
(2013) 12 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20072 of 2013

Promil Tomar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 175 PLR 94

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : Sanjeev Sharma and Mr. Shekhar Verma, for the Appellant; S.S. Goripuria, DAG, Haryana, Mr. Arun Palli and Mr. Sunil Garg, Advocate for the Respondent No. 5, for the Respondent

Judgement

M.M.S. Bedi, J.—The petitioners have preferred this writ petition under Articles 226/227 of the Constitution of India against an order dated June 19, 2013 (annexure P-26) passed by the Presiding Officer, Maintenance Tribunal, Panchkula, exercising powers u/s 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, for short "the Maintenance Act". Petitioners have also sought quashing of the execution proceedings initiated by respondent No. 5 and the order dated August 23, 2013 passed in the execution proceedings annexure P-3. Brief facts relevant for the just decision of the present petition are that in the application filed by respondent No. 5 u/s 23 of the Maintenance Act he stated that he is a senior citizen aged 75 years and owner of 50% share of House No. 174, Sector 6, Panchkula, and owner of 50% share of the said house is Sanjay Tomar, who is the eldest son of respondent No. 5. His wife expired on May 26, 2010. The petitioners had been living with respondent No. 5 on the first floor of the above said house since their marriage in 2009. Respondent No. 5 averred that the property in his name is self-acquired property which was transferred/ temporarily purchased in their name on the assurance and condition that they will look after respondent No. 5 and shall provide him basic amenities. Respondent No. 5 had prayed that the petitioners may be ejected from the properties (i) 25% share of Pankaj Tomar (petitioner No. 2) in House No. 5-B/4

IInd Floor, Purvi Marg, Opposite Sir Ganga Ram Hospital, Rajender Nagar, New Delhi (ii) 90% share of Promil Tomar (petitioner No. 1) in four shops bearing No. G-1 to G-4, Local Shopping Complex, Phase 1, Mayur Vihar, New Delhi; and (iii) House No. 174, Sector 6, Panchkula, first floor. The petitioners on receipt of notice, filed reply to the effect that the application u/s 23 of the Maintenance Act was not maintainable. No property had ever been transferred by respondent No. 5 to the petitioners. It was transferred to them through Will of deceased mother of petitioner No. 2- Smt. Rattan Kaur. Material facts have been intentionally concealed. As per Will No. 803/3 dated October 20, 2009 executed by Smt. Rattan Kaur wife of Sh. Kartar Singh Tomar in favour of petitioners, 50% share of House No. 174, Sector 6, Panchkula, would go to her son Pankaj Tomar, petitioner No. 2 and her daughter Jessica Singh as per letter No. 4012 dated March 23, 2012 issued by HUDA Department. Petitioner No. 2 is owner of House No. 174, Sector 6, Panchkula, Respondent No. 5 had wrongly by way of power of attorney in gift No. 3715 dated March 20, 2012 got his name changed as owner of House No. 174, Sector 6, Panchkula. Petitioner No. 1 who married petitioner No. 2 has been made a party because she gave birth to a female child and she is a witness and protester of respondent No. 5 in physical abuse of his wife Rattan Kaur. The Tribunal gave personal hearing to respondent No. 5 and recorded that he was owner of House No. 174, Sector 6, Panchkula. His son petitioner No. 2 and his wife petitioner No. 1 are not vacating the first floor of said house. They were not letting him keep a maid servant and do not provide any basic needs to him. He stated that his daughters, namely, Priyanka Khosla and Monika Chaudhary are also intending to grab his property and do not respect him. He prayed that petitioner No. 2 be ejected from the properties aforementioned. Petitioner No. 2 has also made a statement before the Tribunal that he is owner to the extent of 50% share of House No. 174, Sector 6, Panchkula. He is living independently on the first floor and has never interfered in the life of his father respondent No. 5. In fact, his father has fraudulently changed name in the gift deed No. 3715 by misusing his general power of attorney. Petitioner No. 2 claimed that he had filed a civil suit for declaration to get the said gift deed No. 3715, null and void against respondent No. 5. Respondent No. 5 does not want to live with them though they are willing to live with him. The order passed by the Tribunal is as under:--

