



CNR: KAHC010119362025

NC: 2026:KHC:41867
WP No. 5248 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 5248 OF 2025 (GM-RES)

BETWEEN

DR. M.S. MAHESH.
AGED ABOUT 56 YEARS,
S/O LATE M. SHIVANNA
RESIDING AT NO. 19,
KALIDASA MAIN ROAD,
SUBHADRA COMPLEX,
JAYALAKSHMIPURAM,
VANI VILAS MOHALLA,
MYSURU-570002.

... PETITIONER

(BY SRI. K.S. BHEEMAIHAH., ADVOCATE)

AND

1. THE DEPUTY COMMISSIONER
MYSURU DISTRICT,
MYSURU-570012.
2. THE ASSISTANT COMMISSIONER
GOVERNMENT OF KARNATAKA
WELFARE OF SENIOR CITIZENS COMMITTEE,
MYSURU-570012.
3. SMT. SUBHADRAMMA
W/O LATE M. SHIVANNA
AGED ABOUT 82 YEARS,
RESIDING AT NO. 19,
KALIDASA MAIN ROAD,
SUBHADRA COMPLEX,
JAYALAKSHMIPURAM,
VANI VILAS MOHALLA,
MYSURU-570002.





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PRESENTLY RESIDING AT
UNITED STATES OF AMERICA WITH
HER ELDER DAUGHTER
SMT. HARI VATHSALA AHLUWALIA,

.... RESPONDENTS

(BY SRI. MOHAMMED JAFFAR SHAH., AGA FOR R1 & R2;
SRI. K. MURTHY., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT TO QUASH THE ORDER DATED 04.02.2025, PASSED BY THE DEPUTY COMMISSIONER, MYSURU DISTRICT, MYSURU-THE RESPONDENT NO.1 HEREIN IN DISPUTE NO. SCA/261/2024/(RD0050000646489) WHICH IS AT ANNEXURE-M AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 09.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner, son of respondent No. 3 is before this court seeking for the following reliefs:

a) Issue a Writ of Certiorari or any other appropriate writ to quash the Order dated 04.02.2025, passed by the Deputy Commissioner, Mysuru District, Mysuru-the Respondent No.1 herein in Dispute No SCA/261/2024(RD0050000646489), which is at Annexure-M.

b) Issue a Writ of Certiorari or any other appropriate writ to quash the Order dated 12.08.2024, passed by the Asst. Commissioner, Mysuru District, Mysuru-the Respondent No.2 herein in Disputes No: MYSAC-MAG/SRCZ/76/2023, which is at Annexures-J.



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- c) Issue a Writ in the nature of Writ of Mandamus or any other Writ directing the Respondent No.1 and 2 not to give effect to their orders dated 04.02.2025, passed by the Respondent No.1, in Dispute No: SCA/261/2024(RD0050000646489), which is at Annexure-M, and order dated 12.08.2024, passed by the Respondent No.2 in Dispute No: MYSAC-MAG/SRCZ/76/2023, which is at Annexure-J.*
- d) Issue such other Writ or order or direction as this Hon'ble Court deems fit under the facts and circumstances of the case including an order as to cost in the interest of justice and equity.*

2. Respondent No. 3, who is the mother of the petitioner, instituted proceedings before the Assistant Commissioner, Mysuru, functioning as the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "**the Senior Citizens Act**"), by filing an application dated 13.04.2023. In the said application, she alleged that the petitioner was subjecting her to harassment in the house in which she was residing. It was specifically contended that the petitioner had wrongfully confined her and her sister by locking them in a dark room and that the petitioner's wife was constantly picking quarrels with her, thereby depriving her of a peaceful life. On these allegations, she sought an order directing the eviction of the petitioner from the said residential premises.



3. The Assistant Commissioner, by order dated 12.08.2024, allowed the application and directed the eviction of the petitioner and his family from the subject premises. Aggrieved by the said order, the petitioner preferred an appeal before the Deputy Commissioner under Section 16 of the Senior Citizens Act. The Deputy Commissioner, by order dated 04.02.2025, dismissed the appeal and affirmed the order of the Assistant Commissioner. Aggrieved by the concurrent orders passed by the Assistant Commissioner and the Deputy Commissioner, the petitioner is before this Court seeking for the aforesaid reliefs.
4. Sri. Bheemaiah, learned counsel appearing for the petitioner, assailed the impugned orders and made the following submissions:
 - 4.1. The petitioner is the son of late M. Shivanna and respondent No. 3, Smt. Subhadramma. He has two sisters, namely, Smt. Hari Vatsala Ahluwalia, who is residing in the United States of America, and Smt. M.S. Manonmani, who is serving as an Assistant Professor of Physiology at Government Science College, Hassan, and is residing in her own house with her family.
 - 4.2. Learned counsel submitted that late M. Shivanna was employed as an Accounts Officer



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in the Karnataka Electricity Board, Mysuru, until his retirement. During his service, out of his self-acquired earnings, he purchased property bearing No. 19, Kalidasa Road, V.V. Mohalla, Mysuru, in the year 1968. Upon the said property, a building known as '**Subhadra Complex**' was constructed, comprising a residential house, an outhouse and several commercial shops.

- 4.3. According to the petitioner, he has been residing in the residential portion of the property along with respondent No. 3. During the lifetime of his father, the entire family, including his sisters, resided in the said house. After the marriage of the sisters, they shifted to their respective matrimonial homes. Following the father's retirement, the petitioner's parents moved to the United States of America to reside with their elder daughter and obtained permanent resident status (Green Cards). They would occasionally visit Mysuru and stay with the petitioner before returning to the United States. The petitioner's father passed away on 22.02.2008. Thereafter, respondent No. 3 has



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been collecting the rental income from the commercial premises situated in the complex.

4.4. It was further submitted that in the year 2014 the petitioner came across the last Will and Testament executed and registered by his father, whereby the subject property had been bequeathed in his favour. Upon approaching the Mysuru City Corporation, he was informed that the khatha had already been mutated in the name of respondent No. 3. Since mutation in municipal records does not confer title and respondent No. 3 was the surviving widow of his father, the petitioner did not object to such mutation. Placing reliance upon the registered Will dated 25.09.2000, learned counsel contended that the petitioner is the absolute owner of the subject property, including the residential house and the commercial complex standing thereon.

4.5. It was contended that the property being the self-acquired property of late M. Shivanna, he was fully competent to bequeath the same in favour of the petitioner. Learned counsel further submitted that respondent No. 3 was residing



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for most of the time in the United States with her elder daughter and that the relationship between the petitioner and his other sister, Smt. M.S. Manonmani, was strained. According to him, it was at the instigation of the said sister that respondent No. 3 lodged a false complaint before the Assistant Commissioner. It was also submitted that, in view of such circumstances, the petitioner had installed CCTV cameras in the premises.

- 4.6. Learned counsel further submitted that the petitioner has been residing in the subject premises for several decades. In support of this contention, he relied upon the Registration Certificate issued by the Karnataka Medical Council on 04.05.1994, wherein the petitioner's address is shown as No. 19, Subhadra Complex, Kalidasa Main Road, V.V. Mohalla, Mysuru-570002. Reliance was also placed upon the Aadhaar Card of the petitioner, as well as those of his wife, son and daughter, all of which reflect the said address. Reference was further made to the petitioner's passport issued on 22.07.2002 and renewed on 23.08.2012, which also records the same residential address.



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Learned counsel also relied upon the identity cards issued to the petitioner's son and daughter by their respective educational institutions to contend that both of them have been pursuing their studies at Mysuru while residing in the subject premises.

4.7. Learned counsel also relied upon the statement of account issued by the State Bank of India in respect of the housing loan availed by the petitioner, the provisional admission letter issued to the petitioner's son by his college at Mysuru, the study certificate issued by the school attended by the petitioner's daughter, the passbook relating to the joint bank account maintained by the petitioner and his wife, and the individual bank account of his wife, all of which indicate the subject property as their residential address.

4.8. On the strength of the aforesaid documents, learned counsel submitted that the petitioner, his wife and their children have been continuously residing in the subject premises for several years and, therefore, they cannot be



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directed to be evicted therefrom in proceedings initiated under the Senior Citizens Act.

4.9. Learned counsel submitted that respondent No.3 has already instituted O.S. No. 1236 of 2023 seeking partition and separate possession of a one-third share in the subject property. According to him, once respondent No. 3 has chosen to assert her rights before the competent civil court, the initiation of parallel proceedings before the Assistant Commissioner seeking eviction of the petitioner constitutes an abuse of the process of law and renders the impugned proceedings unsustainable.

4.10. In this regard, he relies upon the decision of the Hon'ble Apex Court in ***Samtola Devi v. State of Uttar Pradesh and others***,¹ more particularly para 32, 33 and 34 thereof, which are reproduced hereunder for easy reference:

32. *The aforesaid decision was followed by this Court in Urmila Dixit (supra) [SLP (C) No.720/2023]. However, even in the aforesaid case the court has only held that in a given case, the Tribunal "may order" eviction but it is not necessary and mandatory to pass an order of eviction in every case. The Appellate Tribunal has not recorded any reason necessitating the eviction of Krishna Kumar*

¹ SLP (C) No.26651/2023



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or that in the facts and circumstances of the case, it is expedient to order eviction so as to ensure the protection of the senior citizen.

