



CNR: KAHC010141732024

NC: 2026:KHC:46022
WP No. 7430 of 2024**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 25TH DAY OF AUGUST, 2026****BEFORE****THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ****WRIT PETITION NO. 7430 OF 2024 (GM-RES)****BETWEEN**

SMT. TEJASWINI. V
W/O D GOPI
AGED ABOUT 28 YEARS
RESIDING AT NO 15
NANJUNDADEVARA BADAVANE
KODIGEHALI MAIN ROAD
BANGALORE NORTH TALUK
BENGALURU 560091

...PETITIONER

(BY SRI: SUJAYEENDRA SRIDHAR, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
REVENUE DEPARTMENT
M S BUILDING
DR B R AMBEDKAR ROAD
BENGALURU 560001
REPRESENTED BY
HIGH COURT GOVERNMENT PLEADER
KARNATAKA HIGH COURT BUILDING
BENGALURU 560001
2. THE TRIBUNAL OF MAINTENANCE
AND WELFARE OF PARENTS AND SENIOR
CITIZENS
AND ASSISTANT COMMISSIONER
BENGALURU NORTH SUB DIVISION
BENGALURU 560001
3. SRI V DHANASHEKAR





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S/O LATE VENKATACHALAPATI
AGED ABOUT 60 YEARS
RESIDING AT OLD NO 3/1
NEW NO 8/1, 9TH CROSS
GANAPATHI NAGAR
BYATARAYANAPURA
BENGALURU 560085

...RESPONDENTS

(BY SRI: MOHAMMED JAFAR SHAH., AGA FOR R1 & R2;
SRI. DHANANJAY JOSHI., SR. COUNSEL, AMICUS CURIAE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ALLOW THE ABOVE WRIT PETITION AND ISSUE A WRIT OF CERTIORARI QUASHING THE ORDER PASSED BY THE SECOND RESPONDENT IN CASE NO. MSC/CR/96/2022 DATED 15.12.2023 AT ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 01.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The petitioner – daughter-in-law of Respondent No.3, is before this Court seeking for the following reliefs:

i) Allow the above writ petition.

ii) Issue a writ of certiorari quashing the order passed by the second Respondent in Case No.MSC/CR/96/2022 dated 15.12.2023 at Annexure-A;

iii) Pass any such other order, issue any other writ or direction that this Hon'ble Court deems fit, in the interest of justice and equity.



2. The Petitioner is the wife of one Sri.D.Gopi S/o Dhanashekar, who is Respondent No.3 herein. Thus, Respondent No.3 is the father-in-law of the Petitioner. The Petitioner got married to the said D.Gopi on 20.06.2010. It is stated that Respondent No.3 is also the maternal uncle of the Petitioner and the alliance was within the family.
3. It is alleged that when the Petitioner got married upon the insistence of elders at a very young age she was barely 15 years old at the time of her marriage. The elders of the family forced her to marry the son of Respondent No.3. The Petitioner and her husband were living with the Respondent No.3 in property bearing No.3/1, Byatarayanapura, Bangalore, since the year 2010. A son was born to the Petitioner and D.Gopi in the year 2013 and was named as Likith Surya. It is alleged that the Petitioner faced harassment in the matrimonial home. The husband was not providing for the basic necessity of the Petitioner and her minor son.
4. In the year 2019, the Petitioner and her parents demanded that Respondent No.3 - father-in-law to



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take some measure to ensure safety and security of the Petitioner and her minor son in the matrimonial house as also to ensure that their future is secured. It is in that background to take care of the Petitioner and minor son, noting that the husband was not taking care of them, Respondent No.3 executed a Will on 12.06.2019 which was registered as document bearing No.CMP-3-00091-2019-20 bequeathing the scheduled property in favour of the Petitioner and her minor son. The Will not being capable of coming into effect immediately, the well-being of the Petitioner and her minor son not being secured, Respondent No.3 executed the gift deed dated 14.10.2020 voluntarily without imposing any conditions to secure the Petitioner and her minor son.

5. On 17.08.2022, Respondent No.3 filed an application under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Senior Citizens Act') alleging that the gift deed executed by him in favour of the Petitioner was on the condition that she shall provide basic necessities and physical needs to Respondent No.3. In the said petition, it was



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alleged that after the execution of the gift, the Petitioner left the matrimonial home and failed to provide any basic amenities to Respondent No.3.

6. The said application was objected to by the Petitioner Firstly, on the ground that as on the date of the execution of the gift, Respondent No.3 born on 16.08.1963, he was 57 years old and thus not a senior citizen. The application under Section 23A having been filed on 17.08.2022, Respondent No.3 was 59 years old and thus not a senior citizen as on that date. Hence, it was contended that Respondent No.3 did not qualify the requirement of the Senior Citizens Act to file the said application under Section 23. Secondly, it was contended that the gift deed executed by Respondent No.3 out of his natural love and affection does not contain any conditions and was, in fact, executed in the background of the fact that the son of Respondent No.3, i.e., the husband of the Petitioner was not taking care of the Petitioner.
7. It was contended that the Petitioner faced harassment in the matrimonial home which she endured as a dutiful wife and daughter-in-law. It is on that basis that it was contended in the

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proceeding before the Assistant Commissioner that there was no requirement for the Petitioner to take care of Respondent No.3 in terms of the gift deed. But the gift deed had been executed to ensure the safety and welfare of the Petitioner and the minor son. Thus, the gift deed would not come within the mischief of Section 23 of the Senior Citizens Act.

8. It is contended that the subject matter of the gift deed consists of a building comprising of 10 residential units. Respondent No.3 and D.Gopi- her husband continues to dwell in a portion of the said property even subsequent to the execution of the gift deed. The other portions being let out on rental basis, Respondent No.3 continued to collect the rents. It was contended that Respondent No.3 continues to collect an amount of ₹ 1,00,000 as rentals from the houses as also a sum of ₹ 15,000 from Bharati Airtel Ltd. on account of erection of a telecommunication / signal tower. It is in that background that the Petitioner contended that despite the gift having been executed in favour of the Petitioner, Respondent No.3 receiving the rentals and his welfare is secured by such rentals.



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9. It is further contended that her husband had an illicit relationship with one Sindhu and when she raised this issue she was thrown out of the matrimonial home and thereafter the above application came to be filed before the Senior Citizen Tribunal.
10. The Senior Citizen Tribunal allowed the application and cancelled the gift deed. It is challenging the same, the Petitioner is before this Court.
11. Sri.Sujayeendra Sridhar, learned counsel for the Petitioner, apart from reiterating the above, would submit that these aspects have not been considered by the Tribunal and further submits that:
 - 11.1. Learned counsel for the Petitioner submits that the Tribunal ought to have first decided the question of maintainability and the locus standi of Respondent No.3 as a preliminary issue. According to him, Respondent No.3 was admittedly not a senior citizen either on the date of execution of the gift deed or on the date of filing of the application. Therefore, Respondent No.3 had no locus to invoke the provisions of the Act.

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- 11.2. He further submits that the Tribunal failed to consider that the gift deed did not contain any condition requiring the donee, namely the Petitioner, to maintain or look after Respondent No.3.
- 11.3. Learned counsel further relies upon the documents produced along with the memo dated 05.12.2025. He submits that there was an earlier partition dated 10.11.2003 among Respondent No.3 and his family members, under which certain properties were allotted to Respondent No.3. Thereafter, Respondent No.3 executed a settlement deed dated 06.12.2021 in favour of his son, D. Gopi, conveying certain properties. He also executed another gift deed dated 07.10.2021 in favour of D. Gopi in respect of certain other properties.
- 11.4. Learned counsel further points out that on 15.11.2023, Respondent No.3 executed another gift deed in favour of Sindhu Avaghan, with whom, according to him, D. Gopi was having an illicit relationship. The said gift deed related to property situated at



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Dasanapura Hobli, Kittanahalli Grama Panchayat, bearing old No.118 and new No.84/2, measuring 1,200 square feet (30 x 40). He further submits that the said gift deed was subsequently cancelled by a deed of cancellation executed between Sindhu Avaghan and D. Gopi in respect of the very same property.

