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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-3641-2024(O&M)
Date of Decision: 30.09.2025

SURENDER MEHLAWAT

-PETITIONER

V/S

THE DEPUTY COMMISSIONER-CUM-CHAIRMAN,
MAINTENANCE APPELLATE TRIBUNAL, REWARI AND
OTHERS

-RESPONDENTS

CWP-32800-2024(O&M)

TIRATH MEHLAWAT

-PETITIONER

V/S

THE DEPUTY COMMISSIONER-CUM-CHAIRMAN,
MAINTENANCE APPELLATE TRIBUNAL, REWARI AND
OTHERS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Shailendra Jain, Sr. Advocate with
Mr. Rahul, Mr. Munish Sharma, Advocates,
for the petitioners.

Mr. Bhupender Singh, Addl.A.G., Haryana.

Mr. Amit Jhanji, Sr. Advocate with
Mr. Shashank Shekhar Sharma, Advocate
Mr. Yash Yadav, Advocate,
for the respondents no. 3.

Mr. Sukesh Kumar Jindal, Advocate,
for respondent no.4.

Mr. Ajit Singh Lamba, Advocate,
for respondent no.5.

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KULDEEP TIWARI, J. (ORAL)

1. Both these petitions are amenable to be decided together as a common order passed in a proceeding initiated under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'Act of 2007'), has been put to challenge. For the sake of brevity the facts of the case have been culled out from the CWP-3641-2024.

2. Through the instant petitions filed under Article 226/227 of the Constitution of India, a challenge is thrown to the order dated 29.09.2023 (Annexure P-20) passed by the learned Maintenance Tribunal, Bawal, District Rewari (respondent no.2), wherethrough the release/transfer deed bearing No.1430 and 1431 dated 21.08.2018 (Annexures P1 and P-2 respectively), were declared null and void, under an *ex parte* proceeding initiated under the provisions of Section 23 of the Act of 2007. The petitioners further seeks quashing of the order dated 23.01.2024 (Annexure P-29) passed by the learned Appellate Tribunal, Rewari (respondent no.1), wherethrough, the appeals preferred by them under the provisions of Section 16(1) of the *ibid* Act, were also dismissed.

FACTUAL MATRIX

3. In order to understand the dispute amongst the parties, first, it is essential to have a glance upon the family pedigree, which is as



under:-

Medh Singh			
Phool Kumar (son) died in 1998			
Sangeeta (died in 1990) Ist wife of Phool Kumar		Santosh (alive) 2 nd wife of Phool Kumar	
Prisha (daughter)	Amandeep (son)	Surender (son)	Tirath (son)

4. In the instant case, Medh Singh (respondent no.3), who is a grandfather of both the petitioners, filed an application dated 29.04.2019 under the provisions of Section 23 of the Act of 2007, seeking cancellation of transfer deeds bearing Vasika No.1430 and 1431, both dated 21.08.2018, executed in favour of the petitioners. The said application was filed on the ground that, subsequent to the execution of the said deeds, the petitioners stopped taking care of respondent no.3, who is a senior citizen. It was also alleged that the petitioners failed to take respondent no.3 to the hospital, when his health deteriorated, and eventually stopped looking after him during his ailment. Not only that, the petitioners hurled abuses upon respondent no.3, and also insulted him before the society. Respondent no.3, further asserted that the transfer deeds in question were executed by him in favour of the petitioners on an assurance to provide all basic amenities and physical needs during his life- time, however, the petitioners failed to fulfil such assurances. The aforesaid application was, subsequently, withdrawn on dated 26.10.2022 (Annexure P-7), as the matter was amicably settled between the

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petitioners and respondent no.3, respondent no.4, and performa respondent no.6, upon an assurance to provide their better services to the senior citizen (respondent no.3). However, respondent no.3 again filed a second application on 31.05.2023 before the learned Maintenance Tribunal concerned, on the similar grounds, wherein, the petitioners were proceeded against *ex parte*, and thereupon, the learned Tribunal, vide order dated 29.09.2023 (Annexure P-20), accepted the said application and declared the above referred two release/transfer deeds, as null and void. The petitioners fetching grievance from the said order, preferred a statutory appeal under Section 16 of the Act of 2007 before the learned Maintenance Tribunal, which was also dismissed vide order dated 23.01.2024 (Annexure P-29). Learned Appellate Maintenance Tribunal concerned, had specifically observed that Amandeep, (herein respondent no.4), had specifically recorded his statement on 29.09.2023, before the learned Maintenance Tribunal wherein, he expressed his inability to offer his services to his grandfather Medh Singh (present respondent no.3). Further, it was categorically, observed that the present petitioners are residing separately, from their grandfather (respondent no.3), in Gurgaon, therefore, he is not being maintained properly, and upheld the order passed by the learned Maintenance Tribunal concerned.

