



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 1936/2022

Vinod Sharma

----Petitioner

Versus

1. Smt. Shanti Devi '

2. Achluram

3. Rajendra

4. Mahendra

----Respondents

For Petitioner(s) : Mr. O.P. Mehta and  
Mr. Falgun Buch

For Respondent(s) : Mr. J. K. Chanda

**JUSTICE DINESH MEHTA**

**Judgment**

**Reserved on ::: 14/02/2022**

**Pronounced on ::: 21/02/2022**

**Reportable**

(1) This Court is called upon to examine the legality, propriety and correctness of the order dated 05.01.2022, passed by the Maintenance Tribunal and S.D.O. (North), Jodhpur (hereinafter referred to as 'the Tribunal') whereby the petitioner and respondent Nos.3 and 4 each have been ordered to deposit a sum of Rs.3,000/- per month in the bank account of respondent Nos.1 and 2 – lesser privileged parents.



(2) Had this order confined to payment of maintenance, this Court would not have interfered in the matter, but the indulgence of this Court is necessitated because of the other direction relating to eviction of the non-applicant No.3 (petitioner herein) who has been residing in the house of the applicants (respondent Nos.1 and 2 herein).

(3) The conundrum, which is to be solved in the present case is, whether pursuant to an application filed under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act of 2007') read with Rajasthan Maintenance of Parents and Senior Citizens Rules, 2010 (hereinafter referred to as 'the Rules of 2010'), can an order of eviction be passed by the Tribunal constituted under the Act of 2007.

(4) The factual canvas of the case, if unfurled, would bring to fore nothing except acrimonious relationship between the petitioner with his parents and his siblings, which has unfortunately become an order of the day.

(5) Hence, avoiding detailed facts, this Court is outlining the facts which are quintessential for delving into the question involved.

(6) The respondent Nos.1 and 2 filed an application under Section 5(A)(B) of the Act of 2007 read with Rule 4(1)(3) of the Rules of 2010, inter alia, bringing to the notice of the Tribunal that they being senior citizens of 75 years and 82 years of age are facing financial constraints, as their three sons (petitioner and respondent Nos.3 and 4 herein) are neither taking their care nor are they maintaining them. Arraying all the three sons, it was



prayed that each of them be directed to pay a monthly maintenance amount of Rs.10,000/-.

(7) In the application so filed, not only the sustenance was sought for but also an order of ouster of all the three sons (the petitioner; respondent Nos.3 and 4) was prayed so that they could live in their residential house situated at Plot No.2, Artisan Colony, Masooriya, Jodhpur (hereinafter referred to as 'the subject house').

(8) A reply to the application was filed by the present petitioner asserting that the respondent Nos.1 and 2, despite having sufficient means to meet their ends, filed the petition with a view to harass the petitioner. Various other averments were also made, which are hardly of any use for the issue involved.

(9) The Tribunal decided the subject application vide its order dated 05.01.2022 and directed the petitioner so also respondent Nos.3 and 4 to pay Rs.3,000/- per month as maintenance to their parents. All the three sons were also directed to hand-over the possession of the subject house to the applicants-parents, with a simultaneous direction to the Station House Officer, P.S. Dev Nagar to ensure compliance and submit a report.

(10) Having visited with an order of eviction, the petitioner (non-applicant No.2) has invoked extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India with a plea that the Tribunal cannot pass an order of eviction.

(11) Mr. O.P. Mehta, learned counsel for the petitioner, argued that the impugned order to the extent of forceful eviction of the petitioner is illegal and fundamentally without jurisdiction, as the Tribunal does not possess any such power under provisions of the Act of 2007.



(12) He argued that section 23 of the Act of 2007 is the only provision in the entire Act, which deals with immovable property and such section, by no stretch of imagination is attracted in the present case, inasmuch as the respondent No.1 has not executed any gift-deed or otherwise transferred the property in petitioner's favour. And moreso when no allegation of physical assault and mental cruelty have been levelled.

(13) Advancing his arguments further, it was submitted that unless there are pleadings asserting execution of a gift-deed and consequent transfer of property, the Tribunal cannot assume jurisdiction and issue an order of eviction. In other words he argued that in appropriate case, the Tribunal can declare transfer of property by way of gift or otherwise to be illegal or void, but in absence of such eventuality, order of eviction cannot be passed.