11.5. On the strength of these documents, learned counsel submits that Respondent No.3 owns several properties and is financially well-placed. According to him, Respondent No.3 is not dependent on anyone for his maintenance and is fully capable of looking after himself. He therefore contends that the property gifted in favour of the Petitioner and the minor child was intended to secure their future, and such a gift could not have been cancelled in proceedings under Section 23 of the Act.

11.6. Learned counsel next refers to the definition of "children" under Section 2(a) of the Act, which reads as follows:



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"children" includes son, daughter, grandson and grand-daughter but does not include a minor.

11.7. Relying upon the above provision, learned counsel submits that the definition specifically includes only a son, daughter, grandson and granddaughter, while excluding a minor. He contends that a daughter-in-law is not included within the definition of "children". Therefore, according to him, the Petitioner, being the daughter-in-law of Respondent No.3, does not come within the scope of Section 2(a) of the Act.

11.8. Learned counsel also refers to the definition of "parent" under Section 2(d) of the Act, which reads as follows:

"parent" means father or mother whether biological, adoptive or step-father or step-mother, as the case may be, whether or not the father or the mother is a senior citizen.

11.9. By placing reliance on Section 2(d), learned counsel submits that the expression "parent" is confined to a biological, adoptive or step-father or step-mother, irrespective of whether such person is a senior citizen.



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11.10. Learned counsel therefore contends that a father-in-law is not covered by the definition of "parent" under the Act. Consequently, Respondent No.3 cannot claim any right against the Petitioner by treating himself as her "parent" under the provisions of the Act.

11.11. Learned counsel next refers to the definition of "relative" under Section 2(g) of the Act, which reads as follows:

"relative" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

11.12. Placing reliance on the above definition, learned counsel submits that a "relative" means only the legal heir of a childless senior citizen who is not a minor and who is in possession of, or would inherit, the property of such senior citizen after his death. According to him, the Petitioner does not satisfy this definition and therefore cannot be treated as a "relative" under the Act.



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11.13. Learned counsel also relies upon the definition of "senior citizen" under Section 2(h) of the Act, which reads as follows:

"senior citizens" means any person being a citizen of India, who has attained the age of sixty years or above.

11.14. Referring to the above definition, learned counsel submits that a person becomes a "senior citizen" only upon attaining the age of sixty years. He therefore contends that Respondent No.3 had not attained the age of sixty years either on the date of execution of the gift deed or on the date of filing of the application under Section 23 before the Tribunal. On this ground also, he submits that the application itself was not maintainable.

11.15. He refers to Section 23 of the Senior Citizens Act, which is reproduced hereunder for easy reference:

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



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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.

11.16. Placing reliance on Section 23 of the Act, learned counsel submits that the provision is attracted only when all the statutory requirements prescribed therein are satisfied. According to him, Section 23 is not a general provision enabling the Tribunal to cancel every gift or transfer made by a person who subsequently becomes a senior citizen. The provision is intended to operate only in a limited class of cases where the transfer has



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been made by a person who was already a senior citizen at the time of such transfer and where the transfer itself was made subject to a condition requiring the transferee to provide the transferor with basic amenities and basic physical needs.

11.17. Learned counsel submits that a plain reading of Section 23(1) makes it clear that the expression "*Where **any senior citizen** who, after the commencement of this Act, has by way of gift or otherwise transferred his property...*" necessarily contemplates that the transferor must answer the description of a "senior citizen" on the date of the transfer. According to him, the status of being a senior citizen is not an event which can be acquired subsequently so as to retrospectively bring an earlier transfer within the ambit of Section 23.

11.18. In his submission, the provision does not envisage that a transfer validly made by a person before attaining the age of sixty years can later be reopened under Section 23



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merely because the transferor has subsequently become a senior citizen.

11.19. He submits that the expression "senior citizen" has been specifically defined under Section 2(h) of the Act to mean a citizen of India who has attained the age of sixty years or above. Therefore, when the legislature has consciously employed the words "any senior citizen" in Section 23(1), the Tribunal cannot ignore the statutory definition and extend the benefit of the provision to a person who had not attained the prescribed age on the date of execution of the transfer. According to him, any other interpretation would amount to rewriting the provision and enlarging its scope beyond what the legislature has intended.

11.20. Learned counsel further submits that even assuming for the sake of argument that the transferor subsequently became a senior citizen, such subsequent event cannot confer jurisdiction upon the Tribunal to examine the validity of a transfer which was executed at a point of time when the transferor was not a



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senior citizen. He submits that the jurisdiction of the Tribunal under Section 23 depends upon the existence of the statutory conditions on the date of the transfer itself and not on events occurring thereafter.

11.21. He further contends that the requirement that the transfer must have been made subject to a condition requiring the transferee to provide basic amenities and basic physical needs is an independent and equally mandatory requirement. Unless both the conditions, namely, (i) the transfer having been made by a senior citizen, and (ii) the transfer having been made subject to a condition of maintenance, are simultaneously satisfied, the Tribunal cannot invoke the deeming fiction contained in Section 23 to declare the transfer void.

11.22. According to learned counsel, the issue relating to the age and status of Respondent No.3 at the time of execution of the gift deed goes to the very root of the Tribunal's jurisdiction. He submits that it was incumbent upon the Tribunal to first examine



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whether Respondent No.3 satisfied the statutory definition of a "senior citizen" on the date of execution of the gift deed before proceeding to consider any other issue. If this foundational jurisdictional requirement was not fulfilled, the Tribunal lacked jurisdiction to entertain the application under Section 23, and all subsequent findings would become inconsequential.

11.23. Learned counsel submits that the documents placed on record clearly establish that Respondent No.3 had not completed sixty years of age on the date on which the gift deed was executed. Therefore, Respondent No.3 did not satisfy the threshold requirement under Section 23(1) of the Act. In such circumstances, according to him, the application itself was liable to be rejected as not maintainable without entering upon the merits of the allegations regarding maintenance or otherwise.

11.24. He therefore submits that the Tribunal committed a jurisdictional error in entertaining the application and in

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proceeding to cancel the gift deed despite the absence of the statutory prerequisites prescribed under Section 23. On this ground alone, he contends that the impugned order is liable to be set aside, and the gift deed executed in favour of the Petitioner restored to its original legal effect.

12. Noting that Respondent No.3 though served had been unrepresented and that any order passed would have a bearing or impact on Respondent No.3, this Court vide daily order dated 26.11.2025 had observed that the above matter raises an important issue of seminal importance, which would have an impact on several other matters, appointed Sri Dhananjay Joshi, designated Senior Counsel of this Court, as an amicus curiae to assist this court in this matter. Learned amicus, having graciously accepted the request made by this Court, has made his submissions.
13. Sri Dhananjay Joshi, learned Senior Counsel, appearing as amicus curiae, made the following submissions:



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- 13.1. Learned amicus first referred to the definition of "parent" under Section 2(d) of the Act, extracted hereinabove, and submitted that the definition is confined only to a biological, adoptive or step-father or step-mother. According to him, a father-in-law does not fall within the scope of the said definition.
- 13.2. He also referred to Section 2(h), which defines a "senior citizen" as a person who has attained the age of sixty years or above.
- 13.3. On the basis of these definitions, he submitted that the expressions "parent" and "senior citizen" used in the Act denote two separate and distinct classes of persons. While there may be situations where a person answers both descriptions, the two expressions are not interchangeable. According to him, the scheme of the Act clearly indicates that certain rights and benefits are conferred exclusively upon parents, certain rights are conferred exclusively upon senior citizens, while some provisions extend benefits to both categories. Therefore, the applicability of any particular



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provision has to be determined with reference to the language employed in that provision and not by treating the expressions "parent" and "senior citizen" as synonymous.