Hence, both the above orders are under challenge before this Court.



SUBMISSIONS MADE ON BEHALF OF THE PETITIONERS.

5. Learned Senior counsel appearing for the petitioners while opening his arguments draws attention of this Court towards the contents of the release/transfer deeds (*supra*), to submit that there is no specific condition recited therein, for providing basic necessities and basic physical needs to their grandfather who is a senior citizen (respondent no.3).
6. He, by filing a brief synopsis gave details of the properties, which devolved upon petitioners, and respondent no.4, upon demise of their father Phool Kumar, at different points of time. The details are extracted hereinafter:-

List of several immoal properties transferred by Medh Singh till date (1) Amandeep Mehlawat, (2) Surender Mehlawat and (3) Tirath Mehlawat				
Sr.No.	Details	In favour of	Date	Vasika Nos.
1	A. 127K-3M, situated at Village Bawal, Tehsil Rewari in question. B. 163 K-0.534 M situated at Village Asra Ka Majra, Tehsil Rewari in question	1/3 rd share in both (1) Surender Mehlawat, (2) Tirath Mehlawat, and (3) Amandeep Mehlawat	21.08.2018	1430 & 1431
2.	40K Village Asra Ka Majra, Tehsil Rewari	Entirely in favour of Amandeep Mehlawat	24.01.2019	2790
3.	23K-2M of land at Village Saban, Tehsil Bawal, District Rewari	Entirely in favour of Amandeep Mehlawat	24.01.2019	2791



4.	Phool Kumar's business of opeeration/running of 18 buses and taken over by Medh Singh after demise of Phool Kumar, as legal guardian of Surender Mehlawat and Tirath Mehlawat	Entire business transferred to Amandeep Mehlawat	24.01.2019	
5.	Residential H.No.230, Sector 6 (Part-1), HSVP, Dharuhera, District Rewari, 650 sq. Yards (two storeyed)	Entirely in favour of Amandeep Mehlawat	11.11.2020	1272
6.	Cash and jewelry	Entirely in favour of Amandeep Mehlawat	2020	
7.	Two Bighas of land situated in Guggal Kota, Tehsil Nimrana, District Alwar (Rajasthan)	Entirely in favour of Amandeep Mehlawat	21.11.2022	20220312 0104246
8.	Shop No.61, New Grain Market, Rewari measuring 277.77 sq.yards	Entirely in favour of Prisha (sister of Amandeep Mehlawat)	21.06.2024	1816
Separation of shares of transferred lands of Medh Singh at Sr. No.1(A) inter se between Amandeep Mehlawat on the one hand and Surender, Tirath Mehlawat on the other, by effecting partition in the following manner. Consequently, Amandeep Mehlawat became owner of ½ and Surender, Tirath Mehlawat became owner of ½ of 127K-3M, situated at Bawal, Tehsil and District Rewari:-				
	127K-3M sitauted at Bawal	50K-9M transferred by Amandeep Mehlawat in favour of Surender Mehlawat and Tirath Mehlawat	28.12.2022	2542
		39K-17M transfer by Surender, Tirath Mehlawat in favour of Amandeep Mehlawat		2543
List of several immoval properties succeeded on the demises of Phool Kumar till date (1) Amandeep Mehlawat, (2) Surender Mehlawat and (3) Tirath Mehlawat				
Sr. No.	Details	In favour of	Date	Mutation Nos.



