



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 590 OF 2023

Nitin Rajendra Gupta } ...Petitioner

V/s.

Deputy Collector, Mumbai and others. } ...Respondents

WITH
INTERIM APPLICATION (L) NO. 6495 OF 2023
IN
WRIT PETITION NO. 590 OF 2023

Hemant Rajendra Gupta } ...Applicant

In the matter between

Nitin Rajendra Gupta } ...Petitioner

V/s.

Deputy Collector, Mumbai and others. } ...Respondents

WITH
INTERIM APPLICATION (L) NO. 30919 OF 2023
IN
WRIT PETITION NO. 590 OF 2023

Mr. Rajendra Keshardeo Gupta } ...Applicant

In the matter between

Nitin Rajendra Gupta } ...Petitioner

V/s.

Deputy Collector, Mumbai and others. } ...Respondents

Mr. G. S. Godbole, Senior Advocate with Mr. Manuj Borkar i/b Mr. Prasad D. Borkar, *for the Petitioner.*

Mr. Ameet Mehta a/w. Ms. Sheetal Pandya and Ms. Pratiksha Udeshi i/b Solicis Lex, *for the Respondent No.2 and Applicant in Interim Application (L) No. 30919 Of 2023.*

Mr. Avirat Sonawane, *for Applicant in Interim Application (L) No. 6495 Of 2023.*

Ms. Uma Palsuledesai, AGP for State, Respondent No. 1 and 3.

CORAM : **SANDEEP V. MARNE, J.**

Reserved On : 28 MARCH 2024.

Pronounced On : 10 APRIL 2024.

JUDGMENT:

1) **Rule.** Rule is made returnable forthwith. With the consent of the parties, petition is taken up for final hearing and disposal.

2) Petition takes an exception to the Order dated 31 October 2022 passed by the Maintenance Tribunal constituted under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**Senior Citizens Act**) by which the Tribunal has partly allowed the application filed by Respondent No.2-Father and has declared Gift Deeds executed on 21 June 2019 and 25 September 2020 as null and void with further directions to Petitioner to vacate and handover the possession of Flat Nos.2005 and 2006 at Riviera Towers CHS and Flat No.708 in Autumn Grove CHS to Respondent No.2-Father. The petition thus arises out of challenge to the Order passed by the Maintenance Tribunal under the provisions of Sections 23(1) of the Senior Citizens Act, by which Gift

Deeds executed by Respondent No. 2-Father in favour of his son (Petitioner) are set aside.

3) Briefly stated, facts of the case are that Respondent No.2- Rajendra K. Gupta filed application before the Maintenance Tribunal in February 2022 for return of various properties gifted by him to his son (Petitioner) and for payment of maintenance of Rs.50,000/- per month. In the application, Respondent No.2 disclosed that he has three sons - Hemant, Sharad and Nitin and that his wife Binadevi Rajendra Gupta has expired on 18 February 2019. He claimed in the application that after the demise of his wife on 18 February 2019, Petitioner (Nitin Gupta) got executed four Gift Deeds in respect of various immovable properties from him as well as took into possession various other immovable properties. Respondent No.2 gave details of four Gift Deeds executed in favour of Petitioner as under:

- i) Flat Nos.2005 and 2006, Riviera Tower CHS Limited, Lokhandwala Township, Kandivali (East), Mumbai;

These flats were purchased by Respondent No.2 and his wife in the year 2007. After the death of Binadevi, her 50% share in the flats devolved equally amongst all heirs. On 9 April 2019, Sharad Rajendra Gupta and Nitin Rajendra Gupta relinquished their shares in these two flats by registered Release Deed dated 9 April 2019. However, Hemant Rajendra Gupta did not relinquish his share and his share remained unaffected. That by Gift Deed dated 21 June 2019 and 25 September 2020, Petitioner got the entire Flat Nos. 2005 and 2006 transferred to his name.

- ii) Flat No.708, Autumn Grove CHS Limited, Lokhandwala Township, Andheri (East), Mumbai;

This flat was jointly purchased by Respondent No.2, Binadevi and Nitin in the year 2015. After Binadevi's death,

her share in the flat devolved equally amongst all the heirs. By Release Deed dated 9 April 2019, Sharad and Nitin relinquished their rights in respect of Flat No.708, while Hemant did not relinquish his share. That Petitioner, by Gift Deed executed by Respondent No. 2 on 21 June 2019 and 25 September 2020, got entire Flat No.708 transferred in his name.

iii) Flat No.502, 'Highland' Building No.3 CHS Lokhandwala Township, Kandivali (East), Mumbai;

This flat was owned by Binadevi Gupta and Petitioner got gift in respect of this flat executed in his name from Binadevi on 17 November 2016.

iv) Office No.8, The Hind Estate Building No.3B CHS, First Floor, Bhuleshwar, Mumbai;

This property was in the joint names of Gupta family members and the name of Respondent No.2 was mutated as Karta of the family. However, by Gift Deed dated 24 March 2017, Petitioner got this property also transferred in his name.

4) Respondent No.2 further contended in his application that after execution of various Gift Deeds in his favour, Petitioner started ill-treating him by removing all the servants and by confining him to one room. That on 14 April 2021 Respondent No.2 left Mumbai and went to Surat to reside with his other son Sharad. That he was forced to reside at Surat on account of ill-treatment given by Petitioner. He claimed that he neither has any other source of income nor has any other property with him. He further contended that various shares, Mutual Funds, PPF and jewellery were also transferred by Petitioner in his name/custody. Respondent No. 2

therefore prayed for return of all his properties as well as monthly maintenance of Rs. 50,000/- from Petitioner.

5) Petitioner appeared before the Maintenance Tribunal and resisted the Complaint filed by Respondent No.2. After hearing parties, the Maintenance Tribunal passed Order dated 31 October 2022 partly allowing application filed by Respondent No.2. The Maintenance Tribunal has declared two Gift Deeds executed on 21 June 2019 and two Gift Deeds executed on 25 September 2020 as null and void. The Tribunal has directed Petitioner to handover vacant possession of the two flats in Riviera Building and Flat No. 708 in Autumn Grove Building to Respondent No.2. Aggrieved by the Order passed by the Maintenance Tribunal, Petitioner has filed the present petition.

6) Mr. Godbole, the learned senior advocate appearing for Petitioner would contend that the Maintenance Tribunal has exceeded its jurisdiction while passing the impugned Order. He would submit that Respondent No.2 was never the sole owner in respect of Riviera flats as well as at Autumn Grove flat. That therefore the Tribunal could not have directed to vacate the said flats. Petitioner is a co-owner in respect of Flat No.708 in Autumn Grove building, as the same was purchased by him alongwith his mother and father. That therefore even if Gift Deed is to nullified, Petitioner still continues to be 1/3rd owner in respect of the Flat No.708. That therefore Order passed by the Maintenance Tribunal, to vacate all the three flats, is erroneously passed on a presumption as if Respondent No.2 is the sole owner in respect of all the three flats.