(14) Learned counsel invited Court's attention towards order dated 12.09.2008 passed by a Coordinate Bench at Jaipur and submitted that the following questions are pending consideration of a Larger Bench pursuant to a reference made in SBCWP No.20305/2018:-

*"(a) Whether the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 empowers the Maintenance Tribunal constituted under Section 7 of the Maintenance Act, 2007 to pass an order of eviction of a person who is in possession of the property of such senior citizen by birth or marriage by interpreting Section 23 of the Maintenance Act, 2007 to include possession as transfer with a condition?"*

*"(b) Whether the word 'transfer' used in Section 23 of the Maintenance Act, 2007 would include the possession held by birth or marriage and declaration of transfer as void would include eviction also?"*



(15) Having informed the Court about pendency of reference, Mr. Mehta, prayed that until the above questions are answered, effect and operation of the impugned order dated 05.01.2022 be stayed.

(16) Apart from above submissions, learned counsel for the petitioner, cited the following judgments in his support:-

(i) Subhashini Vs. The District Collector, Kozhikode & Ors. [ILR 2020 (4) Kerela 117]

(ii) Om Prakash Manchanda Vs. D.M./Collector, Kanpur Nagar & Ors. [2019 (132) ALR 566]

(iii) Manisha Saloman Vs. Kalawati Saloman [AIR 2021 Chh. 92]

(17) Mr. J.K. Chanda, learned counsel appearing for the respondent Nos.1 and 2, in Caveat, submitted that the order under consideration passed by the Tribunal is perfectly just and valid. He contended that the petitioner and his wife have made their parents' lives miserable. On the one hand, they are not lending financial support and on the other hand they are creating nuisance and quarreling with them due to which it has become difficult nay impossible for them to live in their own house with peace. He vehemently argued that the Tribunal has heard the parties and upon realising the agony of the hapless parents who are in twilight of their life, has passed the order of handing over the possession of the subject property.

(18) According to learned counsel, the direction of dispossession/eviction has been passed not exercising the powers under section 23 of the Act of 2007, but by invoking sub-rules (2) and (5) of Rule 20 of the Rules of 2010.

(19) He urged that it is the duty of the State to ensure that life and property of senior citizens are protected and they are able to



live with security and dignity. It was also argued that in view of the provisions contained in sub-rule (5) of Rule 20 of the Rules of 2010, in case of a danger to life or property of a senior citizen, it is the duty of the District Magistrate or an officer subordinate to him to protect life and property of such senior citizen.

(20) He summed up his arguments while submitting that the fact that the above quoted questions are pending consideration of the Larger Bench, which revolves around section 23 of the Act of 2007 has hardly any bearing on the present case because instead of resorting to section 23 of the Act of 2007, the Tribunal has issued direction in order to ensure compliance of sub-rules (2) and (5) of Rule 20 of the Rules of 2010.

(21) No sooner had Mr. Chanda rested his arguments than the Court posed a question to him, "whether the Tribunal constituted under the Act of 2007 can perform the duties and exercise the powers given under Rule 20 of the Rules of 2010, which are specifically meant for District Magistrate?"

(22) Though Mr. Chanda had no convincing answer to the pointed question he nonetheless proceeded to place a slew of judgments of different High Courts, wherein such orders of eviction have been affirmed. Following are the judgments he cited:-

- (i) Justice Shanti Sarup Dewan Vs. U.T., Chandigarh & Ors. [MANU/PH/2648/2013]
- (ii) Promil Tomar & Ors. Vs. State of Haryana & Ors. [(2014) 175 (1) PLR 94]
- (iii) Sunny Paul Vs. State of NCT of Delhi & Ors. [253 (2018) DLT 410]

(23) Heard.



(24) Before venturing into the journey, it would be apt to refer to the judgment cited by the rival counsel with small narration of facts and adjudication made therein.

(25) Judgments cited by the petitioner's counsel:-

(i) In the case of *Subhashini (supra)*, a full bench of High Court of Kerala was referred the question on the extent to which Section 23 of the Act could proceed in annulling rights obtained in immovable property by transfer inter-vivos. While contemplating the object of section 23 the Court held thus:

"13. ...The legislation is inspired by the social realities generally and particularly in the Indian context, where there is prevalent a tendency for the old and infirm to gift or otherwise settle their properties on their children. Section 23, it was argued, realizes that often the elderly, give up their valuable rights over property, in the hope and expectation that they would be looked after and their infirmities assuaged. Though there is an element of morality in the legislation as such, that cannot be the sole reigning consideration in interpreting a provision in the statute which brings in drastic consequences as available in Section 23, totally extinguishing the rights of the transferee."