1.	½ share in 34K-7M sitauted in village Asra K Majra, Tehsil Bawal, District Rewari	1/5 share each in favour of (1) Amandeep, (2) Surender, (3) Tirath, (4) Prisha (5) Santosh	08.05.2006	522
2.	23.1 K in village Saban Tehsil Bawal, District Rewari	1/5 share each in favour of (1) Amandeep, (2) Surender, (3) Tirath, (4) Prisha (5) Santosh	15.06.2006	885
3.	6.25 Bigha situated in Guggal Kota, Rajasthan	1/4 share each in favour of (1) Amandeep, (2) Surender, (3) Tirath, (4) Prisha	14.07.2006	947
4.	124.5 K in village Asra Ka Majra, Tehsil Bawal District Rewari	1/5 share each in favour of (1) Amandeep, (2) Surender, (3) Tirath, (4) Prisha (5) Santosh	08.05.2006	522
5.	1/5 share each of Prisha and Santosh in 124.5Ksituated village Asra Ka Majra, Tehsil Bawal District Rewari	Relinquished in favour of (1) Amandeep (2) Surender (3) Tirath	26.06.2006	523
6.	1/5 share each of Prisha and Santosh in 34K-7M situated village Asra Ka Majra, Tehsil Bawal District Rewari	Relinquished in favour of (1) Amandeep (2) Surender (3) Tirath	26.06.2006	523
7.	1/5 share each of Prisha and Santosh in 23.1 K situated village Asra Sabban, Tehsil Bawal District Rewari	Relinquished in favour of (1) Amandeep (2) Surender (3) Tirath	26.06.2006	889
8.	1/4 share each of Prisha and Santosh in 6.25 Bigha situated in Guggal Kota, Rajasthan.	Still exists intheir names		
Inter se transfers between (1) Amandeep Mehlawat on the one hand and (2) Surender, Tirath Mehlawat on the other, by gift deeds/transfer deeds (in blood relation) to settle the family properties to bring peace and harmony in the family.				
Sr. No.	Details	In favour of	Date	Vasika Nos.
1.	Plot No.229, measuring 818 sq.yard	In favour of Amandeep by Surender and Tirath Mehlawat	28.10.2020	1111



Transfer by (1) Amandeep Mehlawat (2) Surender Mehlawat (3) Tirath Mehlawat in favour of Smt. Santosh, mother of Surender Mehlawat and Tirath Mehlawat				
Sr. No.	Details	Date	Vasika No.	
1.	Plot No.211, measuring 502 sq.yard situated in Sector-3, Rewari.	17.02.2020	8478	

7. The above details have been referred by learned senior counsel for the petitioners to submit that the above applications have, infact, been instituted by respondent no.3-Medh Singh, at the behest of respondent no.4-Amandeep, who is also having 1/3rd share in the release/transfer deeds in questions.

8. He also submits that the grandfather of the petitioners i.e. respondent no.3, is residing with respondent no.4, and he being of an age of 94 years, is unable to take any rational decision himself. Further, respondent no.4, in fact, is trying to settle the family property dispute, under the garb of respondent no.3.

9. He, in addition, submits that, immediately upon, the order passed by the learned Maintenance Tribunal concerned, was upheld by the learned Appellate Tribunal concerned, and the petitioners preferred writ petitions before this Court to thrown challenge to the said order, the lands which are subject matter of the release/transfer deeds in question, were got transferred by respondent no.4 on dated 09.02.2023, in favour of his own sister-Prisha Lamba, who has been arrayed as respondent no.5. He, while giving strength to his submissions, submits that it was only

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respondent no.4, who is behind the initiation of proceedings under Section 23 of the Act of 2007, before the learned Maintenance Tribunal concerned.

10. He, to a greater extent, submits that one of the basic reasons for preferring the second application before the learned Maintenance Tribunal concerned, by respondent no.3, seeking declaration of release/transfer deeds in question, as null and void, was that the petitioners were bent upon to sell all the properties which devolved upon them through transfer deeds. However, this cannot be a ground for invoking the mischief of Section 23 of the Act of 2007.

11. He, over and above, submitted that, except for the bald allegation that the petitioners are not maintaining their grandfather (respondent no. 3), there is neither any specific instance, nor any evidence has been mentioned in the application to substantiate the said claim. No particular act, or omission has been cited to show, as to how the senior citizen (respondent no.3), was allegedly not maintained by the petitioners, especially when he was residing with respondent no. 4, even at the time of execution of the release/transfer deeds in question.

12. He, while arguing his case, further submits that the petitioners are still ready and willing to extend all possible assistance to their grandfather (respondent no.3), and are also ready to pay such maintenance amount, as this Court may deem fit and proper to determine.

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13. He, while drawing attention of this Court towards the proceedings before the learned Maintenance Tribunal concerned, submits that initiation of *ex parte* proceedings against the present petitioners suffers from illegality, as it was only respondent no.4, who adopted clever tactics, so as to ensure that the petitioners be proceeded against as *ex parte*.

14. He now draws attention of this Court towards the caveat petition, as filed by respondent no.3, which is annexed as Annexure P-30, wherein, the mobile number mentioned against the applicant Medh Singh in the memo of parties, is, in fact, that of Amandeep i.e. respondent no.4, and submits that the entire litigation is being contested by Medh Singh, at the behest of his grandson (respondent no.4), in order to get maximum benefit out of the property in question.

