal failed to grant the relief of eviction of respondent No.3 from the property in question.

2.5 Feeling aggrieved against impugned order dated 07.06.2023, petitioner filed an appeal before learned Appellate Authority which dismissed the same vide impugned order dated 28.02.2024 (P-2) upholding the order of learned Tribunal.

3. CONTENTIONS ON BEHALF OF LEARNED COUNSEL FOR THE PETITIONER

3.1 Learned counsel contends that learned Tribunal granted meagre amount of maintenance to petitioner to the tune of Rs.2000/- per month and



CWP-29818-2024

did not consider the fact that he has the added responsibility of maintaining one paralyzed son.

3.2 Further contends that even the maintenance amount awarded vide impugned order has not been paid so far by respondent Nos.3 and 4.

3.3 Lastly contended that orders passed by both the authorities i.e. Maintenance Tribunal as well as Appellate Tribunal are completely silent with regard to the prayer made for evicting respondent No.3 from the property in question.

4. Heard learned counsel for the petitioner and perused the paperbook.

5. **OBSERVATIONS AND FINDINGS**

5.1. It is not in dispute that petitioner is getting old age pension to the tune of Rs.1500/- per month. Also noteworthy that on repeated asking of the Court, learned counsel for the petitioner is unable to point out as to whether respondent Nos. 3 & 4 are having any source of income or any landed property/business. It transpires that respondent No.3 is a labourer by profession and respondent No.4 is unemployed. Keeping in view the status of the parties, it can not be said that the amount of financial assistance of Rs.2,000/- per month awarded by the authorities is on lower side; rather the same is just and appropriate, particularly when petitioner is also receiving a sum of Rs.1500/- per month as old age pension.

5.2. No doubt, learned Maintenance Tribunal may order an eviction of children and relatives from the property of senior citizen where there has been a breach of obligation to maintain the senior citizen. In '***S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and Others***', (2021) 15 SCC 730,

Hon'ble the Apex Court observed that the power to order eviction is construed

in the provisions of the Act i.e right to receive maintenance out of an estate. In



CWP-29818-2024

present case, learned Maintenance Tribunal has rightly awarded maintainance to the tune of Rs. 2000/- per month. It is only where there is a breach of obligation to maintain senior citizen or parent that eviction order can be passed. In other words, eviction would be an incident of an enforcement of right to maintainance and protection to the senior citizen. Present is not the case where eviction order can be passed.

5.3. As far as contention of the petitioner regarding non-payment of maintenance amount awarded vide impugned order(s) is concerned, this Court is not a Court for execution of impugned order(s), therefore, petitioner may avail alternative remedy as per law.

6. In view of the above, there is no option except to dismiss the present petition.

7. Ordered accordingly.
Pending application(s), if any, shall also stand disposed off.

06.11.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No