13.4. Referring to Chapter II of the Act, learned amicus submitted that the provisions contained therein deal with the maintenance and welfare of both parents and senior citizens. Sections 4, 5 and 6 specifically recognise the right of both categories to seek maintenance. He submitted that under Section 4, a senior citizen, including a parent, who is unable to maintain himself from his own earnings or property, is entitled to claim maintenance. Similarly, under Section 5, an application seeking maintenance may be presented either by a senior citizen or by a parent. Thus, according to him, wherever the legislature intended to confer rights on both parents and senior citizens, it has expressly said so by using both expressions in the provision itself.

13.5. Learned amicus next referred to Chapter III of the Act, which deals with the



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establishment of old age homes. He submitted that the provisions contained in this Chapter are intended for the welfare of senior citizens and not for every parent. According to him, a parent who has not attained the age of sixty years cannot claim the benefits provided under this Chapter merely because he or she is a parent.

13.6. Learned amicus thereafter referred to Chapter IV of the Act, which relates to medical care of senior citizens. He submitted that this Chapter also specifically refers only to senior citizens and does not extend its benefits to a parent who has not attained the age of sixty years. According to him, this again demonstrates that the legislature has consciously distinguished between the two classes of beneficiaries under different Chapters of the Act.

13.7. Learned amicus then referred to Chapter V of the Act, which deals with the protection of life and property of senior citizens. He submitted that Section 23, which empowers the Tribunal to declare certain transfers void,



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forms part of this Chapter. Since the entire Chapter is intended for the protection of the life and property of senior citizens, Section 23 must also be understood as applying only to senior citizens and not to every parent irrespective of age. According to him, for Section 23 to become applicable, the transferor must have transferred his property by way of gift or otherwise after the commencement of the Act, and at the time of such transfer the transferor must already have been a senior citizen, that is, a person who had attained the age of sixty years.

- 13.8. In support of this submission, learned amicus referred to Clause 2(h) of the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007, which originally defined "senior citizen" as follows:

"2(h) 'senior citizen' means any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen."

- 13.9. Learned amicus submitted that the above definition, as originally contained in the Bill, treated a senior citizen and a parent as



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belonging to the same class by specifically including within the definition of "senior citizen" a parent, irrespective of whether such parent had attained the age of sixty years. However, when the Bill was considered by Parliament and ultimately enacted, the legislature consciously amended the definition by deleting the words ***"and includes parent whether or not a senior citizen."***

13.10. According to learned amicus, this omission is of considerable significance. He submitted that the amendment was not accidental but was made after deliberation in Parliament. The legislature, having consciously deleted the words which equated a parent with a senior citizen, intended to maintain a distinction between the two expressions. Therefore, while a parent may invoke those provisions of the Act which expressly apply to parents, such parent cannot claim the benefit of provisions which are exclusively meant for senior citizens.



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13.11. He submitted that Section 23 is one such provision. Since the legislature has deliberately used only the expression "senior citizen" in Section 23 and has omitted any reference to "parent", the provision cannot be extended by interpretation to include a parent who has not attained the age of sixty years. According to him, to hold otherwise would amount to reintroducing into the enacted statute words which Parliament consciously chose to delete during the legislative process.

13.12. Learned amicus therefore submitted that a parent who is not a senior citizen has no statutory right to invoke Section 23 of the Act. Such a person can seek relief only under those provisions where the legislature has expressly conferred rights upon parents. In the absence of any such express provision in Section 23, the Tribunal had no jurisdiction to entertain an application filed by a person who had not attained the age of sixty years at the relevant point of time.



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13.13. He relies on the decision of the Hon'ble Supreme Court in the case of ***Kamalkant Mishra vs. Additional Collector & others***¹ more particularly Paras 4 and 7 which are reproduced hereunder for easy reference:

4. The facts giving rise to the present appeal are as follows:

4.1. The appellant is a senior citizen, aged about 80 years. He has a 78-year-old wife and three children who are working. Respondent No. 3 is the eldest son, he runs a business and is financially sound.

4.2. The appellant had purchased two properties of the following description:

i. Room No. 6, Nagina Yadav Chawl, Yadav Nagar, Mumbai

ii. One room in Raju State, Bengali Chawl, Saki Naka, Mumbai

4.3. Appellant and his wife had moved to U.P. leaving their children behind in these properties. Respondent No. 3 had taken the properties in his possession, and he did not allow the appellant to reside in them.

4.4. On 12.07.2023, appellant and his wife filed an application under Section 22, 23, and 24 of the Act praying maintenance and eviction of the occupants from the said properties.

4.5. The Tribunal vide order dated 05.06.2024 allowed the application and directed the Respondents to hand over the possession of both the premises and further directed maintenance of

¹ 2025 SCC Online SC 2077



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Rs. 3,000/- per month to be given to the elderly parents.

4.6. Respondent No. 3 assailed the order before the Appellate Tribunal which dismissed the appeal vide order dated 11.09.2024.

4.7. Still feeling aggrieved, Respondent No. 3 preferred Writ Petition No. 14585 of 2024 before the Bombay High Court praying for setting aside of eviction orders.

4.8. The High Court vide order dated 25.04.2025 allowed the petition observing that the Tribunal does not have the jurisdiction to pass an order for vacation of the property against a senior citizen.

*7. The framework of the Act clearly notes that the law was enacted to address the plight of older persons, for their care and protection. **Being a welfare legislation, its provisions must be construed liberally so as to advance its beneficent purpose.** This Court on several occasions has observed that the Tribunal is well within its powers to order eviction of a child or a relative from the property of a senior citizen, when there is a breach of the obligation to maintain the senior citizen.² In the present case, despite being financially stable, the Respondent has acted in breach of his statutory obligations in not allowing the appellant to reside in the properties owned by him, thereby frustrating the very object of the Act. High Court fell in error in allowing the writ petition on a completely untenable ground.*

13.14. Relying on **Kamalkant Mishra** learned amicus submits that the facts of the said case disclose that the appellant therein was an eighty-year-old senior citizen who, along with his wife, had approached the Tribunal under Sections 22, 23



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and 24 of the Act seeking maintenance and eviction of his son from the properties owned by him. The Tribunal allowed the application by directing delivery of possession of the properties to the appellant and also awarded maintenance of ₹3,000/- per month. The Appellate Tribunal affirmed the said order. However, the Bombay High Court, in exercise of its writ jurisdiction, interfered with the orders of the Tribunal and the Appellate Tribunal on the ground that the Tribunal did not possess the jurisdiction to direct eviction from the property of a senior citizen.

13.15. Paragraph 7 of the judgment emphasises that the Act is a beneficial welfare legislation enacted to ensure the care, maintenance and protection of older persons and that its provisions are required to receive a liberal interpretation so as to advance the object of the legislation. The Hon'ble Supreme Court further held that the Tribunal is empowered to direct eviction of a child or a relative from the property of a senior citizen where there is a breach of the statutory obligation to maintain such senior citizen, and consequently set aside the judgment of the High Court.