The Court observed that section 23 is a stand-out provision in the overall scheme of the Act holding thus:

"20. Chapter V under which Section 23 is included, speaks of 'Protection of Life and Property of Senior Citizen'. Section 21 speaks of measures for publicity and awareness of the provisions of the Act, sensitization and training of both executive and judicial officers enjoined with the task of implementing the provisions of the Act and effective co-ordination between the various Ministries or Departments for addressing effectively the issues relating to welfare of senior citizens. Section 22 speaks of authorities who may be specified for implementing the provisions of the Act. Section 32 empowers the State Government to make rules prescribing the manner in which an inquiry under Section 5 shall be held and the power and procedure to be followed by the Tribunal under Section 8, which permits such inquiry to be summary. There is neither power, specifically conferred on the State



Government to prescribe the procedure in an application under Section 23, nor is it prescribed in the Rules. Section 8 provides a summary procedure only with respect to the inquiry under Section 5 and not that under Section 23. There is not even a form prescribed in which an application is to be made before the Tribunal; for prescription of which there is no empowerment in the statute, as we noticed. Hence our observation that Section 23 (1) stands out, glaringly in contrast to the general scheme of the Act. Sub-section (2) again is with reference to maintenance out of an estate and it is that right available under Section 39 of the Transfer of Property Act, 1882 (for brevity 'the T.P Act'); which align with the scheme of the enactment."

On the meaning of the phrase "gifts or otherwise" contained in section 23 the Court held thus:

"35. ... If text is the texture-context is what gives the colour. We are of the opinion that looking at the text of the Act and looking at the context in which it was enacted and has application, the intention of qualifying the transfer of property by a senior citizen with the words 'gift or otherwise', projects a clear indication to restrict the words 'or otherwise' to such category of transfers which are in the nature of gifts or partakes the character of gift."

While deciding the nature of proceedings under the Act of 2007 the Full bench of Kerala High Court held thus:

"42. We have already seen that power to prescribe the procedure for inquiry under the Act, is conferred on the Tribunals constituted under the Act of 2007; subject to that prescribed by the State Government under Section 32. The procedure contemplated by the statute is summary as per Section 8(1). Sub-section (2) of Section 8 confers the Tribunal with the powers of a Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses, compelling discovery of evidence, documents and material objects and for such other purposes as may be prescribed. The Rules do not prescribe the Tribunal to invoke any other provisions of the CPC. Section 8(2) does not confer the Tribunal with the power of the Civil Court as such and speaks only of the Tribunal being a Civil Court for the purpose of Section 195 and Chapter XXVI of the Cr.P.C. The Tribunal hence, cannot be a substitute for a Civil Court for the purpose of carrying out an inquiry as to the





circumstances which led to the execution of the document which is capable of being declared void under Section 23(1).

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43. The Legislature never intended that such complex questions of facts and law are to be gone into by the Tribunal constituted under the Act of 2007 which, we reiterate, has been constituted for the purpose of adjudicating issues of maintenance as would arise under Section 5 of the Act and also confers a restricted jurisdiction under Section 23(1)."

The Court finally concluded as under on the question referred to it by the Division Bench:

"52. We conclude by answering the reference, that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. It is the jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry. We answer the reference agreeing with the decision in W.A. No. 2012 of 2012 dated 28.11.2012 [MalukuttyPonnarassery v. P. RajanPonnarassery]. We find *Shabeen Martin v. Muriel* [MANU/KE/2026/2016 : 2016 (5) KHC 603] and *Sundhari v. Revenue Divisional Officer* [MANU/KE/0481/2018 : 2018 KHC 4655 : 2013 (3) KLT 1082] to be wrongly decided. We approve *Radhamani v. State of Kerala* [MANU/KE/2493/2015 : 2016 (1) KHC 9] which had a recital in the document akin to that required under Section 23(1)."

(ii) In the case of *Om Prakash Manchanda (supra)*, the petitioner-father challenged the rejection of his application filed under Section 5 of the Act of 2007 praying for refund of the money given to respondent-son and to obtain vacant possession of his house due to harassment of the petitioner by the respondent. The Court while deciding the issue before it discussed the scope of the provisions of the Act of 2007 holding thus:



