

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THE HONOURABLE MR.JUSTICE V.G.ARUN

and

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 22ND DAY OF SEPTEMBER 2020 / 31ST BHADRA, 1942

WA.No.1460 OF 2015

AGAINST THE JUDGMENT IN WPC 4291/2013 DATED 02-06-2014
OF HIGH COURT OF KERALA

APPELLANT/ RESPONDENT NO.2:

SUBHASHINI, AGED 68 YEARS, C/O. RAMESH KUMAR,
PERIKKATHARA, KARUVANTHURUTHI, FEROKE,
KOZHIKODE DISTRICT-673631.

BY ADVS.

SRI.P.SANJAY

SMT.A.PARVATHI MENON

RESPONDENTS/ RESPONDENT NO.1 & PETITIONERS 1 AND 2:

- 1 THE DISTRICT COLLECTOR,
KOZHIKODE-673001,
APPELLATE TRIBUNAL MAINTENANCE AND WELFARE OF
PARENTS AND SENIOR CITIZENS ACT 2007.
- 2 P.ANILKUMAR, AGED 49 YEARS, S/O. VASU (LATE) ,
PERUKKATHARA HOUSE, KARUVANTHURUTHI P.O. ,
FEROKE, CALICUT.
- 3 JAYANTHI ANILKUMAR, AGED 45 YEARS, W/O.P.ANIL KUMAR,
PERIKKATHARA HOUSE, KARUVANTHURUTHI P.O. ,
FEROKE, CALICUT.

R1 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER

R2-R3 BY ADV. SRI.P.B.KRISHNAN

R2-R3 BY ADV. SRI.HARISH R. MENON

R2-R3 BY ADV. SRI.K.T.SHYAMKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-09-2020,
THE COURT ON 22-09-2020 DELIVERED THE FOLLOWING:

"C.R."

K.Vinod Chandran, V.G.Arun & T.R.Ravi, JJ.

W.A.No.1460 of 2015

Dated, this the 22nd day of September, 2020

JUDGMENT

Vinod Chandran, J.

"Children begin by loving their parents;
as they grow older they judge them; sometimes they
forgive them".

[Oscar Wilde]

Only sometimes; but that is no reason to stop loving them, refuse to care for them and alienate them, is the principle on which the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for brevity 'the Act'] has been interpreted in majority of the decisions of this Court and some other High Courts. Certain Benches trode a different path to find that the statute though inspired by traditional values, all the same has to be interpreted strictly and there could be no question of unrequited love raised; to bring in drastic consequences to the rights on property gifted or settled by reason of the love and affection of the donor or settler for the beneficiary. The matter is placed before us through a reference made by a Division Bench seeking resolution of the conflict;

specifically on the extent to which Section 23 of the Act could proceed in annulling such rights obtained in immovable property by transfer *inter-vivos*. We would refer to the conflicting decisions as we record the arguments.

2. Smt.Parvathi Menon, learned Counsel appearing for the appellant/senior citizen, argued for the position that, in the absence of the condition under Section 23(1) being expressed in the document of transfer; the Tribunal constituted under the Act has a duty to inquire into the circumstances under which a transfer has been effectuated by a senior citizen, in this case the mother herself. There could be no insistence of a condition being available in the deed, as to the transfer having been effected on condition of the transferee providing basic amenities and basic physical needs to the transferor, a senior citizen. The mere expectation of such a reciprocal understanding would suffice, which, even if not expressed, could be implied or inferred, from the recitals in the document or the circumstances surrounding it's execution. If on an inquiry the condition can be inferred or implied; and if the transferor-senior citizen asserts breach, then the deeming provision squarely applies and the transfer could be declared void by the Tribunal at the option of the senior citizen.

3. A Division Bench in W.A.No.2012 of 2012 dated 28.11.2012 [Malukutty Ponnarassery v. P.Rajan Ponnarassery], found that the absence of an express recital of an undertaking by the transferee, to make provision of basic necessities and amenities to the transferor, would divest the Tribunal of the authority to declare void a transfer effected by a senior citizen. The said decision is on a totally wrong premise without understanding the object of the enactment brought in specifically to curb a rampant degeneration of values in today's society leading to children refusing to look after their parents after having obtained valuable properties by way of gift or otherwise from their parents, which often is the only source of livelihood and residence for the old and infirm transferor, contends Smt.Parvathi.

4. It is argued that the decision in Shabeen Martin v. Muriel [2016 (5) KHC 603] held otherwise and so did another Division Bench in Sundhari v. Revenue Divisional Officer [2018 KHC 4655 = 2013 (3) KLT 1082]. The decisions of a learned Single Judge reported in Radhamani v. State of Kerala [2016 (1) KHC 9] and Manju G.S. v. K.N.Gopi [2020 (1) KHC 10] has looked at the religious and philosophical texts to highlight the traditional value systems; validating an interpretation which would further

the ideal cause and bring to fruition the objects of the enactment. It is argued that Section 3 gives an overriding effect to the provisions of the Act and a senior citizen is relieved of the rigmarole of a regular judicial proceeding with the intention of providing expeditious relief. The procedure of the Tribunal as declared by Section 8 of the Act is summary. The Tribunal is also conferred with the powers of the Civil Court. The jurisdiction of Civil Courts is barred under Section 27 and Section 32 empowers the State Government to prescribe the procedure of the Tribunal. An expeditious and effective remedy thus provided by the legislature, by-passing the regular remedies available, warrants a liberal interpretation, furthering the object of the enactment.

5. The averments available from the records are read out to bring out the facts in the present case. The life interest reserved for residence and for collecting the income from the property settled on the son, which is expressly provided in the document, enables an inference that the mother expected the son to look after her in her old age as found in Sundhari (*supra*). The learned Single Judge committed an error in having followed the decision in W.A.No.2012/2012. The learned Counsel would concede that Shabeen Martin and Sundhari did not notice the unreported

decision in W.A.No.2012/2012, all by Division Benches. It is asserted that W.A.No.2012/2012 was wrongly decided and the other two Division Benches have rightly addressed the issue considering the societal change the statute intended to bring in providing succour to those old and infirm, who were neglected by their off-springs or those in the direct line of succession, in the case of the childless.

6. Sri.P.B.Krishnan, learned Counsel appearing for the respondent/son/beneficiary of the settlement deed executed by the appellant, would argue for the position that Section 23 of the Act mandates the condition to be expressed in the document, for the Tribunal to invoke its jurisdiction to declare it void. It is argued that looking at the enactment as such, Section 23 under Chapter V is a stand alone provision, which has to be interpreted in the context in which the same has been introduced. There is no quarrel with respect to the stress laid in providing care for the elderly, imbibing the traditional norms and values of the Indian society, as has been stated in the statement of objects and reasons. All the same it cannot lead to total obliteration of valuable rights in a property, obtained as per the law established.