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13.16. Placing reliance on the aforesaid decision, learned amicus curiae submits that the judgment clearly recognises the object of the Act as one intended for the welfare and protection of senior citizens. He points out that in ***Kamalakant Mishra***, both the appellant-father and the Respondent-son had admittedly attained the status of senior citizens. Despite the Respondent also being a senior citizen, the Hon'ble Supreme Court held that his status did not dilute or extinguish his statutory obligation towards his father, who was likewise a senior citizen. The Court, treating the enactment as a beneficial piece of welfare legislation, adopted a liberal interpretation so as to advance its object and restored the order of the Tribunal directing the son to pay maintenance of ₹3,000/- per month and to hand over possession of the properties to the father.

13.17. Learned amicus curiae submits that the said decision does not support the proposition that every parent, irrespective of age, can invoke Section 23 of the Act. On the contrary, according to him, the judgment proceeds on the undisputed premise that the transferor and the applicant before the Tribunal were senior



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citizens. He therefore submits that ***Kamalakant Mishra*** reinforces the legislative scheme that the special protection available under Chapter V, including Section 23, is intended for senior citizens and must be applied where the statutory conditions are fulfilled. The principle laid down by the Hon'ble Supreme Court is that once a valid application is filed by a senior citizen and there is a breach of the statutory obligation by a child or a relative, the provisions of the Act should receive a liberal construction to advance the legislative purpose. However, such liberal interpretation, according to him, cannot be extended to dispense with or override the foundational jurisdictional requirement that the applicant must first satisfy the statutory definition of a "senior citizen" wherever the provision so requires.

13.18. He further relies upon the decision of this Court (Kalaburagi Bench) in case of ***Smt.Shoba vs. Dr.Anil P.Kumar and another***² more particularly, Para 15 thereof, which is reproduced hereunder for easy reference:

15. *One other contention that has been urged by Sri.Ganesh S.Kalburgi, learned counsel for*

² WP No.202832/2019 dated 29.7.2024

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Respondent No.1 is that when the Gift Deed was executed, the mother was aged 53 years as such, the benefit of Section 23 of the Act cannot be availed of by her. I am unable to again accept this contention for the reason that the application/petition under Section 23 of the Act would have to be considered as on the date of the application so long as the applicant satisfies the requirement of being a senior citizen as on that day, the same would be sufficient and it is not required for the donor or releasor to be a senior citizen on the day on which the Gift or Release is executed. Thus, this contention also stands rejected.

13.19. By relying on **Smt.Shoba vs. Dr.Anil P.Kumar and another**, learned amicus submits that in the said case, one of the contentions urged before the Court was that the donor was only 53 years of age on the date of execution of the gift deed and, therefore, the benefit of Section 23 of the Act could not be claimed. The learned Single Judge (i.e., Myself) rejected the said contention by holding that the relevant date for determining the applicability of Section 23 is the date on which the application is filed before the Tribunal and not the date on which the gift or release deed was executed. The Court observed that it is sufficient if the



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applicant satisfies the requirement of being a senior citizen on the date of filing of the application and that it is not necessary for the donor or releasor to have been a senior citizen on the date of execution of the transfer.

13.20. Placing reliance upon the aforesaid decision, learned *amicus curiae* submits that the judgment clearly proceeds on the basis that an application under Section 23 can be maintained only by a person who answers the description of a "senior citizen" under the Act. According to him, the decision recognises that the eligibility of the applicant to invoke Section 23 is to be examined with reference to the statutory definition of "senior citizen", thereby excluding a person who has not attained the prescribed age from invoking the provision.

13.21. Learned *amicus curiae* submits that although this Court in **Smt. Shoba** was concerned only with the question whether the transferor should have been a senior citizen on the date of execution of the gift deed, and did not



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directly consider that aspect in the present context, the Court unequivocally held that the applicant must satisfy the requirement of being a senior citizen on the date of filing of the application. Applying the same principle to the facts of the present case, he submits that Respondent No.3 admittedly had not attained the age of sixty years on the date on which the application under Section 23 was presented before the Tribunal and was only 59 years of age. Therefore, Respondent No.3 did not satisfy even the minimum jurisdictional requirement recognised in **Smt. Shoba**. In such circumstances, according to him, the Tribunal ought to have rejected the application at the threshold without proceeding to examine the merits of the dispute.

13.22. Learned *amicus curiae* therefore submits that this Court is required to give effect to the provisions of the Act as enacted by the legislature. According to him, the statutory requirements contained in Section 23 cannot be diluted or expanded by interpretation so as to confer a remedy upon a person who

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does not satisfy the eligibility criteria prescribed under the Act.

13.23. On the above basis, learned *amicus curiae* submits that the writ petition deserves to be allowed, the order passed by the Tribunal is liable to be set aside, and the relief sought by the Petitioner deserves to be granted.

14. Learned AGA, Sri.Mohammad Jafar Shah, for Respondent-State also supports the submission made by the learned Amicus and submits that the stand of the State is that as on the date of the transfer, the person is required to be a senior citizen. If the transferor is not a senior citizen as on the date of transfer, Section 23 would not be applicable.
15. Sri.Sujayendra Sridhar, learned counsel for the Petitioner would in rejoinder submit that there is a bill namely the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill 2019 which had been introduced. In terms of said bill, though the definition of senior citizen was not changed, amendment was proposed to Section 23 to substitute the word senior citizen wherever they



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occur in Section 23 with the words "parent and senior citizen". His submission is that apart from the submission made by learned Amicus as regard to the original bill, the debate thereto and the change made to the definition of senior citizen, the fact that an amendment bill had been introduced in the year 2019 to substitute the word "Senior Citizen" with "parent or Senior Citizen" in Section 23 would categorically establish that a parent is not covered under Section 23, and it is only a Senior Citizen who can claim benefit under Section 23. A parent who is not a senior citizen is not covered under Section 23, and it is only a senior citizen who may be a parent who would be covered under Section 23. His submission further is that even if the amendment were to come into force, insofar as the present matter is concerned, it would have no bearing inasmuch as it is only a parent who could claim relief under Section 23. In the present case, Respondent No.3 is not parent of the Petitioner within the definition of clause (d) of Section 2 and as such even if the amendment were to come into force, Respondent No.3 could not claim any relief by filing any application under Section 23.



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16. Heard Sri.Sujayendra Sridhar, learned counsel for the Petitioner, Sri.Dhananjay Joshi, learned Senior counsel as amicus and Sri.Mohamed Jafar Shah, learned AGA for the State. Perused papers.
17. The points that would arise for determination are:
- (i) **Whether the expression "senior citizen" occurring in Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, requires the transferor to have attained the age of sixty years as on the date of execution of the transfer, or whether it is sufficient if the transferor attains the status of a senior citizen on the date of filing of the application under Section 23, or when the matter is taken up for consideration by the tribunal or this court?**
 - (ii) **Whether the Tribunal was required to determine the question of maintainability and jurisdiction, including the eligibility of Respondent No.3 to invoke Section 23, as a preliminary issue before examining the merits of the application?**
 - (iii) **Whether Section 23 of the Act can be invoked in the absence of an express or implied condition in the gift deed obligating the transferee to provide the transferor with basic amenities and basic physical needs?**

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- (iv) Whether, having regard to the definitions contained in Sections 2(a), 2(d), 2(g) and 2(h) of the Act and the scheme of the legislation, Respondent No.3 could maintain proceedings under Section 23 against the Petitioner, who is his daughter-in-law?
- (v) Whether the legislative scheme of the Act, particularly the distinction drawn between "parent" and "senior citizen" and the legislative history of Section 2(h), indicates that the remedy under Section 23 is available exclusively to senior citizens and not to every parent irrespective of age?
- (vi) Whether, on the facts of the present case, Respondent No.3 satisfied the statutory prerequisites for invoking Section 23 of the Act and, if not, whether the Tribunal committed a jurisdictional error in entertaining the application and cancelling the gift deed?
- (vii) Whether the impugned order passed by the Tribunal cancelling the gift deed is sustainable in law? If not, what reliefs are the parties entitled to?
- (viii) What order?

