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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No.12813 of 2009 & C.M. Nos.13599, 14589, 14803 of 2009

MRS. PRITI DHOUNDIAL & ORS. Petitioners
Through: Mr. Prashant Mehndiratta, Advocate with
petitioners in person.

versus

TRIBUNAL (UNDER MAINTENANCE & WELFARE OF THE
PARENTS & SENIOR CITIZENS ACT, 2007) & ANR. Respondents
Through: Mr. A.K. Nigam, Senior Advocate with
Mr. Sanjoy Ghose & Ms. Pragnya,
Advocates for R-2 with Mrs. (Dr.) Lotika
Sarkar in person.

Date of Order: 26th November, 2009

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? [YES]
2. To be referred to the reporter or not? [YES]
3. Whether judgment should be reported in Digest? [YES]

J U D G M E N T

1. By this writ petition made under Article 226 and 227 of the Constitution of India, the petitioners have prayed for quashing of an order dated 29th October, 2009 passed by the Tribunal under Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act”).

2. It is submitted by the petitioners that the impugned order was passed on an application or complaint dated 19th October, 2009 alleged to have been made by the President of All India Centre for Development of Education and Environment (ACIDEE) against the petitioners. The petitioners learnt about this order from reports appearing in newspapers on 30th October, 2009 and obtained a copy of the order on that day from the Tribunal. It is stated that although an appeal can be preferred against the order to a

Appellate Tribunal, however, there is no Appellate Tribunal in existence so that an appeal could be preferred, moreover, the reliefs being sought by the petitioners are not on merits of the order but on the order being *per se* illegal and contrary to the provisions of the Act. It is stated that the procedure adopted by the Tribunal was patently illegal and the order reflected a grave bias of the Tribunal and the Tribunal had given a go bye to the principles of natural justice and adopted a procedure unknown to law. It is also submitted that the Tribunal had gone much beyond its jurisdiction in passing adverse comments beyond the facts of case. The comments were patently illegal and based on surmises and conjunctures. These comments have been passed against petitioners without there being any material before the Tribunal and without even hearing the petitioners or giving an opportunity to the petitioners to be heard. The Tribunal called the petitioners Nos.1, 2 and 3 after summoning them on 28th October, 2009 at 2 p.m. and simply recorded their statement and on 29th October, 2009, the Tribunal passed the impugned order without confronting the petitioners with any adverse statements that might have been made against them by any of the witnesses. The petitioners were not even allowed to go through the statements of the alleged witnesses and were not even allowed to file reply to the complaint.

3. The Tribunal passed an order in respect of a gift deed of property No.L-1/10, Hauz Khas Enclave, New Delhi. By its order, the Tribunal cancelled the gift deed dated 28th June, 2007. Mrs. Lotika Sarkar, who had executed the gift deed had not even appeared before the Tribunal, nor her statement was recorded by the Tribunal before passing this order. At the time of entertaining this petition, this court stayed the operation of the order and also made Mrs. Lotika Sarkar a party to the writ petition and a notice was served on Mrs. Lotika Sarkar. Mrs. Lotika Sarkar in her personal capacity had filed a suit

for cancellation of the same gift deed before this court. This suit was pending adjudication at the time when this writ petition was preferred. Thus, this writ petition was heard along with the suit.

4. A perusal of the record of the Tribunal shows that the Tribunal had acted on its own motion on a reference from an NGO - ACIDEE. The first hearing of the Tribunal is dated 19th October, 2009 wherein it is recorded that one Mr. Pradeep Kumar Singh, President of ACIDEE appeared before the Tribunal with an application/complaint and asked the Tribunal to take *suo moto* action of nullifying the gift deed and for transferring back the property to Mrs. Lotika Sarkar. After recording the contents of the complaint and submissions of Mr. Pradeep Kumar Singh, President of the NGO, the Tribunal issued notice by all means to Mr. N.C. Dhoundial, Mrs. Priti Dhoundial, Mr. Ashwin Dhoundial as well as to the Sub-Registrar of Properties where the gift deed was registered, to officers of MCD, DJB, BSES, Rajdhani Power Limited and officers of Home Department and asked them to appear before it on 27th October, 2009. Surprisingly, the Tribunal had not issued a notice to Mrs. Lotika Sarkar and did not send a copy of the complaint received from NGO to any of the petitioners. The Tribunal did not seek their reply to the applications made by the NGO. The Tribunal just sent notices to the three respondents, asked them to make their statement and recorded statement of some other officials and passed the impugned order making serious imputations against the character and intention of the petitioners.