7. With respect to construing a statutory provision, reliance is placed on the decision in Kotak Mahindra Bank

Ltd. v. Hindustan National Glass Ind. Ltd. [(2013) 7 SCC 369] and the quotation made from the authoritative text 'Principles of Statutory Interpretation' (Justice G.P.Singh). It is pointed out that the various words used in Section 23, except 'senior citizen'; which is specifically defined in the Act of 2007, are terms, the meaning and the scope and purport of which are discernible from the various enactments dealing with rights on property and contract. Property is defined in the Act of 2007, just as the Transfer Of Property Act, 1882 ('TP Act' for brevity) includes both movable and immovable properties. There cannot be a different interpretation of these terms so found in Section 23, from how they were ordinarily and legally understood for decades together. Section 3, which gives an overriding effect to the Act, does not render otiose the definition of the various terms discernible from the various enactments; found in Section 23. The provision does not create separate rights on the transferor or hitherto unknown liabilities on the transferee. Simply stated, it only provides a speedy remedy to a specified category of citizens - the senior citizens - who have been chosen to be treated differently for reason of their advancing age and their requirement for assistance.

8. It is pointed out that the Tribunal has been constituted under Section 7 to specifically adjudicate and decide upon the order for maintenance under Section 5 and the Rules too prescribe a procedure to that end. Pertinently, Section 32, which grants power to the State Government to prescribe by rules, a procedure for the Tribunal, does not concern itself with Section 23. Nor does the Rules framed speak of any prescription as to how an inquiry contemplated under Section 23, has to be proceeded with. It is pointed out that the transfer as contemplated under Section 23 is very narrow though the rule of *ejusdem generis* does not strictly apply to construe the word 'otherwise' as something in the nature of a gift. It can only be something akin to a gift or settlement by a parent in favour of an off-spring on consideration of love and affection alone. If, on the contrary, a sweeping interpretation is allowed, then even a sale deed with a condition as required under Section 23 could be declared void. In the context in which the statute has been introduced, the obligation on the transferee to provide 'basic amenities and basic physical needs' to the transferor as a condition for transfer, has to be strictly construed and it should be expressly stated in the document, argues Sri. Krishnan.

9. A gift as contemplated under the TP Act could have a condition precedent or a condition subsequent. Reliance is placed on P.J.P.Thomas v. I.T.Commissioner [AIR 1964 SC 587], Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker [(1997) 2 SCC 255] and Renikuntla Rajamma (D) by LRs. v. K.Sarwanamma [(2014) 9 SCC 445]. Subbegowda v. Thimmegowda [AIR 2004 SC 2428], is relied to argue how, the question of construction of a document arising in a civil proceeding has to be decided. This necessarily calls for an inquiry, where evidence can be adduced as to the circumstances prevailing at the time of execution of the document. This exercise is strictly a judicial exercise, which cannot be embarked upon by a Tribunal constituted under Section 7, since it brings out drastic consequences, of the document being declared void on the mere statement of the transferor that provision of 'basic amenities and physical needs' have been denied. There can neither be an inference of such a condition, on the basis of the inquiry into the circumstances surrounding the execution nor can it be implied, on the mere reservation of life interest in the transferred property. The Tribunal can assume jurisdiction only if the condition is available in the document expressly stated and recited and the inquiry could only be to the extent of whether there has been a breach. On

finding the breach the Tribunal does not have any discretion, but has to declare void the transfer of property as one made by fraud, coercion or undue influence, at the option of the transferor. To emphasise the drastic consequence it entails, it is pointed out that Section 23 employs a deeming fiction and does not create a presumption. If it were a presumption, there was scope for rebuttal evidence to be led; which benefit is unavailable when there is a deeming fiction employed.

10. When a complaint is raised before the Tribunal, jurisdiction could be assumed only if the document expressly discloses the condition, is the compelling argument. If it is held otherwise, again the interests of third parties who have *bona fide* purchased such a property or has created security interest would be jeopardized without any remedy whatsoever. A third party would also be alien to the proceedings under the Act, since there is no scope for deciding on such rights raised by a *bona fide* purchaser or a creditor who has a security interest in the property. In the present case itself after the settlement, the respondent has availed a loan from a Bank to construct an house in the property after mortgaging the land. Section 27 barring the jurisdiction of the Civil Courts prohibits grant of injunction in respect of matters

arising under the Act. Section 23 is enacted only to protect the interest of a senior citizen and to provide a speedy remedy, especially in the context of the delay caused in availing a normal remedy before the Civil Court with multiplicity of appellate forums provided. It is also pointed out that the Tribunal constituted under Section 7 is not a Judicial Officer and is an Executive Officer of the State not below the rank of Sub Divisional Officer; not fully versed in the principles of judicial adjudication. This further puts to serious peril an inquiry into the circumstances under which a document was executed, with inferences and implications drawn, based only on such circumstances as discernible from the oral depositions or other documents. Reliance is placed on Madras Bar Association v. Union of India [(2010) 11 SCC 1] to emphasize that the Tribunal constituted under the Act is not one which discharges a judicial function of the State, which has been entrusted with the Courts established. The matters relating to title to immovable property can only be dealt with by a Civil Court and not in a summary inquiry as has been held in Government of A.P. v. Thummala Krishna Rao [(1982) 2 SCC 134]. Ammonia Supplies Corpn. v. Modern Plastic Containers (P) Ltd. [(1998) 7 SCC 105] is also placed before us to urge the very restricted jurisdiction

conferred by the provision itself. The Tribunal constituted under the Act only examines the jurisdictional fact as to whether there is expressed; a provision of 'basic amenities and basic physical needs' by the transferee to a transferor, as a condition for transfer of property, in the document which effectuates such transfer. The Tribunal is entitled to assume jurisdiction only when that fact is established from the document and proceed to look at the breach complained of. On finding breach alleged to be established, the Tribunal is empowered to declare the transfer void, at the option of the transferor.

