

**CWP-13785-2022 (O&M)****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****211****CWP-13785-2022 (O&M)
Decided on : 29.04.2025**

AMANPREET KAUR

. . .Petitioner

Versus

APPELLATE MAINTENANCE AUTHORITY CUM DISTRICT
MAGISTRATE, FATEHGARH SAHIB AND ORS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. L. S. Mann, Advocate for the petitioner.

Mr. Gaurav Mohunta, Advocate and

Mr. Nishant Arora, Advocate for respondent No. 3.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the prayer of the petitioner is for setting-aside the orders dated 09.09.2021 (Annexure P-8) and 16.05.2022 (Annexure P-9). passed by the authorities concerned exercising jurisdiction under the Maintenance & Welfare of Parents & Senior Citizen Act, 2007, (for short 2007 Act) by which direction has been given to the petitioner to return the land which had been transferred in her name by her husband i.e. respondent No. 4.

2. Learned counsel for the petitioner submits that the petitioner is the daughter-in-law, who has been directed to return the land in question which was transferred in her favour in the year 2019 by her husband-respondent No.4. Learned counsel for the petitioner submits that the land in question was actually transferred by respondent No. 3 i.e. the

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grand-father of respondent No. 4 in the year 2018. Learned counsel for the petitioner further argues that as there was a matrimonial dispute persisting between the petitioner and respondent No. 4, who is concededly living with another woman and in order to get the land back which was transferred in favour of the petitioner, a claim was raised by respondent No. 3 by misusing the provisions of 2007 Act so that the land in question which was given to the petitioner by respondent No. 4 should be brought back into family-kitty for it to be transferred again to respondent No. 4.

3. Learned counsel for the petitioner further submits that application filed by respondent No. 3 under Section 23 of the 2007 Act was not even contested by the respondent No. 4-husband of the petitioner and the transfer of the property by the respondent No. 3-grand-father in favour of the respondent No. 4/husband of the petitioner/grandson was set-aside so as to take the said land back from the petitioner so as to get the same transferred to respondent No. 4-husband of the petitioner.

4. Learned counsel for the petitioner further submits that under the particular *modus operandi*, the proceedings under 2007 Act were initiated, which were not *bonafide*.

5. Learned counsel for the petitioner lastly argues that even the requisites of provisions of Section 23 of the 2007 Act were not fulfilled in the fact and circumstances of the present case, which has been ignored by the authorities concerned while passing the impugned orders 09.09.2021 (Annexure P-8) and 16.05.2022 (Annexure P-9).

6. Learned counsel for the petitioner further argues that a civil

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suit was filed by the respondent No. 4-husband of the petitioner qua the same land against the petitioner so as to cancel the said transfer deed which has already been dismissed but thereafter, the provisions of 2007 Act were invoked malafidely to overcome the said issue so as to get the land back from the petitioner.

6. Upon notice of motion, learned counsel for the respondents has appeared. Learned counsel for the respondent No. 3-grandfather submits that the land initially belonged to respondent No. 3-grandfather though the same was equally bifurcated between grandsons and one of the son (respondent No. 5) of respondent No. 3. Learned counsel for respondent No. 3 further submits that as respondent No. 3 was not being maintained by his grandsons or his son (respondent No. 4 & 5), the application under Section 23 of the 2007 Act was filed by him, so as to attain the said transferred land back, which has been allowed by the authorities concerned exercising jurisdiction under 2007 Act after due application of their mind and therefore, the impugned orders be upheld and the land in question reverted back to respondent No. 3 vide the orders impugned, remain with him.

7. Learned counsel for respondent No. 3 further submits that the land has been taken back not only from respondent No. 4 but from the others son as well.

8. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

9. Certain facts needs to be mentioned for correct appreciations of the issue in hand.

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10. The petitioner is married to respondent No. 4 and there is a matrimonial dispute persisting between them as respondent No. 4 is living with another woman. After marriage of petitioner and respondent No. 4, the land which was transferred in favour of respondent No. 4 by respondent No. 3, some of land out of his total ownership i.e. 9 bighas, was transferred by respondent No. 4 in favour of the petitioner. Thereafter, as respondent No. 4 starting living with another woman, respondent No. 4 filed a civil suit against the petitioner, for purpose of getting the said land back keeping in view the matrimonial dispute persisting between the parties i.e. petitioner and respondent No. 4, which suit has already been dismissed.

