



**105+235 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-15527-15528-CWP-2024 in/and
CWP No.25005 of 2023
Date of Decision : 09-01-2025**

SUDHIR @ SUDHIR SINGH AND ORS.

.....Petitioner(s)

VERSUS

**APPELLATE TRIBUNAL CUM DISTRICT MAGISTRATE AND
ORS.**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Monika Khatri, Advocate
for the petitioners.

Mr. Ashwani Bakshi, Advocate with
Mr. Harshit Kataria, Advocate
For respondent Nos.3 and 4.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance being raised by the petitioners is qua the order passed by the Tribunal under the Maintenance and Welfare of Senior Citizens Act, 2007 (hereinafter referred as 2007 Act) by which, the gift of the land belonging to the respondent Nos.3 and 4 in favour of the petitioner measuring 24 Kanal 7 Marlas situated within the revenue estate of village Khudan, Tehsil and District Jhajjar has been cancelled vide orders dated 06.10.2022 (Annexure P-9), which order has further been upheld by the appellate authority on 03.10.2023 (Annexure P-11).

2. Learned counsel appearing on behalf of the petitioners argues that the orders which have been passed by the Tribunal and upheld by the appellate authority under the 2007 Act are totally cryptic and non-speaking and do not deal with the required parameters which needs to be fulfilled for passing an order under Section 23 of the 2007 Act.

3. Learned counsel for the petitioner submits that the necessary ingredients such as maintenance and fulfilling the needs of the senior citizen, which is envisaged under Section 23 of the 2007 Act have neither been pleaded by the respondent nor been noticed by the authorities concerned before cancelling the gift deed in favour of the petitioners by the respondent Nos.3 and 4.

4. Learned counsel for the petitioner submits the orders dated 06.10.2022 (Annexure P-9) and 03.10.2023 (Annexure P-11) passed by the authorities concerned may kindly be set aside.

5. Upon notice of motion, the respondents have appeared. The respondents have stated that the land was transferred in favour of the petitioners with the motive that the needs/amenities which were required by respondent No.3, who is paternal aunt of the petitioners will be fulfilled by the petitioners whereas, the petitioners have failed to discharge the said duties so as to violate the provisions of Section 23 of 2007 Act hence, the orders dated 06.10.2022 (Annexure P-9) and 03.10.2023 (Annexure P-11) passed by the authorities are perfectly valid and are liable to be upheld.

6. Learned counsel for the respondents submits that the petitioners never bothered about the private respondents emotionally at the time of the need when they suffered certain emotional setback in their life after the gift

deed was executed in their favour, which act on the part of the petitioners satisfy the requirement of Section 23 so as to get the gift deed cancelled.

7. Learned counsel for the respondents further submits that private respondents have not been supported financially also by the petitioners hence, the orders dated 06.10.2022 (Annexure P-9) and 03.10.2023 (Annexure P-11) passed by the authorities in favour of the private respondents impugned in the present petition are liable to be upheld.

8. Learned counsel for the private respondents further as per that while issuing notice of motion, the Court directed the payment of Rs.30,000/- per month in favour of the private respondents but the same was not complied with after one month hence, even on this account, the equity does not lie with the petitioners to claim the relief as being claimed in the present petition.

9. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

10. The question which needs to be decided in the present petition is whether the Tribunal can straightaway pass an order without recording the findings whether, the requirement of Section 23 of the 2007 Act are fulfilled in a case before granting the relief of cancellation of gift deed or not.

11. Further, it is to be adjudicated whether, the applicant claiming relief under Section 23 of the 2007 Act of cancellation of the deed has to plead the basic ingredients by specific pleadings, and whether the Tribunal is required to give findings keeping in view the pleadings of the parties and the evidence which has come on record or a cryptic order/non-speaking order

can be passed by the Tribunal while passing any order i.e. either allowing the petition or dismissing the application as the case may be.

12. Before proceeding further, the relevant Section under which the application was filed by the respondent i.e. Section 23 of the 2007 Act needs to be looked into. The same is reproduced hereunder for the ready reference:-

“(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.”

13. A bare perusal of the Section 23 of the 2007 Act would show that the transfer of the property is to be treated as void in certain circumstances. As per Section 23 of the 2007 Act, in case the transfer of the property is with condition that the transferee is to provide the amenities and basic physical needs to the transferor and if the transferee fails to provide the amenities and basic physical needs to the transferor, the transfer is to be

deemed to be by fraud or coercion or undue influence and the Tribunal will have the power to declare the said transfer as void.