33. *In our opinion, the Appellate Tribunal was, therefore, not justified in ordering for his eviction merely for the reason that the property belongs to Kallu Mal, completely ignoring the fact that the claim of Krishna Kumar regarding 1/6th share and the cancellation of gifts and sale deeds is pending adjudication before the civil court.*

34. *In our opinion, in the facts and circumstances of the case, there was no necessity for the extreme step for ordering the eviction of Krishna Kumar from a portion of the house rather the purpose could have been served by ordering maintenance as provided under Section 4/5 of the Senior Citizens Act and by restraining him from harassing the parents and interfering in their day-to-day life.*

4.11. By relying on the ***Samtola Devi*** case, his submission is that when a civil suit for partition in respect of the subject property is admittedly pending, the Tribunal ought not to have directed the petitioner's eviction. According to him, the petitioner claims title to the property under the registered Will dated 25.09.2000 executed by his father and not through respondent No. 3. It was therefore contended that respondent No. 3 has no right, title or interest in the subject property and that the petitioner derives his rights exclusively under



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the testamentary disposition made by his father. Consequently, it was submitted that the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, have no application to the facts of the present case.

4.12. Further, he relies on the decision of the Hon'ble Apex Court in ***Sudesh Chhikara v. Ramti Devi***,² more particularly para 8, 14, 15 and 17 thereof which are reproduced hereunder for easy reference:

8. The learned counsel appearing for the appellant urged that the High Court has not adverted to the facts of the case at all. He pointed out that respondent no.1's son withdrew the appeals preferred by him against the decrees passed in the civil suits filed by respondent no.1 by which release deeds executed in his favour were held to be null and void. His submission is that respondent no.1's son has joined hands with her and under his pressure that respondent no.1 filed the petition under Section 23. He submitted that there is no material placed on record before the Maintenance Tribunal and the High Court to even indicate that the execution of the release deed was vitiated by fraud or coercion or undue influence. Another submission is that the Maintenance Tribunal did not hold any inquiry as contemplated by the 2007 Act. He submitted that the ingredients of Section 23 were not established.

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

² LAWS (SC) 2022-12-17



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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.

15. *We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.*

17. *Hence, for the reasons recorded above, the appeal is allowed. The impugned order dated 22nd May 2018 passed by the Maintenance Tribunal as well as the order dated 21 st May 2019 passed by the High Court are hereby set aside and the petition filed by respondent no.1 under Section 23 of the 2007 Act stands dismissed. There shall be no order as to costs.*

4.13. By relying on **Sudesh Chhikara**, learned counsel submitted that the jurisdiction under Section 23 of the Senior Citizens Act can be invoked only where the instrument of transfer itself contains a stipulation obligating the



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transferee to provide basic amenities and physical needs to the senior citizen. In the absence of any such condition in the document of transfer, no obligation to maintain the senior citizen can be fastened upon the transferee. Consequently, according to him, no order directing the petitioner's eviction could have been passed.

4.14. He relies upon the decision of the Division Bench of this Court in ***Sri Jayashankar v. The Assistant Commissioner and others***,³ more particularly para 6.3, 6.4 and 6.5 thereof which are reproduced hereunder for easy reference:

6.3 *The Tribunal exercising powers under Section 23(1) of the Act is not a civil court, nor the powers exercised by the Tribunal under the said provision are the powers of civil court. They are the powers in the context of the provisions of the Act which have their own purpose and object, which is to provide more effective recourse in law for maintenance and welfare of parents and senior citizens and to guarantee and recognize for them their rights.*

6.4 *In the above view, it will not be permissible in law for the Tribunal, while exercising powers under Section 23(1) of the Act, to pronounce upon generally that the transfer of the property by way of gift or otherwise was fraudulent or that the transferor was guilty of fraud or coercion in the general sense of the term. The rights and obligations arising for the parties in the context of commission of fraud as is to*

³ WA No.339/2023 DD 24.04.2024



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be applied in general law, are the civil disputes. It is not open for the Tribunal functioning under the Act to pronounce upon such fraud having committed in effecting the transfer.

6.5 *In view of the above position obtaining, this Court is of the view that the Tribunal misdirected itself in law in making the observations in paragraph 13 of its order by suggesting that the gift deed was fraudulently obtained from the complainant. The aspects mentioned by the Tribunal in that regard are to be proved by leading of evidence. It was not permissible for the Tribunal to arrive at a different finding in that regard. Even otherwise, recording of such finding was beyond the powers and jurisdiction of the Tribunal.*

4.15. By relying on the decision in **Jayashankar**, his submission is that while exercising jurisdiction under Section 23(1) of the Senior Citizens Act, the Tribunal cannot adjudicate upon allegations of fraud, coercion or undue influence in relation to a transfer of property. Such questions can be determined only by a competent civil court after recording evidence. It was therefore contended that the Tribunal had exceeded its jurisdiction in rendering findings touching upon the validity of the transfer.

4.16. He relies upon the decision of the Division Bench of this Court in **Nanjappa v. State of**



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Karnataka and others,⁴ more particularly para 23, 24, 25, 26 and 27 thereof, which are reproduced hereunder for easy reference:

23. Though in the present case, a specific contention is being taken by the learned Senior Counsel for the appellant that, the appellant being the absolute owner of the property in question, out of love and affection executed a Gift in favour of his brother/respondent No.3 under a Gift Deed, dated 23.2.2012, with a ray of hope that the 3rd respondent/brother would take care of basic needs of medical necessities as his son was not keeping well and his daughter was settled with her husband, but respondent No.3 has changed attitude towards him and has failed to show even love and affection towards him. The fact remains that, on the application filed by the appellant against respondent No.3, the Assistant Commissioner, who is the authority under the provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act has allowed the application filed by the present appellant ignoring the conditions stipulated under the provisions of Sub-sections (1) and (2) of the Senior Citizens Act as held by the Hon'ble Supreme Court. Thereby, the learned Single Judge has rightly allowed the writ petition. In identical circumstances, the Full Bench of the Kerala High Court in the case of Subhashini -vs- District Collector, Kozhikode reported in LAWS (KER)-2020-9-81 at paragraph-52 has held as under:

"52. We conclude by answering the reference, that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. It is the jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry. We answer the reference agreeing with the

⁴ WA No.573/2022 DD 17.03.2023



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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)."

24. *On careful reading of the contents of the Gift Deed, dated 23.2.2012, the impugned order passed by the learned Single Judge of this Court is in consonance with the provisions of Sub-sections (1) and (2) of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as the Gift Deed, dated 23.2.2011, does not contain any stipulation that respondent No.3 is under obligation to maintain the present appellant. In the absence of the same, it cannot be held that the impugned order passed by the learned Single Judge is not in consonance with the provisions of Section 23 of the Senior Citizens Act.*

25. *Though our conscious is in favour of the welfare of the Senior Citizens considering the scope and object of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, but our hands are tied in view of the dictum of the Hon'ble Supreme Court in the case of Sudesh Chhikara, wherein while interpreting the very provisions of Sub-section (1) of Section 23 of the said Act, it has been held that the two conditions must be stipulated in the document, which is binding on all including this Court as contemplated under Article 141 of the Constitution of India.*

26. *The judgments relied upon by the learned Senior Counsel for the appellant are not applicable to the peculiar facts and circumstances of the present case, in view of the latest dictum of the Hon'ble Supreme Court rendered on 6th December 2022 in the case of Sudesh Chhikara -vs- Ramthi Devi reported in LAWS(SC) 2022-12-17.*



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27. For the reasons stated above, the point raised in the present Intra Court Appeal is answered in the negative holding that the appellant has not made out any ground to interfere with the impugned order, dated 26.2.2019, passed by the learned Single Judge in Writ Petition No.52010/2016.

- 4.17. By relying on the decision in **Nanjappa**, his submission is that incorporation of a condition requiring maintenance of the senior citizen in the document of transfer is a sine qua non for the exercise of jurisdiction under Section 23 of the Senior Citizens Act. In the absence of such a stipulation, the Tribunal lacks jurisdiction to invoke the provisions of Section 23.
- 4.18. Though a copy of another decision dated 20.02.2023 in WP 9943/2022 has been produced, he does not place any reliance on the said decision.
- 4.19. Summarising his submissions, learned counsel contended that the petitioner, his wife and children have been residing in the subject premises for several years, while respondent No. 3 has been frequently residing in the United States with her elder daughter. According to him, whenever respondent No. 3 visits the United States, she locks two rooms in the



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house for her exclusive use and the petitioner and his family have no access to those portions. He submitted that neither the petitioner nor any member of his family has interfered with the peaceful residence or day-to-day life of respondent No. 3.

4.20. Lastly, learned counsel submitted that respondent No. 3 had no independent intention of initiating proceedings against the petitioner and that the present proceedings were instituted solely at the instance of the petitioner's sisters. He submitted that the petitioner has never objected to respondent No. 3 residing in the house and is willing to take care of all her needs. It was therefore contended that the application filed before the Tribunal under the provisions of the Senior Citizens Act was not maintainable and that both the Assistant Commissioner and the Appellate Authority have erred in directing the petitioner's eviction. He accordingly prayed that the impugned orders be set aside.



5. Per contra, Sri. K. Murthy, learned counsel appearing for respondent No. 3, supported the impugned orders and made the following submissions:

5.1. Learned counsel submitted that the petitioner has failed to discharge his obligation of maintaining and taking care of respondent No. 3, who is his aged mother. According to him, all the needs of respondent No. 3 during her stay at Mysuru are looked after by her younger daughter, Smt. M.S. Manonmani, while during her stay in the United States of America, she is taken care of by her elder daughter, Smt. Hari Vatsala Ahluwalia. It was submitted that all her medical expenses, including the expenses incurred towards various surgeries undergone by her in the United States, have been borne by her elder daughter, whereas her day-to-day requirements, including food and other necessities during her stay at Mysuru, are attended to by her younger daughter. Learned counsel further submitted that the sister of respondent No. 3 is residing in the outhouse situated in the subject property and that the petitioner and his wife have also been subjecting her to harassment with the sole



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object of usurping the property, over which the petitioner, according to him, has no lawful right.

