* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th May, 2023

IN THE MATTER OF:

\+ **W.P.(C) 12076/2022**

CHARANJIT SINGH AHLUWALIA ..... Petitioner

Through: Mr. Sudarshan Rajan, Mr. Hitain Bajaj, Advocates

versus

UNION OF INDIA ..... Respondent

Through: Mr. Ravi Prakash, Mr. Farman Ali, Ms. Astu Khandelwal, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The instant writ petition challenges the constitutional validity of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as the* "Senior Citizens Act") whereby it restricts the applicability of the Section only to the gifts of property made by a senior citizen after the commencement of the Senior Citizens Act.

2. The brief facts leading to the filing of the writ petition are as follows:-

   i. The Petitioner is a senior citizen who was allotted a property bearing No. II-E/3, Lajpat Nagar, New Delhi *vide* lease deed dated 18.01.1950 and also through the deed of conveyance of building dated 26.06.1962.

ii. It is stated that the Petitioner has four sons and four daughters. The Petitioner states that two of his sons, namely, Ramandeep Singh Ahluwalia and Manjit Singh Ahluwalia fraudulently got gift deeds signed by the Petitioner in their favour on 02.05.2007 in respect of the first floor, basement and ground floor of the aforesaid property.

iii. It is stated that at the time of making gift, the rentals from the said property was more than Rs.10 lakh for each floor. It is stated that the properties which were gifted by the Petitioner was a source of income for the Petitioner and after the gift deed was executed, the rentals received were being appropriated by his two children to whom the properties were gifted.

iv. It is stated that the two sons of the Petitioner in whose favour the property has been gifted are not taking care of the Petitioner. It is stated that the Petitioner has been manhandled and tortured by his two sons. It is stated that since the Petitioner is now 97 years of age, he is infirm and heartbroken and is scared of his two sons to file any complaint with the Police.

v. The Petitioner states that he wants to revoke the gifts which were made in favour of his two sons.

3. The Petitioner states that, the Senior Citizens Act came into force in the year 2008. Section 23 of the Senior Citizens Act 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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> *(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 right.*
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> *(3) If, any senior citizen is incapable of enforcing the rights under sub-section (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."*
>
> (emphasis supplied)

4. The Petitioner in short wants the words *"after the commencement of the Act"* to be taken away or struck down from Section 23 of the Senior Citizens Act. It is stated that Section 23 of the Senior Citizens Act is read only prospectively. The principal contention of the Petitioner is that this Section goes against the object and purpose of the Act to protect Senior Citizens. It is stated that the senior citizens who have gifted their properties to their children or near and dear ones with the hope that they will be taken care of by them, are not being maintained by the persons to whom the property has been gifted, rather they are being tortured and abused. It is submitted that in such a scenario the Act must read in a manner to permit the senior citizens to revoke the gifts made by them prior to the commencement of the Act. In short, the Petitioner submits that the Act must be given a

retrospective effect. According to the Petitioner, the Act should read as under:-

> *"**Section 23.** Transfer of property to be void in certain circumstances.- (1) Where any senior citizen who, 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."*

5. Undoubtedly, the Senior Citizens Act was brought into force for effective provisions for the maintenance and welfare of the parents and senior citizens guaranteed under the Constitution of India. The Statement of Objects and Reasons of the Act, read as under:-

> *"**Statement of Objects and Reasons.—**Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.*

> *2. The Bill proposes to cast an obligation on the persons who inherit the property of children or their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.*
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> *The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.*
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> *3. The Bill, therefore, proposes to provide for—*
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> *(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;*
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> *(b) providing better medical facilities to senior citizens;*
>
> *(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;*
>
> *(d) setting up of old age homes in every district.*
>
> *4. The Bill seeks to achieve the above objectives."*

6. Despite the object for which the Act was brought into force, Section 23 of the Senior Citizens Act as enacted by the Legislature makes the Section operative only after the commencement of the Act. The Legislature did not intend that Section 23 be read retrospectively.