11. The respondent No. 3-grandfather initiated the proceedings under 2007 Act in order to get the land back from the respondent No. 4/husband of the petitioner /grandson on the ground that respondent No. 3-senior citizen was not being maintained. The said proceedings were not contested by respondent No. 4-husband of the petitioner/grandson and orders were passed by the authorities concerned under 2007 Act cancelling the said transfer deed which has resulted into the land in question being taken from petitioner as the land which was transferred by respondent No. 4 in favour of the petitioner, has been directed to be reverted back to respondent No. 3-grandfather.

12. The events which have been depicted hereinbefore shows that the arduous efforts have been taken by the respondents to get the land back from the petitioner. The respondent No. 4 not being successful in getting the land back by filing a civil suit turned to the other way and

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a novel method was evolved so as to involve the respondent No. 3-grandfather in order to initiate the proceedings under 2007 Act and to get the said land back from the petitioner.

13. Further, the authorities while adjudicating upon the claim of the grandfather i.e. respondent No. 3 qua the proceedings initiated under Section 23 of the 2007 Act should have looked into the aspect that whether the same is initiated bonafidely or malafidely and whether the requirement envisaged under Section 23 of the 2007 Act are fulfilled by the senior citizen or not so as to get the land back.

It is imperative to note that the authorities concerned exercising jurisdiction under 2007 Act have failed to apply mind qua the aforementioned issues, especially when the petitioner presented before the authorities concerned with the fact that the claim of the respondent No. 3-grandfather under Section 23 of the 2007 Act is a collusive one and has been filed to fulfill a particular motive.

14. As per Section 23 of the 2007 Act, the land can only be reverted to the senior citizens in case the senior citizens is not being maintained by the transferee and the said transfer of the land was made subject to condition of getting maintenance from the transferee.

15. Learned counsel for the respondent no. 3 has not been able to rebut the fact that even as of now the respondent No. 3-grandfather and the respondent No. 4/husband of the petitioner/grandson are living in the same house and they have joint kitchen has not been rebutted. Once, the respondent No. 3-grandfather is living in the same house as respondent No. 4/grandsons, how can it be proved that the respondent

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No. 3-grandfather was not being maintained by the grandson which led to the filing of an application by respondent No. 3 under Section 23 of the 2007 Act so as to get the land back from the petitioner . The necessary result is that the motive of the respondents was only to get land back from the petitioner which had already been transferred by respondent No. 4 in favour of the petitioner.

16. The Courts have to be very careful while allowing cancellation of a transfer deed in a summary proceedings, the aspect as to whether the said proceedings initiated under 2007 Act are collusive or not or whether they are initiated with a particular motive or not. Said aspect has to be taken care of by the authorities concerned while exercising jurisdiction under 2007 Act so that the proper justice is done between the parties concerned.

17 Keeping in view the totality of the circumstances, especially when it is crystal clear that the proceedings initiated by respondent No. 3 against respondent No. 4 and other grandsons was with a motive other than the one for which 2007 Act has been enacted and the said proceedings have only been filed to get the land back from the petitioner, hence, the orders dated 09.09.2021 (Annexure P-8) and 16.05.2022 (Annexure P-9) passed by the authorities concerned exercising jurisdiction under 2007 Act without noticing the said factual aspects, cannot be sustained and is set-aside. Keeping in view the totality of circumstances of the present case, as the grandson i.e. respondent No. 4 has agreed to give the land back to the respondent No. 3-grandfather, except the land which was transferred in the name of the petitioner by

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respondent No. 4, the remaining land will be reverted back to the grandfather(respondent No. 3). The land measuring 9 bighas which was transferred by the respondent No. 4 in favour of the petitioner will remain the ownership of the petitioner.

18. The present petition is allowed in above terms.

19. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

29.04.2025

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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No