11. Sri.P.Narayanan, learned Senior Government Pleader, would support the appellant and argue for the position that a wider interpretation has to be necessarily given to Section 23, which alone would fulfil the object of the enactment. A number of decisions of the various High Courts, specifically that of the Punjab and Haryana High Court in CWP No.5086 of 2016 (O&M) dated 03.05.2018 [Smt.Raksha Devi v. Deputy Commissioner-cum-District Magistrate], Mohinder Singh v. Deputy Commissioner-cum-Appellate Tribunal [2018 SCC OnLine P&H 2171], of Madras High Court in W.P.(MD) No.3259 of 2016 & W.M.P.(MD) No.2846 of 2016 dated 27.02.2020 [M.Shanmugam Pillai v. The District Collector, Pudhukkottai District] and of Karnataka

High Court in N.D.Vanamala v. The State of Karnataka [ILR 2019 Kar. 247] and W.P.No.9828/2019 (GM-RES) dated 02.12.2019 [Smt.Shanthamma v. The Chairman, Tribunal for Maintenance and Welfare of Parents and Senior Citizens] are relied on. Some of these draw support from the decisions of this Court and quotes extensively from religious texts to emphasize the humane value systems embedded in every society.

12. Smt.Parvathi Menon, in reply, would urge that Section 23 cannot be read in isolation. Section 23, according to her, has to be read harmoniously with Sections 4 and 5. It is argued that a purposive interpretation has to be given to Section 23 especially considering the relationship between the transferor and the transferee. This also has to have reference to the realities of life in Indian society, where parents often express their unconditional love by gifting/settling properties on their progenies; always with the hope and expectation that their gesture will be reciprocated by provision of sufficient support and maintenance in their old age. A doctrinaire approach has to be eschewed in interpreting the legislation, which has as its very object, provision of physical and financial support to the elderly and to prevent them from being exposed to physical and emotional

neglect. A decision of a Division Bench of the Delhi High Court, Sunny Paul vs. State of NCT of Delhi LPA 205/2017 dated 03.10.2018 is relied on to further buttress this contention. The learned Counsel would also place before us the Twenty-Eighth Report of the Parliamentary Standing Committee on Social Justice and Empowerment of the Fourteenth Lok Sabha with respect to the Bill which led to the enactment of 2007. It is also argued that the option conferred on the transferor to seek for the transfer to be declared void, is in the form of a persuasion on the children, to look after their parents, failing which they would lose their valuable rights on the property. There can be no dilution of the provision, which would be rendered ineffective otherwise.

13. We are quite clear in our minds that the legislation which we are looking at is an exercise in social engineering attempted to curb the evil of alienation of senior citizens; in today's society motivated and furthered by consumerism. Legislative exercise has travelled far from the earlier view that, for the jurist, law is absolutely independent of morality [John Austin]. There are overlapping areas of legality and morality; which all the same, in a constitutional dispensation has to have a backing from the said document. Huntington Cairns in his

book 'Legal Philosophy from Plato to Hegel' rues the distancing of philosophy from jurisprudence; especially when those earlier Greek Philosophers occupied themselves actively with elucidation of law. A philosophical contemplation, according to the learned author, influences development of methodology, contributes ideals and provides profound practical knowledge in the field of law. But we have our own doubts as to whether the traditional values and general moral policies could determine and expand the scope and ambit of a piece of legislation, to bring in consequences which even the law makers would not have contemplated or intended. The Act of 2007, as is seen from its statement of objects and reasons, imbibes the traditional values and enjoins upon the State as also the citizen, especially the progenies; including those in the line of succession, the duty to care for senior citizens in the twilight of their life. The legislation is inspired by the social realities generally and particularly in the Indian context, where there is prevalent a tendency for the old and infirm to gift or otherwise settle their properties on their children. Section 23, it was argued, realizes that often the elderly, give up their valuable rights over property, in the hope and expectation that they would be looked after and their infirmities assuaged. Though there

is an element of morality in the legislation as such, that cannot be the sole reigning consideration in interpreting a provision in the statute which brings in drastic consequences as available in Section 23, totally extinguishing the rights of the transferee.

14. We are guided by the caution expressed by a Constitution Bench of the Hon'ble Supreme Court in Navtej Singh Johar vs. Union Of India [2018 (10) SCC 1]. There the question was as to whether a law was violative of the fundamental rights guaranteed under Article 14, 15, 16 and 21 of the Constitution. Quite distinct from what we are called upon to consider here. The underlying principles of inclusiveness and the need to uphold individual dignity of a section of people, commends us to quote from the said decision. There the issue considered was that of inclusiveness in society, of a minority, the LGBT community so as to uphold their individual dignity; unaffected by their sexual orientation. Here too the enactment attempts to provide inclusiveness to the community of senior citizens and ensure their care and welfare; a dignified life, in their twilight years.

15. The decision proceeded on constitutional morality and not on general public morality, to caution so:

"132. We may hasten to add here that in the context of the issue at hand, when a penal provision is challenged as being violative of the fundamental rights of a section of the society, notwithstanding the fact whether the said section of the society is a minority or a majority, the magna cum laude and creditable principle of constitutional morality, in a constitutional democracy like ours where the rule of law prevails, must not be allowed to be trampled by obscure notions of social morality which have no legal tenability. The concept of constitutional morality would serve as an aid for the Court to arrive at a just decision which would be in consonance with the constitutional rights of the citizens, howsoever small that fragment of the populace may be. The idea of number, in this context, is meaningless; like zero on the left side of any number".

One of the concurring judgments approvingly quoted the following from the decision of the Delhi High Court in Naz Foundation vs. Government (NCT of Delhi) 2009 Online Del 1762;

"79. Thus popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights under Article 21. Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjecting notions of right and wrong. If there is any type of

"morality" that can pass the test of compelling State interest, it must be "constitutional" morality and not public morality. ...

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86. ... In our scheme of things, constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view."

16. In understanding the legislative intent behind the subject enactment, certain decisions of this Court and other High Courts have looked at the religious texts - the Smritis, the Bible and the Quran. In that context, we deem it apposite to look into Balusu Gurulingaswami v. Balusu Ramalakshamma, [1899 SCC OnLine PC 5 : ID (1897-1900) 9 All 1001 : (1898-99) 26 IA 113 : (1899) 9 Mad LJ 67 : ILR (1899) 21 All 460]. Long before the declaration of this country as a secular republic, the validity of adoption of an only son was considered by the Privy Council, under the Hindu Law. The argument against such adoption was also an absolute prohibition as available in the Smritis, which, then had received acceptance in certain judicial decisions. It was urged that the religious and legal aspects of adoption were inseparable. Their Lordships held that "the precepts are precise, and yet their Lordships cannot find that anybody asserts them to be law in any but the religious sense" (sic page 480). In examining the validity

of temporal arrangements, the temporal courts cannot decide it merely on religious beliefs was the finding. It was held so:

"No system of law makes the province of legal obligation co-extensive with that of religious or moral obligation. A man may, in his conduct or in the disposition of his property, disregard the plainest dictates of duty. He may prefer an unworthy stranger to those who have the strongest natural claims upon him. He may be ungrateful, selfish, cruel, treacherous to those who have confided in him and whose affection for him have ruined them. And yet he may be within his legal rights. The Hindu sages doubtless saw the distinction as clearly as we do, and the precepts they have given for the guidance of life must be construed with reference to it. If a transaction is declared to be null and void in law, whether on a religious ground or another, it is so; and if its nullity is a necessary implication from a condemnation of it, the law must be so declared. But the mere fact that a transaction is condemned in books like the Smirtis does not necessarily prove it to be void. It raises the question what kind of condemnation is meant" (page 482).