“26. Thus, from the aforesaid discussion, it is evident that the Senior Citizens Act, 2007 has been enacted in order to provide speedy remedy to the aged parents as against the atrocities of their near and dear ones including their children. If the parent is aged and old and incapacitated to maintain himself/herself, the son or the relative may be held liable to maintain his/her parent. The maintenance can be fixed by the Tribunal after making a summary enquiry and effective measures can be taken to ensure that the same is paid and the senior citizen gets sufficient money to meet his daily need and medical expenses so that he may live his life with dignity. Further, in case of any harassment by son or relative living in the house of the senior citizen, who subject him (the senior citizen) to mental cruelty or physical torture, he (the son or relative of the senior citizen) would make himself liable to eviction under Section 23 of the Senior Citizens Act 2007, despite the fact that the property in which he is living has been transferred in his name by such senior citizen. The reason being that the transfer made with the condition to maintain the transferor shall be deemed to be void in case of any such condition. The word 'transfer' used in Section 23 would not only mean to include actual transfer rather it would be given a liberal consideration so as to include the "transfer of possession" to son or relative. The son or relative living in the property of the senior citizen would be only a licensee who has been allowed to occupy the same out of parental love. And such a licensee of the senior citizen would be subjected to the proceedings under Section 23 of the Senior Citizens Act, 2007 if a case of mental torture or physical assault is found.”

(iii) In the case of *Manisha Saloman (supra)*, the petitioner (daughter-in-law) challenged the order passed in favour of respondent (mother-in-law) directing eviction of the petitioner. The issue before the Court was whether the Maintenance Tribunal could pass such an order in exercise of the powers vested in it under Sections 9, 10 and 11 of the Act of 2007? The Court answered the aforesaid issue in the negative holding thus:

“19. On perusal of the provisions under Sections 9, 10 and 11 of the Act, 2007, it is found that the Maintenance Tribunal has no such power to pass any order of eviction from any disputed house...”



(26) Judgments cited by the respondents's counsel:-

(i) In the case of *Justice Shanti Sarup Dewan (supra)*, the father owned the property where he resided with his son. Due to differences with his son the father sought his eviction from the property under section 22 of the Act. The Court framed the issue that whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act and held as under:

"36. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No. 1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an overriding effect qua any other enactment in view of Section 3 of the said Act. In fact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time-consuming civil proceedings may not be finished during the lifetime of appellant No. 1. In fact, that is the very objective of respondent No. 7."

(ii) In the case of *Promil Tomar & Ors. (supra)*, the father owned 50% of the property while he transferred the remaining 50% to his eldest son. The son had been residing in the said property since 2009, i.e., after the commencement of the Act. The father averred that the property was his self-acquired property and the 50% share in the property was given to the son on the assurance



that he shall take care of his father. Under section 23 the father sought eviction of his son from the said property and the Court held as under:

“19. ...The word "otherwise" used under Section 23(1) of the Maintenance Act by the legislation would include transfer of ownership, transfer of possession by way of a lease deed, mortgage, gift or sale deed. Even a transfer of possession to a licensee by a senior citizen will also fall under the ambit of Section 23(1) of the Maintenance Act. The word "otherwise" cannot be ignored for the objective of Section 23(1) of the Maintenance Act. In context to the objectives of the Act, "transfer" would mean that transfer of property by senior citizen need not be a gift only but it could be any transfer within the meaning of Transfer of Property Act or would even include transferring of any right of the nature of title or possession. Section 23(1) of the Maintenance Act further provides that if the transfer is subject to a condition that transferee shall provide basic amenities and basic physical needs to the transferor and transferee refused to do so, the transfer of property shall be deemed to have been made by fraud, coercion or undue influence and would be declared so by the Maintenance Tribunal on the option of transferor. A senior citizen who had transferred his right, title or interest to any other person by gift or otherwise (which would include transfer of possession by lease, mortgage or licence) would become void in the event of transferee refusing to provide amenities and physical needs. The said transfer in such circumstances would be termed as fraud and would be void.

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24. ...A direction is issued to the petitioners to handover the vacant possession of the portion of the property in dispute within a period of two months after the receipt of a certified copy of the order.”

In the aforesaid case, firstly the petitioner had come into possession of the subject property after the commencement of the Act and secondly the transfer of the subject property was made on the assurance by the son to maintain his father. Hence, facts of the present case are clearly distinguishable from that of *Promil Tomar's case (supra)* as in the present case the petitioner had the



possession of the subject property prior to enactment of the Act and there was no transfer of property from Respondents to the Petitioner.

(iii) In the case of *Sunny Paul (supra)*, the parents sought eviction of their son on the basis of Section 23 of the Act. In this case the Rules framed by the Delhi Government in exercise of the powers under section 32 of the Act specifically provided the provision for eviction under Rule 22 unlike the present case where the Rules of 2010 do not provide for eviction. Hence, this judgment is also distinguishable on facts from the present case.