7. It is well settled that unless the terms of statute expressly provide or necessarily require it, retrospective operation should not be given to a statute which will have the effect of rights being created in favour of others. The Apex Court in Govind Das & Ors. v. Income Tax Officer & Anr., **1976 (1) SCC 906,** has observed as under:

> *"**11**. **Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure**. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that*
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> > *"all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective"*
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> *and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only....."* (emphasis supplied)

8. Similarly, in Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited, **(2015) 1 SCC 1**, the Apex Court has observed as under:-

> *"**28**. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it.*

> *Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."*

9. In Commissioner of Income Tax 5 Mumbai v. Essar Teleholdings Limited, **(2018) 3 SCC 253**, the Apex Court has observed as under:-

> *"**22**. The legislature has plenary power of legislation within the fields assigned to them; it may legislate prospectively as well as retrospectively. It is a settled principle of statutory construction that every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operations. Legal maxim nova constitutio futuris formam imponere debet non praeteritis i.e. a new law ought to regulate what is to follow, not the past, contain a principle of presumption of prospectivity of a statute."*

10. The Constitution Bench of the Apex Court in Padma Sundara Rao v. State of T.N., **(2002) 3 SCC 533**, while dealing with the powers of the Court to add, subtract or amend any provisions of the statute has observed as under:-

> *"**12**. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and*

unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage [218 FR 547] .) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama [(1990) 1 SCC 277 : AIR 1990 SC 981] .

***13**. In D.R. Venkatchalam v. Dy. Transport Commr. [(1977) 2 SCC 273 : AIR 1977 SC 842] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.*

***14**. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd. [(2000) 5 SCC 515]) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case [(1996) 3 SCC 88] . In Nanjudaiah case [(1996) 10 SCC 619] the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot*

be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

15. *Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (at All ER p. 544-I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664-I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."]"*

11. In Meet Malhotra v. Union of India through Secretary & Ors., this Bench *vide* Order dated 13.04.2023 in **LPA 532/2022**, has held as under:-

> *"**22**. It is well settled that Courts must ordinarily give grammatical meaning to every word used by the legislature and this rule is normally avoided when the language used will lead to absurd results. This has been succinctly explained by the Apex Court in G. Narayanaswami v. G. Pannerselvam, (1972) 3 SCC 717. The relevant extract of the said judgment reads as under:*
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> > *"4. Authorities are certainly not wanting which indicate that courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of "plain meaning" or "literal" interpretation, described in Maxwell's Interpretation of Statutes as "the primary rule", could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying: "The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule". (See : Maxwell on Interpretation of Statutes, 12th Edn., p. 28.) It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case (See : Crawford on Statutory Construction, 1940 Edn., para 157, pp. 240-42). This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really*

to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all. To these provisions we may now turn." (emphasis supplied)

23. *As a general rule, the language of a statute should be read as it is. Courts should not venture into an exercise to interpret or construe the statute when there is no obscurity or ambiguity in the intention of the legislature. The Hon'ble Supreme Court has expounded this principle in J.P. Bansal v. State of Rajasthan, (2003) 5 SCC 134, wherein it held as under:*

"14. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See : Frankfurter : Some Reflections on the Reading of Statutes in "Essays on Jurisprudence", Columbia Law Review, p. 51.)

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16. Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. [See : Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests [1990 Supp SCC 785 : AIR 1990 SC 1747] (AIR at p. 1752), Shyam Kishori Devi v. Patna Municipal Corpn. [AIR 1966 SC 1678] (AIR at p. 1682) and A.R. Antulay v. Ramdas Sriniwas Nayak [(1984) 2 SCC 500 : 1984 SCC (Cri) 277] (SCC at pp. 518, 519).] Indeed, the Court cannot reframe the legislation as it has no power to legislate. [See : State of Kerala v. Mathai Verghese [(1986) 4 SCC 746 : 1987 SCC (Cri) 3] (SCC at p. 749) and Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] (AIR at p. 101).]"

(emphasis supplied)

***24**. The literal rule of construction requires that the Courts must understand the words in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning. In Vijay Narayan Thatte v. State of Maharashtra, (2009) 9 SCC 92, the Apex Court has stated:-*

"22. In our opinion, when the language of the statute is plain and clear then the literal rule of interpretation has to be applied and there is ordinarily no scope for consideration of equity, public interest or seeking the intention of the legislature. It is only when the language of the

statute is not clear or ambiguous or there is some conflict, etc. or the plain language leads to some absurdity that one can depart from the literal rule of interpretation. A perusal of the proviso to Section 6 shows that the language of the proviso is clear. Hence the literal rule of interpretation must be applied to it. When there is a conflict between the law and equity it is the law which must prevail. As stated in the Latin maxim dura lex sed lex which means "the law is hard but it is the law"."