5.2. Learned counsel further submitted that the registered Will dated 25.09.2000, upon which the petitioner places reliance, is not the last testamentary disposition executed by late M. Shivanna. According to him, late M. Shivanna subsequently executed another registered Will dated 28.04.2002, whereby the earlier Will dated 25.09.2000 stood expressly revoked. It was further submitted that even the subsequent Will dated 28.04.2002 was thereafter cancelled. Consequently, according to learned counsel, the petitioner cannot claim any right, title or interest in the subject property solely on the basis of the Will dated 25.09.2000.

5.3. Yet another Will was executed by Shivanna on 22.12.2004, which is the last Will and testament of Shivanna. Property No.19 is the subject property has been divided as under:



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ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ವಿವರ

ಮೈಸೂರು ಸಿಟಿ, ವಿ.ವಿ. ಮೊಹಲ್ಲಾ, ಕಾಳಿದಾಸ ರಸ್ತೆ, ಸುಭದ್ರಾ ಕಾಂಪ್ಲೆಕ್ಸ್ ಎಂಬ
ನಾಮಾಂಕಿತದ ಮನೆ ನಂ. 19 ಪೂರ್ವಪಶ್ಚಿಮ 40.6 ಅಡಿಗಳು ದಕ್ಷಿಣೋತ್ತರ 80
ಅಡಿಗಳುಳ್ಳ ಪೂರ್ತಾ ಸ್ವತ್ತಿನ ಪೈಕಿ ಉತ್ತರ ಭಾಗದ ಸ್ವತ್ತಿಗೆ ಚಕ್ಕುಬಂದಿ :-

ಪೂರ್ವಕ್ಕೆ : 20 ನೇ ನಂಬರ್ ಸ್ವತ್ತು
ಪಶ್ಚಿಮಕ್ಕೆ : 18ನೇ ನಂಬರ್ ಸ್ವತ್ತು
ಉತ್ತರಕ್ಕೆ : ಕಾಳಿದಾಸ ರಸ್ತೆ
ದಕ್ಷಿಣಕ್ಕೆ : ಈ ದಿನ ಉಯಿಲು ಮೂಲಕ ನನ್ನ ಮಗಳು ಹರಿ
ವತ್ಸಲಾ ಶ್ರೀ ಅಲಿಯಾಸ್ ಹರಿ .ವಿ. ಅಲುವಾಲಿಯಾ ಗೆ
ನೀಡಿರುವ ಸ್ವತ್ತು ನಂತರ 44ನೇ ನಂಬರ್ ಸ್ವತ್ತು

ಈ ಮಧ್ಯದಲ್ಲಿರುವ ಮುಂಭಾಗದ ಗೌಂಡ್ ಪೋರ್ 4 ಅಂಗಡಿ ಮಳಿಗೆಗಳು ಮತ್ತು
ಫಸ್ಟ್ ಪೋರ್ ವಿಸ್ತೀರ್ಣ ಪೂರ್ವಪಶ್ಚಿಮ 40.6 ಅಡಿ ದಕ್ಷಿಣೋತ್ತರ 57 ಅಡಿಗಳ ಪೈಕಿ
ಪೂರ್ವಭಾಗದ ನಕ್ಷೆಯಲ್ಲಿ ನಮೂದು ಮಾಡಿರುವ 6 ಅಡಿ 9 ಅಡಿ ಅಗಲದ ಜಾಗ ಬಿಟ್ಟು
ಉಳಿಕೆ ಫಸ್ಟ್ ಪೋರ್ ಕಟ್ಟಡ ಹಾಗೂ ಮುಂದೆ ಮೇಲ್ಭಾಗದಲ್ಲಿ ಕಟ್ಟುವ ಕಟ್ಟಡದ ಹಕ್ಕು
ಸಹ ನಮ್ಮ ಮಗ ಡಾ|| ಮಹೇಶ್. ಎಂ.ಎಸ್. ನಿಗೆ ಸೇರತಕ್ಕದ್ದು.

ಮೈಸೂರು ಸಿಟಿ, ವಿ.ವಿ. ಮೊಹಲ್ಲಾ, ಕಾಳಿದಾಸ ರಸ್ತೆ ಸುಭದ್ರಾ ಕಾಂಪ್ಲೆಕ್ಸ್ ಎಂಬ
ನಾಮಾಂಕಿತದ ಮನೆ ನಂ. 19 ಪೂರ್ವಪಶ್ಚಿಮ 40.6 ಅಡಿಗಳು ದಕ್ಷಿಣೋತ್ತರ 80
ಅಡಿಗಳುಳ್ಳ ಪೂರ್ತಾ ಸ್ವತ್ತಿನ ಪೈಕಿ ದಕ್ಷಿಣ ಭಾಗದ ಸ್ವತ್ತಿಗೆ ಚಕ್ಕುಬಂದಿ :-

ಪೂರ್ವಕ್ಕೆ : 20 ನೇ ನಂಬರ್ ಸ್ವತ್ತು
ಪಶ್ಚಿಮಕ್ಕೆ : 18ನೇ ನಂಬರ್ ಸ್ವತ್ತು
ಉತ್ತರಕ್ಕೆ : ಈ ದಿನ ಉಯಿಲು ಮೂಲಕ ನನ್ನ ಮಗನಾದ
ಡಾ|| ಮಹೇಶ್ ಎಂ.ಎಸ್. ಗೆ ನೀಡಿರುವ ಸ್ವತ್ತು
ದಕ್ಷಿಣಕ್ಕೆ : 44ನೇ ನಂಬರ್ ಸ್ವತ್ತು



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ಈ ಮಧ್ಯದಲ್ಲಿರುವ ಗೌಂಡ್ ಫೋರ್ ಆರ್.ಸಿ.ಸಿ. ವಾಸದ ಮನೆ ಮತ್ತು ಹಿಂಭಾಗದ ಖಾಲಿ ಜಾಗ ಸಹ ಮತ್ತು ಮುಂದೆ ಇದರಲ್ಲಿ ಕಟ್ಟುವಂತಹ ಕಟ್ಟಡ ಸಹ ನಮ್ಮಗಳ ಮಗಳು ಹರಿ ವತ್ಸಲಾ ಶ್ರೀ ಅಲಿಯಾಸ್ ಹರಿ .ವಿ. ಅಲುವಾಲಿಯಾಗೆ ಸೇರತಕ್ಕದ್ದು. ನೆಲದ ಹಕ್ಕು ಈಕೆಗೆ ಸೇರಿದೆ.

ನಮ್ಮಗಳ ಕಾಲಾನಂತರ ನಮ್ಮ ಮಗಳಾದ ಶ್ರೀಮತಿ. ಹರಿ ವತ್ಸಲಾ ಶ್ರೀ ಅಲಿಯಾಸ್ ಹರಿ .ವಿ. ಅಲುವಾಲಿಯಾ ಮತ್ತು ನಮ್ಮ ಮಗ ಡಾ|| ಮಹೇಶ್ .ಎಂ.ಎಸ್. ಇವರುಗಳು ಆ ದಿನದ ಪೂರ್ತಾ ಸ್ವತ್ತಿನ ದರವನ್ನು ನಿಗಧಿ ಪಡಿಸಿ ಮಾರುಕಟ್ಟೆ ಬೆಲೆಯ ಪ್ರಕಾರ 1/3 ಭಾಗವನ್ನು ನಮ್ಮ ಮಗಳಾದ ಶ್ರೀಮತಿ. ಎಂ.ಎಸ್. ಮನೋನ್ಮಣಿಗೆ ನೀಡತಕ್ಕದ್ದು. ಅವಳಿಗೆ ಮೊಬಲಗು ನೀಡಿದ ನಂತರ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿಗೆ ಅವರುಗಳು ಮಾಲೀಕರಾಗತಕ್ಕದ್ದು. ಮುಂದೆ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ವಿಚಾರದಲ್ಲಿ ನಮ್ಮಗಳ ಕಾಲಾನಂತರ ಯಾವುದೇ ತಂಟೆ ತಕರಾರುಗಳು ಉದ್ಭವವಾಗದೇ ಇರಲೆಂಬ ಉದ್ದೇಶದಿಂದ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ವ್ಯವಹಾರದಲ್ಲಿ ವ್ಯವಹರಿಸಲು ನಮ್ಮಗಳ ಅಳಿಯಂದಿರಾದ ಶ್ರೀ. ಹಮಿಂದರ್ ಸಿಂಗ್ ಅಲುವಾಲಿಯಾ ಇವರನ್ನು ಎಕ್ಸಿಕ್ಯುಟೀನ್ ಆರ್ಬಿಟ್ರೇಟರ್ ಆಗಿ ನೇಮಿಸಿರುತ್ತೇವೆ. ಅವರು ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ವಿಚಾರದಲ್ಲಿ ನಮ್ಮ ಮಗಳಾದ ಎಂ.ಎಸ್. ಮನೋನ್ಮಣಿಗೆ 1/3 ಭಾಗದ ಹಿಸ್ಸೆಯನ್ನು ನೀಡಲು ಸಹಕರಿಸಿ ಸ್ವತ್ತನ್ನು ಅನುಭವಿಸಲು ನನ್ನ ಇಬ್ಬರು ಮಕ್ಕಳುಗಳಿಗೆ ಅನುವು ಮಾಡಿಕೊಡುವುದು.