(27) There has been a cleavage of opinion between different High Courts in light of the rules framed by each State in relation to the scope of section 23 of the Act of 2007. In the instant case, the respondents have premised their case on the Rules of 2010. Hence, instead of distinguishing some cases or following some, I deem it appropriate to tread on the uncharted terrain with the judicial scanner. The terrain is unexplored, because no judgment of this Court or Hon'ble the Supreme Court has been brought to my notice.

(28) More often than not, the authorities discharging the duties, under the Act of 2007, including the Tribunal are swayed by the misery of the aged and vagaries of lives of senior citizens. The situation is really grim. The moral standards of the society including the children are deteriorating each day. But the Courts are required to decide right of litigating parties on constitutional moralities and not on public or popular moralities.



(29) This Court proposes to examine as to whether the order of eviction or any other like order of such nature can be passed within the framework of the laws involved in the instant case.

(30) The facts of the case which are concise and admitted need not detain the Court much.

(31) Before dilating upon the provisions, it would be profitable to reproduce them in order to keep them handy:-

**"Section 3.- Act to have over-riding effect**

*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.*

**Section 4.- Maintenance of Parents and Senior Citizens**

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of -

i. parent or grand-parent, against one or more of his children not being a minor

ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2

2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:



*Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.*

### **Section 5.- Application for maintenance**

1. An application for maintenance under section 4, may be made -

a. by a senior citizen or a parent, as the case may be; or

b. if he is incapable, by any other person or organisation authorised by him; or

c. the Tribunal may take cognizance sua motu.

*Explanation: For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force.*

2. The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

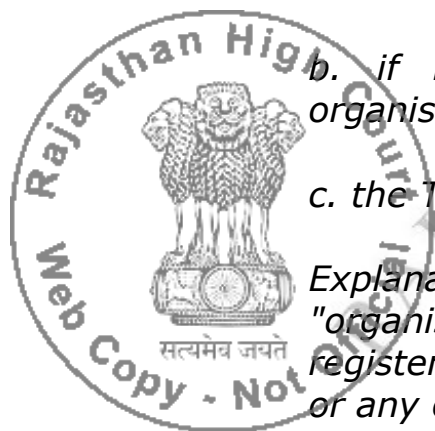
3. On receipt of an application for maintenance under sub-section(I), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

4. An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:

*Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.*

5. An application for maintenance under sub-section (I) may be filed against one or more persons:

*Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.*





6. Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

7. Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

8. If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due.

### **Section 7.- Constitution of Maintenance Tribunal**

1. The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.

2. The Tribunal shall be presided over by an officer not below the rank of SubDivisional Officer of a State.

3. Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

### **Section 8.- Summary procedure in case of inquiry**

1. In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.





2. The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

3. Subject to any rule that may be made in this behalf, the Tribunal may, for the, purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

**Section 11.- Enforcement of order of maintenance**

1. A copy of the order of maintenance and including the order regarding expenses of proceedings, as the case may be, shall be given without payment of any fee to the senior citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by any Tribunal in any place where the person against whom it is made, such Tribunal on being satisfied as to the identity of the parties and the nonpayment of the allowance, or as the case may be, expenses, due.

2. A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 and shall be executed in the manner prescribed for the execution of such order by that Code.

**Section 23.- Transfer of property to be void in certain circumstances**

1. Where any senior citizen who, after the commencement of this Act, has 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 trespasser or 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 transfer or 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.*

### **Relevant provisions of Rules of 2010**

**Rule 2.- Definitions.— (1) In these rules, unless the context otherwise requires,—**

(e) **"District Magistrate and Collector"** means the District Collector/ Magistrate of the District;

(k) **"Presiding Officer"** means an officer appointed to preside over a Maintenance Tribunal referred to under sub—Section (2) of Section 7, or an Appellate Tribunal under sub-Section (2) of Section 15;

**Rule 4.- Procedure for filing an application for maintenance, and its registration. —**

(1) *An application for maintenance under Section 4 shall be made in Form 'A', in the manner laid down in clauses (a) and (b) of sub-Section (1) of Section 5.*

(2) *On receipt of an application under sub-rule (1), the Presiding Officer shall cause—*

(a) *its essential details to be entered in a Register of Maintenance Claim Cases, to be maintained in such form as the State' Government may direct, and*

(b) *its acknowledgment in Form 'B' to be given, notwithstanding anything contained in Rule 5, to the applicant or his authorized representative in case of hand delivery, and its dispatch by post in other cases and the acknowledgment shall specify, inter alia, the registration number of the application.*

(3) *Where a Tribunal takes cognizance of a maintenance claim, suo motu, the Presiding Officer shall, after ascertaining facts, get Form 'A' completed as accurately as possible, through the staff of the Tribunal, and shall, as far as possible, get it authenticated by the concerned senior citizen or parent, or any person or organization authorized by him and shall cause the same to be registered in accordance with clause (a) of sub-rule (2) above.*



**Rule 5.- Preliminary Scrutiny of the application. —**

(1) On receipt of an application under sub-Section (1) of Section 5, the Tribunal shall satisfy itself that:

(a) the application is complete; and

(b) the opposite party has, *prima facie*, an obligation to maintain the applicant in terms of Section 4.

