

GIFT DEEDS EXECUTED BY SENIOR CITIZENS ARE VOIDABLE UNDER SECTION 23 OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 DESPITE ABSENCE OF AN EXPRESS MAINTENANCE CLAUSE

INTRODUCTION:

*The Bombay High Court in its decision in **Raviprakash R. Sodhani and Anr. v. Ram Swaroop Sodhani and Ors.**¹ observed that a gift deed executed by a senior citizen can be declared void under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, even where the gift deed itself does not expressly record a condition of providing basic amenities and physical needs of the senior citizen. Further, the Bombay High Court observed that the tribunal is empowered to declare a transfer void, where there is a breach of obligation of providing maintenance, basic amenities and basic physical needs by the transferee to a senior citizen transferring the property.*

FACTS:

Mr. Ram Swaroop Sodhani ("**Petitioner No.1**") along with his wife ("**Petitioner No. 2**") had filed a petition before the Bombay High Court ("**Court**") appealing against the order dated 14th August, 2025 passed by the Additional Collector-Appellate Authority ("**Appellate Authority**") and order dated 6th May, 2025 passed by the Maintenance Tribunal ("**Tribunal**") under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ("**the Act**").

One, Mr. Raviprakash R. Sodhani ("**Respondent No.1**"), a senior citizen aged about 88 years, is the father of Petitioner No. 1. Respondent No. 1 had acquired the residential Flat no. B-48, 4th Floor, Tower B, Kalpataru Habitat, Dr. S. S. Roa Road, Parel, Mumbai 400 012 ("**Subject Property**") and had developed businesses under various entities namely, M/s. Universal Enterprises, M/s. Asbee Marketing Ltd. and M/s. Universal Associates.

In July 2021, Respondent No. 1 was diagnosed with suspected throat cancer. From, 3rd August, 2022 to 6th August, 2022, the Respondent No. 1 was

admitted to Apollo Hospital and his biopsy was conducted.

While Respondent No. 1 was in physical and emotional distress and admitted in hospital, a Deed of Partnership in respect of M/s. Universal Enterprises was executed on 2nd August, 2022, whereby the Respondent No. 1 was forced to retire from the partnership and his signing authority was withdrawn.

Thereafter, the Respondent No. 1 was forced to transfer the Subject Property in favour of Petitioner No. 1 and Respondent No. 5 (son of Petitioner No. 1 and 2) vide a registered Gift Deed dated 24th August 2022 ("**Gift Deed**").

Further, it was asserted that Petitioners had withdrawn amounts upto Rs. 50 lakhs from the Respondent No. 1's account. The Petitioners had started to neglect the needs and necessities of the Respondent No. 1 and he was subjected to harassment and humiliation. It was further asserted that Respondent No. 1 was confined to one room in the Subject Property and he was deprived access to the other two rooms which were under lock and key of the Petitioners.

¹ 2025:BHC-AS:42312

Respondent No. 1 addressed a legal notice dated 3rd February, 2025. Thereafter, the Respondent No. 1 approached the Tribunal. The Petitioners filed their reply wherein it was contended that the Respondent No. 1 had executed the Gift Deed voluntarily and there was no element of fraud, duress or coercion. Further it was also contended that the Petitioners had taken good care of the Respondent No. 1.

The Tribunal observed that the Gift Deed was executed by the Respondent No. 1 in hope that the Petitioner No. 1 and Respondent No. 5 would take care and maintain the Respondent No. 1 in his old age. The Tribunal also observed that the Petitioners, however had neglected the Respondent No. 1 and did not maintain him. The petitioners also failed to provide amenities, physical needs and necessities of the Respondent No. 1. Accordingly, the Tribunal vide its order dated 6th May 2025, declared the Gift Deed void by invoking its power under section 23 of the Act.

Aggrieved by the order dated 6th May, 2025, the Petitioners filed an appeal before the Appellate Authority.

Vide order dated 25th July, 2025 passed by the Tribunal, the Petitioners were instructed to vacate the Subject Property. On 27th July, 2025, the order dated 6th May, 2025 passed by the Tribunal was executed and the Petitioners and Respondent No. 5 were allegedly forced to vacate the Subject Property. However, Subject Property still holds the belongings of the Petitioners.

The Appellate Authority vide its order dated 14th August, 2025 dismissed the appeal, observing *inter alia* that there was no error in the order dated 6th May, 2025 passed by the Tribunal.

A notice dated 27th September, 2025 was issued to the Petitioner No. 1, to remove the Petitioners' belongings from the Subject property within 2 (two) days.

Hence, the Petitioners approached the Bombay High Court by the way of a writ petition challenging the order dated 6th May, 2025 and 14th August, 2025 ("**the Orders**").

ISSUE FOR CONSIDERATION:

1. Whether a registered gift deed executed by a senior citizen can be declared void under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in the absence of an express condition?
2. Whether failure to provide amenities and physical needs despite an implied expectation of care, is sufficient to invoke Section 23 of the Act, 2007?

SUBMISSIONS ON BEHALF OF THE PETITIONER:

It was *inter alia* submitted on behalf of the Petitioners that the Tribunal did not provide the Petitioners an efficacious opportunity of hearing. Further the Tribunal did not verify whether the conditions pre-requisite for invocation of section 23 of the Act were complied with.