5.4. Elaborating upon the testamentary succession, learned counsel placed reliance upon the registered Will dated 22.12.2004 said to have been executed by late M. Shivanna. He submitted that the said Will constitutes the last valid testament executed by late M. Shivanna and governs the devolution of the subject property. Referring to the recitals contained therein, he submitted that the residential house



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has been bequeathed jointly in favour of the petitioner and his elder sister, Smt. Hari Vatsala Ahluwalia. However, according to the express stipulations contained in the Will, if the property is sold, the petitioner and Smt. Hari Vatsala are under an obligation to pay one-third of the sale consideration to the younger sister, Smt. M.S. Manonmani. It was submitted that only upon fulfilment of the said obligation would the petitioner and Smt. Hari Vatsala become entitled to the property in accordance with the terms of the testamentary disposition. Learned counsel therefore contended that the petitioner cannot selectively rely upon the Will while simultaneously ignoring the obligations imposed thereunder.

5.5. He further submitted that both Smt. Hari Vatsala and Smt. Manonmani have consistently maintained that respondent No.3 should continue to reside peacefully in the residential house throughout her lifetime and that neither of them has raised any objection to her occupation of the property. According to him, it was only after the petitioner and his wife allegedly subjected respondent No.3 to



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continuous harassment and interference with her peaceful enjoyment of the property that respondent No.3 was compelled to institute O.S. No.1236 of 2023 seeking partition and also to invoke the jurisdiction of the Tribunal under the Senior Citizens Act for protection of her life and property.

- 5.6. Learned counsel further submitted that the reliance placed by the petitioner upon the decisions of the Hon'ble Supreme Court in ***Sudesh Chhikara v. Ramti Devi*** and of the Division Benches of this Court in ***Sri Jayashankar v. The Assistant Commissioner*** and ***Nanjappa v. State of Karnataka*** is wholly misconceived. According to him, each of the aforesaid decisions arose in the context of proceedings under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, wherein the Tribunal had either cancelled or was called upon to examine the validity of a transfer by way of a gift or similar gratuitous conveyance. The ratio laid down therein, according to him, is confined to the scope of Section 23 and the jurisdiction of the Tribunal to declare a transfer void on the



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ground that the transferee had failed to provide basic amenities and physical needs to the transferor-senior citizen.

5.7. It was submitted that the present proceedings stand on an entirely different footing. The respondent No.3 has neither sought cancellation of any gift deed nor questioned the validity of any transfer under Section 23 of the Act. There is admittedly no gift deed executed by respondent No.3 in favour of the petitioner or any member of his family. Equally, respondent No.3 has not sought maintenance from the petitioner in these proceedings. The grievance projected before the Tribunal is confined to the acts of harassment allegedly committed by the petitioner and his wife, which have affected the safety, security, dignity and peaceful residence of respondent No.3 in her own house. Learned counsel therefore submitted that the present proceedings essentially concern the statutory obligation of the State authorities to protect the life, liberty, welfare and dignity of a senior citizen under the scheme of the Act and not the adjudication of



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proprietary rights or the cancellation of transfers contemplated under Section 23.

5.8. Learned counsel further submitted that the petitioner's entire claim rests upon the Will dated 25.09.2000. According to respondent No.3, the said Will no longer governs the succession to the property, having been superseded by subsequent testamentary dispositions executed by late M. Shivanna. Therefore, even the foundational premise upon which the petitioner asserts his title is seriously disputed. It was further submitted that even assuming the petitioner seeks to rely upon the Will dated 22.12.2004, the conditions incorporated therein have admittedly not been fulfilled. Consequently, no enforceable or crystallised proprietary right has accrued in favour of the petitioner so as to enable him to resist proceedings initiated for the protection of a senior citizen. Learned counsel therefore submitted that the judgments relied upon by the petitioner have no application whatsoever to the facts of the present case.



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- 5.9. Learned counsel thereafter dealt in detail with the documents produced by the petitioner under Memo dated 09.07.2026 in an attempt to establish continuous residence at the subject property. According to him, none of the documents relied upon by the petitioner is contemporaneous with the dispute or establishes his present place of residence.
- 5.10. He first referred to the Registration Certificate issued by the Karnataka Medical Council in favour of the petitioner. According to him, the said certificate was issued on 04.05.1994 when the petitioner was admittedly residing with his parents at Mysuru. The address reflected therein merely corresponds to the address furnished by the petitioner at the time of registration and cannot, by itself, establish that the petitioner continues to reside there even after more than three decades.
- 5.11. Learned counsel next referred to the Aadhaar Cards produced by the petitioner, his wife and his children. According to him, Aadhaar Cards merely reflect the address furnished by the holder at the time of enrolment and cannot



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constitute conclusive proof of actual residence. He submitted that after the petitioner entered Government service and was appointed as a Health Officer at Sakaleshpur, he has been ordinarily residing there in connection with his employment. Therefore, the addresses mentioned in the Aadhaar Cards cannot be treated as determinative of his present residence.

5.12. Similarly, with regard to the passport relied upon by the petitioner, learned counsel pointed out that the original passport was issued on 22.07.2002 and renewed on 23.08.2012, both of which are long anterior to the present dispute. According to him, the address recorded in the passport only reflects the particulars furnished at the relevant point of time and cannot establish present occupation of the property.

5.13. Referring to the statement of account issued by the State Bank of India, learned counsel submitted that the account statement relates only to the period between 22.11.2014 and 31.12.2014. Such an old account statement,



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according to him, cannot be relied upon for determining the petitioner's place of residence in the year 2026. He further submits that the fact that the latest account statement has not been produced and such an old statement has been produced would require this Court to draw an inference that the petitioner does not maintain any account with the current address.

5.14. Likewise, insofar as the individual bank accounts of the petitioner and his wife and the joint account maintained by them are concerned, learned counsel submitted that those accounts had been opened several years before the dispute arose. In fact, the petitioner's wife's account had been opened on 17.10.2002, while even the joint account is admittedly of an earlier origin though the exact opening date is not disclosed. He therefore submitted that none of these documents has any evidentiary value in deciding the present controversy relating to occupation and residence.

5.15. Learned counsel also sought to distinguish the documents produced relating to the petitioner's



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children. According to him, the identity cards, study certificates and educational records merely reproduce the address supplied by the parents at the time of admission. Such documents, according to him, cannot be regarded as proof of continuous physical residence at the subject premises.

5.16. He submitted that, in fact, the petitioner, his wife and children were ordinarily residing elsewhere and used to visit respondent No.3 at Mysuru only occasionally. Subsequently, with the intention of asserting control over the property and eventually excluding respondent No.3 from its enjoyment, they allegedly began interfering with her peaceful possession and residence. It was contended that the acts of the petitioner and his family caused constant mental agony and insecurity to respondent No.3, thereby compelling her to seek intervention from the statutory authorities.

5.17. Learned counsel emphasised that the issue before the Tribunal was not whether the petitioner desired to reside in the house, but whether his continued presence had become



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detrimental to the safety, dignity and peaceful existence of respondent No.3. According to him, once the competent authorities found that the petitioner and his family were disturbing the peace and threatening the life and liberty of the senior citizen, they could not insist upon continuing to reside in the same premises merely because they claimed a right to occupy the property.

5.18. Learned counsel further submitted that the petitioner is a qualified medical practitioner employed as a Government Medical Officer at Sakaleshpur and is financially well placed. He possesses sufficient means to secure suitable alternative accommodation either at Sakaleshpur, where he is employed, or elsewhere. Respondent No.3, on the other hand, is an aged widow having no independent source of livelihood except the rental income derived from the commercial premises forming part of the subject property. According to him, the object of the Senior Citizens Act is to ensure that such senior citizens are able to live with dignity, security and peace in their twilight years. Therefore, the balance of convenience



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overwhelmingly favours protecting the residence of respondent No.3 rather than permitting the petitioner to continue occupying the premises despite the findings recorded against him.

5.19. Concluding his submissions, learned counsel reiterated that the petitioner has been serving as a doctor at Sakaleshpur and ordinarily resides there in connection with his Government employment. According to him, it is only on occasional visits to Mysuru that the petitioner and his family stay at the subject property. During such visits, respondent No.3 has allegedly been subjected to repeated harassment, intimidation and interference. He submitted that respondent No.3 and her sister are the persons who have been continuously residing in the residential house and the outhouse respectively.

5.20. He further pointed out that the entire rental income from the commercial shops forming part of Subhadra Complex is being received exclusively by respondent No.3. Even the very nomenclature of the building demonstrates that



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the property has throughout been associated with respondent No.3. According to him, the petitioner's conduct clearly reveals an attempt to secure control over the property by intimidating and harassing his aged mother. These factual aspects, according to learned counsel, have been concurrently examined by both the Assistant Commissioner and the Deputy Commissioner after appreciating the material placed before them. The concurrent findings being based upon the evidence on record and being directed towards securing the welfare and protection of a senior citizen, no ground is made out for interference by this Court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

6. Heard Sri.Bheemaiah, learned counsel for the petitioner, Sri. Mohammed Jaffar Shah, learned AGA for respondent No.1 and 2 and Sri.K.Murthy, learned counsel for respondent No.3. Perused papers.
7. The points that would arise for consideration are:

(i) Whether the Tribunal constituted under the Maintenance and Welfare of Parents



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and Senior Citizens Act, 2007 was justified in exercising its jurisdiction under Section 22 of the Act and directing the eviction of the petitioner from the subject premises?

