



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 2ND DAY OF JULY, 2024
BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM
WRIT PETITION NO. 101705 OF 2024 (GM-RES)**

BETWEEN:

SRI DHARIYAPPAGOUDA PATIL,
S/O. HANAMANTGOUDA PATIL,
AGE: 44 YEARS, OCC: AGRICULTURE,
R/O. HOSANIRALAGI, TQ: SAVANUR,
DIST: HAVERI.

...PETITIONER

(BY SRI. SHIVARAJ P. MUDHOL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REVENUE,
M.S. BUILDING, BENGALURU-560001.
2. THE ASSISTANT COMMISSIONER,
SAVANUR SUB-DIVISION, SAVANUR,
AND CHAIRMAN
MAINTENANCE AND WELFARE OF THE
SENIOR CITIZEN PROTECTION TRIBUNAL,
AT SAVANUR, TQ: SAVANUR,
DIST: HAVERI, PIN: 581205.
3. SMT. RATNAMMA
W/O. GADIGEPPA WALISHETTER,
AGE: 88 YEARS, OCC: HOUSEHOLD WORK,
R/O. MARKET ROAD, SHIGGAV,
TQ: SHIGGAV, DIST: HAVERI,
PIN: 581205.
4. SMT. SHARADA
W/O. BASAVARAJ WALISHETTER,
AGE: 55 YEARS, OCC: HOUSEHOLD WORK,





R/O. MARKET ROAD SHIGGAV,
TQ: SHIGGAV, DIST: HAVERI,
PIN: 581205.

5. SRI. VISWANATH
S/O. BASAVARAJ WALISHETTER,
AGE: 30 YEARS, OCC: BUSINESS,
R/O. MARKET ROAD SHIGGAV,
DIST: HAVERI, PIN: 581205.
6. SMT. LATA
W/O. SHARANAPPA ANGADI,
AGE: 34 YEARS, OCC: HOUSEHOLD WORK,
R/O. DANDIN PETH, SHIGGAV,
TQ: SHIGGAV, DIST: HAVERI, PIN: 581205.
7. SHRI SHARANAPPA
S/O. MAHANTAPPA ANGADI,
AGE: 50 YEARS, OCC: BUSINESS,
R/O. DANDINPETH, SHIGGAV,
TQ: SHIGGAV, DIST: HAVERI, PIN: 581205.
8. SRI. VEERAPPA
S/O. GADIGEPPA WALISHETTER,
AGE: 63 YEARS, OCC: BUSINESS,
R/O. DUNDASI, SHIGGAV,
TALUK: SHIGGAV, DIST: HAVERI, PIN: 581205.

...RESPONDENTS

(BY SRI. V.S. KALASURMATH, HCGP FOR R1 & R2;
SRI. H.N. GULARADDI, ADV. FOR R3;
SRI. MAHANTESH R. PATIL, ADV. FOR R4-R7;
SRI. S.B. CHANAL, ADV. FOR R8)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 16/02/2024 IN NO. SENIOR CITIZEN:APPEAL:VAHE:07:23-24 PASSED BY THE 2ND RESPONDENT VIDE ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The captioned writ petition is filed by the subsequent transferee who is aggrieved by the order passed by respondent No.2, the Assistant Commissioner. The Assistant Commissioner entertained an application filed under Section 23 of the Senior Citizens Act (hereinafter referred to as 'the Act') and subsequently nullified a registered sale deed executed by respondent Nos.4 to 6 for a valuable sale consideration. This order was passed behind the back of the petitioner, a bona fide purchaser who had acquired the property for a valuable sale consideration.

2. The impugned order passed by respondent No.2 is not only erroneous but also outside the jurisdiction conferred upon the Assistant Commissioner under the Act. Section 23 of the Act empowers authorities to declare void any transfer of property made by a senior citizen after the commencement of the Act, but only if such transfer includes a condition that the transferee shall provide for



the basic amenities and physical needs of the senior citizen. The records in the present case reveal that the property in question was allotted to Basvaraj, the husband of respondent No.4-Sharada, under a registered partition deed documented at Annexure-D. This clearly indicates that the property transfer was legitimate and did not fall under the conditions specified in Section 23 of the Act. The Assistant Commissioner's decision to nullify the sale deed, executed for a valuable sale consideration, oversteps the boundaries of his jurisdiction and misinterprets the provisions of the Act.

3. Despite the court permitting the petitioner-purchaser and respondent No.3 to settle the matter amicably, the court must acknowledge that respondent No.2 exceeded his powers by entertaining the application under Section 23 of the Act and nullifying a valid registered sale deed. Section 23 of the Act provides for the authority to declare a gift deed void only if certain conditions are met. None of these conditions were present



in this case. The Assistant Commissioner's action thus represents a misuse of the Act's provisions, leading to an unjust financial burden on the petitioner, who had to negotiate and settle the matter by paying an additional Rs.8,50,000/- to respondent No.3.

4. Today, a joint memo and an affidavit are filed, ratifying the sale deed executed by the daughter-in-law and children of the predeceased son, Basvaraj i.e., respondent Nos.4 to 6, in favor of the petitioner. An amicable settlement is reached, with the petitioner agreeing to pay a further sum of Rs.8,00,000/- by cheque and Rs.50,000/- in cash. Both the cheque and cash were handed over in court, with respondent No.3, acknowledging receipt. This settlement, however, does not negate the fact that the Assistant Commissioner's initial order was beyond his legal powers.

5. Section 23(1) of the Act confers power upon the Maintenance Tribunal to declare a transfer of property as void if the transferee fails to provide basic amenities and



physical needs to the senior citizen who transferred the property. Additionally, Section 23(2) stipulates that a senior citizen has a right to receive maintenance from their estate. If such an estate or part thereof is transferred, this right to maintenance may be enforced against the transferee if the transferee has notice of this right or if the transfer is gratuitous, but not against a transferee for consideration and without notice of the right.