- 18. This Court answers the above points as follows:
- 19. **Answer to Point No. (i):** Whether the expression "senior citizen" occurring in Section 23 of the Maintenance and Welfare of



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Parents and Senior Citizens Act, 2007, requires the transferor to have attained the age of sixty years as on the date of execution of the transfer, or whether it is sufficient if the transferor attains the status of a senior citizen on the date of filing of the application under Section 23, or when the matter is taken up for consideration by the tribunal or this court?

19.1. Sri Sujayeendra Sridhar, learned counsel for the Petitioner, submits that a plain reading of Section 23(1) shows that the person who invokes it must already be a "senior citizen" on the date on which he transfers his property. He submits that the words "any senior citizen who ... has by way of gift or otherwise ... his property" describe the transferor as a senior citizen at the moment of the transfer, and that the status of a senior citizen cannot be acquired later so as to reach back and pull an earlier and otherwise valid transfer into the net of Section 23.

19.2. He submits that Respondent No.3 was neither a senior citizen on the date of the gift (57) nor on the date of the application (59),



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and that on this ground alone the application was not maintainable and ought to have been rejected.

19.3. Sri Mohammed Jafar Shah, learned Additional Government Advocate for Respondents 1 and 2, supports this reading and submits that the person is required to be a senior citizen as on the date of the transfer, failing which Section 23 is not attracted.

19.4. Sri Dhananjay Joshi, learned Senior Counsel appearing as Amicus Curiae, relies on the decision of this Court in **Smt. Shoba vs. Dr. Anil P. Kumar and another** [WP No.202832/2019 dated 29.7.2024] to submit that the eligibility of the applicant is to be tested as on the date of the application, and that Respondent No.3, being only 59 on the date of the application, did not satisfy even that test.

19.5. Section 23(1) of the Act reads as follows:

"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



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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.”

- 19.6. The expression “senior citizen” is defined in Section 2(h) as “any person being a citizen of India, who has attained the age of sixty years or above.” In plain terms, a person becomes a senior citizen on turning sixty; and a transfer falls within Section 23 only where it was made subject to a condition that the person receiving the property will provide for the transferor’s basic needs, and that person has then refused or failed to do so.
- 19.7. The point offers three dates for testing the transferor’s status: the date of the transfer, the date of the application, and the date on which the Tribunal or this Court takes up the matter. In the view of this Court, the first must be rejected, and the second and third read together in a manner that gives effect to the purpose of the Act.



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19.8. To insist that the transferor must have been a senior citizen on the very date of the transfer would defeat the object of this beneficial legislation. The need for maintenance and protection does not usually arise at the moment a person parts with property; it arises later, as age advances, after retirement, or when a person can no longer find work and support himself or herself. A person may well execute a gift or settlement in his earlier and better years and find, only afterwards, that he is neglected in old age. To read Section 23 as shutting its doors upon such a person merely because he was not yet sixty when he made the transfer would push the protection out of reach in the very situations for which it was designed. This Court has already declined to accept such a reading. In ***Smt. Shoba vs. Dr. Anil P. Kumar and another***, the identical contention, that the donor was only 53 years of age when the gift deed was executed and so could not claim the benefit of Section 23, was raised and rejected. This Court held (Paragraph 15) that "*it is not required for the*



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donor or releasor to be a senior citizen on the day on which the Gift or Release is executed", and that the application is to be "considered as on the date of the application so long as the applicant satisfies the requirement of being a senior citizen as on that day" (Paragraph 15). This Court respectfully follows that decision. The date of execution of the transfer is not the touchstone. To that extent, the submissions of the learned counsel for the Petitioner and of the learned Additional Government Advocate, that the transferor must be a senior citizen on the date of the transfer, are not accepted as the correct legal test.

19.9. What then is the relevant date? The learned Amicus Curiae, relying on ***Smt. Shoba***, fixes it at the date of the application, and points out that Respondent No.3 was 59 on that date. There is force in tying the enquiry to the date of the application, and this Court accepts that the date of the application is a relevant date. But the issue then would be whether it is sufficient that the applicant is a senior citizen when the matter is taken up



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for consideration. On the facts of this case that further question must be answered, and in the view of this Court, a marginal shortfall in age on the date of the application cannot be permitted to defeat the benefit where the applicant has become a senior citizen by the time the matter is considered.

19.10. Respondent No.3 fell short of sixty on the date of the application by less than a year. He completed sixty on 16.08.2023. He was therefore already a senior citizen when the Tribunal passed the order under challenge on 15.12.2023, and he is well past sixty today, when the matter is before this Court. In these circumstances, to hold that the application must fail because of the small deficit in age on the date of its presentation would be to elevate a technicality above the purpose of the statute. The object of the Act is the care and protection of the elderly, and its provisions are to be read to advance that object, not to defeat it on a narrow reading of a single date.



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19.11. There is a further and practical reason. Even if the application were to be rejected today for the shortfall in age on the date of its filing, nothing would prevent Respondent No.3, who is now unquestionably a senior citizen, from presenting a fresh application on the very next day. A rejection followed by an immediate re-filing would be an empty formality, achieving nothing except delay and expense, and leaving the parties exactly where they began. The law does not compel a party to perform a futile act, and a beneficial statute is not to be construed so as to insist upon one. To drive an aged applicant, admittedly now a senior citizen, out of court only to walk back in through the same door would serve no purpose that the Act recognises.

19.12. This approach is in keeping with the command of the Hon'ble Supreme Court in ***Kamalakant Mishra vs. Additional Collector & others*** [2025 SCC OnLine SC 2077], where it was held (Paragraph 7) that "*Being a welfare legislation, its provisions must be construed liberally so as to advance*



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its beneficent purpose". A liberal construction of the age requirement, which prevents a small shortfall on the date of filing from defeating a claim that is otherwise good, advances the beneficent purpose of the Act; a rigid, date-of-execution reading would cut against it. The two cited decisions do not conflict, and read together they point the same way: the Act is to be applied generously in favour of the aged, and the age of the transferor is to be tested at the date of the application and, where there is only a marginal shortfall then, at the date of consideration.

19.13. This Court therefore rejects the submissions of the Petitioner, the learned Additional Government Advocate and the learned Amicus Curiae in so far as they seek to defeat Respondent No.3's application on the ground of the shortfall in his age. It must, however, be made clear that this finding decides only that Respondent No.3 is not disentitled by reason of his age. Whether the gift deed in question is a transfer that Section 23 can touch at all is a separate



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matter, dealt with under Points (iv) and (v), and it is on that separate ground, and not on the ground of age, that the fate of this petition ultimately turns.

19.14. This Court answers Point No. (i) by holding that the expression "senior citizen" in Section 23 does not require the transferor to have been sixty years of age on the date of execution of the transfer; such a reading would negate the object of the Act. It is sufficient that the applicant is a senior citizen, that is, sixty years of age or above, as on the date of filing of the application under Section 23; and where there is only a marginal shortfall in age on that date, the requirement is satisfied if the applicant has attained the age of sixty by the date on which the matter is taken up for consideration. Tested on this standard, the shortfall in the age of Respondent No.3 on the date of the application does not disentitle him, him being a senior citizen well before the matter was considered.



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20. **Answer to Point No. (ii): Whether the Tribunal was required to determine the question of maintainability and jurisdiction, including the eligibility of Respondent No.3 to invoke Section 23, as a preliminary issue before examining the merits of the application?**

20.1. Sri Sujayeendra Sridhar submits that the objection to the eligibility of Respondent No.3 went to the root of the Tribunal's jurisdiction and ought to have been decided first, as a preliminary issue, and that the Tribunal instead went straight to the merits and cancelled the gift.