(2) In case where the Tribunal finds any lacunae in the application, it may direct the applicant to rectify such lacunae within a reasonable time limit.

**Rule 20.- Duties and Powers of the District Magistrate.**

(1) The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to,—

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;

**(5) In case of a danger to life or property of a senior citizen, it shall be the duty of the District Magistrate or an officer subordinate to him duly authorized to protect the life and property of such senior citizen."**

(32) Before delving into various statutory provisions, this Court would go through the Statement of Objects and Reasons of the Act of 2007, so as to gather the legislative intention behind enacting the Act and its provisions.

(33) If the text is texture, the context is what gives colour, then interpretation must depend on the text and the context. Neither can be ignored. The interpretation which makes the textual interpretation match the contextual is the best interpretation.

**[Re.: Reserve Bank of India Vs. Peerless Co. (1987) 1 SCC 424]**

(34) The Statement of Objects and Reasons reveals that the Act of 2007 was promulgated to give more attention to the care and



protection of the older persons. They clearly spell out that though parents can claim maintenance under the Code of Criminal Procedure, 1973, but the same is time consuming and expensive, hence, in order to have a simple, inexpensive and speedy provisions to claim maintenance for parents and senior citizens, the Act has been enacted.

(35) Apart from maintenance, the Act has been brought to ensure welfare and well being of senior citizens while creating provisions for setting up old-age homes and for making the State Government, and District Magistrates and officers subordinate to them responsible for protecting the life and property of the senior citizens.

(36) Hon'ble the then Union Cabinet Minister of Social Justice and Empowerment, while tabling the Bill in the Parliament, made the following remarks:-

"I have mentioned right at the beginning that it is very satisfying and it is a matter of great happiness that longevity has increased. We have a very large number of elderly people to bless us. But it is also very disturbing and it poses a great challenge before us that the joint family system is withering away, it is disintegrating. The best place where the elderly should live is their home and not the old-age home. They are being taken care of with great respect within the environment of their homes. But with the fading away of the joint family system, they find themselves neglected, marginalized and abandoned. This is the side reality. This is the reason why we have brought forward this Bill."

(37) In the backdrop of the Statement of Objects and Reasons and the principles noted above, if the Scheme of the Act of 2007 is to be deciphered, this Court strongly feels that the provisions including the provisions under sections 4 and 5 of the Act of 2007 are meant to ensure that the senior citizens or parents be



provided with sufficient means to live with dignity. The progenies or persons liable to maintain their parents, can be directed by the Tribunal constituted under the Act of 2007 to pay a sum not exceeding Rs.10,000/- per month to the parents.

(38) It is to be noted that sub-section (3) of section 1 provides that the Act shall come into force in a State on such date as the State Government may, by notification in the official gazette, notify. The State of Rajasthan has issued a notification dated 31.07.2008 published in official Gazette on 01.08.2008 vide which 1<sup>st</sup> August 2008 has been appointed as the date of applicability of the provision of the Act of 2007.

(39) The stand-alone provision that deals with the immoveable property of the senior citizens is, section 23, which too is applicable in cases where any senior citizen has transferred by way of gift or otherwise a property subject to the condition that transferee shall provide basic amenities to meet their basic and physical needs to the transferor and in case such transferee neglects to provide such amenities, the transferred property shall be deemed to be fraudulent or under coercion and at the option of the transferee, it can be declared void by the Tribunal.

(40) Section 23 of the Act of 2007 can, therefore, be invoked only in three contingencies:

(i) the transfer by way of gift or otherwise has been made after the commencement of this Act.

(ii) The transfer of property by gift or otherwise stipulates a condition that the transferee will provide basic amenities and physical needs of the transferor.

(iii) it is established that the transferee has refused or failed to provide such amenities and physical needs.



(41) Since none of the ingredients have been pleaded or are otherwise present in the case in hands, the applicability of the provisions of section 23 is out of question. That apart, in view of the specific stand taken by Mr. Chanda that the Tribunal has not exercised its power under section 23 of the Act of 2007, this Court is of the firm view that section 23 is not required to be gone into.

