

“Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression “by way of gift or otherwise”. For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:

- (a) The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and
- (b) The transferee refuses or fails to provide such amenities and physical needs to the transferor.

If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.”

The said provision contemplates that whereas any senior citizen has transferred any property by way of gift etc., post-commencement of the Act and such transfer is compelled with the condition that transferee shall provide basic amenities and basic physical needs to the transferor and subsequently such transferee refused to provide such amenities etc, the transfer of the property shall be treated to have been made by fraud, coercion or undue influence and it is further provided that such transfer shall be liable to be declared at the option of the transferor void by the Tribunal.

“When a senior citizen parts with his or her property by executing a gift or release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.”

*Sudesh Chhikara v. Ramti Devi* ‘ (2023-1)209 PLR 107 (SC)