- (ii) Whether the petitioner's claim of title under the Wills executed by late M. Shivanna and the pendency of O.S. No.1236/2023 deprived the Tribunal of jurisdiction to pass an order of eviction?**
- (iii) Whether the decisions relied upon by the petitioner, particularly Samtola Devi, Sudesh Chhikara, Sri Jayashankar and Nanjappa, govern the facts of the present case?**
- (iv) Whether the impugned orders passed by the Assistant Commissioner and affirmed by the Deputy Commissioner call for interference in exercise of the writ jurisdiction of this Court?**
- (v) What order?**

8. This Court answers the above points as follows:

9. **Answer to Point No. (i): Whether the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was justified in exercising its jurisdiction under Section 22 of the Act and directing the eviction of the petitioner from the subject premises?**

9.1. Sri. Bheemaiah, learned counsel for the petitioner, contended that eviction is a drastic



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step and that it cannot be ordered on a bare allegation of harassment. He submitted that the petitioner, his wife and their children have been living in the subject premises for several decades, and that they cannot be turned out of the house in proceedings taken under the Senior Citizens Act.

- 9.2. In support of the plea of long and continuous residence, learned counsel relied upon the Registration Certificate issued by the Karnataka Medical Council on 04.05.1994, the Aadhaar cards of the petitioner, his wife, his son and his daughter, and the passport of the petitioner issued on 22.07.2002 and renewed on 23.08.2012, each of which records the subject premises as the address. He also relied upon the housing loan statement of account of the State Bank of India, the provisional admission letter issued to the petitioner's son, the study certificate of the petitioner's daughter, the passbook of the joint account of the petitioner and his wife, and the individual account of the wife, to show that the subject premises is shown as the residence in each of these documents.



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- 9.3. Learned counsel further submitted that respondent No.3 is not always in the house, as she often travels to the United States of America to stay with her elder daughter, and that whenever she leaves, she locks two rooms for her own use. According to him, neither the petitioner nor any member of his family has ever disturbed the peaceful residence or the day-to-day life of respondent No.3, the complaint was set in motion at the instance of the petitioner's sisters, the petitioner has never objected to his mother living in the house and is willing to look after all her needs, and, therefore, the application before the Tribunal was not maintainable and the direction to evict is unsustainable.
- 9.4. Sri. K. Murthy, learned counsel for respondent No.3, supported the impugned orders. He submitted that the proceedings before the Tribunal are not proceedings for the cancellation of any transfer of property, but proceedings for the protection of the life and property of a senior citizen. He submitted that the scheme of the Act, and in particular Section 22, casts a duty on the State and its officers to



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protect senior citizens, and that where the continued presence of a person in the house of a senior citizen becomes a source of harassment, the officer may direct the removal of that person so as to secure to the senior citizen a life of peace.

- 9.5. Learned counsel submitted that the petitioner has failed to maintain and look after respondent No.3; that her needs at Mysuru are attended to by her sister and her younger daughter Smt. M.S. Manonmani and her needs in the United States by her elder daughter Smt. Hari Vatsala Ahluwalia; and that her medical expenses have been met by her daughters and out of her own savings.
- 9.6. He submitted that the petitioner and his wife have been harassing respondent No.3 and her sister with the object of usurping the property; that the petitioner ordinarily resides at Sakaleshpura, where he is employed as a Government Medical Officer; and that he visits Mysuru only now and then and, during such visits, harasses respondent No.3.



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- 9.7. He submitted that the petitioner is comfortably placed and can find other accommodation, whereas respondent No.3 is an aged widow whose only income is the rent from the commercial portion of the property, and that the balance of convenience is wholly in favour of protecting her residence. He also pointed out that the documents relied upon by the petitioner are old and non-contemporaneous and do not prove present residence, and that the concurrent findings recorded by the Assistant Commissioner and the Deputy Commissioner rest on the material on record.
- 9.8. Sri. Mohammed Jaffar Shah, learned Additional Government Advocate for respondent Nos.1 and 2, being the authorities who passed the impugned orders, supported those orders. He adopted the submissions of Sri. K. Murthy and submitted that the authorities have acted within the four corners of the Act and that no case is made out for interference.
- 9.9. To answer this point, it is necessary first to notice the provision under which the direction has been made. Section 22 of the Maintenance



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and Welfare of Parents and Senior Citizens Act, 2007 reads as under:

22. Authorities who may be specified for implementing the provisions of this Act.—(1) *The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.*

(2) *The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.*

9.10. A plain reading of Section 22 shows two things.

Under sub-section (1), the State Government may confer powers and impose duties on the District Magistrate, who may in turn specify a subordinate officer to exercise those powers within a given area. Under sub-section (2), the State Government must prescribe a comprehensive action plan for the protection of the life and property of senior citizens.

9.11. The words 'protection of life and property of senior citizens' are wide. They are not limited to the payment of a maintenance allowance. They reach as far as protecting the senior citizen in the enjoyment of her home and keeping her



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safe within it. The Assistant Commissioner, being the officer specified under this scheme, was therefore clothed with the authority to take steps for the protection of respondent No.3, including, where the facts justify it, a direction removing the source of the harassment from her house.

9.12. The right to life that the law guarantees to every person is not a right to a bare animal existence. For a senior citizen it carries with it the right to live with dignity, and that includes the right to reside peacefully in her own home without fear, harassment or humiliation. So long as the petitioner and his wife continue to trouble respondent No.3 in the house, that right stands violated. The protection of the life of a senior citizen therefore takes within its fold the protection of her right to reside in peace.

9.13. At the same time, the power to remove a person from the house of a senior citizen is a serious power, and it is not to be used lightly. It is a discretionary power, incidental to the protective object of the Act, and its exercise is hedged in by well-recognised limits. The



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decision of the Hon'ble Supreme Court in ***Samtola Devi v. State of Uttar Pradesh and others [SLP (C) No.26651/2023]***, which was cited by the petitioner, sets out those limits, and it is convenient to gather them together at this stage, since they govern the answer not only to this point but to the points that follow. The parameters that emerge from ***Samtola Devi***, more particularly from paragraphs 28, 32, 33 and 34 thereof, are these:

9.13.1. First, the power is discretionary. Eviction is not the automatic or mandatory result of every application; the authority 'may' order it, but is not bound to order it in every case (paragraph 32 of ***Samtola Devi***).

9.13.2. Secondly, the authority must be satisfied, and must be able to show from its reasons, that eviction is necessary and expedient to secure the maintenance, protection and peaceful living of the senior citizen (paragraphs 32 and 33 of ***Samtola Devi***).



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9.13.3. Thirdly, the mere fact that the property is said to belong to the senior citizen, or to some other member of the family, is not by itself enough, and a genuine and pending civil claim of the occupant to the property cannot simply be brushed aside (paragraph 33 of ***Samtola Devi***).

9.13.4. Fourthly, the authority must consider whether the object of the Act can be met by a lesser measure, such as an order of maintenance under Sections 4 and 5 of the Act, or an order restraining the occupant from harassing the senior citizen and interfering in her day-to-day life (paragraph 34 of ***Samtola Devi***).

9.13.5. Fifthly, and even after all this, eviction remains open, and indeed becomes necessary, where the occupant continues to humiliate or torture the senior citizen; in that situation removal is not an excessive step but the only effective protection (paragraph 28 of ***Samtola Devi***).



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9.13.6. Sixthly, the machinery of the Act exists for the protection of the senior citizen herself. It is not to be turned into a device for enforcing the property claim of some third person who is a stranger to the grievance of harassment.

9.14. These parameters when applied to the facts of the present case, they point firmly to the conclusion that the direction of eviction was justified. It is convenient to take the facts one at a time.

9.15. The first and central question is whether respondent No.3 is being harassed. On this there is direct material. The petitioner raised a specific contention that his mother never intended to file the complaint and that it was filed at the behest of his sister. To test that contention, and at the request of the Court, respondent No.3 was permitted to take part in the proceedings through video conferencing in open Court. On a specific question put to her, she stated in clear words that she had filed the complaint of her own free will, because the petitioner was not taking care of her, and that it



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had become difficult for her to live in the house with her son and daughter-in-law because they constantly harass her. This statement, made directly to the Court by the senior citizen herself, puts an end to the suggestion that the complaint was got up by the sisters. It shows that the grievance is genuine and that it is her own.

9.16. The harassment, moreover, is not of a trifling kind. Respondent No.3 has undergone several surgeries and suffers from a number of ailments, and she meets her medical expenses from her own savings without help from the petitioner. She has stated that she has been confined within her own house, that her movements are controlled, and that closed-circuit television cameras have been installed, which have caused her anxiety and stress for which she has had to take treatment on her own. She was even driven to lodge a criminal complaint against the petitioner. This is the very contingency spoken of in paragraph 28 of ***Samtola Devi***, namely continued humiliation and torture, in which eviction becomes necessary. A lesser measure, such as a bare



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restraining order, would not meet a situation of this gravity, and the fourth parameter noticed above is thereby answered.

9.17. The petitioner's answer is that he and his family have lived in the house for decades and cannot be evicted. This plea does not stand scrutiny. The pleadings show that the petitioner is a qualified medical doctor serving as the Taluk Health Officer at Sakaleshpura. The post of a Taluk Health Officer carries important responsibilities relating to public health. The officer is required to supervise Government health institutions in the Taluk, monitor implementation of various health programmes, attend official meetings, deal with public health issues and remain available whenever the situation so demands.

9.18. Sakaleshpura is situated at a distance of about 150 kilometres from Mysuru. It ordinarily takes more than three hours to travel one way between the two places. This is a matter of common knowledge of which this Court can take judicial notice. Thus, a person travelling from Mysuru to Sakaleshpura and back every



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day would spend more than six hours in travel alone.

9.19. Considering the nature of the petitioner's duties, this Court finds it difficult to accept the contention that he was travelling every day from Mysuru to Sakaleshpura and returning to Mysuru after work. Such a daily journey would leave very little time for the petitioner to effectively discharge his official duties and would not be practical in the normal course.