15. He also apprises this Court, that after the transfer of the lands under release/transfer deeds (Annexure P-1 and P-2) by the respondent no.3 in favour of his grandsons i.e. petitioners and respondent no.4, the respondent no.3, further executed three other release deeds (Annexures P-8 to P-10) of different properties in favour of his grandson-respondent no.4 alone. When respondent no.3 challenged the release deeds (Annexures P-1 and P-2) on the ground of non-provision of basic amenities and physical needs by the petitioners to respondent no. 3, it is pertinent to note that no challenge was ever raised in respect of any other

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properties belonging to or transferred to respondent no.4, either in the first application (Annexure P-6), or in the second application (Annexure P-5), filed before the learned Maintenance Tribunal concerned. The selective challenge to the lands covered under release deeds (Annexures P-1 and P-2) by respondent no.3 clearly indicates a strategic omission, and reflects malice towards the petitioners, and it appears to be a deliberate attempt to shield respondent no.4's own acquisitions from scrutiny, while targeting only the shares of the both the petitioners in the said release/transfer deeds, evidently with the active involvement of respondent no. 4.

16. He, also assits this court by submitting that the pleas of defence in para nos.9, 10 and 11 of the written statement filed by the respondent no.3, with regard to accumulation of money and disposing of the alleged properties existing in the name of both the petitioners at throwaway prices without any care or caution and without considering the purpose behind transferring them, and other transactions of loans etc. speaks for themselves. Such transfers, or other transactions between the parties are beyond the scope of consideration under section 23 of Act of 2007.

17. He, also, raised objection regarding the maintainability of second application, as was preferred by respondent no.3 before the learned Maintenance Tribunal, as it is barred by the doctrine of *res*

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judicata.

18. Learned senior counsel appearing for the petitioners, while concluding his arguments, submits that the expression '**subject to**' as expressed in Sec. 23 of Act of 2007 as per **Black's Law Dictionary, Fifth Edition**, at page No.1278, means “subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for.” In **Collins; English Dictionary**, words '**subject to**' means as “under the condition that: we accept, subject to her agreement.

19. He, while giving strength to his arguments, has placed reliance upon **K.R.C.S. Balakrishna Chetty and Sons and Co. vs. State of Madras**, submits that the Hon'ble Supreme Court, has explained that the use of the words 'subject to' has reference to effectuating the intention of law, meaning “conditional upon.”

SUBMISSIONS MADE ON BEHALF OF RESPONDENT NO.3

20. Learned senior counsel appearing for respondent no.3-Medh Singh, puts fierce defence to submit that the properties in question were transferred by respondent no.3, to his grandsons-petitioners out of his love and affection, and subject to the conditions that they shall provide all basic needs and amenities to him. However, the petitioners grossly neglected to do the same, and ill treated their grandfather-respondent no.3. In such circumstances, respondent no.3, was constrained to file an application before the learned Maintenance Tribunal concerned seeking

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cancellation of the release/transfer deeds in favour of both the petitioners, however, the same was withdrawn by him on dated 26.10.2020, on an assurance given by the petitioners and respondent no.4 that they shall not alienate any parcel of the transferred land, and shall provide better care/services to him.

21. He also submits that the withdrawal of the first application was conditional in nature, whereby, the respondent no.3 had liberty to file a fresh application for the same cause of action, as well as subsequent causes.

22. He further submits that as regard declaration of the petitioners as *ex-parte* by the learned Maintenance Tribunal concerned, is concerned, it is submitted that the petitioners were playing hide and seek with the learned Tribunal, as they were having full knowledge about the pendency of the proceedings. They were duly served through 'WhatsApp' communication number, which is a valid service as per law laid down by a co-ordinate bench of this Court in **COCN No.959 of 2023**, vide judgement dated 26.05.2023. Even in the present Writ Petition, the petitioners themselves admit in para 9 that they were served on 28.09.2023 at 11:28 AM. Therefore, despite valid service of summons upon the petitioners, they intentionally and deliberately did not appear before the learned Maintenance Tribunal on 29.09.2023. Therefore, they were rightly proceeded against *ex-parte* in compliance of Section 9 of

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The Haryana Maintenance of Parents and Senior Citizen Rules-2009. Even the learned Maintenance Appellate Tribunal, has considered this aspect, and arrived at the conclusion that the petitioners intentionally did not appear before the learned Maintenance Tribunal, Bawal, despite having knowledge about the pending litigation, and they were rightly proceeded against *ex-parte*.