7) Mr. Godbole would further contend that jurisdiction for annulment of Gift Deed can be exercised by the Maintenance Tribunal only when a demonstrable case is made out where Gift is made by a senior citizen subject to express condition of providing basic amenities and basic

physical needs to the transferor. That therefore the condition of provision of basic amenities and basic physical needs must be incorporated in the Gift Deed itself. That in the present case, there is no such recital or covenant in any of the Gift Deeds. That the same were not executed subject to condition of providing of basic amenities and physical needs. Mr. Godbole therefore submits that there is absence of specific condition in the Gift, existence of such condition can neither be pleaded nor proved by any documentary evidence. In support of his contention, he would place reliance on the judgment of this Court, Bench at Aurangabad in ***Rahul s/o Chandrakant Bharati V/s. Gotu Nana s/o Narayanrao Patil and others***¹. He would also rely upon the judgment of Full Bench of Kerala High Court in ***Subhashini V/s. District Collector and others***² in support of his contention that the condition for provision of basic amenities and basic physical needs must be incorporated in the document of transfer. Additionally, he would also rely upon judgment of Single Judge of this Court in ***Vikas Prabhakar Patil (Shewale) V/s. Prabhakar Dawal Shewale and another***³ and ***Ranjana Rajkumar Makharia V/S. Mayadevi Subhakaran Makharia and another***⁴. Mr. Godbole would rely upon judgment of the Apex Court in ***Arun Kumar V/s. Union of India***⁵, in support of his contention that existence of condition stipulated under Section 23(1) of the Act is a *sine qua non* for conferment of jurisdiction on the Tribunal. That existence of that condition is a jurisdictional fact, in absence of which the Tribunal cannot exercise jurisdiction under Section 23(1) of the Senior Citizens Act.

8) He would submit that Judgment of the Apex Court in ***Sudesh Chhikara V/s. Ramti Devi & Anr***⁶ cannot be read to mean that absence of

¹ Criminal Writ Petition No.693 of 2018 decided on 21 June 2018.
² 2020 SCC Online Ker 4080.
³ 2021 SCC OnLine Bom 11846.
⁴ 2020(3) Mh.L.J. 587.
⁵ (2007) 1 SCC 732.
⁶ Civil Appeal No. 174 of 2021 decided on 6 December 2022.

condition in the document of transfer can be substituted by pleading in the complaint. He would further submit that the Apex Court in *S. Vanitha V/s. Deputy Commissioner, Bengaluru Urban District and others*⁷ has nowhere held that absence of condition in the agreement of transfer can be substituted by pleading or evidence. He would also seek to distinguish Judgment of Single Judge of Madras High Court in *Mohamed Dayan V/s. District Collector, Tiruppur District and Others*⁸.

9) Mr. Godbole would further submit that the application for revocation of gifts is made by father at the behest of other brother Sharad, who is interested in getting share in the properties gifted to the Petitioner. Mr. Godbole would therefore pray for setting aside the Order passed by the Maintenance Tribunal.

10) Alternatively, Mr. Godbole would further submit that even if this Court arrives at a conclusion that presence of condition for provision of basic physical needs and basic amenities can be presumed in every Deed of Gift, in the present case, there is no material to show that Petitioner has ever denied basic amenities or basic physical needs to Respondent No.2. He would further submit that Petitioner has never prevented Respondent No.2 from residing along with him in flats. Without prejudice, he would submit that even if Respondent No.2 does not wishes to reside with Petitioner, he can make a choice amongst various others flats where Petitioner can provide him residence. He would submit that Respondent No.2 can reside even in flat No.708 in Autumn Grove. Additionally, Mr. Godbole would contend that Petitioner is willing to provide some monthly maintenance amount to Respondent No.2.

⁷ (2021) 15 SCC 730.

⁸ 2023 SCC OnLine 6079.

11) Ms. Mehta, the learned Counsel appearing for Respondent No.2, on the other hand, would oppose the petition and support the Order passed by the Maintenance Tribunal. She would submit that despite having several flats in Mumbai, Respondent No.2 is rendered homeless and is required to reside at Surat along with his other son. That Petitioner and his family members levelled scandalous allegations against Respondent No.2 with a view to ensure his ouster from home. That on account of severe mental torture caused by Petitioner and his family members, Respondent No.2 no longer desires gifting any of his properties to Petitioner and is therefore has right to revoke all the Gift Deeds. That Respondent No.2 is now left with no other source of income and he is at the mercy of his other son in absence of any house on his own in Mumbai. So far as the requirement of making of gift subject to the condition of providing basic amenities and basic physical needs, Ms. Mehta would contend that specific pleadings are made in the Application to that effect that the Gifts were executed on specific condition of provision of basic amenities and basic physical needs. That Gifts in respect of only three flats are sought to be revoked which would not render Petitioner homeless. That Petitioner has two other properties gifted by the parents, which Petitioner can enjoy even after revocation of gifts made in his name. That the ill-intentions of Petitioner become apparent when he made attempts to dispose of Riviera Flats by entering into Agreement for Sale. That though the transaction could not fructify, it became clear that the Petitioner is in the process of disposing of the gifted flats. She would submit that out of the three sons, Hemant also had share in various properties and that therefore Petitioner does not become owner in respect of the gifted flats. She would submit that Respondent No.2 is at an advanced age of 77 years and he cannot be expected to live a miserable life on account of grabbing of all his properties by Petitioner. That the Order passed by the Maintenance Tribunal merely fulfils the objective behind the Senior Citizens Act and in absence of any grave error, this

Court would not be justified in interfering with the findings of the Maintenance Tribunal. She would pray for dismissal of the petition.

12) Mr. Sonwane, the learned Counsel appearing for Applicant in Interim Application (L) No.6495 of 2023 (filed by Hemant Rajendra Gupta) would also oppose the petition. He would submit that even after transfer of gifts in his favour, Petitioner does not become owner in respect of the concerned flats as intervener-Hemant has not relinquished right devolved upon him after his mother's death. Inviting my attention to the Release Deeds, he would submit that Petitioner erroneously claimed in that Deed that Binadevi's heirs included only father-Rajendra, Sharad and Nitin, when in fact there are actually 4 legal heirs. That name of Hemant Rajendra Gupta was deliberately suppressed in the said Release Deeds and the other documents. That this Court may therefore deny grant of any equitable relief in favour of the Petitioner on account of suppression of factual information and making false statements before the Authorities. He would pray for dismissal of the petition.

13) Rival contentions of the parties now fall for my consideration.

14) By the impugned order dated 31 October 2022 the Maintenance Tribunal has nullified the following four Gift Deeds:

- (i) Gift Deed dated 21 June 2019 registered at serial No. BRL/6/7375/2019 gifting 80% of share of father in Flat Nos. 2005 and 2006 in Riveria building.
- (ii) Gift deed dated 21 June 2019 registered at serial no.BRL-6/7371/2019 gifting 56.67% share in Flat No.708 in Autumn Grove building.
- (iii) Gift deed dated 25 September 2020 registered at serial no.BRL-9/6012/2020 gifting balance 20% share by father in Flat Nos.2005 and 2006 in Riveria building.

- (iv) Gift deed dated 25 September 2020 registered at serial no. BRL-9/6011/2020 gifting balance 10% share in Flat No.7-8 of Autumn Grove building.