6. The primary objective of Section 23 of the Act is to protect senior citizens from being deprived of their property without receiving necessary support from the transferee. This provision is designed to ensure that transfers made with the expectation that the transferee will provide basic needs and amenities are honored, failing which the transfer can be declared void.

7. In the current matter, Respondent No. 3 was a party to a suit in O.S.No.15/2012, which ended in a compromise. Following this, a fresh partition was effected,



and the petition property was allotted to Basavaraj, the son of Respondent No. 3, through a registered partition deed. After Basavaraj's demise, Respondents 4 to 8, who are Basavaraj's widow and children, inherited the petition property. Subsequently, Respondents 4 to 8 sold the petition property to the petitioner under a registered sale deed dated 22/08/2023 for valuable consideration. Based on the details provided and the provisions of Section 23 of the Act, the case presents a complex scenario that must be carefully analyzed in light of the legislative intent and judicial interpretations of the Act.

8. The petition property was transferred through a registered partition deed to Basavaraj. Upon his death, the property was inherited by his legal heirs (Respondents 4 to 8) and later sold to the petitioner. Respondent No. 3 is not the current owner of the petition property. The property was not transferred by Respondent No. 3 but was part of the inheritance and subsequent sale by Respondents 4 to 8. The petitioner acquired the property through a



registered sale deed for valuable consideration. There is no indication that the petitioner had notice of any existing right to maintenance or any obligation to provide for Respondent No. 3. Since Respondent No. 3 did not transfer the property to the petitioner, and the transfer was part of a legal inheritance process followed by a sale for valuable consideration, Section 23 cannot be invoked. The petitioner, as a bona fide purchaser, is not liable under Section 23 as he did not receive the property gratuitously or with notice of any obligation towards Respondent No. 3. Therefore, it emerges that Respondent No. 3 is not the owner of the petition property and has neither transferred nor conveyed it to the petitioner. The compromise decree and the registered partition deed remain unchallenged. Consequently, Section 23 of the PSC Act, which aims to protect senior citizens from transfers where their basic needs are not met, cannot be invoked in this case. The petitioner, being a bona fide purchaser for valuable consideration, does not fall within the ambit of the transferee as defined under Section 23 of the PSC Act.



9. The impugned order under challenge is liable to be quashed on two primary grounds. Firstly, the parties involved have amicably settled, necessitating the order's nullification. Secondly, and more critically, the Assistant Commissioner exceeded his jurisdiction by entertaining an application under Section 23 of the Act, which was not maintainable under the circumstances. The Assistant Commissioner's authority does not extend to nullifying a sale deed executed for valuable consideration, and his actions in this case represent an overreach of his statutory powers.

10. Respondent No.2, the Assistant Commissioner, clearly exceeded his jurisdiction and authority by entertaining the application under Section 23 of the Senior Citizens Act and subsequently nullifying a valid registered sale deed. Section 23 of the Act provides specific conditions under which a transfer of property can be declared void, primarily focusing on transfers where the senior citizen has imposed a condition that the transferee



shall provide for their basic amenities and physical needs. In this case, the property in question was part of a registered partition deed, indicating that it was a legitimate transfer not falling under the purview of Section 23.

11. The Assistant Commissioner's overreach in this matter not only misinterprets the Act's provisions but also disrupts the legal protection afforded to bonafide purchasers who has acquired property for valuable consideration. By nullifying a registered sale deed without proper jurisdiction, the Assistant Commissioner undermined the legal certainty and stability of property transactions, leading to unnecessary litigation and financial hardship for the petitioner.

12. Moreover, the Assistant Commissioner failed to verify the records adequately before passing the order. The records clearly showed that the land had already been alienated to the petitioner, who was not afforded an opportunity to present his case. Respondent No.3 pursuant



to compromise recorded in O.S.No.15/2012 and consequent registered partition deed has lost right and title if any over the property. Respondent No.3 is not the owner of the property and thereby has no right to transfer/convey the property. Therefore, Section 23 of the Act is not applicable. Transfer of property happened through inheritance. Respondent Nos.4 to 8 who are the widow and children of the predecessor son of respondent No.3, acquired right by way of inheritance. Petitioner acquired the property through subsequent sale for valid consideration, which thereby excludes applicability of Section 23 of the Act.

13. This lack of due diligence and disregard for procedural fairness highlights a significant lapse in the exercise of administrative power. The imposition of a cost of Rs.25,000/- on respondent No.2, payable to the Advocate Clerks Welfare Fund, underscores the seriousness of this jurisdictional overreach and serves as a



reminder of the need for officials to act within the bounds of their legal authority.

14. For the foregoing reasons, this court passes the following:

ORDER

- i) The writ petition is allowed.
- ii) The impugned order dated 16.02.2024 passed by respondent No.2-Assistant Commissioner is hereby quashed, and the sale deed is held to be valid.
- iii) The Rs.8,00,000/- paid by the petitioner to respondent No.3 shall be kept in a fixed deposit for five years, with the accrued quarterly interest paid to respondent No.3.
- iv) A cost of Rs.25,000/- is imposed on respondent No.2-Assistant Commissioner for exceeding his jurisdiction by entertaining a frivolous application under Section 23 of the Act.



- v) The cost of Rs.25,000/- shall be payable to the Advocate Clerks Welfare Fund, High Court of Karnataka, Dharwad.
- vi) To report compliance, the learned HCGP is directed to ensure the presence of respondent No.2-Assistant Commissioner before this court on 23.07.2024.

Sd/-
JUDGE

MBS
Ct-mck
List No.: 1 Sl No.: 24