Hence, the pendency of Larger Bench reference should not detain this Court from ferreting out an answer by itself.

(42) An appraisal of the Act of 2007 shows that Chapter II of the Act of 2007 deals with maintenance of parents and senior citizens.

Section 4 of the Act of 2007 is the substantive provision like a charging section of a statute. It confers a right upon a senior citizen including parent to claim maintenance while simultaneously casting a duty or obligation upon children to maintain their parents. Whereas section 5 of the Act of 2007 is the machinery provision which prescribes the manner and authority who shall pass the order of maintenance. Other provisions, namely, sections 6 to 18 are ancillary provisions regarding procedure; nature of inquiry; order; alteration in order; enforcement of the order; manner of depositing the amount; interest; right of appeal and appellate tribunal etc. सत्यमेव जयते

(43) Chapter III and IV provide for state's duty to establish old-age homes and medical support for the senior citizens. Chapter V speaks of protection of life and property of senior citizens. Section 21 embodied in the said Chapter enjoins upon the State Government to give wide publicity to the provisions and create awareness, whereas section 22 empowers the State Government to confer such powers and impose such duties on a District Magistrate to ensure that the provisions of the Act of 2007 are



carried out properly. Section 23 given under this Chapter clothes the Tribunal with the power to declare a transfer to be void in the circumstances given thereunder.

(44) A reading of sections 4 and 5 of the Act of 2007, unravels that the Tribunal constituted under the Act can only pass an order of maintenance in favour of senior citizens or parents. Neither is there any direct or indirect reference of eviction nor do these provisions contemplate any such order to be passed by the Tribunal.

(45) Moving on to the Rules of 2010, it is to be noted that Rule 20 falling under Chapter V of the Rules of 2010 under the head "Duties and Powers of the District Magistrate", provides that it shall be the duty of the District Magistrate to ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity [See Rule 20(2)(i)]. Similarly, sub-rule (5) provides that in case of danger to life or property of a senior citizen, it shall be the duty of the District Magistrate or a duly authorized officer subordinate to him to protect the life and property of such senior citizen.

(46) The first question which naturally comes to one's mind is, whether an order of ejection can at all be passed while taking recourse to sub-rule (2) or (5) of Rule 20 of the Rules of 2010? The answer to this question, according to this Court, is a firm 'No' - it cannot be done. The reasons are not far to seek, which are not set out hereinfra.

(47) Chapter V encapsulates duties and powers of the District Magistrate. If sub-rule (2) of Rule 20 of the Rules of 2010 is carefully read, it reveals that it shall be the duty of the District



Magistrate to ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity. It is pertinent that the duty prescribed under sub-rule (2) is only to ensure that life and property of the senior citizens are protected. The same cannot be stretched to such an extent that it translates into a power to scoop out the children who have been living in shared accommodation out of natural bonding which at some point of time existed.

(48) Rule 20, if read in its entirety with its innate intention, gives a clear indication that being a piece of welfare legislation, it adjures the administration (District Magistrate) to avert threat of life and property of the senior citizens, should any such eventuality arise.

(49) Sub-rule (5) is also to the same effect and casts an obligation upon the District Magistrates. Close and conjoint reading of sub-rules (2) and (5) suggests that the District Magistrate should ensure that the property is properly maintained and for want of financial resources, the property should not deplete or deteriorate so as to threaten the life and property of the senior citizens.

(50) The duties which have been prescribed for District Magistrate under Chapter V of the Rules of 2010, framed in exercise of powers under section 32 of the Act of 2007, cannot be construed to be conveying a power, which the Parent Act, namely the Act of 2007 does not even envision much less permit.

(51) A bare look at Rule 20 of the Rules of 2010 lays bare that the duties and powers enshrined under Rule 20, are available with the "District Magistrate".





(52) Hence, even by over-stretching the scope of Rule 20, if power of eviction is read into the Rules of 2010, this Court is of the firm view that the power of passing an order of eviction (if any), can be exercised by the District Magistrate or its subordinate and in no case by the Tribunal. An S.D.O. may be administratively subordinate to the District Magistrate, but while discharging the duties as a persona designata – the Presiding Officer of the Tribunal, he does not act as a subordinate of the District Magistrate in any manner.

(53) Though no reference to Rule 20 of the Rules of 2010 has been made by the Tribunal, if argument of Mr. Chanda were to be accepted, then also, the authority to pass such an order does not vest in the Tribunal, as Rule 20 categorically uses expression 'District Magistrate'. The Tribunal has thus usurped the purported powers under Rule 20, which are otherwise not meant for or available to it. The order of eviction is, therefore, fundamentally void and without jurisdiction.