As far as prohibition against adoption of an only son, it was held that *"it appeals more to the moral sense not to exercise the power than a denial of its existence"* (sic Page 488-489). The injunction imports an admonition rather

than a command, was the finding of the learned Law Lords to uphold the adoption of an only son.

17. We are of the opinion that in deciding the scope of Section 23(1), it would be unsafe to look at religious texts or philosophical treatises. That the children should look after their parents, as a principle or a value, require no validation from scriptures or philosophical sources. The Act attempts to provide a dignified existence to the elderly and in drawing the contours of the power conferred under Section 23(1) we have to necessarily be conscious of the inter-play of the rights of the senior citizen and that of the beneficiaries to a transaction; of those acquired on property as regulated by various statutes. The Preamble speaks of the Act as one to provide effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. Though not specified it has a reference to Article 21 and 41 of the Constitution of India.

18. Article 41 included in Part IV, 'Directive Principles of State Policy', is an obligation cast on the State and is not enforceable. The Act however, casts an obligation on the persons who are entitled to inherit, to maintain and care for their aged parents/relatives, in the

twilight of their life. We are not called upon to decide the vires of the Act or any of its provisions. We are also not concerned with the aspect of maintenance and we will not embark upon an enquiry into that too. Only to understand the scheme of the Act, Chapter II deals with 'Maintenance of Parents and Senior Citizens'. Children and in the case of childless senior citizens, those in the line of succession, are persons against whom such claim can be raised. When the relatives in the line of succession are specifically noticed, we wonder whether a childless senior citizen who has no wealth/property in his/her possession could also seek such a remedy against a relative who has sufficient means. Definitely the State would not have chosen to prefer only those senior citizens with some tangible assets; in which event it would run foul of Part III of the Constitution. We cannot but, also wonder as to, when there is an order of maintenance passed against a relative or even a son or daughter of a senior citizen, who has sufficient landed properties; whether there could be any restriction inferred on that senior citizen from bequeathing his property to another; another child or a total stranger, leaving absolutely no properties to be inherited.

19. Be that as it may, an application for maintenance is spoken of in Section 5 and the constitution of the Tribunal as per Section 7 is to adjudicate and decide upon the order for maintenance under Section 5. We do not think that a provision for speedy adjudication and recovery of maintenance entitled to parents and senior citizens from children falls foul of the Constitutional scheme. But Section 23, as has been argued by Sri.P.B.Krishnan, is a stand alone provision and according to us stands out from the general scheme of the Act. It is pertinent that the statement of objects and reasons does not speak about any property rights of a senior citizen and only speaks of the need to have a simple, inexpensive or speedy provision to claim maintenance for parents, which otherwise is available under the Code of Criminal Procedure, 1973. We leave our apprehensions to be considered in an appropriate proceeding as the vires of the provision is not under challenge here; or for constructive contemplation by the executive Government.

20. Chapter V under which Section 23 is included, speaks of 'Protection of Life and Property of Senior Citizen'. Section 21 speaks of measures for publicity and awareness of the provisions of the Act, sensitization and training of both executive and judicial officers enjoined

with the task of implementing the provisions of the Act and effective co-ordination between the various Ministries or Departments for addressing effectively the issues relating to welfare of senior citizens. Section 22 speaks of authorities who may be specified for implementing the provisions of the Act. Section 32 empowers the State Government to make rules prescribing the manner in which an inquiry under Section 5 shall be held and the power and procedure to be followed by the Tribunal under Section 8, which permits such inquiry to be summary. There is neither power, specifically conferred on the State Government to prescribe the procedure in an application under Section 23, nor is it prescribed in the Rules. Section 8 provides a summary procedure only with respect to the inquiry under Section 5 and not that under Section 23. There is not even a form prescribed in which an application is to be made before the Tribunal; for prescription of which there is no empowerment in the statute, as we noticed. Hence our observation that Section 23 (1) stands out, glaringly in contrast to the general scheme of the Act. Sub-section (2) again is with reference to maintenance out of an estate and it is that right available under Section 39 of the Transfer of Property Act, 1882 (for brevity 'the T.P Act'); which align with the scheme of the enactment.

21. Before we proceed further we have to reject the contention that Section 23 (1) is in the nature of a mere persuasion to care for parents, on the threat of losing valuable rights obtained in a property. We cannot understand the said provision leading to drastic consequences, to be a mere boogey intended to frighten and not to be enforced. In this context it also has to be noticed that but for a declaration of the transfer to be void, the statute does not provide for re-possession, for which a senior citizen would anyway have to approach the civil court. The very intention of the statute to provide expeditious remedy is defeated.

22. We now look at the facts emanating from the various decisions which led to the reference. In Malukutty Ponnarassery, a mother having nine children, gave a portion of her property to the first son by way of gift and sold the balance, the proceeds of which were distributed amongst her other children. Section 23 was invoked on the ground that the gift deed was executed on the understanding that the donee would look after her throughout her life and the allegation that she was thrown out of her house forcing her to take shelter with one of her daughters. The Division Bench found that there was not even a whisper in the document, regarding the undertaking alleged to have been

given by the respondent-son, who was dragged before the Tribunal. The impugned judgment in the present appeal followed this Division Bench decision.

23. In the instant case too, as is evident from Exhibit P2 application made before the Tribunal, the appellant had four children and the properties were divided amongst five, including the mother. The share allotted to the appellant was settled in favour of her younger son, for the purpose of constructing a house in the said property. The settlement deed is produced as Exhibit P1. It does not contain an express condition as required under Section 23, as part of its recital. The contention is that there is a reservation of life interest with respect to residence in the residential house in the property as also taking usufructs from the coconut trees standing in the property scheduled as Exhibit P1. It is based on this reservation, it is urged, that there can be implied, a condition of provision of basic amenities and basic physical needs throughout the life of the transferor. The very fact that the mother had preferred one child from among the four, on whom the mother's share was fully settled is a circumstance from which it can be inferred that the transferor had an expectation and hope that she would be looked after in her old age; is also the argument. Immediately we cannot but

observe that no tenet of public morality attaches the obligation to care for parents, on sole considerations of the material assets of the parents or absolve it in cases of penury of the parent.