15) The Maintenance Tribunal has declared the above four Gift-Deeds as null and void in exercise of power under Section 23(1) of the Senior Citizens Act. The Tribunal has further directed the Petitioner to vacate Flat Nos.2005 and 2006 in Riviera building and Flat No.708 in Autumn Grove building and handover possession thereof to Respondent No.2.

16) First it would be necessary to decide whether Respondent No.2 was the absolute owner in respect of the three flats and whether upon revocation of the four Gift Deeds, he would become absolute owner in respect thereof. It is an undisputed position that Flat Nos.2005 and 2006 in Riviera building were purchased in the joint names of Respondent No.2 and his wife Binadevi. Thus, initially Respondent No.2 was only 50% owner of Flat Nos.2005 and 2006 in Riviera building. It is an admitted position that Binadevi has died intestate on 8 April 2019. Therefore, 50% of Binadevi's share in these two flats would devolve equally amongst Respondent No.2 and the three sons. Thus, percentage of share of Respondent No.2 in these two flats would rise to 62.5% after Binadevi's death (his own 50% share plus 12.5% share after wife's death). It appears that by Release Deed dated 9 April 2019, the two sons, Nitin and Sharad released their shares in Flat Nos. 2005 and 2006 in favour of Respondent No.2. Thus, after execution of Release Deed, the share of Respondent No.2 increased to 87.5% in those two flats. The third son, Hemant Gupta still continues to hold 12.5% shares in the two Riviera flats.

17) So far as Flat No.708 in Autumn Grove building is concerned, the said flat was purchased jointly by Petitioner, Binadevi and Respondent No.2 and accordingly each had one-third share in that flat. After Binadevi's death, her one-third share devolved equally amongst the four

heirs. Again, by Release Deed dated 9 April 2019, Nitin and Sharad relinquished their shares (according to Mr. Godbole, the only one received through mother was released) in favour of Respondent No.2. The Release Deed does not throw light as to whether Petitioner released share received only through mother or whether he also released his own one-third share in Flat No.708 in favour of Respondent No.2. If Petitioner has not released his own 1/3rd share in Flat No. 708 by the release deed, even after revocation of the gift deeds in respect of Flat No. 708, Petitioner would continue to remain 1/3rd owner thereof. However, considering the limited scope of enquiry in the present petition, in my view, it is not necessary to delve deeper into this aspect. Suffice it to hold that Respondent No.2 was neither full owner in respect of Flat No.708 nor became full owner after death of Binadevi as well as after execution of Release Deed dated 9 April 2019. This is because admittedly the third son, Hemant Gupta has not released his share in Flat Nos. 2005 and 2006 in Riviera and in Flat No.708 in Autumn Grove in favour of Respondent No.2. Thus, Respondent No.2 is not the absolute owner in any of the three flats. However, the Maintenance Tribunal has still proceeded to issue direction for vacation of all the three flats by the Petitioner. The Maintenance Tribunal has not applied its mind to this vital aspect about ownership in respect of all the three flats after revocation of the Gift Deeds. Therefore, the direction for vacation of all the three flats, premised on the assumption that Respondent No. 2 would become 100% owner in respect of all of them, appears to be clearly erroneous.

18) The next objection strenuously raised by Mr. Godbole is about exercise of power under Section 23(1) of the Senior Citizens Act for revocation of the four Gift Deeds. According to Mr. Godbole, the jurisdiction under Section 23(1) of the Senior Citizens Act can be exercised only where the transfer of property by senior citizens is made subject to the condition that the transferee shall provide the basic

amenities and basic physical needs to the Transferor. According to Mr. Godbole, since presence of this condition is *sine qua non* for exercise of jurisdiction under Section 23(1), that condition must be reflected in the document of transfer and that in absence of such condition in the document of transfer, the jurisdiction under Section 23(1) cannot be exercised by the Maintenance Tribunal.

19) Section 23 of the Senior Citizens At which confers jurisdiction on the Maintenance Tribunal to issue a declaration in respect of the transfer of property by Senior Citizens reads thus :

23. Transfer of property to be void in certain circumstances.—

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in *Explanation* to sub-section (1) of section 5.

20) Thus sub-section (1) of Section 23 creates a legal fiction, under which transfer of a property is deemed to have been made by fraud or coercion or under undue influence and the Tribunal can declare the same as void at the option of the Transferor. No doubt, power under Section 23(1) can be exercised by the Tribunal only if the transfer is made subject

to the condition that the Transferee shall provide the basic amenities and basic physical needs to the Transferor. Thus existence of condition for provision of basic amenities and basic physical needs in the jurisdictional fact, in absence of which, the jurisdiction cannot be exercised by the Maintenance Tribunal. The only issue is whether this condition needs to be specified in the document of transfer or whether in absence of its incorporation in the document, can it be established by pleadings and evidence? In the present case, in none of the four Gift-Deeds, which are annulled by the Tribunal, there is any specific recital or covenant that the Gift Deeds are executed subject to the condition of Petitioner providing basic amenities and basic physical needs to Respondent No.2. Therefore could the Maintenance Tribunal have exercised the jurisdiction under Section 23 (1) of the Senior Citizens Act is the issue which Mr. Godbole seeks to raise.

21) This issue had arisen for my consideration in *Ashwin Bharat Khater* (supra) in which, this Court, after taking into consideration the judgment of the Apex Court in *Sudesh Chhikara* (supra), held in para-25 to 29 as under:

25. Though it was initially sought to be suggested during the course of submissions that the condition of provision of basic amenities and basic physical needs must be stipulated in the form of a covenant in the Gift Deed, Mr. Khandeparkar, in his usual fairness, has later conceded that he does not want to press an extreme argument that in every case such a condition must be included in the Gift Deed. He however submits that even if such condition need not be included in the Gift Deed, there must be pleading and proof on the part of senior citizen that the Gift or transfer was executed subject to a condition that the transferee would provide basic amenities and basic physical needs to the transferor. In this connection he has placed reliance on the judgment of the Supreme Court in the Case of *Sudesh Chhikara* (supra) in Paragraph Nos.12 and 15 the Supreme Court held as follows:

“12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”.

For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

- a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and
- b. the transferee refuses or fails to provide such amenities and physical needs to the transferor.

15. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1 would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.”

26. In the case before the Apex Court, there was no pleading to the effect that the Gift Deed was executed subject to condition that a transferee would provide basic amenities and basic physical needs to Respondent No.1 therein. In the present case Respondent No.1 - Mother has pleaded in Paragraphs 4-O & 4-P of her application as under:

" 4O. Applicant was alone and with no choice but to take help from her Younger Son/the Respondent No.1. As the Applicant was dependent on Respondent No.1 and the exerted undue influence, relying upon the aforesaid assurances, she was coerced to execute Gift Deed in the favour of Respondent No.1 and the same was executed in May, 2017, with false promises that the Respondent Nos.1 & 2 will take her care of her for the entire life.

4P. In furtherance of the assurances given by the Respondents to safeguard her future, the Applicant was persuaded into gifting her 2 (two) Properties/Shares or Joint-Ownership in the 2 (Two) Properties, in favour of the Respondent No.1 herein, when she was alone and was not in the right frame of mind and was ailing."

