

28.07.2025.
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Ct.No.7.
as

WPA 22622 of 2022

Sri Avishek Basu
Vs.
The State of West Bengal & Ors.

Mr. Amalesh Roy, Ld. Sr. Adv.(VC),
Ms. Molusumi Bhowal,
Mr. Aman Gupta.
...for the Petitioner.

Mr. Kartik Chandra Kapas.
....for the State.

Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra.
...for the Respondent No.4.

1. The present writ petition has been filed challenging the legality and propriety of an order passed by the Presiding Officer, Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act of 2007'), and the Sub-Divisional Officer, Barasat (Sadar), North 24-Parganas. By the said order, the transfer of property through a deed of gift executed by the petitioner, Smt. Niva Bosu, in favour of her son to the extent of her share was declared void. The order further directed the petitioner and her family members to vacate the portion of the property corresponding to her share, as occupied by them, within the time specified therein.

2. Mr. Roy, learned Senior Advocate appearing for the petitioner, invites my attention to the provisions of sub-section (1) of Section 23 of the Act of 2007 and contends that the existence of a condition requiring the transferee to provide basic amenities and physical needs to the transferor is a sine qua non for the application of the said provision. He submits that the recital of the deed does not contain any such condition. Therefore, in the present case, the Presiding Officer misdirected himself in applying sub-section (1) of Section 23 of the Act of 2007 and in directing the petitioner herein to vacate the private respondent's share of the property in question. In support his contention he placed his reliance on two decisions reported in *2022 SCC OnLine SC 1684 (Sudesh Chhikara Vs. Ramti Devi & Anr.)* and *(2018) 1 CHN Cal. 481 (Debasish Mukherjee Vs. Sanjib Mukherjee & Ors.)*

3. Mr. Chatterjee, learned Advocate appearing for the private respondent, vehemently opposes the petitioner's contention. He draws my attention to a specific portion of the recital of the deed and submits that it recorded that 'the transferee has been maintaining the transferor'. He contends that this statement gives rise to a legitimate expectation that the transferee would continue to maintain the transferor.

4. He submits that, in light of the above, sub-section (1) of Section 23 of the Act of 2007 is applicable in the present case. Furthermore, he contends that sub-section (2) of Section 23 of the Act of 2007 is also attracted, considering

that if the mother's share of the property had been let out, it would have generated income. Accordingly, the mother's estate could have provided financial support to the transferor.

5. He draws my attention to a statement made by the petitioner in his written statement filed in a proceeding initiated against him under the Protection of Women from Domestic Violence Act, wherein the petitioner undertook to take all necessary steps to look after and maintain his mother. In support of his submission, Mr. Chatterjee places reliance on the decisions in *Urmila Dixit vs. Sunil Sharan Dixit & Ors.*, reported in (2025) 2 SCC 787, and *S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District & Ors.*, reported in (2021) 15 SCC 730.

6. Mr. Kapas, learned Advocate appearing for the State, submits that the incident was investigated by the jurisdictional police and, upon enquiry, it was revealed that the private respondent had been deprived by the petitioner herein. Accordingly, the police authorities issued a notice directing the petitioner to vacate the private respondent's share of the property.

7. Heard the learned Advocates appearing for the respective parties and peruse the materials on record.

8. It is indeed unfortunate that a mother and son have been embroiled in such litigation for a considerable length of time. The mother was compelled to approach the Sub-Divisional Officer with the grievance that her son had failed to take adequate steps for her maintenance. Acting on the

reasonable expectation that he would care for her and ensure her well-being during her last days, she executed a deed in his favour. However, the decision of a Court of Law must be governed by settled legal principles and relevant statutory provisions, rather than considerations of morality or emotional sentiments.

9. To shed a light in the issue involved in the writ petition, it would be prudent to the provision of sub-Section(1) and (2) of Section 23 of the Act of 2007 which are as follows:

“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 basis 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.”

10. Therefore, a bare perusal of the provisions of sub-section (1) of Section 23 of the Act of 2007 suggests that its applicability is subject to a specific condition, namely, that the transfer must be subject to the conditions that the

transferee shall provide basic amenities and physical needs to the transferor. If the transferee refuses or fails to provide such amenities and physical needs, then the transfer of the property shall be deemed to have been made by fraud, coercion, or undue influence. Thus, the applicability of sub-section (1) of Section 23 of the Act arises only upon fulfillment of these two conditions:

- i) that the transfer either by way of gift or otherwise, shall be subject to the conditions that the transferee shall provide basic amenities and basic physical needs to the transferor;
- ii) such transferee refuses and fails to provide such amenities and physical needs;

11. Therefore, unless these two conditions are fulfilled, sub-section (1) of Section 23 of the Act of 2007 cannot be invoked. Similarly, sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Support for this view may be drawn from the judgment in *S. Vanitha* (supra). Accordingly, unless the condition that a senior citizen has a right to receive maintenance out of an estate is satisfied, sub-section (2) of Section 23 of the Act of 2007 cannot be applied.

12. Undoubtedly, the deed records that the transferee had been taking steps to maintain the transferor on the date of its execution. However, this statement alone is not sufficient to imply any obligation with respect to future events. Merely because a person is performing a particular

act at present does not constitute an assurance that the same will continue in the future. In the decision of *Sudesh Chhikara* (supra), the Hon'ble Supreme Court held that an effective transfer subject to the condition of providing basic amenities and physical needs to the transferor is a sine qua non for the applicability of sub-section (1) of Section 23 of the Act of 2007. This clearly indicates that the statutory condition refers to future obligations, not merely to acts or circumstances existing at the time of execution of the deed of conveyance.

13. I have carefully gone through the decisions cited by Mr. Chatterjee. However, those are distinguishable of facts.

14. In view of the discussions and reasons set out in the preceding paragraphs, the order under challenge in this writ petition is set aside.

15. With this observation, the writ petition is disposed of. There will be no order as to costs.

16. However, this order shall not preclude the private respondent from approaching the Presiding Officer afresh in the future, if so permitted by the law.

(Partha Sarathi Chatterjee, J.)