9.20. It is also relevant to note that a Government officer posted at the Taluk headquarters is ordinarily expected to remain at the headquarters so that he is available for official work whenever required. He cannot leave the headquarters as a matter of routine without the permission of the competent authority. If the petitioner's case is that he travelled to Mysuru every evening and returned to Sakaleshpura every morning, it would mean that he was leaving the headquarters every day. No material has been placed before this Court to show that he had obtained permission to leave the headquarters on a daily basis.



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- 9.21. Further, the petitioner is a medical officer holding the post of Taluk Health Officer. Such an officer is expected to be available not only during office hours but also whenever there is a medical emergency, disease outbreak or any other urgent public health issue. The very nature of the post requires the officer to remain available at or near the headquarters so that he can attend to official duties without delay.
- 9.22. In these circumstances, this Court is of the view that the petitioner's contention that he was commuting every day between Mysuru and Sakaleshpura is neither probable nor supported by any material on record. In the absence of any evidence showing that such an arrangement had been permitted by the competent authority, this Court is unable to accept the said contention.
- 9.23. As the matter is civil in nature, the facts have to be decided on the preponderance of probabilities, and the probabilities point clearly to the petitioner ordinarily residing at or near his place of work, and to respondent No.3 residing in the house and being looked after by



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her sister, who lives in the outhouse, and by her second daughter. The documents relied upon by the petitioner do not improve his case; they are old, they merely carry an address given at some past point of time, and they do not establish present and continuous physical residence.

9.24. It follows that the authority had before it a genuine and serious case of harassment of a senior citizen, that the person causing the harassment had no pressing need to remain in that particular house, and that the protection of respondent No.3 could not be secured by any measure short of removing the source of the harassment. Each of the parameters noticed above is thus satisfied, and none of them stands in the way. The direction of eviction was, in these circumstances, a proper exercise of the protective power under Section 22 of the Act, read in the light of the object of the Act.

9.25. This Court accordingly answers Point No.(i) by holding that the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was justified in exercising its



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jurisdiction under Section 22 of the Act and in directing the eviction of the petitioner from the subject premises.

10. **Answer to Point No. (ii): Whether the petitioner's claim of title under the Wills executed by late M. Shivanna and the pendency of O.S. No.1236/2023 deprived the Tribunal of jurisdiction to pass an order of eviction?**

10.1. Sri. Bheemaiah, learned counsel for the petitioner, submitted that the subject property was the self-acquired property of late M. Shivanna, who purchased it in the year 1968 and built the complex known as Subhadra Complex upon it. He submitted that, by a registered Will dated 25.09.2000, the father bequeathed the entire property to the petitioner, and that, although the khatha was later changed to the name of respondent No.3, a change of khatha does not confer title, and the petitioner did not object to it only because respondent No.3 was the surviving widow. On this basis he contended that the petitioner is the absolute owner of the property, that he claims through his father and not through respondent No.3, that respondent No.3 has no



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right, title or interest in the property, and that the Act therefore has no application.

10.2. Learned counsel further submitted that respondent No.3 has already filed O.S. No.1236 of 2023 seeking partition and separate possession of a one-third share in the property. He contended that, once respondent No.3 has chosen to assert her rights before the civil court, the starting of parallel eviction proceedings before the Tribunal is an abuse of the process of law, and that the Tribunal ought not to have ordered eviction while the civil suit is pending.

10.3. Sri. K. Murthy, learned counsel for respondent No.3, submitted that the very foundation of the petitioner's claim is false. He submitted that the Will dated 25.09.2000 is not the last Will of late M. Shivanna. According to him, the father executed a later registered Will dated 28.04.2002, which revoked the Will of 25.09.2000, and even the Will of 28.04.2002 was later cancelled. He submitted that the last Will and testament of late M. Shivanna is the registered Will dated 22.12.2004, under which



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the residential house has been given to the petitioner and his elder sister Smt. Hari Vatsala jointly, but subject to the express condition that, if the property is sold, they must pay one-third of its value to the younger sister Smt. M.S. Manonmani, and that only on fulfilling that condition would they become entitled to the property. He submitted that the petitioner cannot rely upon the Will to claim ownership while ignoring the obligation attached to it, and that the condition under the 2004 Will admittedly remains unfulfilled, so that no settled right of ownership has arisen in the petitioner's favour.

10.4. Learned counsel further submitted that O.S. No.1236 of 2023 was itself filed by respondent No.3 because of the harassment caused to her, and that the pendency of that suit does not take away the jurisdiction of the Tribunal to protect her. He submitted that the present proceedings are not about deciding who owns the property, but about protecting a senior citizen from harassment in her own home.



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10.5. The whole of the petitioner's argument on this point rests on the premise that he is the absolute owner of the property under the Will dated 25.09.2000, and that his mother has no interest in it. That premise cannot be accepted. A copy of the Will dated 22.12.2004 has been placed on record. It states, in clear terms, that the earlier Will dated 25.09.2000, which was executed on 25.09.2000 and registered on 26.09.2000, stands cancelled, and that the registered and notarised Will dated 28.04.2002 also stands cancelled. It is settled beyond doubt that, where a person leaves more than one Will, it is the last Will that holds the field. On the material before this Court, the last Will of late M. Shivanna is the one dated 22.12.2004. The claim built upon the Will of the year 2000 therefore falls to the ground, because that Will has been cancelled by the testator himself. This court restrains itself from commenting on the actions of the Petitioner in suggesting false facts, when the petitioner is aware of the subsequent Will which has been produced in the pending suit.



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10.6. Under the last Will dated 22.12.2004, the petitioner and Smt. Hari Vatsala have been given a right in the property, but that right is expressly made subject to their paying one-third of the total value of the property to Smt. Manonmani. Until that payment is made, they do not become the owners. There is nothing on record to show that the petitioner has paid any amount to Smt. Manonmani. On the contrary, the petitioner's own case is that his relationship with Smt. Manonmani is strained. It follows that, as of today, the petitioner has not become the owner of the property even under the Will on which respondent No.3's counsel relies. The petitioner's claim to be the absolute owner, to the exclusion of his mother and sisters, is therefore not made out.

10.7. As noticed under Point No.(i), one of the parameters governing the protective power is that a genuine and subsisting civil claim of the occupant to the property cannot be ignored, and that the machinery of the Act is not to be used to enforce the property claim of a stranger



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to the grievance. Where the person sought to be removed holds a real and subsisting right in the property, and the senior citizen herself claims no interest of her own, an order of eviction may in truth work out a third person's title, which the Act does not permit. But that is not this case; it is, in fact, the very opposite of this case.

10.8. In the present case, the petitioner does not have any settled or vested right over the property. His claim under the Will dated 2000 came to an end when that Will was cancelled. His claim under the Will dated 2004 has also not matured, as the condition attached to that Will has not been fulfilled. On the other hand, respondent No.3 is not a stranger to the property. She is the widow of the original owner and the mother of the person who claims absolute title to the property. The khatha also stands in her name. More importantly, she is a senior citizen belonging to the very class of persons whom the Act is intended to protect. The house itself is named **"Subhadra Complex"**, reflecting her close and enduring



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association with it. Therefore, the order directing the petitioner's eviction does not use the provisions of the Act to enforce the title of a stranger. Instead, it secures the peaceful residence and protection of a senior citizen in the house with which she has the closest and most direct connection. Thus, the very consideration which, in an appropriate case, may weigh against directing eviction under the Act, in the facts of the present case, strongly supports the order of eviction.

10.9. Even if the question of title had been left open, it would have made no difference to the jurisdiction of the Tribunal. The power under Section 22 to protect the life and property of a senior citizen does not depend upon first deciding who owns the house. The Act is a beneficial law meant to give quick and simple protection to senior citizens. A senior citizen who is being harassed in the house in which she lives is entitled to that protection whether or not the title to the house is finally settled. Questions of ownership are for the civil court to decide; the protection of the senior citizen from harassment cannot wait until that is done.



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10.10. That brings this Court to the pendency of O.S. No.1236 of 2023. It is important to notice who filed that suit, and why. The suit for partition was filed by respondent No.3 herself, the senior citizen, because of the harassment she was facing. The person who is sought to be evicted, namely the petitioner, has filed no suit asserting a settled right; indeed, as already found, his claim of ownership is not made out. The pendency of a suit filed by the senior citizen, to work out her own rights, cannot be turned around and used by the petitioner to defeat the very protection she is seeking. The argument that the eviction proceedings are an abuse of process because a civil suit is pending is therefore misconceived on the facts of this case.

10.11. It is, however, necessary to make one thing clear, the observations made above on the effect of the several Wills, and on the present state of the petitioner's title, are prima facie observations, made only to test the petitioner's objection that he is the absolute owner and that the Act has no application. They are not, and are not to be treated as, a final decision on



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the title of the parties. The final decision on the ownership of the property, and on the rival claims of the petitioner, respondent No.3 and the sisters, is left entirely to the civil court in O.S. No.1236 of 2023, which will decide those questions on their own merits and uninfluenced by anything said in this order.

10.12. This Court accordingly answers Point No.(ii) by holding that neither the petitioner's claim of title under the Wills executed by late M. Shivanna nor the pendency of O.S. No.1236 of 2023 deprived the Tribunal of its jurisdiction to pass an order of eviction.

