



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CWP-6804-2023 (O&M)

Date of Decision : 02.07.2025

Rajesh alias Rajesh Singh

...Petitioner

Versus

Deputy Commissioner, Panipat and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.S. Saneta, Advocate for the petitioner.

Mr. Nonish Kumar, Advocate for respondent No. 2.

Harsimran Singh Sethi J. (Oral)

CM-3584-CWP-2025

Learned counsel for the petitioner submits that as the writ petition is listed for hearing today, the present application for fixing the main writ petition to an early actual date of hearing has become infructuous and the same may kindly be disposed of as such.

Ordered accordingly.

CM-8824-CWP-2025

Application is allowed, as prayed for.

CWP-6804-2023

1. In the present petition, the challenge is to the order dated 09.03.2023 (Annexure P-5) by which the Deputy Commissioner, Panipat while exercising the jurisdiction under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act')



has set-aside the transfer deed No. 2869 dated 20.02.2018 as well as the consequent mutation No. 5302 dated 25.10.2018 by which, the land transferred in the name of the petitioner by respondent No. 2 has been set-aside.

2. Learned counsel appearing on behalf of the petitioner argues that the land in question was transferred in favour of the petitioner by respondent No. 2-senior citizen of his own will without there being any misrepresentation or fraud on the part of the petitioner hence, seeking cancellation of the said transfer deed and the consequent mutation at the hands of respondent No. 2-senior citizen by invoking the provisions of 2007 Act is incorrect. Learned counsel appearing on behalf of the petitioner further argues that the cancellation of transfer of the land by the respondent-senior citizen to transferee can only be done under Section 23 of 2007 Act and that too only when the essential ingredients required to do so are fulfilled and in the present case, without noticing whether the ingredients required to cancel the transfer as envisaged under Section 23 of 2007 Act are fulfilled or not, the Deputy Commissioner has passed the impugned order cancelling the said transfer only on the ground that the petitioner is not 'helping' respondent No. 2-senior citizen, which is not a ground envisaged in Section 23 of 2007 Act for cancelling the transfer of land done in favour of transferee and without appreciating the said fact, vide impugned order, the transfer deed and the consequent mutation has been set-aside, which is arbitrary and illegal hence, the impugned order dated 09.03.2023 (Annexure P-5) may kindly be set-aside.



3. Learned counsel appearing on behalf of respondent No. 2-senior citizen submits that transfer of the land in question was done by the senior citizen, whereby the petitioner in a fraudulent manner by misleading and misrepresenting the senior citizen, whereas, actually the senior citizen never wanted to transfer the land in favour of the petitioner but the same was done by senior citizen, whereby his consent was not free and fraud was played on him by the petitioner hence, the said transfer of the land was required to be cancelled and has rightly been cancelled by the authorities concerned while exercising jurisdiction under 2007 Act and the said order be maintained.

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

5. The senior citizens have been given certain privileges under 2007 Act. In case, a senior citizen transfers his/her land in favour of the family and the transferee does not take care of the senior citizen, therefore, contravening the provisions of such transfer, a right has been given to the senior citizen to get such transfer deed cancelled. In order to appreciate the controversy, Section 23 of 2007 Act is reproduced hereunder :-

“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 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 organization referred to in Explanation to sub-section (1) of section 5”

6. A bare perusal of Section 23 of 2007 Act would show that a transfer can be cancelled under 2007 Act in case, the land which has been transferred by the senior citizen after the promulgation of 2007 Act contains the condition that the senior citizen will be maintained by the transferee and the said condition is proved having not been adhered to by the transferee before the Court then only, the transfer can be cancelled.

7. The facts of the present case are slightly different. The respondent No. 2-senior citizen transferred the land in question in favour of the petitioner vide transfer deed No. 2869 dated 20.02.2018. The senior citizen has total nine and half acres of land in his name out of which, 4.5 acres of land was transferred in the name of the petitioner.

8. A bare perusal of the transfer deed No. 2869 dated 20.02.2018 would show that there was no such condition was imposed upon the transferee-petitioner that upon transfer of the land, the petitioner is to maintain the senior citizen.



9. Learned counsel appearing on behalf of respondent No. 2 has not been able to show any such condition stipulated in the transfer deed to this Court to claim that Section 23 of 2007 Act has to be made operative in the facts and circumstances of the present case.

10. Even if, it is assumed for the sake of argument that the duty was envisaged upon the petitioner was to maintain the senior citizen despite there being no condition in the transfer deed then also, the facts of the present case does not show that the petitioner was in a position to maintain the senior citizen.

11. Qua this aspect, it may be noticed that even after the transfer of the land in question in favour of the petitioner, it is conceded position of fact that the land was in the possession of senior citizen and was leased out to a third person. The lease money of the total land i.e. 9.5 acre is being received by respondent No. 2-senior citizen. Once, the financial proceeds of the land transferred in favour of the petitioner was being received by the respondent No. 2-senior citizen which fact has gone undisputed, the question of maintaining the senior citizen by the petitioner which is a condition precedent before invoking provision of Section 23 of 2007 Act does not arise. It is only in case the transferee is getting any financial benefits out of the transfer land along with the fact that there is a condition put forth in the transfer deed to do so, he/she is required to maintain the senior citizen but in the facts and circumstances of the present case, the beneficiary i.e. the petitioner was not getting any financial benefit out of the land transferred as the same was being retained by the respondent No. 2-senior citizen hence,



under these circumstances, the senior citizen cannot say that he was not being maintained by the petitioner so as to invoke Section 23 of 2007 Act.

12. The Deputy Commissioner, Panipat while exercising jurisdiction under 2007 Act while passing the impugned order has ignored all these facts. Rather, only finding recorded while passing the impugned order is that the petitioner is not 'helping the senior citizen'. There is no term 'helping' mentioned in Section 23 of 2007 Act under which the transfer made by a senior citizen can be set-aside on account of fraud, which is a ground taken to cancel the transfer deed. These aspects clearly go to show that the order dated 09.03.2023 (Annexure P-5) passed by the Deputy Commissioner, Panipat is perverse not only upon facts but also upon the provisions of law under which the jurisdiction was being exercised hence, the said order dated 09.03.2023 (Annexure P-5) cannot be sustained and is accordingly set-aside.

13. At this stage, learned counsel for respondent No. 2-senior citizen submits that the land got transferred by the petitioner under fraud by misrepresentation thereby obtaining a blemished consent of senior citizen. It may be noticed that in case, the senior citizen feels that he was defrauded and misrepresented by the petitioner before the transfer of the land, the remedy available is before Civil Court and in case, the senior citizen intends to exercise the said jurisdiction and the said remedy is available to him, he will be free to avail the said remedy before appropriate forum.

14. Learned counsel for the petitioner submits that senior citizen be directed to hand over the position of the property to the petitioner as transferred vide transfer deed dated 20.02.2018. Such direction cannot be



given under 2007 Act. In case, petitioner intended to take possession of the land transferred to him by the senior citizen in respect of transfer deed dated 20.02.2018, he has to approach the Civil Court by availing appropriate remedy as possession of property can only be taken by due process of law.

15. No other argument is raised.
16. Petition is allowed in above terms.
17. Pending miscellaneous application, if any, also stands disposed of.

July 02, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No