After hearing both the parties and considering the documents and evidence produced by both the parties the Tribunal is of considered view regarding property No. 1 that the respondents (petitioners) may reside in House No. 174, Sector 6, Panchkula with the consent of the all stake holders otherwise not and they should try to make the good family relation so that every family member may lead the best life This tribunal is having paramount obligation to secure the life and property of parents and senior citizen under the provisions and rules of this Act. The relief sought by the applicant for property No. 2 revert back the 25% share of the respondent No. 1 (petitioner No. 2) in House No. 5-B/4, Poorvi Marg, Old Rajinder Nagar, New Delhi is allowed by declaring it null and void u/s

23 of the Act because respondents have violated the implied condition to serve the applicant with basic amenities and to provide physical needs for which they are bound to provide to the applicant under this Act. This property was inherited by respondent No. 1 (Petitioner No. 2) from his mother through registered will after her death in 2010. The mother of the respondent No. 1 (petitioner No. 2) was holding this property in fiduciary capacity as the whole funds were invested by the applicant at the time of purchase in her name. This transaction was saved u/s 4(3)(b) of Benami Transaction Act, 1988. This tribunal (2) 922 Supreme Court. Regarding property No. 3 this tribunal is of the considered view by keeping in view the social aspect that 90% share of respondent No. 2 (petitioner No. 1) in four shops bearing No. G-1 to G-4, plot No. 4, New Delhi is not to be disturbed as the respondent No. 2 (petitioner No. 1) is not having any source of income to live their life. Respondents (petitioners) are depending upon the rental income of this property. This tribunal disallowed relief qua this property of applicant.

The local police is directed to get the information of well being of applicant (respondent No. 5) once in fortnightly from the applicant neighbours. If the applicant made any complaint regarding safety of life and property then inquire into it seriously on priority basis and took appropriate action as deem fit promptly.

This order is pronounced in open court and case file is ordered to be consigned in the record room. Accordingly present application is disposed off. Copy of this order is given to applicant free of cost as per rules. (The words petitioners, petitioners No. 2, petitioner No. 1 and respondent No. 5 within brackets have been incorporated to clarify the status of the petitioners in the impugned order).

2. The present writ petition has been filed on the ground that there is no alternative remedy u/s 16(1) read with Section 16(5) of the Maintenance Act and Rule 17 of the Haryana Maintenance of Parents and Senior Citizens Rules, 2009, for short "2009 Rules". Section 16 of the Maintenance Act reads as follows:--

16. Appeals: (1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the

Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.

3. Counsel for the petitioners submits that the petitioners do not fall within the parameters of above said provision as such appeal is not maintainable.

4. Learned counsel for the petitioners has argued that the Maintenance Tribunal, Panchkula, had no jurisdiction or power to interfere in the application u/s 23 of the Maintenance Act regarding the properties which were not received/inherited by the petitioners from respondent No. 5 in terms of Section 23 of the Maintenance Act. The Tribunal has no power, authority or jurisdiction to order eviction of petitioners from House No. 174, Sector 6, Panchkula, or to order execution as such jurisdiction vests only with Civil Court. Respondent No. 3 has entertained the execution application filed by respondent No. 5 and has wrongly issued warrants of possession through police for vacation of the portion of House No. 174, Sector 6, Panchkula. Bias has been alleged against respondent No. 4 who is member of the Maintenance Tribunal on the ground that he is also a witness to the testamentary documents executed by respondent No. 5 i.e. Will as such he should have reclused himself from the hearing. The malafide has been alleged against respondent No. 5 by petitioner No. 1, his daughter-in-law, claiming that as she did not submit to the lust of respondent No. 5, she has been termed as a characterless lady.

5. So far as the rights in the properties are concerned, counsel for the petitioners has submitted that 50% share of House No. 174, Sector 6, Panchkula and 75% share in House No. 5-B/4 IInd Floor, Purvi Marg, Opposite Sir Ganga Ram Hospital, Rajender Nagar, New Delhi was owned and possessed by deceased mother of petitioner No. 2 and 90% share of the third property i.e. Shop Nos. G-1 to G-4, Local Shopping Complex, Mayur Vihar, New Delhi, were owned and possessed by petitioner No. 2 as the absolute owner in terms of Section 14 of the Hindu Succession Act, 1956 as such respondent No. 5 could not have a claim against the properties. The provisions of Section 14 of the Hindu Succession Act and Benami Transaction (Prohibition) Act, 1988, were relied upon in support of

said contention.