11. **Answer to Point No. (iii): Whether the decisions relied upon by the petitioner, particularly *Samtola Devi*, *Sudesh Chhikara*, *Sri Jayashankar* and *Nanjappa*, govern the facts of the present case?**

11.1. Sri. Bheemaiah, learned counsel for the petitioner, placed reliance upon four decisions.

11.2. First, he relied upon the decision of the Hon'ble Supreme Court in ***Samtola Devi v. State of Uttar Pradesh and others***, and particularly



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paragraphs 32, 33 and 34 thereof, to contend that, where a civil suit in respect of the property is pending, the Tribunal ought not to order eviction, and that eviction is not to be ordered as a matter of course.

11.3. Secondly, he relied upon the decision of the Hon'ble Supreme Court in ***Sudesh Chhikara v. Ramti Devi [LAWS (SC) 2022-12-17]***, and particularly paragraphs 8, 14, 15 and 17 thereof, to contend that the jurisdiction under Section 23 of the Act can be invoked only where the document of transfer itself contains a condition that the transferee shall provide the basic amenities and physical needs of the senior citizen, and that, in the absence of such a condition, no order can be made.

11.4. Thirdly, he relied upon the decision of the Division Bench of this Court in ***Sri Jayashankar v. The Assistant Commissioner and others [WA No.339/2023 DD 24.04.2024]***, and particularly paragraphs 6.3, 6.4 and 6.5 thereof, to contend that the Tribunal, while exercising powers under Section 23(1), is not a



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civil court and cannot record findings on fraud, coercion or undue influence in a transfer of property.

11.5. Fourthly, he relied upon the decision of the Division Bench of this Court in **Nanjappa v. State of Karnataka and others [WA No.573/2022 DD 17.03.2023]**, and particularly paragraphs 23, 24, 25, 26 and 27 thereof, to contend that the incorporation of a condition to maintain the senior citizen in the document of transfer is a jurisdictional requirement for invoking Section 23, and that, in its absence, the Tribunal lacks jurisdiction. He fairly stated that, although a copy of another decision dated 20.02.2023 in W.P. No.9943/2022 had been produced, he does not place reliance upon it.

11.6. Sri. K. Murthy, learned counsel for respondent No.3, submitted that all four decisions are of no assistance to the petitioner. He submitted that **Sudesh Chhikara**,² **Sri Jayashankar** ³ and **Nanjappa** ⁴ were all cases under Section 23 of the Act, where the Tribunal had cancelled, or was asked to cancel, a transfer of property



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made by way of gift or a similar gratuitous transfer, and that the principle laid down in them is confined to the working of Section 23. He submitted that the present case is not a case under Section 23 at all; respondent No.3 has not transferred any property to the petitioner, there is no gift deed, she has not asked for the cancellation of any transfer, and she has not even asked for maintenance. Her only grievance is harassment, and the proceedings are for the protection of her life and property under the scheme of the Act. As regards ***Samtola Devi***, he submitted that it turned on its own facts, where the suits had been filed by the very person who was sought to be evicted, which is the opposite of the present case.

11.7. The four decisions have to be examined one by one, keeping in view the true nature of the present proceedings. The present case is not one for cancelling a transfer of property under Section 23 of the Act. It is a case for the protection of a senior citizen from harassment in her home, traceable to Section 22 of the Act and to the protective object of the Act as a



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whole. With that distinction in mind, this Court turns to the decisions.

11.8. ***Samtola Devi v. State of Uttar Pradesh and others*** – The petitioner relies on paragraphs 32, 33 and 34, which read as under:

32. *The aforesaid decision was followed by this Court in Urmila Dixit (supra). However, even in the aforesaid case the court has only held that in a given case, the Tribunal "may order" eviction but it is not necessary and mandatory to pass an order of eviction in every case. The Appellate Tribunal has not recorded any reason necessitating the eviction of Krishna Kumar or that in the facts and circumstances of the case, it is expedient to order eviction so as to ensure the protection of the senior citizen.*

33. *In our opinion, the Appellate Tribunal was, therefore, not justified in ordering for his eviction merely for the reason that the property belongs to Kallu Mal, completely ignoring the fact that the claim of Krishna Kumar regarding 1/6th share and the cancellation of gifts and sale deeds is pending adjudication before the civil court.*

34. *In our opinion, in the facts and circumstances of the case, there was no necessity for the extreme step for ordering the eviction of Krishna Kumar from a portion of the house rather the purpose could have been served by ordering maintenance as provided under Section 4/5 of the Senior Citizens Act and by restraining him from harassing the parents and interfering in their day-to-day life.*

11.9. It is also useful to notice paragraph 28 of the same decision, which reads:

28. *It was only in the contingency of Krishna Kumar not behaving properly or continuing to humiliate or torture the parents that the eviction proceedings would be necessary against him.*



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- 11.10. The principle that emerges from ***Samtola Devi*** is that an order of eviction under the Act is not automatic. The Tribunal 'may' order eviction, but it must be shown to be necessary, and reasons must be recorded. In that case the person sought to be evicted, Krishna Kumar, had himself filed suits claiming a one-sixth share and challenging certain deeds, and those claims were pending before the civil court. The Hon'ble Supreme Court held that, in those circumstances, and in the absence of any recorded reason showing that eviction was necessary, eviction ought not to have been ordered, and that the object of the Act could be met by ordering maintenance and by restraining the son from harassing the parents.
- 11.11. In the same breath, however, in paragraph 28, the Hon'ble Supreme Court made it clear that eviction would become necessary if the person continued to humiliate or torture the parents.
- 11.12. When these principles are applied to the present case, ***Samtola Devi*** does not help the petitioner; if anything, it goes against him. There, the suits had been filed by the person to



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be evicted; here, the suit has been filed by the senior citizen herself, and the petitioner has filed no suit asserting any settled right. There, no reason had been recorded to show that eviction was necessary; here, both the Assistant Commissioner and the Deputy Commissioner have found harassment, and the senior citizen has herself confirmed that harassment to this Court through video conferencing. The very contingency mentioned in paragraph 28, namely continued humiliation and harassment, is present in this case. The decision, far from supporting the petitioner, in truth supports the direction of eviction. **Samtola Devi**¹ is accordingly distinguished on its facts, and its paragraph 28 governs the present situation.

11.13. **Sudesh Chhikara v. Ramti Devi** – The petitioner relies on paragraphs 8, 14, 15 and 17, which read as under:

8. The learned counsel appearing for the appellant urged that the High Court has not adverted to the facts of the case at all. He pointed out that respondent no.1's son withdrew the appeals preferred by him against the decrees passed in the civil suits filed by respondent no.1 by which release deeds executed in his favour were held to be null and void. His submission is that respondent no.1's son has joined hands with her and under his pressure that



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respondent no.1 filed the petition under Section 23. He submitted that there is no material placed on record before the Maintenance Tribunal and the High Court to even indicate that the execution of the release deed was vitiated by fraud or coercion or undue influence. Another submission is that the Maintenance Tribunal did not hold any inquiry as contemplated by the 2007 Act. He submitted that the ingredients of Section 23 were not established.

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.*

15. *We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.*

17. *Hence, for the reasons recorded above, the appeal is allowed. The impugned order dated 22nd May 2018 passed by the Maintenance Tribunal as well as the order dated 21st May 2019 passed by the High Court are hereby set aside and the petition filed by respondent no.1 under Section 23 of the 2007 Act stands dismissed. There shall be no order as to costs.*

11.14. The principle laid down in **Sudesh Chhikara** is that, for an order under sub-section (1) of



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Section 23 of the Act, two conditions must be satisfied: there must be a transfer of property by the senior citizen, and that transfer must be subject to a condition that the transferee will provide the basic amenities and basic physical needs of the senior citizen. If the transfer is not subject to such a condition, or if such a condition is not even pleaded, an order declaring the transfer void under Section 23 cannot be sustained. To appreciate this, it is useful to extract Section 23 of the Act:

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 the 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.*



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11.15. A reading of Section 23 shows that it operates only where a senior citizen has transferred property subject to a condition of maintenance. That is the field in which **Sudesh Chhikara** operates. The present case does not fall in that field at all. Respondent No.3 has not transferred any property to the petitioner. There is no gift deed and no other instrument of transfer by her in his favour. She has not sought to have any transfer declared void. The twin conditions spoken of in **Sudesh Chhikara** simply do not arise, because Section 23 has not been invoked. The order in the present case is one for the protection of the senior citizen under Section 22, not one cancelling a transfer under Section 23. **Sudesh Chhikara** is therefore inapplicable and does not govern the present case.

11.16. **Sri Jayashankar v. The Assistant Commissioner and others** – The petitioner relies on paragraphs 6.3, 6.4 and 6.5, which read as under:

6.3 *The Tribunal exercising powers under Section 23(1) of the Act is not a civil court, nor the powers exercised by the Tribunal under the said provision are the powers of civil court. They are the powers in the context of the provisions*



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of the Act which have their own purpose and object, which is to provide more effective recourse in law for maintenance and welfare of parents and senior citizens and to guarantee and recognize for them their rights.