27. Thus, there are specific pleadings made by the first Respondent-Mother in her application that two Gift Deeds were executed in furtherance of assurance given by Petitioners that they would take care of her during her entire life. Mr. Khandeparkar has fairly not contested the issue of absence of pleading. He however submits that it was incumbent upon the Mother to prove by leading oral evidence that the Gift Deed was executed subject to a condition of Petitioners

providing basic amenities and basic physical needs to Mother. The requirement of the aspect of leading oral evidence by senior citizen in support of application is being discussed in latter portion of the Judgment. However, so far as applicability of the Judgment in *Sudesh Chhikara* (supra) in the present case is concerned, I am of the view that the Apex Court was persuaded to set aside the order of Maintenance Tribunal essentially on account of lack of pleadings by Respondent No.1 therein that the Release Deed was executed subject to a Condition for providing maintenance. Since the condition is pleaded by Mother in her application, the judgment in *Sudesh Chhikara* would not support Mr. Khandeparkar's submission that there was no material before the Maintenance Tribunal to arrive at a finding that the Gift Deeds were executed subject to such a condition.

28. In fact Mr. Purohit has rightly drawn my attention to the following finding recorded by the Apex Court in *Sudesh Chhikara* (supra) in Paragraph 14 of the Judgment which reads thus:

“14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in subsection (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.”

29. **The Apex Court has thus held that the existence of condition can even be established before the Tribunal. This would in fact indicate that the existence of such condition need not be reflected in the Deed itself in the form of a covenant or a recital and the same can be established before the Tribunal.**

(emphasis supplied)

22) Thus, in *Ashwin Bharat Khater*, this Court has taken a view that the condition of provision of basic amenities and basic physical needs need not be stipulated in the document of title, but the same can be established through pleadings and evidence before the Maintenance Tribunal. Mr. Godbole would contend that the finding recorded by this Court in *Ashwin Bharat Khater* is on a concession made by the learned counsel appearing for one of the parties therein and therefore the view expressed by this Court would not form a binding precedent. True it is

that in para-25 of the judgment, this Court has recorded a statement on behalf of the learned counsel therein that he did not desire to press the extreme argument that in every case such a condition must be included in the Gift Deed. This Court thereafter considered the judgment of the Apex Court in ***Sudesh Chhikara*** (supra). In case before the Apex Court, the mother had executed Release Deed in favour of her daughter and son. The Release Deed was sought to be cancelled by the mother by preferring application under Section 23 of the Senior Citizens Act, which proceeded to hold that the Release Deed was void. In this factual background, the Apex Court has held in para-13 of the judgment as under:

13. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.

23) Thus, as held by the Apex Court in ***Sudesh Chhikara***, the condition of looking after Senior Citizens may not be attached to the document of gift or release as such transfers could be made out of love and affection without any expectation in return. The Apex Court thereafter held that when a document of transfer is sought to be annulled under Section 23(1), existence of the condition must be established before the Tribunal. Thus, what is the *sine qua non* is not the 'presence' of condition in the document, but 'establishment' thereof before the Maintenance Tribunal.

24) Mr. Godbole has relied upon judgment of the Apex Court in ***Arun Kumar*** (supra) in support of his contention that existence of condition stipulated under Section 23(1) of the Act is a *sine qua non* for conferment of jurisdiction on the Tribunal. That it is a jurisdictional fact, without

establishment of which the Tribunal cannot exercise jurisdiction. In ***Arun Kumar***, the Apex Court has held as under:

74. A “jurisdictional fact” is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

25) The position of law on jurisdictional fact is well settled. Jurisdiction of a court, tribunal or authority depends on existence or otherwise of jurisdictional fact. Therefore, in case where existence of a condition of provision of basic amenities or basic physical need is not present as a condition for making gift, the jurisdiction under Section 23(1) cannot be exercised by the Tribunal. The issue here, however, is slightly different. The issue is whether such condition must be stipulated in the document of transfer or whether it can be established by pleadings and evidence. Therefore, the judgment of the Apex Court in ***Arun Kumar*** does not throw any light on the issue at hand.

26) Reliance is placed by Mr. Godbole on judgment of Single Judge of this Court in ***Rahul Chandrakant Bharati*** (supra) in which it is held in paras-19, 20 and 21 as under:

19. In order to bring the case under subsection (1) of Section 23 of the Act, the following conditions are necessary, which read as under:

(a) The senior citizen has transferred by way of a gift deed or otherwise, after commencement of this Act;

(b) The transfer was subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor;

- (c) Such transferee refused to provide such amenities and physical needs;
- (d) In that event, the said transfer shall be deemed to have been made by fraud or coercion or under undue influence.
- (e) Consequently, at the option of the transferor such transfer shall be declared void by the Tribunal.

20. In the present case, respondent No.1 has transferred the disputed premises to the petitioner, either by way of lease or under leave and licence. There is no written agreement evidencing that this transfer was on the condition that the petitioner shall provide the basic amenities and basic physical needs to the transferor. The application filed by respondent No.1 before the Tribunal is totally silent about the ingredients of sub-section (1) of Section 23 of the Act. Even the impugned order is also silent about these ingredients. As stated above, it is for the first time that respondent No.1 whispered about conditional transfer of the disputed premises before this Court. **When no such condition was attached to the transfer of the disputed premises, there was no question of refusal or failure on the part of the petitioner to provide such amenities and physical needs to respondent No.1.**

21. Considering the objects of the Act, the disputes between the senior citizen and others in respect of civil rights pertaining to movable or immovable property would not be covered under Section 4 or Section 23 of the Act. Here, a Reference may be made to the judgment in the case of Sukumaran Vs. Sumesh and Ors. MANU/KE/0204/2018, delivered on 19th January, 2018, by the Division Bench of the High Court of Kerala at Ernakulam, wherein the father had executed a sale deed in favour of his son. Subsequently, father filed an application before the Tribunal under Section 23 of the Act. The Tribunal declared the sale deed as null and void and cancelled it. It was found that the sale deed did not contain any reservation making the transferee (son) liable to provide the basic amenities and basic physical needs to the transferor (father). Consequently, it was held that the case pleaded by the father, was not one to which section 23 would apply and the father was left to seek to invalidate the sale deed on any valid ground only through the Civil Court. In the present case also, the transfer of the disputed premises to the petitioner was not subject to any condition as mentioned in sub-section (1) of Section 23 of the Act. Consequently, the provisions of Section 23 would not be applicable. Respondent No.1 would have to approach the Civil Court or Competent Authority, as the case may be, depending upon his interpretation about the nature of the transaction in respect of the disputed premises i.e. either lease or leave and licence, for necessary reliefs.