23. He, in addition, submits that the learned Maintenance Tribunal concerned, while cancelling the release/transfer deeds, duly considered the ingredients and ambit of Section 23 of Act of 2007. It is also submitted that the learned Tribunal, took into account the factors contemplated under Section 4(3) of the said Act, including the age, physical and mental health, background, and economic status of the senior citizen, as well as that of the children or relatives from whom relief was sought, before passing the impugned order. Therefore, the order having withstood the legal parameters, calls for no interference by this Court.

24. It was further argued on behalf of respondent no.3 that the bank loan which was raised by the petitioners for setting up their own business, was repaid by respondent no.3 and respondent no.4, and subsequent thereto, a closure certificate was issued by the bank on 10.07.2019.

25. He, over and above, submits that both the petitioners have

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sole intention of accumulating money by selling the properties in question, by hook or crook at the earliest, which they had received from their grandfather- respondent no.3. The said properties are being disposed of by the petitioners, at throwaway prices, carelessly and casually, without even thinking at all about the purpose behind transfer of such properties by respondent no.3, in order to avoid the reversion of the transferred properties, to respondent no.3, in the event of non-fulfilment of assurances.

26. He, to a greater extent submits, before this Court that after the interim orders passed by a co-ordinate bench of this Court vide order dated 20.02.2024, respondent no.3 tried to cultivate his land, however, the petitioners in an illegal manner restrained him from doing so. Resultantly, respondent no.3, had to file a complaint before the SHO concerned on dated 15.05.2024, for expelling the petitioners from the land in question and permitting him to cultivate the said land.

27. While referring to a complaint dated 03.07.2024, as filed by the petitioners before the SHO, P.S. Pawal, regarding commission of offences of criminal intimidation against their grandfather-respondent no.3, learned senior counsel submits that such conduct shows the love and affection of the petitioners towards their grandfather, and this clearly establishes that the petitioners do not have any intention to maintain their grandfather (respondent no.3).

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28. By giving the details of the following mentioned properties, learned senior counsel for respondent no.3 argues before this Court that ever since the year 2014, the petitioners have been hell bent upon selling all the properties which respondent no.3, had either gifted them, or bought in their name with his own hard earned money.

- “i. SCO No. 239, Sector 5, Rewari for Rs. 47,11,000/- (Refer Annexure R-3/3 @Pg.444)
- ii. 33 Kanals 19 marlas land situated in Village Sulkha, for an amount of Rs. 1,31,55,625/-:- (Refer Annexure R-3/4 @Pg.449)
- iii. Plot No. 211 measuring 420 Sq. Meters Sector 3, Part I, Rewari for an amount of Rs., 1,25,50,000/-:- (Refer Annexure R-3/5 @Pg.456)
- iv. Agreement to sell dated 01.03.2023 for 95 Kanal 7 Marla (subject matter of present CWP) for Rs.21.55 crores approx.-:- (Refer Annexure R-3/6 @Pg.464)
- v. 17 Kanals 9 marlas land in village Bawal, District Rewari for an amount of Rs. 2,40,00,000/-: (Refer Annexure R-3/7 (@Pg.468)
- vi. Agreement dated 23.12.2023 for of 24 kanals land in village Salan, Rewari, for Rs. 3,25,00,000/-: (Refer Annexure R-3/3 (@Pg.476)”

29. Much emphasis is laid upon the release/transfer deeds to submit that the petitioners are indulging in disposing of the properties which were the hard earned asset of respondent no.3.

SUBMISSIONS MADE ON BEHALF OF RESPONDENT NO.4.

30. Learned counsel for respondent no.4 submits that the petitioners have been given sufficient land by their grandfather (respondent no.3) out of his love and affection, in addition to the land which was transferred through release/transfer deeds in question.

31. He further submits that the petitioners in order to conceal their own misdeeds and misconduct which necessitated the filing of

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application under Section 23 of the Act of 2007 by their grandfather-respondent no.3, have erroneously and illegally attempted to shift the entire blame upon respondent no.4. It is further contended that the entire allegations levelled against respondent no.4 are baseless, false and incorrect. He has also referred to the details of various property transactions made in favour of the petitioners by respondent no. 3 to substantiate his submissions.