24. In Shabeen Martin, the 1st respondent, aunt, executed a settlement deed in favour of one of the appellants, her nephew, which was sought to be declared void under Section 23. A Division Bench found that on a reading of Section 23 it is not the legislative requirement or intent that the document evidencing the transfer itself should contain an express condition. It was found that if there is evidence to the satisfaction of the authorities that the requirements of the section are satisfied, the power under Section 23 could be invoked. The Division Bench while declaring so, affirmed a Single Bench decision in Radhamani. In Radhamani, one Gopalakrishnan Nair, who was a wealthy businessman in Mumbai, came down to Kerala to settle down in his old age. His wife and children remained at Mumbai. In Kerala, Gopalakrishnan Nair stayed with his nephew and niece; on whom he settled his properties on account of his love and affection and on the ground that the beneficiaries were maintaining and taking care of him, in his old age. Later, Gopalakrishnan Nair left to fend for himself, approached the Tribunal to declare the settlement

void, under Section 23(1). The learned Single Judge affirmed the setting aside of the deed, on which there can be no quarrel. The deed contained a specific recital that the settlement was made on account of the fact that the beneficiaries were taking care of and maintaining Gopalakrishnan Nair in his old age. Thus, the condition in Section 23(1) is expressly available in the document; though not in the same words.

25. Sundhari again was a case in which the parents gifted their property to their daughter. The father expired and problems arose between the mother and the daughter. The mother approached the Tribunal and though the Tribunal set aside the gift deed as such, the learned Single Judge found that the gift made by the father, who is no more, cannot be set aside under Section 23. The Division Bench agreed with that and found that on setting aside of gift made by the mother, she along with her daughter becomes co-owners of the property. Their right to residence as found in the deed was held to be sufficient satisfaction of the condition under Section 23(1), reckoning it to be a provision for basic amenity or physical need.

26. Section 23 (1) & (3) reads as under:

"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.

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(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".

27. None of the words employed in Section 23(1) has been defined in the Act except 'senior citizen'. The other words which have definite legal connotation, have to be understood in the context in which the same has been used, which is discernible from the general scope of the statute as is laid down by the Hon'ble Supreme Court in Kotak Mahindra Bank Limited; with reliance placed on an authoritative text on interpretation. Section 3 only saves any provision in the Act of 2007, inconsistent with any other enactment. The various legal terms are not

differently defined and no substantive right is intended to flow from the enactment of 2007. It has to be understood as not intending any conferment of rights or imposition of liabilities hitherto not conferred or imposed by the various other enactments. The Act and Section 23(1) only provides a speedy remedy. If at all there is any right conferred, it can only be that of declaration of a gift or a similar transaction, as void, on the grounds of fraud, coercion and undue influence, which otherwise would make it voidable under Section 19 of the Contract Act. The context in which the enactment was brought in, as we have already seen, is to curb the evil of alienation of senior citizens from society and the purpose is to provide expeditious adjudication and recovery of maintenance. The remedy available, prior to the Act, insofar as maintenance is concerned, which is sought to be by-passed, as has been referred to in the Act itself, is Section 125 of the Code of Criminal Procedure ['Cr.P.C.' for brevity). The relevant statutes insofar as transfer of property is concerned, would be the T.P. Act, the Indian Contract Act, 1872 and so on and so forth. The remedy to enforce a right or to annul one created by a document executed, is before the Civil Court. Does Section 23(1) relate to every such remedy, against all known forms of transfer of property, which

otherwise is enforceable before the Civil Court is the vexing question we have to first deal with in considering whether the condition has to be expressly specified in the document for the jurisdiction of the Tribunal to arise.

28. Section 23 does not create or negate any substantive rights; except the one mentioned above and merely provides a procedure for speedy recovery, to ensure which a deeming fiction is created with respect to certain categories of transfer of property, made subject to a condition. The fiction created; on a breach of the specified condition, deems the transfer itself to be vitiated by reason of fraud, coercion or exercise of undue influence. The transfer of property as spoken of in the provision has to concede to the various transfers spoken of in the T.P Act. The vitiating factors are those available under common law and defined under the Indian Contract Act. Normally the transferor will have to approach the civil courts to enforce his claim to get the transfer set aside. When a remedy is sought before the Civil Court, the normal rules of evidence applies and the adjudication is carried on by a judicial officer.

29. 'Transfer of property' as defined in the T.P.Act is an *inter vivos* transfer and there are several category of transfers evident from the said Act. The first

question we would have to answer is as to whether the transfer of property which could be annulled would take in all such transfers spoken of in the T.P. Act. In considering the above question, we would first emphasize that Section 23(1) speaks of 'transfer by way of gift or otherwise' which, with the use of 'otherwise' in normal circumstances, should take in every such transfer as spoken of in the T.P. Act. However, the Legislature if having such intention could have merely stated "where any citizens who after the commencement of this Act has transferred his property ...". The very use of the words 'gift or otherwise' in the provision, according to us, lays bare the intention of the legislature to restrict the transfers covered under the provision; which is the 'intention to the contrary' [underlined for emphasis] as held in Kochunni v. State of Madras [AIR 1960 SC 1080] and Grasim Industries v. Collector of Customs [(2002) 4 SCC 297]; decisions we will refer to a little later. There should be some meaning ascribed to every word in a provision, which otherwise would not have been used at all. The words 'gift or otherwise, if it were redundant, the law makers would not have used it.

30. We are quite aware that the use of the word 'otherwise' would not in all circumstances invite the rule

of *ejusdem generis*. In Lila Vati Bai v. Bombay State [AIR 1957 SC 521] a Constitution Bench of the Hon'ble Supreme Court was considering an enactment which enabled requisition of vacant property for a public purpose. The Court *inter alia* was considering the effect of the word 'otherwise' in the provision, which contemplates a vacancy when a tenant '*ceases to be in occupation upon termination of his tenancy, eviction or assignment or transfer in any other manner of his interest in the premises or otherwise*'. The contention that 'otherwise' should be construed *ejusdem generis* was rejected, since it was found, in that context, that the Legislature was cautious and thorough enough to bar all avenues of escape by using the words 'or otherwise' which is not a word of limitation, but of extension covering all possible ways in which a vacancy may occur.