20.2. It is necessary first to understand what a "preliminary issue" is and when a Tribunal is obliged to take one up before the merits. A preliminary issue is an issue which, if answered one way, would dispose of the case, or a substantial part of it, without the need to go further. The classic example is an objection that the forum has no jurisdiction to entertain the case at all. Where such an objection is raised, and where it can be decided on facts that are admitted or that require no evidence, it is ordinarily proper,



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and often necessary, for the Tribunal to decide it at the outset. The reason is one of good sense: if the objection is well- founded, the Tribunal has no authority to proceed, and every step taken on the merits thereafter is wasted labour, besides exposing the parties to needless expense and the risk of an order that must later be undone.

20.3. But this rule has a necessary limit. The duty to decide a jurisdictional objection first arises only where the objection is a real one, that is, where, if it were accepted, it would truly deprive the Tribunal of the power to proceed. A Tribunal is not obliged to halt and record an elaborate preliminary finding on every objection that a party chooses to dress up as "jurisdictional". The court must look at the substance of the objection, not the label placed upon it. If the objection, even taken at its highest, would not oust the jurisdiction of the Tribunal, then the failure to decide it as a preliminary issue causes no prejudice and does not vitiate the eventual order.



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20.4. Applying that understanding to the present case, the only threshold objection that was pressed before the Tribunal was that Respondent No.3 was short of sixty years of age. For the reasons recorded under Points (i) and (ii), that objection is not well-founded. The marginal shortfall in the age of Respondent No.3 on the date of the application, cured well before the matter was considered, neither disentitled him nor ousted the jurisdiction of the Tribunal. An objection that, even if accepted in its factual premise, does not take away the Tribunal's power to proceed is not the kind of objection that the Tribunal was bound to decide as a preliminary issue. To that extent, the grievance that the Tribunal did not first dispose of the age objection is without substance.

20.5. This is not to say that the Tribunal was free to ignore all questions of the applicability of Section 23. There is a distinction between two very different things: the eligibility of the applicant by reason of his age, which is what the Petitioner raised as a preliminary



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objection, and the anterior question whether the transfer sought to be cancelled is a transfer of the kind that Section 23 speaks of at all, namely, a transfer made subject to a condition of maintenance. The first is a question of the applicant's standing; the second is a question of the very existence of the power under Section 23 in relation to this transaction. The Tribunal, before cancelling the gift, was bound to satisfy itself on the second question and to record a finding that the gift carried the requisite condition of maintenance.

20.6. This court answer Point No. (ii) by holding that the Tribunal was not required to decide, as a preliminary issue, the objection based on the age of Respondent No.3 because that objection, even if its factual premise were accepted, did not oust the Tribunal's jurisdiction, the marginal shortfall in age being no bar. A Tribunal is obliged to decide as a preliminary issue only an objection which, if upheld, would truly deprive it of the power to proceed, and the age objection was not of that character.



21. **Answer to point No. (iii): Whether Section 23 of the Act can be invoked in the absence of an express or implied condition in the gift deed obligating the transferee to provide the transferor with basic amenities and basic physical needs?**

21.1. Sri Sujayeendra Sridhar submits that the requirement of a condition of maintenance is an independent and mandatory ingredient of Section 23. He submits that the gift deed dated 14.10.2020 was executed by Respondent No.3 out of natural love and affection, without imposing any condition, and in the background that his own son, the Petitioner's husband, was not caring for the Petitioner and the minor child. According to him, the gift was made to secure the future and maintenance of the Petitioner and her son, and not to obtain maintenance for Respondent No.3, and such a gift cannot be cancelled under Section 23.

21.2. In his application before the Tribunal, Respondent No.3 had alleged that the gift was made on the condition that the Petitioner would provide him basic



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necessities and physical needs, an allegation that the Petitioner has denied.

21.3. The answer to the legal part of this point is to be found in the words of Section 23(1), already extracted under Point (i). Those words repay close attention. The sub-section speaks of a senior citizen who has transferred his property "*subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor*", and it then requires that "*such transferee refuses or fails to provide such amenities and physical needs*". Two ingredients are thus built into the provision: first, that the transfer was made subject to a condition of maintenance; and second, that the transferee has thereafter refused or failed to honour that condition. Only when both are present does the further and drastic consequence follow, that the transfer is deemed to have been made by fraud, coercion or undue influence and may be declared void.



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21.4. The word "condition" in this setting carries weight. A condition is a term of the transfer itself, something that forms part of the bargain, whether written into the deed in so many words or otherwise shown to have been a term on which the transfer was made. It is not the same thing as a motive, a hope, or an expectation. A donor may make a gift out of affection, or in the general expectation that the donee will be good to him, without in law annexing to the gift any condition of maintenance. The deeming fiction in Section 23 is a serious one, for it treats an otherwise valid and voluntary transfer as if it were vitiated by fraud or coercion. A provision of that character cannot be set in motion upon a loose or assumed condition. The person who invokes Section 23 must show that the transfer was in truth made subject to a condition of maintenance; the burden of establishing that ingredient lies upon him, and it is not to be presumed.

21.5. It follows, as a matter of law, that Section 23 cannot be invoked in the absence of a condition, in the transfer, obliging the



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transferee to provide for the transferor. Where no such condition is reflected in the document, averred in the application filed and proved in the proceedings before the tribunal, the first ingredient is missing, the second cannot arise, and the deeming fiction has nothing on which to operate. The transfer is then simply outside the field that Section 23 occupies.

21.6. Turning from the law to this gift, the material on record shows that the gift deed was not a transfer of that description at all. The undisputed background, as it appears from the record, is this. The Petitioner and her minor son were living in the household of Respondent No.3. The Petitioner's husband, who is the son of Respondent No.3, was not providing for the basic necessities of the Petitioner and the minor child. It was to secure the safety and future of the Petitioner and her son that Respondent No.3 first executed a Will in the year 2019 in their favour; and when it was felt that a Will, taking effect only on death, did not sufficiently secure them, Respondent No.3



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executed the gift deed dated 14.10.2020 in their favour. The gift was thus made to provide for the Petitioner and the grandchild, in the very situation where the person primarily bound to provide for them, the son, had failed to do so.

21.7. A gift of that kind is the opposite of a gift subject to a condition that the donee maintain the donor. In the one case, the transfer is the means by which the donor provides maintenance and security to the donee; in the other, the transfer is made on the footing that the donee will provide maintenance to the donor. A single transaction cannot be both at once. To treat a gift made for the maintenance of the Petitioner and her child as though it were a gift conditioned upon the Petitioner maintaining Respondent No.3 is to misread the very nature of the transaction. There is nothing on the record to show that the gift carried the condition that Section 23 requires; on the contrary, the surrounding circumstances show that it did not.



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21.8. It is also relevant that the impugned order records no finding that the gift deed carried a condition of maintenance of the kind Section 23 requires. A power that depends for its exercise upon the existence of such a condition cannot lawfully be exercised without a finding that the condition exists. The Tribunal cancelled the gift without recording any such finding. That omission is not a mere irregularity; it means that the Tribunal exercised the power under Section 23 without the foundation on which alone that power rests.

21.9. This Court is conscious that Respondent No.3 alleged before the Tribunal that the gift was conditional, while the Petitioner denied it. To the extent that this raises a question about the terms of the deed, it is one that turns on the registered document itself and on the admitted circumstances recited in the record, and not on any contested oral evidence that would require a trial. Reading the deed against those admitted circumstances, a gift made to secure a neglected daughter-in-law and a minor grandchild, the only reasonable



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conclusion is that it was not a gift subject to a condition of maintaining Respondent No.3. The gift therefore falls outside Section 23, and it is on this ground, more than any other, that the impugned order cannot be sustained.