6. The main contention of learned counsel for the petitioners is that the properties which are subject matter of the application u/s 23 of the Maintenance Act are absolutely out of the purview of the Maintenance Act and that the Maintenance Tribunal had no jurisdiction to entertain the application filed by respondent No. 5. The application filed is based upon misconceived presumption that he had purchased the properties and latter transferred them in the name of petitioners or that the petitioners failed to serve him as such the application u/s 23 of the Maintenance Act was maintainable.

7. The respondent No. 5 has filed a written statement claiming that respondent No. 5 is 76 years old senior citizen. His wife expired on May 26, 2010. He is owner to the extent of 50% share in House No. 174, Sector 6, Panchkula, where he is residing since 1994. His eldest son Sanjay Tomar is owner of the remaining 50% share who is doing business and remain out of station. Petitioner No. 2 is his second son. Petitioner No. 1 is wife of petitioner No. 2 and petitioner No. 3 is daughter of petitioners No. 1 and 2. The petitioners also used to live on the first floor of House No. 174, Sector 6, Panchkula. Respondent No. 5 having substantial interest in two other properties mentioned above and both these properties were got purchased out of the huge investment of the funds made by respondent No. 5. It is claimed that after the death of Rattan Kaur wife of respondent No. 5, the differences arose between the parties. Petitioners No. 1 and 2 gave beatings to respondent No. 5 in front of CCTV camera and police. When the behaviour of petitioners became unbearable, respondent No. 5 was constrained to file application on April 24, 2012 u/s 23 of the Maintenance Act. A legal objection has been raised that respondent No. 5 has preferred an appeal before the Appellate Tribunal with regard to the relief declined by the Maintenance Tribunal and that he has filed an execution application annexure P-28 dated July 18, 2013 for execution of the order dated June 19, 2013. In the said application, petitioners No. 1 and 2 had appeared and filed their objections on September 4, 2013.

8. So far as the grievance of the petitioners that Jasbir Singh Thol, Member of the Maintenance Tribunal was an attesting witness of registered Will executed by respondent No. 5 is concerned, it was urged by counsel for respondent No. 5 that this objection was never raised before the Maintenance Tribunal as such the objection of bias cannot be raised. Even otherwise, said Member was earlier a Notary Public and he in the capacity as professional duty, witnessed the Will as a second witness as such the plea of bias against him is not sustainable. It has been admitted that the order dated June 19, 2013 has already been partly executed under the orders of Maintenance Tribunal and only part of the same remains to be executed. Only portion of the residential premises where petitioners No. 1 to 3 are residing is left to be vacated. Petitioner No. 1 has, after the order dated June 19, 2013 lodged false FIR No. 368 dated July 21, 2013 under Sections 292(2)/354/509/511/500/518 IPC at Police Station Sector 5,

Panchkula.

9. I have heard learned counsel for the parties and carefully gone through the impugned order and appreciated the contentions. So far as the Maintenance Act is concerned, the said legislation was incorporated recently with following statements of objections and reasons:--

Statement of Objects and Reasons:--

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also propose to make provisions for setting-up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:--

- a) appropriate mechanism to be set up to provide need based maintenance to the parents and senior citizens;
- b) providing better medical facilities to senior citizens;
- c) for institutionalization of a suitable mechanism for protection of life and property of older persons.
- d) setting up of old age homes in every district.

4. The Bill seeks to achieve the above objectives.

10. As the Maintenance Act has not been actively used, there is not much case law available. The provisions of the Maintenance Act have to be interpreted in the light of the object and reasons. So far as the ownership and interest of respondent No. 5 in the properties forming subject matter of the application u/s 23 of the Maintenance Act is concerned, there is not much dispute that the property in question had been transferred/purchased in the name of petitioners in December 2009 and June 2010 after the commencement of the Maintenance Act. The claim of respondent No. 5 is that this was done with solemn assurance

that respondent No. 5 will be provided basic amenities and physical needs. On account of petitioners having failed to honour the needs of respondent No. 5, having started torturing him the property in dispute is liable to be reverted back to respondent No. 5. Section 23 of the Maintenance 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 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.