(emphasis supplied)

27) In *Rahul Chandrakant Bharati* the senior citizen had transferred the premises to the Petitioner therein either by way of a lease or license. Infact, Petitioner was not even a relative of the senior citizen. It was the case of the Petitioner therein that he was occupying the premises as a tenant on monthly rent of Rs.3,000/-, which was being received by senior citizen's daughter. Apparently, therefore there was no document executed by the senior citizen under which premises were put in possession of the Petitioner. Since there was no such document of either lease or license was executed, there was no question of condition of provision of basic amenities and basic physical needs being incorporated in any document. Therefore, there was no occasion for this Court to discuss the issue of 'presence in the document' or 'establishment before the Tribunal' of condition required under Section 23(1) of the Act. In my view, therefore the judgment of this Court in *Rahul Chandrakant Bharati* does not provide any assistance for determination of the issue at hand.

28) Mr. Godbole has relied upon the judgment of Full Bench of Kerala High Court in *Subhashini* (supra) in which the Full Bench of the Kerala High Court has held in paras- 56 and 57 as under:-

56. Very pertinent is the fact that Section 23(1) is prospective and applies only to agreements executed after the enactment came into force. Section 23 applies only to transfers after the commencement of the Act. This further fortifies our interpretation that the provision insists on there being an express condition, written as part of the recitals, in the deed. If it were otherwise and the circumstances which led to the execution or a reservation clause could be relied on to infer or imply such a condition having regulated the execution, it would have been made applicable to deeds of all times, executed by senior citizens of a like nature. The measures of publicity as spoken of in Section 21, under Chapter 5 is also intended at informing every senior citizen about the speedy remedy provided for maintenance as also revocation of a gratuitous transfer and to alert them of the condition to be specified; which has to be a part of the recitals of the document.

57. 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 [Malukutty Ponnarassery v. P.Rajan Ponnarassery]. We find Shabeen Martin v. Muriel [2016 (5) KHC 603] and Sundhari v. Revenue Divisional Officer [2018 KHC 4655 = 2013 (3) KLT 1082] to be wrongly decided. We approve Radhamani v. State of Kerala [2016 (1) KHC 9] which had a recital in the document akin to that required under Section 23(1).

(emphasis supplied)

29) In ***Subhashini*** Full Bench of the Kerala High Court has apparently taken a view that (i) the condition 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 and (ii) such transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. So far as the view on the latter aspect of transfer contemplated under Section 23(1) being only by way of gift is concerned, the view taken by the Full Bench of the Kerala High Court appears to be in conflict with the observations of the Apex Court in para-12 of the judgment in ***Sudesh Chhikara*** wherein the Apex Court has held that ‘*Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”*’. However, since the documents of transfer involved in the present case are gifts, I need not go into the issue of correctness of that finding by the Full Bench of Kerala High Court in ***Subhashini***. It is its view on the former aspect which appears to be in conflict with the one taken by me in ***Ashwin Bharat Khater***. It appears that the judgment of Full Bench of Kerala High Court in ***Subhashini*** was not cited when ***Ashwin Bharat Khater*** was decided.

Though the judgment in *Subhashini* is of Full Bench of Kerala High Court, it would not bind me, but would definitely have a persuasive value.

30) After considering the judgments rendered by some other High Courts, there appears to be divergence of views expressed on the issue of need for incorporation of the condition in the document of transfer. In *N. D. Vanamala Vs. State of Karnataka*⁹, a single Judge of the Karnataka High Court upheld annulment of gift deed notwithstanding the fact that the condition of providing basic amenities and basic physical needs was not a part of the gift deed. The learned Judge held:

22. Admittedly in the present case, the gift deed was executed by the fourth respondent under the bona fide belief that the petitioner being her daughter will take care of her during her old age. But, after obtaining the gift deed, the petitioner has shown her real colour and deprived the basic amenities and physical needs to the fourth respondent. Therefore, the fourth respondent filed an application before the Assistant Commissioner seeking cancellation of the gift deed executed by her in favour of the petitioner. **The contention of the Counsel for petitioner that there must be a condition in the gift deed to take care of the transferor cannot be accepted.** If such contention is accepted, then the very purpose of enacting the 'Act' by the legislators and introducing Sections 23 and 24 in the Act would become futile. That is not the intention of the legislators while enacting the 'Act'. The main object of the 'Act' is to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India and to protect the Senior Citizens at the end of their life. Even otherwise, it is the Duty and Dharma of the children to take care of their aged parents.

(emphasis supplied)

31) However, the Division Bench of the Karnataka High Court overruled the judgment of the Single Judge in *N. D. Vanmala Vs. State of Karnataka*¹⁰. The Division Bench held:

⁹ 2018 SCCOnline Kar 2707

¹⁰ Writ Appeal No. 96 of 2019 decided on 29 June 2022

8. Thus from the perusal of the relevant extract of the Gift deed, it is evident that the Gift deed does not contain any condition that the transferee, namely, the appellant shall provide the basic amenities and basic physical needs to the transferor. On the other hand, Gift deed has recorded that the appellant has taken care of respondent No.4. Respondent No.4 has expired during the pendency of the appeal. **In the absence of any stipulation in the gift deed with regard to the maintenance of respondent No.4, the Assistant Commissioner had no authority under Section 23 of the Act to declare the Gift deed to be void.** However, the aforesaid aspect of the matter has not been appreciated by the learned Single Judge.

(emphasis supplied)

32) However later, in the year 2023, another Single Judge of Karnataka High Court in *Apparanda Shanthi Bopanna vs A B Ganapathy*¹¹ held that the senior citizens would be entitled to enjoy the fruits of gift executed by them in the form of Rs. 7,00,000 each during their lifetime. Attention of the Court was invited to the judgment of this Court in *Ashwin Bharat Khater*. However the learned Judge does not appear to have decided the issue of need for incorporation of condition of provision of basic amenities and basic physical needs in the gift deed. However despite absence of such condition in the document, it is held that, though the gifts needs not be annulled, the fruits thereof must be enjoyed by the senior citizens in the form of maintenance in the form of Rs. 14,00,000 to them every year. One of the reasons for not restoring the gifted properties to the senior citizens was their advanced age of 85 years. It is held:

12. The petitioner is now 85 years old. The petitioner was satisfied for three years after execution of gift deeds as the donees/respondents 1 and 2 were depositing `14,00,000/- every year into her account for maintenance or living of the petitioner as she was living earlier. Stopping of maintenance of `14,00,000/- that was paid every year, drew the petitioner to the doors of the Assistant Commissioner. The Assistant Commissioner annuls gift deeds. If that is accepted, it would mean that the petitioner would get back the property to her name. As observed hereinabove, she is 85 years old and will not be in a position to take care

¹¹

Writ Petition No. 9943 of 2022 decided on 20 December, 2023

of the property even if the order of the Deputy Commissioner is set aside. What the petitioner requires and why the petitioner knocked at the doors of the Assistant Commissioner was for maintenance i.e., the maintenance at the rate at which it was agreed between respondents 1 and 2 and the petitioner. Therefore, relying on the judgments quoted hereinabove, in the peculiar facts before this Court, annulling the order of the Deputy Commissioner or restoring the order of the Assistant Commissioner is not required, as those issues need not be decided in the present case. It would suffice, by sustaining the order of the Deputy Commissioner, a direction is issued to the respondents 1 and 2/donees to put the petitioner in a position status quo ante i.e., receipt of money as maintenance that she was receiving between 2016-2019, the petitioner should be satisfied.