32. He also submits that respondent no.4 has supported the case of his grandfather (respondent no.3), while asserting that he never objected to his grandfather's intention to reclaim the properties which were transferred by him, out of his love and affection, to the petitioners. It is further contended that the properties in question solely belongs to respondent no.3, having been acquired from his own hard earned money, and it is his sole discretion, to deal with the same, the manner or way he likes.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.5.

33. Learned counsel for respondent no.5, also vociferously opposed the submissions, as made on behalf of the petitioners. It is submitted that the after the order passed by the learned Appellate Tribunal concerned vide order dated 23.01.2024 (Annexure P-29), respondent no.3 executed a transfer deed dated 09.02.2024 *qua* parcel of land in favour of respondent no.5.

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34. He further submits that at the time when there was no ongoing litigation between the parties, respondent no.3, being the absolute owner of the property, out of his own will and volition had transferred the property measuring 163 *kanal* 5.34 *marla*, situated in the revenue estate of Asra Ka Majra, in favour of respondent no.5, and as such she has become the absolute owner of the same, and a vested right in the said property was created in her favour. The transfer deed executed in favour of respondent no.5, cannot be put to challenge by filing the instant writ petitions, which can only be assailed by taking recourse of filing an independent civil suit.

35. He finally, submits that no petition is maintainable against a private individual, especially, who was not even a party before the learned tribunal concerned.

ANALYSIS

36. This Court has examined the impugned orders as well as the rival submissions as made by all the parties concerned.

37. Before testing the legality of the impugned orders, let's have a glimpse upon the provisions of Section 23 of the Act of 2007, which is extracted hereinafter:-

“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

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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.”

38. The above extracted provisions empowers the senior citizen to seek cancellation of any transfer of property executed by them, either by way of gift deed, or otherwise; provided that the transferee has undertaken the obligation to provide basic amenities and maintenance to the senior citizen and such transferee failed to provide the promised maintenance, in that eventuality, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence.

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39. Sub-clause (1) of Section 23 of the Act of 2007, creates a legal fiction and empowers the learned Maintenance Tribunal concerned, to presume that the transfer is the result of fraud, coercion or undue influence, in case, the transfer is made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, and post the execution of the transfer deed, the transferee fails to keep the promise.

40. Two ingredients are essential to be established by leading the cogent evidence; first, that the transfer was subject to the condition that the transferee shall provide the basic amenities and fulfill all basic physical needs; second, that post the transfer of execution of the transfer deed, the transferee failed to provide the basic amenities and physical needs.

41. Hon'ble Supreme Court, in case titled '***Sudesh Chhikara vs. Ramti Devi and another***', Civil Appeal No.174 of 2021, decided on 06.12.2022, has held that, to attract the provisions of Section 23 of the Act of 2007, the condition of providing basic amenities and basic physical needs to transferor-senior citizen is *sine qua non* for its applicability. The relevant paragraphs are extracted hereunder:-

“13. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not

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necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

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.”

42. Similar observations were made by a Co-ordinate Bench of this Court, in case titled **‘Tilak Raj vs. State of U.T. Chandigarh and**

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others', CWP-414-2025, decided on 13.01.2025, wherein, after considering the ratio laid down in ***Sudesh Chhikara's case (supra)***, it was held that the condition requiring the transferee to maintain the senior citizen by providing basic amenities and physical needs must not only be expressly stipulated in the transfer deed, but must also be specifically pleaded before the learned Tribunal concerned, in order to establish a breach thereof. It is only upon fulfillment of these conditions that the relief under Section 23 of the Act of 2007, can be granted. The relevant observations of the Co-ordinate Bench are extracted hereinbelow:

“12. A bare perusal of the above paragraphs of the judgment in Sudesh Chhikara (supra) makes it clear that not only the condition that the senior citizen will be maintained by the transferee qua his basic amenities and basic physical needs must be there in the document concerned but, the said part needs to be pleaded before the Tribunal also so as to prove the violation of the said condition and it is only under that circumstances, the relief can be granted. In the absence of the condition that the transferee is liable to maintain the senior citizen in the deed sought to be recalled, the requirement of Section 23 of the 2007 Act are not fulfilled and the interpretation being given by the petitioner to the paragraphs 13 and 14 of the judgment cannot be accepted.

13. Even otherwise, on being asked to read from the pleadings as to what basic amenities and the basic physical needs were demanded by the petitioner before the Tribunal and how they were proved, learned counsel for the petitioner has not been able to show that any such

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factual averment was made or any evidence was brought on record with regard to any basic amenities or the physical needs of the petitioner, not being fulfilled by the respondent. Hence, even if the interpretation being given by the petitioner is accepted for the sake of argument, then also, the requirements of the judgment in Sudesh Chhikara (supra) are not fulfilled in the facts and circumstances of the present case.”