11. The above said provisions are to be construed on literal interpretation, besides taking into consideration the intention of the Legislation. The Court translates or interprets law while keeping in mind the object of Statute and intent of the Legislation. In this context reference can be made to *The State Bank of India Vs. Shri N. Sundara Money, and Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, wherein it was held that function of the Court is to interpret the statute to ascertain the intent of the Legislature. In *Steel Authority of India's case (supra)*, it was observed as follows:--

It is a well-settled proposition of law that the function of the Court is to interpret the Statute to ascertain the intent of the legislature-Parliament. Where the language of the Statute is clear and explicit the Court must give effect to it because in that case words of the Statute unequivocally speak the intention of the legislature. This rule of literal interpretation has to be adhered to and a provision in the Statute has to be understood in its ordinary natural sense unless the Court finds that the provision sought to be interpreted is vague or obscurely worded in which event the other principles of interpretation may be called in aid. A plain reading of the said phrase, under interpretation, shows that it is lucid and clear. There is no obscurity, no ambiguity and no abstruseness. Therefore the words used therein must be construed in their natural ordinary meaning as commonly understood.

12. In *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea*

Estate, , it was held as under:--

The words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.

13. In R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), , the Apex Court observed that a statute is to be construed to the intent of them that make it. This principle has been, with approval and consistently reiterated by the Supreme Court in many judgments. It is a settled principle of law as well as conventional way of interpreting a statute to seek the intention of the makers of law. The Courts interpret the law while keeping in mind the object of the statute and intent of the Legislature. A Court is required to look essentially to the words of the statute to discern reference aiding their effort as much as possible by the context. While interpreting Section 23 of the Maintenance Act, the objects and reasons which have been mentioned hereinbefore cannot be ignored. The object is to maintain the traditional norms and values of India Society which laid stress of providing care to the elderly. Considering the provisions of maintenance under other laws, time consuming and expensive, the endeavour of the legislation was to have simple, inexpensive and speedy provisions for maintenance of the parents. The Maintenance Act proposed to cast an obligation on the person who inherit the property of their aged relatives, to maintain such aged relatives. The objective of the Maintenance Act was also to provide to set up appropriate mechanism to provide need based maintenance to the parents, senior citizens and setting up of old age homes in every district. A peaceful living for the senior citizens in their property is the apparent objective of the Maintenance Act. The property in dispute had been transferred and purchased in the name of petitioners in December 2009 and June 2010 after the commencement of the Maintenance Act. It is claimed that it was purchased on solemn assurance of the petitioners that they will provide basic amenities and physical needs to respondent No. 5. It is claimed by respondent No. 5 that the petitioners had started torturing him in every possible manner as such the property is liable to be reverted back to him as such the facts fall within the purview of Section 23 of the Maintenance Act. Continuance of the petitioners in the house of respondent No. 5 is detrimental to the life and property of respondent No. 5. There are allegations that they have stolen valuable documents of respondent No. 5 and house hold goods belonging to him. The allegations have been levelled by petitioner No. 1 that on account of respondent No. 5 having not been able to satisfy his lust, she has been made a victim, is clearly indicative of the fact that the provisions of the Maintenance Act would enable respondent No. 5 to get transfer, by way of gift or otherwise, declared void. Once the transfer of the property to the petitioners is held void by the Tribunal on account of the conduct of the petitioners for having failed to provide amenities and physical needs, the

consequential benefit would be to restore respondent No. 5 in a position which would be in the shape of status quo ante i.e. a situation which existed prior to the transfer so far as title and possession is concerned.

14. In *Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania*, by Gujarat High Court at Ahmedabad, the scope of Section 23(1) had come up for consideration in which it as observed as follows:--

14. The question which, therefore, arises is whether the term "transfer" in Section 23 of the Act should be construed so as to mean only actual transfer of ownership and title or the said expression should be construed, having regard to the object of the Act and the provisions u/s 2(b), 2(d), 2(f), 2(h) and Section 4, so as to also include possession of the property as well.....