21.10. This court answers Point No. (iii) by holding that Section 23 of the Act cannot be invoked in the absence of a condition, forming part of the transfer, obliging the transferee to provide the transferor with basic amenities and basic physical needs; such a condition is an essential and independent ingredient, and the burden of establishing it lies upon the person invoking Section 23. On the facts, the gift deed dated 14.10.2020 carried no such condition. It was made to secure the maintenance of the Petitioner and her minor son, in the face of the son's neglect, and is the very opposite of a gift conditioned upon the Petitioner maintaining Respondent No.3. The gift therefore falls outside the purview of Section 23, and the Tribunal, which recorded no finding of any such condition, erred in cancelling it under that provision.



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22. **Answer to Point No. (iv): Whether, having regard to the definitions contained in Sections 2(a), 2(d), 2(g) and 2(h) of the Act and the scheme of the legislation, Respondent No.3 could maintain proceedings under Section 23 against the petitioner, who is his daughter-in-law?**

22.1. Sri Sujayeendra Sridhar submits that the Petitioner, being the daughter-in-law of Respondent No.3, is not a "child" within Section 2(a), which includes only son, daughter, grandson and granddaughter and excludes a minor; that Respondent No.3 is not the Petitioner's "parent" within Section 2(d); and that she is not a "relative" of a childless senior citizen within Section 2(g). He submits that Respondent No.3 has a living son, D. Gopi, who is his "child", and that the duty to maintain Respondent No.3 rests upon that son and not upon the Petitioner.

22.2. Sri Dhananjay Joshi, learned Amicus Curiae, submits that "parent" and "senior citizen" are distinct classes under the Act and that the applicability of any provision must be tested by the words that provision uses.



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22.3. It is convenient to begin by setting the relevant definitions side by side. Section 2(a) provides that "children" *"includes son, daughter, grandson and grand-daughter but does not include a minor"*. Section 2(d) provides that "parent" *"means father or mother whether biological, adoptive or step-father or step-mother ... whether or not the father or the mother is a senior citizen"*. Section 2(g) provides that "relative" *"means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death"*.

22.4. In plain terms, the Act fixes the duty to maintain a senior citizen or parent upon a defined set of persons, his children, and, in the case of a childless senior citizen, his relative in the sense described. These definitions identify who bears the obligation to maintain.

22.5. Read against this scheme, the position of the Petitioner and of the son becomes clear. The Petitioner, as the daughter-in-law, is not a "child" of Respondent No.3 within Section



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2(a). Respondent No.3 has a living son, D. Gopi, and it is that son who answers the description of "child" and upon whom the primary statutory obligation to maintain Respondent No.3 falls. Respondent No.3 is not "childless", so the extended category of "relative" under Section 2(g) does not arise.

22.6. If, therefore, Respondent No.3 is in need of maintenance, the person whom the Act makes answerable to him is his son, and the remedy the Act gives him is a claim for maintenance against that son. It is not a remedy of cancelling a gift made to the daughter-in-law, who owed him no statutory duty of maintenance.

22.7. This does not mean that a gift to a daughter-in-law can never fall within Section 23. Section 23(1) speaks of "the transferee" in general terms and does not confine the transferee to a "child" or a "relative". If a senior citizen were to transfer property to a daughter-in-law or even a third party subject to a genuine condition that the transferee maintain him, and the transferee then failed



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to do so, the section could in principle be attracted, the relationship notwithstanding. The relationship of the transferee is therefore not, by itself, what takes this case outside Section 23.

22.8. What takes this case outside Section 23 is the character of the gift, read together with the scheme of the definitions. The gift was made to the daughter-in-law precisely because the son, the "child" who owed the duty of maintenance, was failing in that duty. It was a provision for the maintenance and security of the Petitioner and the minor grandson, and carried no condition that the Petitioner maintain Respondent No.3. To permit Respondent No.3 to invoke Section 23 and cancel that gift would stand the Act on its head: a statute enacted to secure maintenance for the vulnerable would become an instrument for taking away a maintenance already provided to a neglected daughter-in-law and a minor child, while the son who owed the duty remained untouched. That is not a result the Act contemplates or permits.



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22.9. For these reasons, and for the reasons under Point (iii), Respondent No.3 could not maintain proceedings under Section 23 against the Petitioner in respect of this gift. This finding rests on the absence of any maintenance condition and on the scheme of the Act, and not merely on the label of the relationship between the parties.

22.10. This court answers Point No. (iv) by holding that Respondent No.3 could not maintain proceedings under Section 23 against the Petitioner. She, as his daughter-in-law, is not his "child" under Section 2(a); the primary obligation to maintain him rests upon his living son, D. Gopi, who is his "child"; and, Respondent No.3 not being childless, the category of "relative" under Section 2(g) has no application. The gift to the Petitioner was made to secure her own maintenance and that of the minor grandson, and carried no condition that she maintain Respondent No.3. Such a gift falls outside Section 23. The daughter-in-law relationship is not, of itself, the bar; the bar is the absence of any maintenance condition in a gift that was itself



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made for the Petitioner's maintenance, coupled with the fact that the person who owed Respondent No.3 the duty of maintenance was his son and not the Petitioner.

23. **Answer to Point No. (v): Whether the legislative scheme of the Act, particularly the distinction drawn between "parent" and "senior citizen" and the legislative history of Section 2(h), indicates that the remedy under Section 23 is available exclusively to senior citizens and not to every parent irrespective of age?**

23.1. Sri Dhananjay Joshi, learned Amicus Curiae, submits that the Act keeps "parent" and "senior citizen" as distinct classes. He takes the Court through the scheme:

23.1.1. Chapter II, on maintenance, names both parents and senior citizens in Sections 4, 5 and 6;

23.1.2. Chapters III and IV, on old age homes and medical care, speak of senior citizens; and

23.1.3. Chapter V, which protects the life and property of senior citizens and



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contains Section 23, is framed around senior citizens.

23.2. He relies on the legislative history of the definition, pointing out that clause 2(h) of the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 originally read:

"2(h) 'senior citizen' means any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen."

23.3. He submits that Parliament consciously deleted the words "and includes parent whether or not a senior citizen" before enacting the Bill, thereby keeping the two classes apart, so that a parent who is not a senior citizen cannot claim the benefit of provisions cast solely in favour of senior citizens, of which Section 23 is one.

23.4. Sri Sujayeendra Sridhar, in rejoinder, adds that the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, while not altering the definition of senior citizen, proposed to substitute the words



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“senior citizen” in Section 23 with “parent and senior citizen”, which, he submits, shows that as the law presently stands Section 23 covers only a senior citizen. He adds that, even if such an amendment were to come into force, it would not help Respondent No.3, as Respondent No.3 is not the “parent” of the Petitioner within Section 2(d).

23.5. The scheme of the Act, when read chapter by chapter, does support the distinction that the learned Amicus Curiae draws. Chapter II, which deals with maintenance, speaks of “parents” and “senior citizens” together, showing that where the legislature intended a benefit to reach both, it named both. Chapters III and IV, dealing with old age homes and the medical care of senior citizens, are cast in terms of senior citizens. Chapter V, which is concerned with the protection of the life and property of senior citizens and in which Section 23 is placed, is likewise framed around the senior citizen. The pattern is consistent: where a benefit was meant for both classes, the legislature said so; where it was meant for senior



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citizens alone, it used that expression by itself. Section 23 uses the words "any senior citizen" and makes no mention of a parent.