33) Division Bench of Madras High Court, Bench at Madurai in *R. Sekkappan Vs. S. Kanappan*¹² held as under

14. Careful perusal of the petition under Section 23, filed by respondent no.1, shows that **it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1.** Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. **It seems that oral evidence was not adduced by the parties.** As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.

(emphasis supplied)

The fact situation in *R. Sekkappan* before the Division Bench of Madras High Court appears to be similar to the facts in the case in *Sudesh Chikkara* before the Apex Court where failure to plead and lead evidence about existence of condition was essentially held to be the reason for not annulling the deed of transfer.

¹²

WA No. 809/2023 decided on 12 June 2023

34) Without noticing the judgment of Division Bench in *R. Sekkappan*, it appears that a Single Judge of Madras High Court In *Mahamed Dayan Vs. Dist Collector*¹³, has held that the settlement deed sought to be annulled under Section 23(1) need to contain express condition of provision of basic amenities and basic physical needs. The Court held:

38. The Kerala High Court observed in the case of Radhamani and Others (cited supra), Section 23(1) of the Senior Citizen Act, cannot be interpreted to the disadvantage of the senior citizen. Section 23(1) of the Act contemplates that “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 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”. The phrase “ subject to the condition that the transferee shall provide the basic amenities” does not mean that the Gift or Settlement Deed should contain any such condition expressly. “Subject to the condition” as employed in Section 23(1), is to be holistically understood with reference to the subsequent phrase i.e., “deemed to have been made by fraud or coercion or undue influence”. Both the phrases would amplify that the deeming clause should be considered so as to form an opinion that the phrase “subject to condition” amounts to an implied condition to maintain the senior citizen and any violation would be sufficient for the purpose of invoking Section 23(1) of the Act, to cancel the Gift or Settlement Deed executed by the senior citizen.

39. To elaborate, the phrase “subject to condition” employed under Section 23(1) of the Act, is to be understood with reference to the love and affection by the senior citizen towards the person in favour of whom such Gift or Settlement Deed has been executed.

40. “Love and Affection” is an implied condition in the context of Section 23(1) of the Act, and therefore, there need not be any express condition in the Settlement Deed for the purpose of maintaining the senior citizen. Refusal of maintenance after executing the Settlement Deed or Gift Deed, is the ground for invoking the deemed ground of fraud or coercion or undue influence. When the deeming clause has been incorporated under the provisions of Section 23(1) of the Act, 'Love and Affection' to be construed as the consideration for executing the Gift or Settlement Deed. Thus the condition need not be expressly made in the document and the love and affection, which resulted in execution of the Deed by the senior citizen is to be construed as a condition for the

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Writ Petition No. 28190 of o2022 decided on 8 September 2023

purpose of invoking the deeming clause for declaring the document as fraud or coercion or undue influence. The entire purpose and object of the Senior Citizens Act, is to consider the human conduct towards them. When the human conduct is indifferent towards senior citizen and their security and dignity are not protected, then the provisions of the Act, is to be pressed into service to safeguard the security and dignity of senior citizen. Therefore, the purposive interpretation of the provisions are of paramount importance and Section 23 of the Act, cannot be mis-utilised for the purpose of rejecting the complaint filed by the senior citizen on the ground that there is no express condition for maintaining the senior citizen. Even in the absence of any express condition in the document, "Love and Affection" being the consideration for execution of Gift or Settlement Deed, such love and affection becomes a deeming consideration and any violation is a ground to invoke Section 23(1) of the Act. Thus there is no infirmity in respect of the order passed by the second respondent in the present case.

42. The human conduct in the context of the senior citizen Act, is to be understood considering the relationship between the senior citizen and the beneficiaries of the Gift or Settlement Deed. Mostly the parents are executing the document in favour of their children. Since they may not be in a position to maintain the property at their old-age and more-so, they are intending to visibly express their love and affection towards their children by settling their properties. In some cases, the parents during their old-age are settling their property in order to avoid conflict between their children and to ensure that all children get equal share. If at all the parents decide to settle the property in favour of a son or daughter, then they are doing so, only with love and affection and with a fond hope that they will be taken care of by the son or daughter during their old-age. Thus love and affection, being the consideration and implied condition, within the meaning of Section 23(1) of the Act. The subsequent non-maintenance of senior citizen would attract Section 23(1) of the Act and the Authorities in such circumstances are empowered to declare the document as null and void.

43. Therefore, Section 23 is referable as a conduct of the transferee prior to and after execution of the Deed of Gift or Settlement, as the case may be. For all purposes, Section 23 is to be understood taking note of the conduct of the transferee and not with reference to the specific stipulation of condition in the Deed of Gift or Settlement.

35) Another Single Judge of the Madras High Court in *Sankarapan Vs. The Appellate Authority*¹⁴ did not agree with the view in *Mohammed Dayan* on the ground that the Division Bench Judgment in *R. Sekkappan* was not considered in *Mohammed Dayan*. The Court held:

¹⁴

WP No. 27135 of 2023 decided on 10 November 2023

11. I, therefore, hold that to invoke Section 23 of the Senior Citizens Act, there must be an express recital in the deed of transfer that the transferee is under an obligation to provide the basic amenities and basic physical needs to the transferor. If this condition is not expressly incorporated or found in the deed of transfer, the jurisdiction of the Maintenance Tribunal will not be available under Section 23 of the Act. The only remedy open to the transferor is to move the jurisdictional Civil Court for relief.

However, the judgment of Division Bench in ***R. Sekkappan*** was rendered in the facts of that case where there was absence of pleadings and failure to lead evidence. Also, there is no discussion in ***R. Seekappan*** about the need for incorporation of condition of provision of basic amenities and basic physical needs in the document of transfer. However, the Single Judge in ***Sankarapan*** did not approve the view taken in ***Mohammed Dayan*** though it contains detailed discussion on the issue and held that the judgment of Division Bench in ***R. Sekkappan*** would prevail.

36) A Single Judge of Calcutta High Court in ***Himangshu Mondal v. Sachirani Mondal***¹⁵ has also taken a view that the condition of provision of amenities and needs must be stated in the document of transfer.

37) As noticed above, there is divergence of views expressed by various High Courts on the issue of requirement of incorporation of condition of provision of basic amenities and basic physical needs in the document of transfer.

38) Though in few judgments of some of the High Courts, the judgment of the Apex Court in ***Sudesh Chhikara*** is interpreted to mean as if the Apex Court has held that the condition required under Section 23(1) must be expressly stated in the document of transfer, in my view, the Apex Court has not held so. In ***Sudesh Chhikara***, the Apex Court has held that “*Effecting transfer subject to a condition of providing the basic amenities*

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and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23". Thus finding of the Apex Court cannot be read to mean as if the condition of providing the basic amenities and basic physical needs must be incorporated in the document itself. The Apex Court has held in Para 14 of the Judgment as under:

14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. **Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.**

39) Thus, what is emphasized by the Apex Court in *Sudesh Chhikara* is the need to 'establish' existence of condition attached to transfer. In *Sudesh Chhikara* Apex Court has dealt with a case where the condition of provision of basic amenities or basic physical needs was not incorporated in the release deed. The Apex Court then considered whether existence of such condition was pleaded and whether evidence was adduced about existence of such condition. If the condition already existed in the document of transfer, the need for establishment of its existence through pleading and evidence becomes unnecessary. Pleading and evidence would be needed when the condition is not found in the document, but a senior citizen asserts and wishes to prove that the gift was actually done in expectation of the donee providing the basic amenities and basic physical needs to the donor. This is why after considering the judgment in *Sudesh Chhikara*, I have held in *Ashwin Bharat Khater* that in absence of incorporation of such condition, the same can be established before the Maintenance Tribunal.