(emphasis supplied)

25. *The principle of literal interpretation also requires that each word in a statute must be given effect to and there is a presumption that every word used by the legislature is intentional. In Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, a Constitution Bench of the Hon'ble Supreme Court has stated that:*

"14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See State of U.P. v. Dr. Vijay Anand Maharaj [AIR 1963 SC 946 : (1963) 1 SCR 1] , Rananjaya Singh v. Baijnath Singh [AIR 1954 SC 749 : (1955) 1 SCR 671] , Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907 : 1958 SCR 360] , Nyadar Singh v. Union of India [(1988) 4 SCC 170 : 1988 SCC (L&S) 934 : (1988) 8 ATC 226 : AIR 1988 SC 1979] , J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170] and Ghanshyamdas v. CST [AIR 1964 SC 766 : (1964) 4 SCR 436] .)"

12. Learned Counsel for the Union of India submits that the Kerala High Court while dealing with the same issue refused to give retrospective effect to Section 23 of the Senior Citizens Act and has held that Section 23 of the Senior Citizens Act was intended to be only prospective in nature. In Human Rights and Social Welfare Forum Represented through its Chairman Dr. Vijeesh C Thilak v. Union of India Representated by Secretary & Anr., **2021 SCC OnLine Ker 12268**, the Division Bench of the High Court of Kerala held as under:-

> *"**18**. As per Section 23 of Act, 2007, a senior citizen or a parent is entitled to approach the Tribunal seeking maintenance from the children or relatives in accordance with the parameters provided under the Act, 2007. Section 23 of Act, 2007 is a stand alone provision by which the Tribunal is vested with powers to declare any transfer made by way of gift or otherwise on the basis of the undertaking made in the deed that the transferor's basic amenities and basic physical needs would be taken care of and the transferee fails to comply with the undertakings contained in the deed.*
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> ***19**. It is true, the provisions of Section 23(1) and other provisions are confined to a senior citizen or parent, who has executed a deed of such nature, after the commencement of the Act. On a deeper analysis of the said provision, what we could gather is that such a rider is provided under Section 23(1) to ensure that the deeds executed prior to the introduction of the Act are protected to avoid unpleasant situations in the family, and also bearing in mind that due to the passage of time, innumerable transfers might have taken place and various other commitments would have been made by the transferees. Therefore, there is a clear nexus and object sought to be achieved by inserting the rider in question in Section 23(1) of Act, 2007.*

20. *As we have pointed out above, the objective of Act, 2007 is to protect the interest and welfare of the senior citizens during the heydays of their life. This is quite reflected in Section 23(1) of Act, 2007, because it clearly says that the Tribunal is vested with powers only to declare the deed void, only if the transferee has refused or fails to provide amenities and physical needs to the transferor or such a deed was made by fraud or coercion or undue influence. This question with respect to the nature of Section 23(1) was considered by a Full Bench of this Court in Subhashini v. District Collector [(2020) 5 KLT 533 (FB)]. Paragraphs 51 and 52 are relevant to the context, which read thus:*

> *"51. Very pertinent is the fact that S.23(1) is prospective and applies only to agreements executed after the enactment came into force. S.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 S.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 S.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 S.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 ((2017) 1 KLT (SN 2) 2 = 2016 (5) KHC 603) and Sundari v. Revenue Divisional Officer ((2018) 3 KLT 1082 = 2018 KHC 4655) to be wrongly decided. We approve Radhamani v. State of Kerala ((2016) 1 KLT 185 = 2016 (1) KHC 9) which had a recital in the document akin to that required under S.23(1).*
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> ***21**. Giving due consideration to the above, we are of the view that the petitioner is not right in saying that the words 'after the commencement of this Act' incorporated in Section 23(1) is illegal or arbitrary, justifying to be struck down, or modified so as to eliminate the effect of the rider in question, and therefore the said contention cannot be sustained under law. We are of the clear view that the rider in question is made in Section 23(1) of Act, 2007 with the laudable object as discussed above, and therefore intra vires the provisions of the Constitution as we could not locate any arbitrariness or illegality in the provision. To put it otherwise, the petitioner has not made out any case for interference exercising the writ jurisdiction conferred under Article 226 of the Constitution of India."*

13. This Court is in agreement with the view expressed by the High Court of Kerala. The Act did not intend to disturb the rights of the donee which has already been created and vested in him. The Legislature is conscious of

the fact that vested rights of the donor are not to be given a retrospective operation despite the fact that the object of the Act is to provide for measures for welfare of senior citizens. This is not a case of *casus omissus* and this Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot make the provision what the Legislature did not intend it to be.

14. In view of the above, this Court does not find the present case fit for exercising its jurisdiction under Article 226 of the Constitution of India. However, it is made clear that in case the Petitioner approaches the competent authority under the Senior Citizens Act, the competent authority is directed to adjudicate the *lis* of the Petitioner in accordance with law.

15. With these observations, the petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MAY 12, 2023
Hsk/ss