It was submitted that, the registered Gift Deed executed by Respondent No. 1 did not mention any express condition that the Petitioners shall provide basic amenities and physical needs to the Respondent No. 1. It was contended that the application before the Tribunal for declaration of the Gift Deed as void would be maintainable only if the Respondent No. 1 proved that (a) the Gift Deed was subject to condition to provide basic amenities and maintain the Respondent No. 1 and (b) the Petitioners were in breach of such condition. In the absence of any material proving the above, the power under section 23 of the Act cannot be invoked and the Gift Deed cannot be declared void.

It was also *inter alia* submitted that Appellate Authority has committed a gross error in law in not examining legality, propriety and correctness of the order dated 6th May, 2025 passed by the Tribunal.

The Petitioners prayed that the Orders be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

It was submitted on behalf of Respondent No. 1 that the Gift Deed was executed at a time when Respondent No. 1 was undergoing medical treatment and was in vulnerable position, which justifies the inference that the Gift Deed was executed by fraud and coercion.

It was further submitted the issues raised were to be determined keeping in view the beneficial nature of the Act. An interpretation of the Act which advances its object should be adopted.

The Respondent No. 1 relied on the Supreme Court judgement in ***Urmila Dixit v. Sunil Sharan Dixit & Ors***² and the Delhi High Court judgment in ***Smt. Varinder Kaur v. Smt. Kaljit Kaur and Ors***³.

JUDGEMENT:

The Court observed that the Act was enacted to provide effective provisions for maintenance and welfare of the parents and senior citizens. The Act also envisages a simple, inexpensive and speedy mechanism to claim maintenance for parents and to protect life and property of senior citizens. The statement of Objects and Reasons of the Act reflect the same.

The Court observed that section 23 of the Act empowers the Tribunal to declare a transfer made by a senior citizen void upon fulfilment of certain conditions laid out in sub section (1) and (2) of the section 23 of the Act. Section 23 (1) of the Act creates a deemed fiction where the transfer of the property of the senior citizen was subject to the condition of providing maintenance, basic amenities and basic physical needs of the senior citizen and there is breach of such obligation by the transferee. In such a case, the Tribunal is empowered to declare the transfer void, albeit at the option of the transferor – a senior citizen.

Section 23 (1) of the Act governs the situation where the senior citizen has a right to receive maintenance out of the property. In such a situation, right of maintenance can be enforced against the property or a part thereof, even against the transferee who has a notice of the right or if the transfer is gratuitous.

The Court observed that for applicability of section 23 (1) of the Act, two conditions are required to be satisfied. First, the transfer of the property must have been made by the senior citizen subject to the condition that the transferee shall provide the basic amenities and basic physical needs of the transferor. Second, the transferor has refused or failed to provide the maintenance and basic amenities and physical needs of the transferor. If these two conditions are satisfied, the deeming fiction operates i.e. the transfer of the property by the senior citizen shall be deemed to have been made by fraud, coercion or under undue influence.

The Court referred to the decision of the Supreme Court in ***Sudesh Chhikara v. Ramti Devi***⁴ where the Supreme Court culled out the conditions necessary to empower the Tribunal to declare the transfer void, the Supreme Court observed that “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.

13. *If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence.*

² (2025) 2 SCC 787

³ LPA No. 587 of 2025 dated 26 September, 2025

⁴ (2024) 14 SCC 225

Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

The Court relied on *Urmila Dixit* (supra) wherein the Supreme Court emphasised that the Act of 2007 is a beneficial piece of legislation. It is meant to secure rights of senior citizens in the advance stages of their lives and therefore the interpretation adopted must further this object.

The Court observed that an express recital that a gift is subject to the condition that the transferee shall provide the amenities, needs and necessities of life of the transferor / senior citizen need not be in terms incorporated in the instrument effecting the transfer. The first condition in section 23(1) of the Act, need not be specifically incorporated in the instrument of transfer. Expectation that the transferee to whom the senior citizen transfers his property, by way of gift, in the evening of his life, will provide for his necessities and physical and emotional support, is implicit in the very act of transfer.

The Court also relied on the judgment of the Delhi High Court in *Smt. Varinder Kaur* (supra) while emphasising that the deed in question need not expressly contain the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, especially in the context of the execution of the gift deed.

The Court observed that the Respondent No. 1 who has built the business and acquired the Subject Property, is divested of the rights and properties, and the monies were withdrawn from the account of the Respondent No. 1 while he was in vulnerable position. The Respondent No. 1 was neglected and humiliated after he was divested of his rights in the entities which he built, and the properties he acquired.

The Court also took note of the veracity of the claim of the Respondent No. 1 that he was confined to one room and the Petitioners and Respondent No.5, kept the two rooms locked whenever they went away, is borne out by the fact that though the Petitioners and Respondent No. 5 have been physically evicted from the Subject Flat, yet two rooms continued to be under lock and key of the Petitioners and the Respondent No. 1 was required to move the authority again to give clear and vacant possession of those two rooms as well.

The Court held that taking into consideration the object of the Act, the Respondent No. 1 who now claims to be 88 years of age, is entitled to the protection of his right to property. The Court did not find any infirmity in the Orders. Accordingly, the writ petition was dismissed.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.