6.4 *In the above view, it will not be permissible in law for the Tribunal, while exercising powers under Section 23(1) of the Act, to pronounce upon generally that the transfer of the property by way of gift or otherwise was fraudulent or that the transferor was guilty of fraud or coercion in the general sense of the term. The rights and obligations arising for the parties in the context of commission of fraud as is to be applied in general law, are the civil disputes. It is not open for the Tribunal functioning under the Act to pronounce upon such fraud having committed in effecting the transfer.*

6.5 *In view of the above position obtaining, this Court is of the view that the Tribunal misdirected itself in law in making the observations in paragraph 13 of its order by suggesting that the gift deed was fraudulently obtained from the complainant. The aspects mentioned by the Tribunal in that regard are to be proved by leading of evidence. It was not permissible for the Tribunal to arrive at a different finding in that regard. Even otherwise, recording of such finding was beyond the powers and jurisdiction of the Tribunal.*

11.17. The principle laid down in ***Sri Jayashankar*** is that the Tribunal exercising power under Section 23(1) of the Act is not a civil court, and that it cannot pronounce upon whether a transfer of property was brought about by fraud or coercion in the general sense; such questions have to be proved by evidence before the civil court. This principle, once again, is tied to the exercise of power under Section 23. In the present case, the Tribunal has not gone into the validity of any transfer, has not held any



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gift or Will to be fraudulent, and has not cancelled any document. It has confined itself to protecting the senior citizen from harassment. This Court too, in the course of this judgment, has referred to the Wills only to test the petitioner's own objection that he is the absolute owner and that the Act does not apply; it has not decided the title of the parties, which remains open for the civil court. ***Sri Jayashankar***³ is therefore not attracted and does not govern the present case.

11.18. ***Nanjappa v. State of Karnataka and others***

– The petitioner relies on paragraphs 23, 24, 25, 26 and 27, which read as under:

23. Though in the present case, a specific contention is being taken by the learned Senior Counsel for the appellant that, the appellant being the absolute owner of the property in question, out of love and affection executed a Gift in favour of his brother/respondent No.3 under a Gift Deed, dated 23.2.2012, with a ray of hope that the 3rd respondent/brother would take care of basic needs of medical necessities as his son was not keeping well and his daughter was settled with her husband, but respondent No.3 has changed attitude towards him and has failed to show even love and affection towards him. The fact remains that, on the application filed by the appellant against respondent No.3, the Assistant Commissioner, who is the authority under the provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act has allowed the application filed by the present appellant ignoring the conditions stipulated under the provisions of Sub-sections (1) and (2) of the Senior Citizens Act as held by the Hon'ble Supreme Court.



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Thereby, the learned Single Judge has rightly allowed the writ petition. In identical circumstances, the Full Bench of the Kerala High Court in the case of Subhashini -vs- District Collector, Kozhikode reported in LAWS (KER)-2020-9-81 at paragraph-52 has held as under: "52. We conclude by answering the reference, that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. It is the jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry."

24. *On careful reading of the contents of the Gift Deed, dated 23.2.2012, the impugned order passed by the learned Single Judge of this Court is in consonance with the provisions of Sub-sections (1) and (2) of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as the Gift Deed, dated 23.2.2011, does not contain any stipulation that respondent No.3 is under obligation to maintain the present appellant. In the absence of the same, it cannot be held that the impugned order passed by the learned Single Judge is not in consonance with the provisions of Section 23 of the Senior Citizens Act.*

25. *Though our conscious is in favour of the welfare of the Senior Citizens considering the scope and object of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, but our hands are tied in view of the dictum of the Hon'ble Supreme Court in the case of Sudesh Chhikara, wherein while interpreting the very provisions of Sub-section (1) of Section 23 of the said Act, it has been held that the two conditions must be stipulated in the document, which is binding on all including this Court as contemplated under Article 141 of the Constitution of India.*

26. *The judgments relied upon by the learned Senior Counsel for the appellant are not applicable to the peculiar facts and circumstances of the present case, in view of the latest dictum of the Hon'ble Supreme Court rendered on 6th December 2022 in the case of Sudesh Chhikara -vs- Ramthi Devi reported in LAWS(SC) 2022-12-17.*

27. *For the reasons stated above, the point raised in the present Intra Court Appeal is answered in the negative holding that the appellant has not made out any ground to interfere with the impugned order, dated 26.2.2019,*



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passed by the learned Single Judge in Writ Petition No.52010/2016.

11.19. The principle laid down in **Nanjappa**, following **Sudesh Chhikara**, is that the condition requiring the transferee to provide the basic amenities and physical needs of the senior citizen must be expressly stated in the document of transfer, and that this is a jurisdictional fact which the Tribunal must find before invoking Section 23(1). In **Nanjappa**, the gift deed did not contain such a condition, and it was therefore held that the transfer could not be declared void. Here, too, the decision is rooted in Section 23. As already explained, the present case is not one under Section 23; there is no transfer by respondent No.3 and no prayer to declare any transfer void. **Nanjappa** is therefore of no application and does not govern the present case.

11.20. As regards the decision dated 20.02.2023 in W.P. No.9943/2022, learned counsel for the petitioner did not place any reliance upon it. It is, therefore, not necessary to deal with it, and this Court expresses no opinion upon it.



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11.21. To sum up on this point, three of the four decisions relied upon, namely ***Sudesh Chhikara, Sri Jayashankar*** and ***Nanjappa***, are all decisions on the working of Section 23 of the Act, which deals with the cancellation of a conditional transfer of property. The present case does not arise under Section 23, and those decisions do not govern it. The fourth decision, ***Samtola Devi***,¹ is distinguishable on its facts and, in its paragraph 28, in truth supports the direction of eviction in a case of continued harassment such as the present one.

11.22. This Court accordingly answers Point No.(iii) by holding that the decisions relied upon by the petitioner, namely ***Samtola Devi, Sudesh Chhikara, Sri Jayashankar*** and ***Nanjappa***, do not govern the facts of the present case.

12. **Answer to Point No. (iv): Whether the impugned orders passed by the Assistant Commissioner and affirmed by the Deputy Commissioner call for interference in exercise of the writ jurisdiction of this Court?**

12.1. Sri. Bheemaiah, learned counsel for the petitioner, submitted that both the Assistant Commissioner and the Deputy Commissioner



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have erred in directing the eviction of the petitioner; that the application before the Tribunal was not maintainable; and that the impugned orders are unsustainable and deserve to be quashed in exercise of the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

12.2. Sri. K. Murthy, learned counsel for respondent No.3, submitted that the impugned orders are concurrent findings of fact recorded by two authorities after considering the material placed before them; that these findings are directed at securing the welfare and protection of a senior citizen; and that, in the exercise of writ jurisdiction, this Court does not sit as a further court of appeal to re-appreciate the evidence. He submitted that no error of jurisdiction, and no error of law on the face of the record, has been shown, and that no case is made out for interference.

12.3. The jurisdiction of this Court under Articles 226 and 227 of the Constitution, while wide, is well defined in the manner of its exercise. This Court does not sit in appeal over the orders of



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the Tribunal and of the appellate authority under the Senior Citizens Act. It does not re-weigh the evidence, nor does it substitute its own view of the facts for that of the authorities. It interferes only where the order suffers from a want of jurisdiction, a breach of the principles of natural justice, an error of law apparent on the face of the record, or a perversity such that no reasonable authority could have reached that conclusion on the material before it. It interferes with findings of fact only on grounds that are pleaded and made out.

- 12.4. Tested on these principles, the impugned orders do not call for interference. The Assistant Commissioner allowed the application of respondent No.3 and directed eviction, and the Deputy Commissioner, in appeal under Section 16 of the Act, considered the matter afresh and affirmed that order. There are thus two concurrent findings, namely that the petitioner and his wife have been harassing respondent No.3, and that her protection requires their removal from the house. These findings are supported by material, including the statement made by respondent No.3 herself before this



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Court. No breach of natural justice has been alleged, the petitioner having been heard at both stages. The findings recorded are not perverse; on the contrary, they are the only reasonable findings that could have been reached on the material.

12.5. What the petitioner really seeks is a fresh appreciation of the facts and a different conclusion on whether he was harassing his mother and whether he truly resides in the house. That is precisely the exercise which is not open in writ jurisdiction. For the reasons already recorded under Points No.(i), (ii) and (iii), the orders are within jurisdiction, are in keeping with the object of the Act, and are supported by the decisions cited, when those decisions are properly understood. There is no error of law and no perversity.

12.6. It is useful to state the matter in one further way, because it shows that the conclusion reached here rests on principle and not on sympathy. The very same parameters that govern the protective power, and that were noticed under Point No.(i), decide the question



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of interference. Where an authority orders eviction without recording reasons, without advertent to a genuine and subsisting claim of the occupant, without considering lesser measures, or by lending the Act to the enforcement of a stranger's title, its order departs from those parameters and must be corrected in writ jurisdiction. Where, on the other hand, the authority has acted in keeping with each of those parameters, as here, there is no departure to correct, and the writ court has no warrant to interfere merely because a different view of the facts is theoretically possible. The writ court interferes to keep the authority within the parameters, not to substitute its own discretion for that of the authority. There being no departure here, no ground for interference exists.

12.7. This Court accordingly answers Point No.(iv) by holding that the impugned orders passed by the Assistant Commissioner and affirmed by the Deputy Commissioner do not call for interference in the exercise of the writ jurisdiction of this Court.



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13. **Answer to Point No. (v): What order?**

13.1. In view of the findings recorded on Points No.(i) to (iv), the petitioner has not made out any ground for interference with the impugned orders. The writ petition is liable to be dismissed. Hence this court passes the following:

ORDER

- (i) The writ petition is dismissed.
- (ii) The jurisdictional Assistant Commissioner is directed to implement the order dated 12.08.2024 passed by the Assistant Commissioner, as also the order dated 04.02.2025 passed by the Deputy Commissioner, within a period of 60 days from the date of receipt of a copy of this order.
- (iii) It is made clear that the observations and findings in this order on the title to the subject property, including on the effect of the Wills dated 25.09.2000, 28.04.2002 and 22.12.2004, are prima facie in nature and are confined to the disposal of this



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writ petition. O.S. No.1236/2023, and any other proceedings between the parties, shall be decided by the concerned court on their own merits, uninfluenced by the observations in this order.

- (iv) Pending interlocutory applications, if any, stand disposed of.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

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List No.: 2 Sl No.: 1