43. The legality of the hereinabove expressed observations was tested by the aggrieved by filing LPA No.1012 of 2025. However, the same were affirmed by the Division Bench of this Court, by drawing an order dated 09.05.2025. The relevant paragraphs of this order are extracted hereunder:-

“10. A perusal of the said judgment indicates that transfer must be made subject to the condition that transferee shall provide basic amenities and basic physical needs to the transferor and only then if the transferee refuses or fails to provide such amenities or physical needs to the transferor Section 23 (1) of the 2007 Act can be brought into motion. Only if both the conditions are satisfied by a legal fiction, then transfer shall be deemed to have been made by way of fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of transferor and the Maintenance Tribunal would have the jurisdiction to declare the transfer void.

11. It was further observed in Sudesh Chhikara's case (supra) that when a petition under Section 23 of the 2007 Act does not reveal that the deed was executed subject to the obligation of maintenance stipulated under Section 23

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of the 2007 Act and no such finding is recorded by the Maintenance Tribunal or no oral evidence is adduced by the parties, then the order of the Tribunal could not be held to be maintainable.”

44. From the anvil of the above, it needs to be evaluated/examined by this Court, as to whether, the application filed by respondent no.3 (senior citizen) before the learned Maintenance Tribunal concerned, invites the mischief of Section 23 of the Act of 2007, specifically, keeping in mind that there is no recital in the release/transfer deeds to the effect that transfer of property by the senior citizen was subject to providing basic amenities and basic physical needs to him by the transferee.

45. The jurisdiction of the Senior Citizen's Tribunal, to invoke the provisions of Section 23 of the Act of 2007, is confined to the fact, as to whether, the document of gift deed or release/transfer deed, includes express, or implied condition containing a legal obligation on the transferee to provide basic amenities and basic physical needs to the transferor; and second, as to whether, the transferee has failed to or refused to fulfill such obligations.

46. While following the ratio laid by the Hon'ble Supreme Court in “**Sudesh Chhikara vs. Ramti Devi and another**”, this Court can safely conclude that the first condition containing legal obligation upon the transferee towards the transferor, is absent in the release/transfer

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deeds in question. In that eventuality, it is upon the learned Maintenance Tribunal concerned, to evaluate from the facts and circumstances *ibid* and evidence led, as to whether, such release/transfer deed is subject to the conditions of providing basic amenities and basic physical needs or not?

47. In the instant case, the learned Maintenance Tribunal concerned, has failed to carry out such exercise, as explained above. Further, even if the petitioners were proceeded against *ex parte*, the tribunal concerned, is not discharged from its duty to carry out such exercise. In absence of the two conditions, as explained by Hon'ble Supreme Court in **Sudesh Chhikara's** case, and also by this Court in preceding paragraphs, the learned Maintenance Tribunal does not have any jurisdiction to declare the release/transfer deeds as null and void.

48. Learned counsel for the petitioners while giving details of the transfer of properties *inter se* the petitioners, respondent no.3 and respondent no.4, has specifically emphasised that it is a case of a property dispute *inter se* the family, and respondent no.4, is solely responsible for initiation of proceedings against the present petitioners. This submission finds strength from the fact that immediately after cancellation of the release/transfer deeds in question, respondent no.3, opted to transfer the land in favour of the real sister of respondent no.4, namely Prisha Lamba, who has been arrayed as respondent no.5.

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49. This Court has also referred to the family pedigree, from where it is clear that Phool Kumar solemnised two marriages; the petitioners were born out of first marriage with Sangeeta (since died), whereas, respondents no.4 and 5, born out of second marriage solemnised with one Santosh (still alive). All these aspects ought to have been taken into consideration by the learned Maintenance Tribunal concerned, while adjudicating the issue in dispute, and even the learned Appellate Tribunal concerned, has also failed to examine this aspect in its right earnest.