31. Another Constitution Bench in Kochunni (*supra*) considered the effect of the words 'receiving maintenance from properties purporting to be sthanam properties as of right or in pursuance of custom or otherwise'. It was held that maintenance being '*foreign to the concept of sthanam, if there is right for such a maintenance, then the sthanam is to be deemed to be a tarwad*' (*sic*). The rule of *ejusdem generis* was found to be not an inviolable rule of law and held to be a permissible inference in the absence of any

indication to the contrary [underlined for emphasis, as referred to in para 29 above]. The right or the custom mentioned in the clause was found to be a distinct genus; thus not confining the words 'or otherwise' to things analogous to a right or contract. This was again a decision based on the context in which the enactment was made, which protected maintenance, whatever may be its source or origin and there was no contray intention discernible (emphasized).

32. A three Judge Bench of the Hon'ble Supreme Court in Centrotrade Minerals and Metals Inc. vs. Hindustan Copper Ltd. MANU/SC/0464/2020 considered the interpretation of the word 'otherwise' as available under Section 48 of the Arbitration and Conciliation Act, 1996. The contention therein was also that one of the parties before the arbitrator did not have a proper opportunity to present its case. Section 48 has a nominal heading "Conditions for enforcement of foreign awards" and speaks of a refusal, only on the conditions enumerated thereunder, one of which is the party against whom the award is invoked not being given proper notice of the appointment of the arbitrator or of the proceedings or "was otherwise unable to present his case". The respondent before the Hon'ble Supreme Court against whom the arbitration award was passed claimed that

the 'otherwise' has to be given a very wide interpretation specifically relying on Kochunni. It was found that Kochunni dealt with a different enactment with a different object and cannot apply to construing the word 'otherwise' appearing in the Arbitration Act. It was held that having failed to avail the opportunity accorded by the Arbitrator, the respondent cannot seek for refusal of enforcement under Section 48. A narrower meaning of the word "otherwise" was preferred in the context in which the same appeared in the Arbitration Act.

33. Grasim Industries found the rule of *ejusdem generis* to be applicable only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent (emphasized). It was held that 'where the context and the object and mischief of the enactment do not require restricted meaning to be attached to the words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning' (sic para 12). We emphasize that in the context of a particular enactment as also when there is a contrary intention indicated, in the use of the word

'otherwise' there can be a restricted meaning inferred.

34. We find apposite a reference to the decision in George Da Costa v. Controller of Estate Duty, Mysore [AIR 1967 SC 849], where the Court was considering the aspect of complete exclusion from a property gifted, which also included 'from any benefit by contract or otherwise'. Relying on The Attorney-General v. Seccombe [1911 2 K.B. 688], it was held that 'in the context of the Section, the word 'otherwise' should be construed ejusdem generis and it must be interpreted to mean some kind of legal obligation enforceable at law or in equity, which though not in the form of contract may confer a benefit on the donor' (sic). The case before the Supreme Court and the Kings Bench were both with respect to estate duty on gifts where there was no total exclusion of the donor, in his lifetime. The provisions were also *in pari materia*. On this aspect the Supreme Court agreed with the Kings Bench, but differed from that decision on the question of complete exclusion; which was found to be not satisfied even if the donor continued in the property out of filial affection. We are not concerned with that other aspect, but emphasize that this was a case in which the words 'or otherwise' was given a restricted meaning looking at the preceding word 'contract'; confined to legally enforceable benefits.

35. In this context, we also have to refer to the definition of 'sale' as found in the TP Act (Section 54), which is a transfer of ownership in exchange for a price paid or promised or part-paid and part promised. On conclusion of the sale, the title passes absolutely and by Section 11 of the TP Act, any restriction repugnant to the interest created would be void. The context in which the Act has been enacted is very relevant in applying the rule of *ejusdem generis*. A paragraph from Reserve Bank of India v. Peerless Co. [(1987) 1 SCC 424] is quoted herein below:

33. "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the

Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place".

If text is the texture - context is what gives the colour. We are of the opinion that looking at the text of the Act and looking at the context in which it was enacted and has application, the intention of qualifying the transfer of property by a senior citizen with the words 'gift or otherwise', projects a clear indication to restrict the words 'or otherwise' to such category of transfers which are in the nature of gifts or partakes the character of gift.

36. Having held that the words 'gift or otherwise' have a restricted application insofar as transfer of property, the next question would be as to the condition imposed insofar as a gift is concerned. In Philip John v. Commissioner of I.T., Calcutta [AIR 1964 SC 587] the question was as to whether the income derived from an asset held in the hands of the wife would be taxable at the hands of the husband when the transfer had occurred at a time when there was no subsisting relationship. Here, the man

and woman had agreed to a marriage in September and before the event itself, the man transferred the shares in consideration of the forthcoming marriage. It was held that the gift may be made subject to conditions, either precedent or subsequent. A condition precedent has to be performed before the gift takes effect and a condition subsequent after it has taken effect. With respect to a subsequent condition if it remains unfulfilled, it will put an end to the gift. In that case, since the engagement was announced in September and the transfer occurred in December, prior to the marriage, it was held; on the marriage being held, the subsequent condition would stand fulfilled and the gift has effect from the date of transfer itself. The transfer by way of gift was found to be not between husband and wife, since there was no such relationship at the time of gift.

37. Section 126 of the T.P.Act, speaks of suspension or revocation of gifts and validates any condition which does not depend upon the will of the donor. Hence, when there is a subsequent condition imposed, it does not vitiate the gift as such and the fulfilling of such condition is a necessary concomitant of the gift having been effected, provided it satisfies the conditions in Section 123 of the Act, of the gift being by way of a

registered document executed by or on behalf of the donor and attested by at least two witnesses. In the case of a gift of movable property, by means of delivery too.

38. Subbegowda again looked at the aspect of conditional transfer by way of a settlement and held so in paragraph 9:

"9. A conditional transfer or a settlement accompanied by conditions is not unknown to the law of real property. It is permissible in law to annex or encumber any grant or alienation with condition or limitation which will operate and the Court will give effect to it unless there is some provision of law which annuls or invalidates such conditions, restraint or limitation. None has been brought to our notice".