14.2. Having regard to the object of the Act and the intention of the legislature, there is no reason or justification or indication to restrict the meaning and scope of the term "transfer" so as to mean only "actual transfer of title and ownership" and to exclude "possession of property" from the purview of Section 23 and/or from the term "transfer" employed in Section 23 of the Act.

14.3. There is no provision in the Act to suggest or to indicate that the said term carries very narrow, and literal meaning so as to mean only actual transfer of title and ownership and the concept of possession, which is recognized by the Act - particularly u/s 4 of the Act, has to be kept out.....

16. In view of the foregoing discussion and the scope and purview of the provisions u/s 23 read with Section 4 of the Act and having regard to the object of the Act, the impugned orders and the direction to handover the possession of the property to the respondent cannot be said to be without jurisdiction or beyond the scope of Section 23 read with Sections 4, 2(b), 2(d) and 2(f) of the Act. The impugned direction, therefore, cannot be faulted.

15. Counsel for the petitioners would refer to judgment of Kerala High Court in Writ Petition (C) No. 20850 of 2011, *C.K. Wasu v. The Circle Inspector of Police and others*, wherein a single Bench of Kerala High Court had observed that the Tribunal constituted under the Maintenance Act can pass an order of maintenance but the Maintenance Act does not empower the Tribunal to grant relief of eviction against his family members from the residence where they had been residing.

16. I have considered the contentions of learned counsel for the petitioners. In *C.K. Wasu's* case (*supra*), the petitioner, a senior citizen had filed a writ petition in the High Court for a writ of Mandamus directing the respondents to remove the respondents (his sons) from the house of the petitioner to save him from harassment and threat to his life. In the said case, the old man had 20 acres of landed property with monthly income of Rs. 75000/-. He was allegedly leading a shameful and immoral life. The allegations against him were that at the age of 85 he was indulging in immoral and shameful activities with young girls. His wife

was residing with their daughter under compulsion. His wife had not supported him in the writ petition. The observations made by Kerala High Court was in context to Section 5 of the Maintenance Act which empowers the Tribunal to pass an order of maintenance pending the proceedings and to direct the children or relatives to make payment of monthly allowances by way of interim relief. In context to the conduct of senior citizen, the scope of the different provisions of the Maintenance Act had not been taken into consideration. The observation of the Kerala High Court appear to be obiter dicta not laying down any absolute principle of law. A Division Bench of our High Court in Justice Shanti Sarup Dewan, Chief Justice (Retd.) and another v. Union Territory, Chandigarh and others, in an appeal filed by the petitioner, sought a direction to the State authorities to ensure the shifting of his son from his residential house. It was observed by the Division Bench that the Maintenance Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of "life and property of older persons. The Division Bench of this Court, with an objective to achieve the objectives of the Maintenance Act had exercised the powers under Article 226 of the Constitution of India to issue direction to vacate the house belonging to the senior citizen. In view of the observations of the said Division Bench judgment, an order of ejectment can be passed by the Tribunal in favour of a senior citizen.

17. Respondent No. 5 in his application u/s 23 of the Maintenance Act had pleaded that petitioners No. 1 and 2 have been living with him on the first floor of the house at Panchkula since their marriage in the year 2009. Petitioner No. 2 being a drug addict was once arrested by Bhunter Police District Kullu on January 23, 2009 and he was convicted and confined by the Court.

18. Mr. Sanjeev Sharma, Sr. Advocate argued that the said property was never transferred by way of gift or by any other means in favour of the petitioners as such no transfer in their favour can be said to be void, suffering from the vice of fraud, coercion or undue influence.