(54) There is yet another angle from which the issue whether power of eviction can be read in Rule 20(2) and (5) of the Rules of 2010 can be examined. It is pertinent that section 32 of the Act of 2007 empowers the State Government to frame rules for carrying out purpose of the Act. Sub-section (2) draws the precincts within which the State Government can frame the Rules. It will not be out of place to reproduce Section 32 hereunder:-

**“32. Power of State Government to make rules**

*1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

*2. Without prejudice to the generality of the foregoing power, such rules may provide for -*



a. the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of section 8;

b. the power and procedure of the Tribunal for other purposes under subsection (2) of section 8.

c. the maximum maintenance allowance which may be ordered by the Tribunal under sub-section (2) of section 9;

d. the scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section (2) of section 19;

e. the powers and duties of the authorities for implementing the provisions of this Act. under sub-section (1) of section 22;

f. a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;

g. any other matter which is to be, or may be, prescribed

3. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House, before that House."

(55) So far as the powers of the Tribunal are concerned, section 32(2)(a) empowers the State Government to prescribe manner of holding inquiry under section 5 of the Act of 2007 and sub-section (1) of section 8 of the Act of 2007. Clause (b) of section 32(2) permits the State Government to provide for rules for the power and procedure of the Tribunal for the purpose of sub-section (2) of Section 8 of the Act of 2007.

(56) As against this, clause (d) provides that Rules can be framed for the scheme for management of old age homes including the standards and various types of services to be provided that are



necessary for medical care and means of entertainment. Clauses (e) and (f) provide for powers and duties of the authorities for implementing the provisions under sub-sections (1) and (2) of section 22 of the Act of 2010.

(57) When a clear and distinct demarcation of State's power to frame Rules has been made, the expanse of Rules of 2010 framed by the State, cannot traverse beyond the scope of sections 8, 9, 19 and 22(1) and (2) because, the State is empowered to frame Rules only for the purpose of sections 8, 9, 19 and 22.

(58) This Court is of the view that, sub-rules (2) and (5) of rule 22 cannot be interpreted to include power to pass an order of eviction, because none of these sections (8, 9, 19 and 22) conceive eviction of the children by the Tribunal or even by the District Magistrate.

(59) This being the position, the interpretation sought to be given by Mr. Chanda, if accepted, would be violative of the permissible legislative limits, which the State is bound to honour. The State's power germinates or flows from the fountain head, being section 32 of the Act of 2007. It cannot frame a law which the parent Act does not authorize it to frame.

(60) Without prejudice to what has been discussed and held, even as per respondents' own stand petitioner has been living in the subject premises since his birth. The purported transfer within the meaning of section 23 of the Act of 2007 was made prior to the date when the Act of 2007 was made enforceable in Rajasthan (01.08.2008). Therefore, even by virtue of the extended meaning of section 23 of the Act of 2007 the petitioner cannot be called upon to vacate the premises.



(61) More often than not, the authorities discharging their duties or exercising their powers under the Act of 2007, including the Tribunals get moved by the miseries of old-age and vagaries of life faced by the senior citizens and veteran parents. The situation is really grim – the moral standards of the society including the children are deteriorating with every passing day but then, the Courts are supposed to decide the cases or rights and obligations of the litigants on the touchstone of statutes and constitutional morality and not being solely guided by public or popular morality. The societal expectations and obligations can neither be enforced nor can the same be ordained by the Courts of law unless the law expressly so provides.

(62) In the words of Sh. B.R. Ambedkar, "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise our people have yet to learn it."

(63) According to this Court, small patches or gaps in the law can be filled in with a view to give true meaning to the provisions of a statute. But a hiatus or void supposedly left, consciously or sub-consciously, by the framers of law cannot be bolstered or built up by the quasi-judicial authorities or the Tribunals, which are supposed to apply law as it exists or prevails.

(64) To conclude, while observing that the Act of 2007 does not envisage an order of eviction even by the District Magistrate, much less the Tribunal, this Court unhesitantly holds that order of ouster of the petitioner oppugned in the instant writ petition is dehors the provisions of the Act of 2007; beyond the scope of Rules of 2010 and also out of the powers of the Tribunal.



(65) The writ petition is, therefore, allowed; impugned order dated 05.01.2022, passed by the Tribunal is hereby, quashed.

(66) The stay application also stands disposed of accordingly.

**(DINESH MEHTA),J**

/skm/-



RAJASTHAN HIGH COURT



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