39. The restricted interpretation urged upon the provision by the respondent, is also on the additional aspect of the Tribunal constituted being an Executive Officer of the State. This again is a deliberate act of the Legislature, fully conscious of the fact that the adjudication to be carried on is in a very limited and narrow compass especially considering the nature of the proceedings which is declared to be summary in the statute itself. Such restricted jurisdiction conferred on Tribunals have engaged the attention of the Hon'ble Supreme Court in

Thummala Krishna Rao, which considered an Act enabling eviction of encroachments in Government property. The summary proceedings were found enabled only where there was no dispute on title and unauthorized occupation is found to be undoubtedly of Government land. Ammonia Supplies Corpn. also considered the restricted jurisdiction of the Company Court when there was a specific bar of jurisdiction of the Civil Courts under the Companies Act. What came up for consideration is Section 155 of the Companies Act, which provided for rectification in the Register of Members. Though all matters pertaining to rectification could be considered under Section 155 of the Companies Act, the adjudication being summary in nature, a complex determination of the facts and circumstances was held to be excluded from the purview of the Section. If a right is to be established, then necessarily the party has to approach the Civil Court, was the finding.

40. The Legislature also has, in different circumstances, provided for an expeditious adjudication unencumbered by the rigour of appeal and revision as found in Section 6 of the Specific Relief Act, 1963. A person in possession even without a valid title, could always seek restoration of possession under Section 6 where the title would not be a question raised or considered. Appeals or

revisions are specifically prohibited and the remedy of the title holder is also saved. This question is to be considered by a judicial body and not by a Tribunal manned by an Executive Officer, ill versed in the rules of evidence and the nuances of a judicial determination. The Legislature cannot be said to have been unaware of such measures and hence we find that there is a conscious deliberate intention discernible from the provision itself which confers a very limited and restricted jurisdiction on the Tribunal constituted with an officer in the executive branch of the State, not below the rank of a Sub-Divisional Officer.

41. The Tribunal constituted under the Act of 2007 does not enable it to carry out a judicial adjudication as to the prevailing circumstances, to infer or imply a condition, for the purpose of cancelling a gift deed as held in Subbegowda. Courts and Tribunals though exercising judicial power and discharge similar functions, the well recognised differences were succinctly stated in Madras Bar Association by a Constitution Bench of the Hon'ble Supreme Court:

"45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.

(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act".

The Constitution Bench contemplated complete exclusion, of Judicial Officers, only in highly specialized fact finding Tribunals. Even in cases where Tribunals are manned by or constituted of Judicial members, the procedure was found to be generally permissible of regulation by the Tribunals

themselves applying the provisions of the Code of Civil Procedure [C.P.C.] when it is required. Such Tribunals also are not regulated by strict rules of evidence.

42. We have already seen that power to prescribe the procedure for inquiry under the Act, is conferred on the Tribunals constituted under the Act of 2007; subject to that prescribed by the State Government under Section 32. The procedure contemplated by the statute is summary as per Section 8(1). Sub-section (2) of Section 8 confers the Tribunal with the powers of a Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses, compelling discovery of evidence, documents and material objects and for such other purposes as may be prescribed. The Rules do not prescribe the Tribunal to invoke any other provisions of the CPC. Section 8(2) does not confer the Tribunal with the power of the Civil Court as such and speaks only of the Tribunal being a Civil Court for the purpose of Section 195 and Chapter XXVI of the Cr.P.C. The Tribunal hence, cannot be a substitute for a Civil Court for the purpose of carrying out an inquiry as to the circumstances which led to the execution of the document which is capable of being declared void under Section 23(1).

43. In construing a document and ferreting out the intention of the executant behind executing the deed, in paragraph 4 of Subbegowda it was so held:

"The question of construction of a document is to be decided by finding out the intention of the executant, firstly, from a comprehensive reading of the terms of the document itself, and then, by looking into to the extent permissible - the prevailing circumstances which persuaded the author of the document to execute it. If the executant intended to transfer property, the Court would lean in favour of holding the transferee having been vested with interest in the property. Where an intention to transfer property within the meaning of Section 5 of Transfer of Property Act, 1882 cannot be spelled out, the document will be given effect to as it reads and as is explicit from what is set out in the deed itself".

The Legislature never intended that such complex questions of facts and law are to be gone into by the Tribunal constituted under the Act of 2007 which, we reiterate, has been constituted for the purpose of adjudicating issues of maintenance as would arise under Section 5 of the Act and also confers a restricted jurisdiction under Section 23(1).

44. Now we come to the question as to whether reservation of life interest or enjoyment of usufructs from the property gifted or settled in favour of the transferee

could result in an implied condition that the transferor expects the transferee to look after the senior citizen till his/her death. In Namburi Basava Subrahmanyam v. Alapati Hymavathi [(1996) 9 SCC 388] the question arose as to whether the deed was a settlement or will. It was held that the nomenclature of the document was not conclusive. We rely on the following extract from Paragraph 5:

5. ...A combined reading of the recitals in the document and also the Schedule would clearly indicate that on the date when the document was executed she had created right, title and interest in the property in favour of her second daughter but only on her demise she was to acquire absolute right to enjoyment, alienation etc. In other words, she had created in herself a life interest in the property and vested the remainder in favour of her second daughter. It is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the property would devolve on the settlee with absolute rights on the settlor's demise. A reading of the documents together with the Schedule would give an indication that she had created right and interest in praesenti in favour of her daughter Vimalavathy in respect of the properties mentioned in the Schedule with a life estate for her enjoyment during her lifetime. Thus, it could be construed rightly as a settlement deed but not as a Will. Having divested herself of the

right and title there under, she had, thereafter, no right to bequeath the same property in favour of her daughter Hymavathy. ..."

45. A settlement deed in which a life interest for the purpose of residence/taking usufructs alone is reserved, created a right and interest *in praesenti* in favour of the beneficiary of the document with a life estate for the transferor for enjoyment during his/her life time. The transferor is held to have been divested of her right and title by the deed and retains with her no right to bequeath the property in favour of another. A mere reservation of life interest or right to collect usufructs from the property has to be enforced against the beneficiary of the document or a subsequent transferee and Section 23(1) does not come to the aid of a transferor seeking that remedy. Neither can Section 23(1) be considered to have interfered with the valuable rights of the transferee nor be taken as imposing any restriction on his/her right; when there is a settlement made with reservation of life interest for residence or taking usufructs from the property. There can be no implied condition to assume jurisdiction under Section 23(1) merely for the reason that the document contains a reservation of life interest.