23.6. The legislative history strengthens this reading. The words "and includes parent whether or not a senior citizen", which appeared in clause 2(h) of the Bill of 2007, would, had they survived, have brought every parent within the definition of "senior citizen", and with it within the reach of provisions such as Section 23. Those words were deleted before the Bill became law. When the legislature removes particular words from a Bill before enacting it, the deletion is ordinarily a considered act, and the court may legitimately read it as a deliberate decision to exclude what those words would have brought in. To construe Section 23 as though the deleted words still stood would be to restore, by interpretation, what Parliament chose to take away by legislation. That is not a course open to this Court.



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23.7. The Amendment Bill of 2019, relied upon in rejoinder, points the same way. A proposal to replace "senior citizen" in Section 23 with "parent and senior citizen" proceeds on the footing that, as the section presently reads, a parent who is not a senior citizen is not within it; one does not propose to add what is already present. A Bill that has not become law cannot itself alter the meaning of the existing section, and this Court does not treat it as a source of any new rule. It is used only as a confirmation of what the present language of Section 23 conveys.

23.8. To this extent, therefore, the submission of the learned Amicus Curiae, supported by the rejoinder, is accepted: the remedy under Section 23, as the law stands, is meant for senior citizens and not for every parent irrespective of age. But this conclusion does not decide the present case in the manner the argument was pressed.

23.9. Respondent No.3 is not a mere parent below sixty seeking to pass himself off as a senior citizen. As held under Point (i), he answers



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the description of a "senior citizen" for the purpose of Section 23, the marginal shortfall in his age on the date of the application having been made good well before the matter was considered. The distinction between "parent" and "senior citizen", and the history of Section 2(h), therefore do not exclude him from Section 23 on the ground of status. The reason his application must fail lies not in that distinction, but in the separate finding, under Points (iii) and (iv), that the gift he sought to cancel does not carry the condition of maintenance that Section 23 requires and was itself made for the Petitioner's maintenance.

23.10. This court answers Point No. (v) by holding that in principle, the scheme of the Act and the legislative history of Section 2(h), in particular the deletion, before enactment, of the words "and includes parent whether or not a senior citizen", and the subsequent proposal in the 2019 Amendment Bill to bring in a "parent", together indicate that the remedy under Section 23 is meant for senior citizens and not for every parent irrespective



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of age. That distinction, however, does not disentitle Respondent No.3, who answers the description of a senior citizen for the purpose of Section 23 (Point (i)).

23.11. His application fails not on the parent/senior-citizen distinction, but because the gift falls outside Section 23 (Points (iii) and (iv)).

24. **Answer to Point No. (vi): Whether the impugned order passed by the Tribunal cancelling the gift deed is sustainable in law? If not, what reliefs are the parties entitled to?**

24.1. The Petitioner and the learned Amicus Curiae submit that the impugned order is unsustainable and is liable to be set aside, and that the gift in favour of the Petitioner ought to be restored.

24.2. The sustainability of the impugned order is to be judged on the findings already recorded, and those findings leave no room for it to stand. The order cancels, under Section 23, a gift deed which does not fall within Section 23 at all. It was a gift made not subject to any condition that the Petitioner maintain Respondent No.3, but to secure the



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maintenance of the Petitioner and her minor son in the face of the son's neglect (Points (iii) and (iv)). The Tribunal cancelled it without recording the finding of a maintenance condition on which alone the power under Section 23 could be exercised (Points (ii) and (vi)).

- 24.3. An order that applies a drastic deeming provision to a transaction outside its scope, and that does so without the jurisdictional foundation the provision requires, is not sustainable in law.
- 24.4. The Petitioner is accordingly entitled to have the impugned order set aside. The natural and only consequence of setting aside an order that wrongly cancelled a registered gift deed is that the gift deed is restored to the position it occupied before the order, that is, it stands with its full legal force and effect. No wider relief is called for, and none has been sought beyond the quashing of the order and the incidental prayer for such further relief as the case may require.



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24.5. This Court makes it clear that, in setting aside the cancellation, it expresses no opinion on any independent remedy that Respondent No.3 may have, in accordance with law, against his son for his own maintenance. Whether Respondent No.3 is in need of maintenance, and what his rights against his son may be, are questions that do not arise in this petition and are left entirely open. The only matter decided is that the gift to the Petitioner could not be cancelled under Section 23.

24.6. This Court answers Point No. (vii) by holding that the impugned order cancelling the gift deed is not sustainable in law because it applies Section 23 to a transfer outside its scope and without the finding of a maintenance condition on which the power depends. The order is set aside. On its being set aside, the registered gift deed dated 14.10.2020 in favour of the Petitioner stands restored to its full legal force and effect. Any independent remedy that Respondent No.3 may have against his son for his own maintenance is left open.



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WP No. 7430 of 2024**25. Answer to Point No. (vii): What order?**

25.1. For the reasons recorded above, the writ petition is required to be allowed and the impugned order is quashed.

25.2. While going through the record, this Court cannot but notice one matter that, though it does not touch the decision on the gift deed, is too serious to be passed over in silence. It is stated in the pleadings that the Petitioner was married to the son of Respondent No.3 on 20.06.2010 upon the insistence of the elders of the family, and that she was barely fifteen years of age at the time of her marriage, having been, according to the record, compelled by the elders to marry.

25.3. If this allegation is true, it discloses a marriage solemnised in breach of the law. The marriage of a girl below the age prescribed by law is prohibited by the Prohibition of Child Marriage Act, 2006, which was enacted to prevent the solemnisation of child marriages and to protect children from the serious harm that



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such marriages cause. A child marriage is not a private family matter but a matter of grave public concern, engaging the welfare and the rights of a child.

25.4. This Court is conscious of the limits of the present proceeding. The truth of the allegation has not been enquired into in this petition, which is confined to the validity of the order cancelling the gift deed, and this Court records no finding on whether the Petitioner was, in fact, a minor at the time of her marriage. But the allegation appears on the face of the record, and, if established on enquiry, it would attract the provisions of the Prohibition of Child Marriage Act, 2006. In these circumstances, it is the plain duty of this Court to bring the matter to the notice of the authorities charged with the enforcement of that Act so that it may be looked into and dealt with in accordance with law.

25.5. In the result, and for the reasons recorded above, the following



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ORDER

- (i) The writ petition is **allowed**.
- (ii) A writ of certiorari is issued quashing the order dated 15.12.2023 passed by the Second Respondent, the Tribunal of Maintenance and Welfare of Parents and Senior Citizens, in Case No.MSC/CR/96/2022, produced at Annexure-A.
- (iii) As a consequence of the quashing of the order of cancellation, the registered gift deed dated 14.10.2020 executed by Respondent No.3 in favour of the Petitioner stands restored to its full legal force and effect.
- (iv) It is clarified that this order does not decide, and leaves open, any remedy that Respondent No.3 may have in accordance with law against his son for his own maintenance.
- (v) As regards the allegation that the Petitioner was married while she was a minor, the concerned authorities charged with the enforcement of the Prohibition of Child Marriage Act, 2006, including the jurisdictional Child Marriage Prohibition Officer and the District administration concerned, are directed to look into the allegation regarding the age of the Petitioner at the time of her marriage on 20.06.2010, to verify the same, and to take such action as may be warranted in accordance with law. This Court records



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no finding on the truth of the allegation, and the authorities shall proceed uninfluenced by anything in this judgment save the direction to enquire and to act in accordance with law.

- (vi) The Registry shall forward a copy of this judgment to the Deputy Commissioner / District Magistrate of the district concerned for compliance with direction (v) above.
- (vii) Before parting with the matter, this Court places on record its appreciation of the valuable assistance rendered by Sri Dhananjay Joshi, learned Senior Counsel, who accepted the request of this Court to act as Amicus Curiae.

This court has been assisted by Ms Harshada, Law Clerk, in reviewing this Judgment.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

PRS
List No.: 2 Sl No.: 3