50. At this stage, it is also relevant to mention that the main grievance of respondent no.3, can be gathered from his statement suffered before the learned Maintenance Tribunal concerned, seeking cancellation of release/transfer deeds. After the the withdrawal of the first application, the reasons for preferring second application was that the petitioners were indulging in transferring the transferred properties at throwaway price. Whether such allegations invites the mischief of Section 23 of the Act of 2007, also ought to have been examined the learned Maintenance Tribunal concerned. However, through a cryptic and a non-speaking order, the release/transfer deeds were declared null and void by the learned Maintenance Tribunal concerned. The relevant part of the examination-in-chief of respondent no.3 submitted before the learned Maintenance Tribunal by way of an affidavit is extracted hereinafter:-

“7. That I had raised challenge in a petition under section 23 of M. OF. P & Sr. Citizen Act, 2007 titled as Medh Singh

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Versus Amandeep etc. Upon learning about the same, the respondents apologised before me and started serving me and started expressing their love and affection for me and fully assured me that neither they will transfer the above land in any manner nor they will create any charge thereupon and will take care of me in my ailments and at this last stage of my life and will not attribute any mental and physical harm to me in any manner and fraudulently got withdrawn the above petition titled as Medh Singh Versus Amandeep etc. from me on 26.10.2020.

8. That now since long, the respondents especially respondent No.1 and 2 are misbehaving with me and used to speak against me and are not serving me, are not providing treatment to me in ailment and the respondents are threatening to sell the above land. Now I learnt that the above respondents No.1 and 2 have internally finalized the deal for sale of above land to some other person and when I enquired about this, an attempt was made to strangle me to death.

9. That the respondents No.1 and 2 are at the verge to alienate the above said property. The respondents No. 1 and 2 suffers from bad habits, who, by virtue of registered sale deed Vasika No.2684 dated 18.01.2023, have already sold 33 Kanals 19 Marlas of land and by virtue of registered sale deed No.8039 dated 20.02.2023, have already sold 500 Sq. Yards of plot situated in Sector-3 (Part-I), HUDA, Rewari.

10. That keeping in view the above misconduct, misbehaviour and fraud, I the petitioner wants to declare the above said document vide Vasika No.1430 and 1431 dated 21-8-2018, Mutation No. 15552 dated 10.9.2018 entered in favour of the respondents, as null and void and do not want to give any of my land to the respondents for the time being so that the applicant may maintain himself and may lead his remaining life respectfully and may maintain himself and may spent in his ailment etc. Surrender Mehlwat's M.No.8607824265 and Tirath's M.No.8059828536.”

51. So far as the learned Appellate Tribunal, is concerned, it has also failed to examine the legal as well as factual aspect, as explained above. It has not examined the plea, as raised by the petitioners to the effect that the application (*supra*), has been filed by respondent no.3, at the behest of his grandson (respondent no.4). The statement made by

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respondent no.4 before the learned Maintenance Tribunal on 29.09.2023, wherein, he expressed his inability to offer his services to his grandfather (respondent no.3), ought to have been considered by the learned Appellate Tribunal concerned, in its right perspective, in order to evaluate, as to whether, the application (*supra*), was in fact, filed by respondent no.3, at the instance of respondent no.4 to settle the property dispute.

52. The learned Appellate Tribunal concerned, has also failed to consider, as to whether, there is any positive evidence led by respondent no.3, to establish that the petitioners had neglected to maintain him after the execution of release/transfer deeds in question or not?

53. Further, the learned Appellate Tribunal ought to have considered that the transfer deeds, other than those under dispute, which were executed in favour of respondent no.4 by respondent no.3, have never been put to question, despite respondent no.4 having made a specific statement before the learned Maintenance Tribunal expressing his inability to maintain his grandfather-respondent no.3.

FINAL ORDER

54. In view of the above, this Court finds that both the impugned orders do not pass the test of legality, therefore, the same are **set aside** and the matter is **remanded** to the learned Maintenance Tribunal concerned for adjudication afresh on the application filed under Section

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23 of the Act of 2007, so preferred by respondent no.3 (senior citizen), while considering the above discussed legal as well as factual aspects, after giving due opportunity of hearing to all the parties concerned.

55. The aforesaid exercise shall be carried out within a period of 03 months from the date of receipt of a certified copy of this order.

56. All the parties concerned, are directed appear before the learned Maintenance Tribunal concerned, on 10.11.2025 at 11:00 a.m.

57. Needless to assert that anything observed hereinabove is only for the purpose of adjudicating the legality of the impugned orders, therefore, the same would not have any bearing upon the quashi judicial authority concerned, at the time of deciding the *lis*, afresh. The authority concerned shall take an independent decision, in view of the position of law, as explained above.

58. **Disposed of** accordingly

A photocopy of this order be placed on the file of the connected case.

September 30, 2025
dharamvir/AK Sharma

(KULDEEP TIWARI)
JUDGE

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