40) If Section 23(1) of the Senior Citizens Act is interpreted to mean as if the condition of providing basic amenities and basic physical needs must be incorporated in the document of transfer, the same may throw most of the transactions effected by senior citizens out of purview of Section 23(1). Because it is difficult that a senior citizen making a gift in favour of his/her child would insist that the condition of providing basic amenities and basic physical must be incorporated in the gift deed. In most of the cases, such documents are drafted at the instance of the child, who is the beneficiary of such transfer. Applicability of special protection under Section 23(1) to a senior citizen would then depend on the manner in which the gift deed is couched by its drafter. A senior citizen who is unaware of provisions of section 23(1) would not know that absence of recital or stipulation in the gift deed, which he/she executes, would deny him/her the special protection that the legislature has extended him under Section 23(1). Grant or denial of protection under Section 23(1) would then depend on the wisdom of the drafter or scribe who drafts the document of transfer.

41) On the other hand, if provisions of Section 23(1) of the Senior Citizens Act are interpreted to mean that existence of condition of providing basic amenities and basic physical needs, not incorporated in the document of transfer, can be established before the Tribunal through pleadings and evidence, such interpretation would subserve the objective behind enacting the provision, the ultimate objective being the welfare of senior citizens. Such interpretation would provide the freedom to the Tribunal to determine whether the document of transfer was indeed executed subject to such condition. In a given case, where senior citizen owns just a house and executes a gift deed in favour of his/her child, which does not contain a recital or stipulation that the same is executed subject to condition of providing basic amenities and basic physical needs, in the event of the child throwing the senior citizen out of that house, the

protection granted under Section 23(1) would be rendered nugatory and the entire objective behind enacting the Act would be frustrated. In that case, the senior citizen, in my view, needs to be given an opportunity to prove before the Tribunal that the gift was made on a condition that the senior citizen would be provided the basic amenity of residence in the house that he/she gifted to the child. On the other hand, if a senior citizen owns multiple properties, and gifts only one of it to the child, while retaining other properties, the Tribunal can draw an inference that execution of the gift was not subject to any such condition. Therefore, some flexibility needs to be provided to the Tribunal to take decision in the light of facts of each case. The Tribunal must consider facts of each case and decide whether after execution of document of transfer, there is denial of basic amenity or basic physical need to the senior citizen or whether the provisions of Section 23(1) are being misused to decide property disputes amongst the siblings. In appropriate cases, where the senior citizen has other residence, but is not looked after, the Tribunal can make an order for payment of maintenance rather than annulling the gift.

42) In my view, therefore the existence of condition of provision of basic amenities and basic physical needs need not be specifically incorporated in the document of transfer and the same can always be established before the Tribunal through pleadings and evidence.

43) Reliance is placed by Mr. Godbole on judgment of Single Judge of this Court in *Ranjana Rajkumar Makharia V/S. Mayadevi Subhakaran Makharia and another*¹⁶ this Court has merely reiterated the conditions which are required to be fulfilled for passing an order by the Tribunal under Section 23. This Court has nowhere held that the condition of provision of basic amenities or basic physical needs must be stipulated in the document of transfer/gift.

¹⁶

2020(3) Mh.L.J. 587.

44) Mr. Godbole has relied upon judgment of Single Judge of this Court in *Vikas Prabhakar Patil (Shewale) V/s. Prabhakar Dawal Shewale and another*¹⁷, which is actually considered by this Court in his judgment in *Ashwin Bharat Khater*. In *Vikas Prabhakar Patil* (supra), there is no discussion of the issue of presence of condition stipulated under Section 23(1) in the document of transfer or whether it can be established by pleadings and evidence before the Tribunal. In that case, a sale-deed was sought to be revoked under the provisions of Section 23(1) of the Act. It is not clear from the Order in *Vikas Prabhakar Patil* as to whether there was payment of monetary consideration for effect of transaction of sale and whether the senior citizen therein made any attempt to establish the condition of provision of basic amenities and basic physical needs before the Tribunal. The order in this Court in *Vikas Prabhakar Patil* therefore does not provide any assistance to the issue at hand.

45) I therefore do not find any reason to take a different view than the one taken in *Ashwin Bharat Khater*. I accordingly hold that the condition of provision of basic amenities and basic physical needs need not be stipulated in the form of a covenant or recital in the document of transfer referred to under Section 23(1) and it is open for the parties to establish presence of such condition on the basis of pleadings and evidence.

46) The next issue is whether existence of such condition was established by Respondent No.2 before the Maintenance Tribunal. It must be observed here that while executing various Gift-Deeds, Respondent No. 2 has ensured that his right of occupation in gifted flats was protected. In each of the Gift-Deeds, there is a specific stipulation as under:

“The Donee hereby state, declare and undertake that the Donor is entitled to reside and enjoy the occupancy of the

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said premises during his lifetime and the Donee will not create any hindrance of whatsoever nature for the same.”

47) Thus, all the four Gift Deeds are executed subject to a specific covenant that Petitioner shall not cause any hindrance to the second Respondent's occupation, residence and enjoyment of the gifted flats. Provision of residence is one of the basic amenities as well as basic physical need of a senior citizen. Therefore, though the gift deeds do not contain specific recital/covenant that the same are executed subject to the condition of provision of basic amenities and basic physical needs, existence of such condition can be inferred in the present case both on account of covenant for providing residence to Respondent No. 2 as well as admission of liability to provide residence to him by Petitioner. Thus, in the present case, execution of Gift-Deeds subject to condition of provision of basic amenities and basic physical need of residence to Respondent No.2 is established.

48) Having held that execution of Gift-Deeds by the father was subject to the condition of provision of basic amenities and basic physical need of residence in the gifted flats, the next issue for consideration is whether the order declaring annulment of all Gift-Deeds in the present case can be sustained. As observed above, Respondent No.2 is not the 100% owner in respect of any of the three flats. The third son, Hemant Gupta has undoubtedly retained his one-third share (through his mother's share) in each of the three flats. Flat No.708 was originally purchased jointly by the Petitioner and the parents and accordingly he held one-third share in that flat. Even though he executed Release Deed dated 9 April 2019 in his father's favour, it is debatable whether he intended to release his own one-third share in Flat No.708. Even if it is assumed that he did release his own one-third share in Flat No.708 in favour of the father, the acquisition of that one-third share by father from the Petitioner was not on payment

of any consideration. Therefore, even in the case of assumption of relinquishment of Petitioner's one-third share in Flat No.708, it again becomes questionable whether father had the right to get back that share from son under Section 23(1) of the Senior Citizens Act when that one-third share was never acquired by the father by paying any consideration. Without going any further into the aspect of ownership of various parties, which does not fall in the domain of enquiry under the Senior Citizens Act, suffice it to hold that Respondent No.2-father was never 100% owner in respect of the three flats. The Tribunal has completely glossed over this important aspect.