19. I have carefully considered the said contention of learned counsel for the petitioners and I am of the opinion that Section 23(1) of the Maintenance Act provides that "where any senior citizen has transferred by way of gift or otherwise, his property, and the transferee refuses or fails to provide amenities and physical needs, the said transfer of the 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 transfer by a senior citizen in first part of Section 23(1) of the Maintenance Act could be a gift or otherwise. The property transferred by gift or otherwise would include the transfer of the possession of a property or part of it by a senior citizen. The word "otherwise" used u/s 23(1) of the Maintenance Act by the legislation would include transfer of ownership, transfer of possession by way of a lease deed,

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

20. The word "fraud" used in the Maintenance Act has to be understood in context to its meaning given by different Courts at different times. The Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, has considered the meaning of word "fraud" i.e. an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. It was held in the said judgment that "fraud" vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.

21. In *Ram Chandra Singh Vs. Savitri Devi and Others*, it was observed that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res-judicata*.

22. I do not find any force in the contention of learned counsel for the petitioners that Section 23(1) of the Maintenance Act is not attracted in the circumstances of the present case. Respondent No. 5 is admittedly owner/co-owner of the property in dispute. The possession of the first floor of the property has been handed over to the petitioners with an implied latent promise that the petitioners transferee would at least vouch for the welfare of the transferor. The petitioners transferee have apparently failed to provide for the amenities, physical needs or even care for the welfare of respondent No. 5 giving a cause of action to respondent No. 5 to seek the protection of Section 23(1) of the Maintenance Act and get the transfer by way of possession declared void bringing the act of the petitioners under the definition of fraud. In view of the law that fraud vitiates all

proceedings and vests no right in anybody, respondent No. 5 would be entitled to enforce his legal right to declare the transfer i.e. transfer of possession which falls under the definition of "otherwise" u/s 23(1) of the Maintenance Act, void. The fact that petitioners have failed to provide amenities and physical needs stand established from the material available on the record. In order to further substantiate that the transferees have maltreated the transferor, is apparent from the CCTV footage placed on the record in the shape of photographs Annexures P-5 showing petitioners assaulting respondent No. 5. A photograph dated 2012-09-09 at 17:55:53 shows the lady petitioner No. 1 assaulting respondent No. 5 with right hand while holding a child in the left arm while petitioner No. 2 escorting her on the right side in presence of a police official. Similar are the instances of assault by petitioner No. 2 and petitioner No. 1 in other four photographs which have been permitted to be taken on record.

23. In view of the above interpretation of Section 23(1) of the Maintenance Act, the transfer of possession in favour of the petitioners has rightly been declared to be void by the Tribunal being vitiated on account of fraud within the definition of Section 23(1) of the Maintenance Act. The Tribunal has rightly allowed the application partly.

24. Since respondent No. 5 has filed an appeal u/s 16(1) of the Maintenance Act against a part of the order dated June 19, 2013 declining him relief, nothing said in this order will effect the rights of the parties. It is held that the appeal is not maintainable u/s 16(1) of the Maintenance Act on behalf of the petitioners as it is only a senior citizen or a parent who has been given authority to file appeal, in case any adverse order is passed by the Tribunal against him.

I have also considered the contention of learned counsel for the petitioners that one of the members of the Tribunal had bias against the petitioners being an attesting witness to the Will of respondent No. 5. Though notice of motion was issued on the basis of said contention but on careful appreciation of the facts and circumstances of the case, it transpires that the said plea had not been taken before the Tribunal. Once the petitioners had surrendered to the jurisdiction of the Tribunal, they cannot later on raise a plea regarding the competence of the Tribunal. The said plea of bias is barred by the principle of estoppel. Moreover, one of the members of the Tribunal Sh. Jasbir Singh Thol, has not in any manner, favoured respondent No. 5. He was recommended by Deputy Commissioner, Panchkula alongwith five other persons for induction as a member of the Maintenance Tribunal, Panchkula in February 2010. He joined only on February 28, 2013 pursuant to the direction of the High Court. He is non-official member (Legal). He had attested the Will of respondent No. 5 on May 27, 2011 as a second witness to the Will. The allegation of bias are thus vague, uncertain and not maintainable against the Tribunal Members.

This petition is thus dismissed. The order dated June 19, 2013 is upheld except for the portion which is subject matter of the appeal u/s 16(1) of the Maintenance Act. A direction is issued to the petitioners to handover the vacant

possession of the portion of the property in dispute within a period of two months after the receipt of a certified copy of the order.