46. We again refer to Section 126 of the T.P.Act, which saves the rights of transferees for consideration without notice of the condition-subsequent, from the consequence of a revocation or suspension. Hence, when a Civil Court is considering the issue, a subsequent *bona fide* transferee without notice of the condition, could raise a claim before the Court which remedy is not available under Section 23(1). The property gifted or settled can be subject matter of alienation. When there is no condition as specified in sub-section (1) of Section 23 expressed, the purchaser would have no notice of it. If from the existing circumstances at the time of execution, there could be an inference drawn that there was a condition affixed to the transfer of property; then it would seriously prejudice that subsequent purchaser. A subsequent purchaser/transferee has absolutely no right under the Act of 2007 to raise such a question. A remedy sought before the Civil Court as against the dispossession or otherwise would also stand barred under Section 27 of the Act. The rights of such a subsequent transferee as arising from the other statutes cannot be wished away or extinguished by the Tribunal constituted under the Act of 2007. When there is a condition that the transfer is effected on the promise of providing basic amenities and

basic physical needs, expressed in the document, a purchaser would be conscious of the condition and the purchase made would be a risk he/she took with the knowledge that at any time the original transferor could enforce it; even by resort to Section 23(1) of the Act.

47. We also notice from the facts of the present case that the property settled on the son is the share of the mother which lies contiguous to the share obtained by that son. The residential building was constructed therein by availing loans from Banks as revealed from the records and admitted by the mother in her complaint. In the above circumstances, the mother can only claim for a right to reside in the building which has been reserved in her favour, in the settlement deed. The ownership of the residential building would not be transferred to her even if the deed is declared void. We refer to Bishan Das v. State of Punjab [AIR 1961 SC 1570], a Constitution Bench of the Hon'ble Supreme Court, and refer to an extract from paragraph 11:

"It is by now well settled that the maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country; see Thakoor Chunder Parmanick v. Ramdhone Bhattacharjee, 6 Suth WR 228, Beni Ram v. Kundan Lall, 26 Ind App 58, and Narayan Das v.

Jatindranath, 54 Ind App 218 (AIR 1927 PC 135). These decisions show that a person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by the application of the maxim *quicquid plantatur solo, solo cedit*".

48. These are instances, where a Court of law and also of equity would exercise its jurisdiction to bring out a resolution of the disputes raised; which, however, the Tribunal constituted under Section 7 of the Act of 2007 cannot do. The Tribunal constituted under the Act of 2007, under Section 23(1) can only declare void the transfer, at the option of the transferor. As we noticed earlier, it cannot even order recovery of possession of the subject property, for which again the transferor will have to approach the Civil Court. On the aspect of option, a disturbing issue arises from sub-section (3) of Section 23, which we extracted herein above. Any organisation referred to in the Explanation to sub-section (1) of Section 5 is entitled to approach the Tribunal under sub-section (1) of Section 23. Section 5 has been made specifically for the purposes of maintenance. When it stands extended to Section 23(1), there arises the question as to who would exercise the option for cancellation

especially if the senior citizen is not in a position to express such will by reason of old age or otherwise.

49. One other aspect is that the option if exercised, cannot be withdrawn and if the senior citizen expires immediately after the declaration by the Tribunal, the property would revert as the estate of the deceased and every legal heir acquires a right to inherit. We specifically notice the Division Bench judgment of this court in Antony Scaria & Anr. v. District Collector & Ors. [2020 (3) KLT 183], wherein before the death of the transferor there was no declaration made by the Tribunal. The writ petition was filed by the transferor against the refusal of the Tribunal and the appellate authority to invoke its jurisdiction under Section 23(1). Pending writ petition, the transferor died when the other legal heirs sought to continue the proceedings. It was held that the right to approach the Maintenance Tribunal is in the personal capacity of the senior citizen and not a heritable right under common law. The situation would be quite different if in the life time of the senior citizen the declaration is made by the Tribunal. On his death the property devolves on the legal heirs.

50. Sunny Paul a decision of the Delhi High Court was also placed before us by the learned Counsel appearing

for the appellant. In Sunny Paul, the Tribunal is seen to have issued direction to the sons to vacate the household and handover the household articles back to the petitioner/parents and the SHO of the jurisdictional police station was directed to enforce, enforcement/compliance of the directions. There the said directions were issued in view of the specific provisions available under the rules framed under the Act of 2007. For eviction of a son or a daughter or legal heir from a self acquired property, there is no such provision available in the Rules framed for the State of Kerala.

51. Very pertinent is the fact that Section 23(1) is prospective and applies only to agreements executed after the enactment came into force. Section 23 applies only to transfers after the commencement of the Act. This further fortifies our interpretation that the provision insists on there being an express condition, written as part of the recitals, in the deed. If it were otherwise and the circumstances which led to the execution or a reservation clause could be relied on to infer or imply such a condition having regulated the execution, it would have been made applicable to deeds of all times, executed by senior citizens of a like nature. The measures of publicity as spoken of in Section 21, under Chapter 5 is

also intended at informing every senior citizen about the speedy remedy provided for maintenance as also revocation of a gratuitous transfer and to alert them of the condition to be specified; which has to be a part of the recitals of the document.

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 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).

53. In the facts and circumstances of the case, we are of the opinion that nothing further arises, for us to

remand the matter to the Division Bench for consideration of the appeal itself. The document, which is the subject matter of dispute, is a settlement deed wherein there is a reservation of right of residence in the residential building as also to take usufructs from the standing coconut trees in the property. There is no condition as required under Section 23(1) expressly stated in the document. The life interest reserved in the document cannot also lead to such a condition being implied or inferred. There can be no consideration of the circumstances under which the document was executed, as has been attempted by the appellate authority. We hence, dismiss the appeal and restore the order of the Tribunal granting maintenance of Rs.2,500/-. We are quite conscious of the fact that there is an interim order passed granting Rs.5,000/- per month during the pendency of the appeal. The respondent is said to have complied with that order till date. We are of the opinion that what is required is the restoration of the order of the Tribunal in the facts and circumstances, leaving open the remedy of the appellant to approach the Civil Court for enforcement of any rights reserved on her under the document. We specifically restore the order of the Tribunal also in the context of the admission of the appellant that she has other children with whom she is

residing. There is a contention raised that she had also resided in an Ashram for a period. If she wishes to claim further maintenance, she could approach the Tribunal in which event, the quantum would have to be proportionately shared by all the children.

54. The reference is answered and the appeal would stand dismissed, leaving the parties to suffer their respective costs. We place on record our deep appreciation for the enlightening arguments, both incisive and thought provoking, addressed by Sri.P.B.Krishnan and Smt.Parvathi Menon; to help us resolve the conflict and in turn the dispute.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
V.G.ARUN
JUDGE

Sd/-
T.R.RAVI
JUDGE

Vku/-

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