49) Father's main grouse before the Maintenance Tribunal was that he was denied residence in his own flats at Mumbai on account of which he is forced to reside with his other son-Sharad at Ahmedabad. The Maintenance Tribunal has not awarded any monthly maintenance to Respondent No.2. As such denial is premised on a finding that Respondent No.2 did not implead all the three sons in the proceedings filed before the Tribunal. Another finding recorded by the Maintenance Tribunal is that Respondent No.2 would be in a position to earn income through the three flats in respect of which the gifts are annulled. Mr. Godbole has submitted that Petitioner is willing to provide Flat Nos. 2005 and 2006 in Riviera Building for residence of the Respondent No.2 alongwith Petitioner and his family members. Alternatively, he has also expressed willingness to provide Flat No. 708 in Autumn Grove building for residence of the father, where he can reside independent of Petitioner and his family. Additionally, he has expressed willingness on the part of the Petitioner to provide fixed monthly amount for maintenance of the father.

50) The objective behind enacting sub-section (1) of Section 23 of the Senior Citizens Act is to ensure that if senior citizens are deprived of their

properties by children and are denied basic amenities and basic physical needs after effecting such transfers, the effect of such transfer is revoked and ownership of senior citizens is restored. The basic idea behind this provision is not to nullify validly executed documents of transfer but to ensure that senior citizens are restored the basic need of residence in the house which he/she gifts in favour of his/her children. The legislative scheme and effect of Section 23 of the Senior Citizens Act is discussed by the Apex Court in paras-19 and 20 of the judgment in **S. Vanitha** (supra):

19. A senior citizen, including a parent, who is unable to maintain themselves from their own earning or out of property owned by them, is entitled to make an application under Section 4(i). A parent or grand-parent may make an application against one or more of their children. A childless senior citizen can make an application against a relative specified in Section 2(g). Section 4 recognises a corresponding obligation on the part of the children or relative to maintain a senior citizen, extending to such needs as would enable them to lead a normal life. In the case of a relative, the obligation is if they are in possession of the property of the senior citizen or would inherit property from them. Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance.

20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7) is of a summary nature as provided in Section 8(1) and with all the powers of a Civil Court, as provided in Section 8(2). Under Sub-section (1) of Section 9, where a senior citizen is not able to maintain himself or herself and the children or relatives, as the case may be, neglect or refuse to maintain them, the Tribunal is empowered to order them to make a monthly allowance at such monthly rate for the maintenance of the senior citizen, as the Tribunal may deem fit. The amount of the monthly allowance can be altered inter alia upon a change in circumstances, under Section 10.

51) Considering the broad objective behind enacting the provisions of Section 23(1) of the Senior Citizens Act, which is to ensure provision of basic amenities and basic physical needs to senior citizens, in my view, the Maintenance Tribunal ought to have passed an order in such a manner that Respondent No.2 is provided basic amenities and basic physical needs

rather than revocation of the three gift deeds. As observed above, Respondent No.2 is not the full owner in respect of Flat Nos.2005 and 2006 in Riviera Building or Flat No.708 in Autumn Grove building. While gifting his own share in these three flats, Respondent No.2 reserved his right to reside in the same without any hindrance on the part of the Petitioner. Considering this position, in my view, Respondent No.2 can be provided residence in one out of the three flats together with some fixed monthly amount towards maintenance, which shall ensure that Respondent No.2 is in a position to spend his sunset days peacefully. Though Petitioner has shown willingness to provide residence to Respondent No.2 in Flat Nos. 2005 and 2006 in Riviera Building, where Petitioner is residing with his family members, it appears that the relationship between Petitioner's family members and Respondent No.2 are unsavory especially in view of the serious allegations levelled against him in pleadings before the Maintenance Tribunal. According to the Petitioner, Respondent No.2 on his own accord left the house of the Petitioner out of embarrassment caused to him when he was caught in illicit relationship with a housemaid by Petitioner's wife and children. On the contrary, Respondent No.2 has denied the said allegation as absolutely false and scandalous and has relied upon police complaint filed by the lady who is named in the allegations. I do not wish to delve any deeper into these allegations and counter allegations. At the same time, considering the unsavory relationship between the parties and also considering the fact of availability of separate flat in Autumn Grove building for residence of Respondent No.2, in my view, residence of Respondent No.2 alongwith the Petitioner and his family in Riviera building may not be in the interest of Respondent No.2 himself. In my view therefore, Respondent No.2 can be provided residence in Flat No.708 in Autumn Grove building. Additionally, Petitioner can be directed to pay monthly allowance of Rs. 25,000/- to Respondent No.2 so that he can

make necessary provision for required assistance, as well as maintenance in that flat.

52) Petitioner has alleged that the other brother, Sharad Gupta with whom Respondent No.2 is currently residing, has instigated the father to seek annulment of Gift-Deeds as he wants a share in the gifted flats. The provision of Section 23(1) of Senior Citizens Act cannot be used as a machinery for settling property disputes between the heirs of senior citizens. However, unfortunately in many cases, it is observed that such a course of action is taken by the parties. The objective behind enacting Section 23(1) of Senior Citizens Act is entirely different. The provision operates as an exception to a validly effected transactions of transfer of immovable properties which can be revoked in rare and exceptional circumstances by the Maintenance Tribunal. The Tribunal therefore has to ensure that the provision is not misused by children who are denied share in the immovable properties by seeking to get gift-deed annulled by filing application through senior citizens. Since the broad objective behind the Act is to ensure that senior citizens are taken care of by the children, that objective would sufficiently be achieved in the present case by provision of residence to Respondent No.2 in Flat No.708 in Autumn Grove building in addition to payment of monthly maintenance of Rs.25,000/- by Petitioner. I am conscious of the fact that the maximum limit for payment of maintenance to a senior citizen under Section 9 of the Senior Citizens Act is capped at Rs.10,000/-. I am also conscious of the fact that Respondent No.2 has two other sons, who are also under obligation to maintain him. However, the order for payment of monthly maintenance of Rs.25,000/- by the Petitioner is being made in view of exceptional circumstances where total four properties are gifted by Respondent No.2 and his wife in favour of the Petitioner as well as the willingness shown by him to pay monthly maintenance amount to Respondent No.2.

53) I accordingly proceed to pass the following order :

(i) The order dated 31 October 2022 passed by the Maintenance Tribunal is set aside.

(ii) The Petitioner shall provide to Respondent No.2 residence in Flat No.708 in Autumn Grove Co-operative Housing Society in addition to payment of amount of Rs. 25,000/- per month towards maintenance, which shall be paid by Petitioner to Respondent No.2 on/or before 7th day of each month during the lifetime to Respondent No.2.

54) With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no Order as to costs. With the disposal of the Writ Petition, nothing survives in the Interim Application, the same also accordingly stands disposed of.

SANDEEP V. MARNE, J.