14. Applying the said Section 23 of 2007 Act in the present case, the respondent Nos.3 and 4 while making an application were required to show as to what amenities and physical needs were expected from the transferee, which the transferee failed to execute to the satisfaction of the respondent Nos.3 and 4, which led to the filing of an application under Section 23 of the 2007 Act.

15. Further, Section 23 of the 2007 Act has already been interpreted by the Hon'ble Supreme Court of India in Civil Appeal No.174 of 2021 titled "***Sudesh Chhikara Vs. Ramti Devi and anr.***", decided on 06.12.2022. The Hon'ble Supreme Court of India has held that the twin conditions needed to grant the relief under Section 23 of the 2007 Act needs to be fulfilled by the applicant and further that there is to be pleading that the senior citizen is not being granted the amenities and physical needs, which pleadings needs to be proved before the authorities concerned before the grant of relief.

The relevant Paragraph 14 of the said judgment is as under:-

"14. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the

Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.”

16. A bare perusal of the application filed shows that there is no sch pleading. The only pleading is that the transfer was not voluntarily executed but was done under pressure. The said allegations have been denied by the petitioners, who were the respondents before the Tribunal. The Tribunal, without even advertng the basic requirements of the provision needed to pass an order under Section 23 of the 2007 Act passed an order only on the statement of the private respondents that the release deeds dated 06.01.2004 having No.6086 and release deed dated 06.01.2014 having No.6087 are to be treated as void. Not even a single reason has been given by the Tribunal as to what amenities were not provided by the petitioners, as demanded or envisaged by the respondents while executing the release deeds. In the absence of any finding by the Tribunal, the orders passed by the Tribunal, though has been upheld by the appellate authority, but without any valid reasons, cannot be sustained in the eyes of law.

17. The purpose of adjudication means that reasons have to flow for reaching a conclusion and the said reasons should support the requirement of Section 23 of the 2007 Act and that the transferee has failed to provide the basic amenities or basic physical needs to the senior citizen to

lead a dignified life as envisaged under Article 21 of the Constitution of India.

18. In the present case, neither there is any pleading about the physical needs nor the basic amenities which the transferee failed to provide moreover there is no such finding by the Tribunal also before accepting the prayer of the private respondents so as to cancel the release deeds dated 06.01.2004 having No.6086 and dated 06.01.2014 having No.6087.

19. Further, it is not a case that the private respondents are suffering with the financial distress after the transfer of the release deed in the absence of the provisions of the basic needs and amenities at the hands of the petitioners.

20. Learned counsel for the respondents has not been able to rebut that the respondents are financially sound and have enough property in their possession even as of now to sustain themselves and live a dignified life.

21. On being asked, the learned counsel for the private respondent No.3 and 4 have not been able to substantiate and describe any amenity, which they did not have after the transfer of the property and hence, expected the same from the petitioners.

22. That being the factual position, the Tribunal failed to appreciate the facts of the present case in correct perspective keeping in view the requirements of Section 23 of the 2007 Act. Even the appellate authority has not described any physical need or basic amenity, which was to be given by the petitioners in favour of the private respondents, which they failed to do, so as to entitle the Tribunal to cancel the release deeds made by the private respondents in favour of the petitioners.

23. Learned counsel appearing on behalf of the private respondents have not been able to show the reason recorded by the Tribunal, which supports the ingredients required for a Tribunal to pass orders for the cancellation of release deeds after declaring the transfer void under Section 23 of the 2007 Act.

24. In the absence of such reasons, the orders passed by the Tribunal cannot be sustained and the orders passed by the Tribunal dated 06.10.2022 (Annexure P-9), which order has been upheld by the appellate authority on 03.10.2023 (Annexure P-11) are accordingly set aside.

25. The case is remanded back to the Tribunal for fresh adjudication for passing a speaking order keeping in view the requirements of Section 23 of the 2007 Act on the basis of the pleadings of the parties already on record and the evidence which they have led in support of their respective case.

26. Let a fresh order be passed by giving due reasons for the conclusion to be arrived at by the Tribunal by keeping in mind that there are certain requirements/parameters laid down under Section 23 of the 2007 Act.

27. The writ petition is allowed in above terms.

09-01-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO