

**CWP-28227-2023 (O&M)****-1-****206 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-28227-2023 (O&M)
Date of Decision: 13.05.2025****SHALLY JARYAL****... PETITIONER****VS.****DEPUTY COMMISSIONER CUM DISTRICT COLLECTOR,
HOSHIARPUR AND OTHERS****.. RESPONDENTS****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI****Present: Mr. R.K.Dadwal, Advocate,
for the petitioner.****Mr. Himanshu Raj, Addl. A.G.Punjab.****Mr. Rahul Jaswal, Advocate,
for respondent No.3.************HARSIMRAN SINGH SETHI, J.(ORAL)**

In the present petition, the challenge is to the orders passed by the authorities exercising jurisdiction under the Senior Citizen Act, 2007 (for short' 2007 Act') by which, the transfer of the land by the senior citizen i.e, respondent No.3, in the favour of the petitioner i.e, her daughter, has been set aside on the ground that the daughter is not maintaining the mother.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand. The land in question belonged to the father of the petitioner, namely, Surinder Singh, who unfortunately died in the year 1993 leaving behind his two daughters and widow Darshana Devi. At the time of his death, both the daughters were unmarried. In the year 2011, the land

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which was inherited by Darshana Devi from her husband was bifurcated between two daughters, namely, Sunanda Jaryal and Shally Jaryal i.e, present petitioner. The said transfer deed was executed on 15.09.2011. It may be noticed that when the land in question was transferred in the favour of the petitioner, the petitioner was not married at that time.

3. After the transfer of the land, the petitioner was married in the year 2012 and she started residing in her matrimonial home. The mother of the petitioner was living with the other daughter, namely, Sunanda Jaryal. After the marriage of the petitioner, respondent No.3-senior citizen used to lease out the land which was transferred in the favour of the petitioner and the revenue out of the said land was also being managed by the senior citizen with the help of her son-in-law i.e. the husband of Sunanda Jaryal.

4. Thereafter, the senior citizen filed a petition under Section 23 of 2007 Act for cancellation of the transfer deed dated 15.09.2011 on the ground that the petitioner failed to maintain the senior citizen. In the said proceedings, the petitioner submitted that as the senior citizen was living with other daughter and she was living in her own matrimonial house, and the revenue generated out of the land transferred in her favour is being utilized by the senior citizen alongwith the other daughter Sunanda Jaryal, hence the question of not maintaining her while living in her matrimonial house is incorrect. By recording the fact that senior citizen was not being maintained by the petitioner, the transfer deed executed in favour of the petitioner has been cancelled by the Tribunal vide order dated 26.08.2021. It may be noticed that though, the transfer in favour of petitioner was cancelled but similar transfer in favour of the other sister was maintained.



5. The petitioner filed an appeal against the said order of the Tribunal which came to be decided on 25.07.2023 by the Appellate Authority and the Appellate Authority though noticed that the land transferred in favour of the petitioner was in the possession of the senior citizen, her other daughter and son-in-law and they are utilizing the revenue generated out of the said land but still, held that the petitioner did not provide medicine to Senior citizen-Darshana Devi, who is suffering from ailment, after the order passed by the Tribunal and the order of the Tribunal was upheld. Both the orders passed by the Authorities are under challenge in the present petition.

6. Learned counsel for the petitioner submits that firstly, in the present case, the land was transferred in favour of the petitioner was at the time when she was unmarried however, the land remained in the possession of the senior citizen as well as the other daughter of the senior citizen and her husband i.e, the Jija of the petitioner. Learned counsel for the petitioner further submits that the revenue generated out of the said land was being utilized by them only and even after the petitioner got married and went to her matrimonial home, the status of the land did not change and the same remained in the possession of the senior citizen, her other daughter and son-in-law hence, once the revenue of the land owned by the petitioner is being collected by the senior citizen alongwith her other daughter and son-in-law, the question of non-maintenance of the senior citizen at the hand of the petitioner does not arise.

7. Learned counsel for the petitioner further submits that once, after the transfer of the land, the petitioner was married by the senior citizen herself and after marriage, the petitioner's duty is to reside in her



matrimonial home, the non-providing of the medicines of the senior citizen cannot be made a ground to take the land back from the petitioner by holding that senior citizen was not being maintained. Hence, without appreciating all the facts which had come on record, the orders have been passed by the authorities concerned whereas in the facts and circumstances of the present case, the requisite of Section 23 of 2007 Act are not proved, therefore, the impugned orders are liable to be set aside.

8. Upon notice of motion, the respondents have appeared. Learned counsel appearing on behalf of respondent No.3 concedes the factum that the land which was transferred by the senior citizen in favour of the petitioner has been leased out to the other daughter of the senior citizen with whom the senior citizen is residing. Learned counsel for respondent No.3 further concedes that factum that the revenue generated out of the lease is being kept by the family and has never been given to the petitioner except on one or two occasions.

9. Learned counsel for respondent No.3 submits that the said fact will not change the position as, the petitioner was required to maintain the senior citizen and was required to take care of daily needs of the senior citizen which she failed to do and, therefore, the authorities exercising jurisdiction under 2007 Act perfectly exercised its jurisdiction so as to set aside the transfer deed qua the petitioner only so as to revert the land back in the name of the senior citizen hence, the orders passed by the authorities impugned in the present petition may kindly be upheld.

10. Learned counsel for respondent No.3 further submits that the petitioner filed a civil suit for declaration that she is the owner of the land in



question which civil suit has been dismissed for non-prosecution hence, she cannot claim the ownership of the land in question.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. From the facts narrated hereinabove, the position is clear that the land initially belong to the father of the petitioner which was inherited by the senior citizen after his death. The land was further divided between the two daughters equally and that too at the time when the petitioner was unmarried. After the transfer of the land by the senior citizen in favour of the petitioner, the petitioner was married and she moved to her matrimonial home. Even after the said event, the land in question remained in the possession of the other sister and her husband, with whom the senior citizen is residing. Even, the revenue which is being generated out of the land transferred in the name of the petitioner, is being utilized by the senior citizen alongwith her other daughter, namely, Sunanda Jaryal and her son-in-law, namely, Raj Kumar and the position remains the same as of now.

13. Once the revenue of the land transferred in the favour of the petitioner by the senior citizen is being enjoyed by the senior citizen alongwith her other daughter and son-in-law, the question which arises is whether, still the petitioner is bound to take care of the senior citizen and can it be said that she is not maintaining her old mother?

14. It may be noticed that the petitioner, who moved to her matrimonial house after the marriage, can only take care through the finances and the finances being generated out of the land which was transferred in favour of the petitioner are being used by the senior citizen and her other daughter as well as son-in-law. Once the said fact is not



rebutted, the findings recorded by the authorities that senior citizen is not being maintained by the petitioner, is contrary to the evidence brought on record.

15. A married daughter is not expected to live with the senior citizen so as to leave her matrimonial house so as to take care of her day to day need. The only reason given by the authorities is that the medicines were not provided to the senior citizen. It may be noticed that senior citizen transferred the land equally in favour of her two daughters and she is living with one of her daughter, namely, Sunanda Jaryal. Hence, how can the other daughter, who is living in her matrimonial house, should go to give the medicine to the senior citizen when she is living with the other daughter. It is the duty of the daughter with whom the senior citizen is living to give her the medicine. Once the finances are being provided by the petitioner to the senior citizen, the non-providing of the medicine on day to day basis cannot be taken as a ground to hold that the senior citizen is not being maintained by the petitioner. The authorities who have been given the jurisdiction to pass an order of cancelling the transfer deed and that too by adopting a summary procedure have to be careful while exercising its jurisdiction that any assertion made by the senior citizen is proved on the basis of the evidence.

16. In the present case, no evidence has been brought on record to prove that the senior citizen is not being maintained. Rather, the facts which have been noticed hereinbefore, clearly go to show that even as of now the land which was transferred by the senior citizen in favour of the petitioner and was being demanded back by the senior citizen, the revenue generated out of the said land is being enjoyed by the senior citizen alongwith her



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other daughter and son-in-law. That being so, the factual position which is very relevant to decide as to whether senior citizen is being maintained or not, has not even been appreciated by the authorities while passing the impugned orders.

17. Keeping in view the totality of the circumstances, wherein the land which was transferred in the name of the petitioner by the senior citizen prior to her marriage, the revenue of the said land is being enjoyed by the senior citizen even after the marriage of the petitioner, it cannot be said that the senior citizen was not being maintained by the petitioner in manner required. The authorities have failed to appreciate the facts and evidence correctly while passing the impugned orders.

18. Infact, the senior citizen has failed to prove that she is not being maintained by the petitioner despite getting all the revenue of the land in question. The impugned orders are accordingly set aside. The land transferred in the name of the petitioner by the senior citizen will remain the property of the petitioner.

19. With regard to the grant of lease by the petitioner in favour of her mother and sister, the said dispute does not come within the domain of this Court while exercising jurisdiction over and order passed under 2007 Act. In case, she is aggrieved in any manner, she can take appropriate remedy for redressal of her grievance as permissible under law.

20. Present petition is allowed in above-said terms.

(HARSIMRAN SINGH SETHI)
JUDGE

13.05.2025
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No