5. Section 5 of the Act, which is the source of jurisdiction of Tribunal, reads as under :-

“5. Application for maintenance : (1) An application for maintenance under section 4, may be made—

- (a) by a senior citizen or a parent, as the case may be; or*
- (b) if he is incapable, by any other person or organisation authorised by him; or*
- (c) the Tribunal may take cognizance suo motu.*

Explanation.- For the purposes of this section “organisation” means any voluntary association registered under the Societies Registration Act, 1860, (21 of 1860) or any other law for the time being in force.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under sub-section (1) after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4) An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

(5) An application for maintenance under sub-section (1) may be filed against one or more persons:

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

(8) If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."

6. A perusal of this Section shows that an application for maintenance can be made before the Tribunal by a person authorized by the victim (senior citizen or parent) or by an organization authorized by him. It is obvious that the NGO, who made a complaint to the Tribunal had not been authorized by Mrs. Lotika Sarkar to make the complaint to the Tribunal on her behalf nor the complaint was for neglect to maintain. The Tribunal had authority to take *suo moto* cognizance but in this case, the Tribunal's *suo moto* cognizance is also based on the complaint made by the NGO. There is no material to show that the Tribunal of its own conducted an inquiry before taking *suo moto* cognizance or even contacted Mrs. Lotika Sarkar to find out the truth of the matter. Allegations were made by the NGO without an authority and the same were considered sufficient for taking *suo moto* cognizance. Thus, cognizance was taken on the basis of a complaint of an NGO, not authorized by Mrs. Lotika Sarkar, whose property was involved. Mrs. Lotika Sarkar is a known personality and the Tribunal, who summoned all the witnesses within no time, could have also made some effort to make preliminary inquiry as to whether Mrs. Lotika Sarkar had authorized the NGO to make a complaint on her behalf or under what circumstances, the gift deed was executed by her and what were

the terms and conditions of the gift deed, whether the gift deed was linkable to the maintenance or not.

7. Though, the Tribunal had made loud claims in its order about its inherent powers and authority to do investigative proceedings but unfortunately the Tribunal in this case did no investigation of its own before entertaining the complaint. What the least was required from the Tribunal was to summon the affected senior person and if the Tribunal considered that the senior person was not in a capacity to appear before it, it could depute a Commissioner to go and record the statement of the senior person. Clause 6 of the Act provides that the proceedings of the Tribunal can be carried against the children or relatives in any district where he resides or lastly resided or where the children or relative resided. It also provides that all evidence in such proceedings shall be taken in presence of children or relative against whom the order is proposed to be made. Unfortunately, the Tribunal gave a go bye to the very Act under which it was constituted and it had been given power to record evidence. The Tribunal seemed to be in a hurry to pass an order in view of the media coverage and attention and did not consider it necessary to follow law and gave a go bye even to basic and essential principles of a fair trial and natural justice. This is the only way one can look upon the manner in which Tribunal recorded statements of different witnesses in absence of the petitioners and the manner in which the Tribunal acted in this case. Such a procedure as adopted by the Tribunal is fraught with danger. Any person or an NGO with ulterior motive, in order to defame or bring a disrepute to somebody, can use the Tribunal as a tool and file a complaint in respect of his/her parents before the Tribunal and without investigating whether the complaint was true or not and without making even an inquiry from the concerned senior person or parent, the Tribunal can just record statement of some witnesses and pass an order against the children or

relative, without giving an opportunity to the children or relative either to cross-examine the witnesses or to confront the witnesses with adverse material. The procedure adopted by the Tribunal is unheard of. This procedure is not even adopted by investigating agencies known for their shoddy investigation. Even investigating agencies examine the complainant/victim and confront the accused persons with the evidence and try to know from him the truth and if it is found that there was no force in the complaint, no charge sheet is filed. Here in this case, the Tribunal did not call for Mrs. Lotika Sarkar, did not record the statement of Mr. Pradeep Kumar Singh, the so-called President of NGO and on presumptions passed an order against the petitioners.

8. Section 6 of the Act calls upon the Tribunal that before hearing an application under Section 5, it may refer the same to a Conciliation Officer. The Tribunal in this case, neither bothered to appoint a Conciliation Officer nor gave an opportunity to the parties to talk to each other. It only seems that the Tribunal was acting under a pre-notion and had decided to paint the pictures of the petitioners black. This only explains why the Tribunal wrote paragraphs after paragraphs about the conduct of the petitioners without even examining Mrs. Lotika Sarkar in whose reference the conduct was considered.

9. I have examined Mrs. Lotika Sarkar in the connected suit and examination of Mrs. Lotika Sarkar shows that the petitioners herein have not only been taking care of her in her old age with all responsibilities but had been actually showering love on her when none of her other relative came forward.

10. The Tribunal had purportedly cancelled the gift deed executed by Mrs. Lotika Sarkar in favour of Mrs. Priti Dhoundial on the authority of Section 23 of the Act which 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.

(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.

(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 organization referred to in Explanation to sub-section (1) of section 5.”

11. The very first line of Section 23 provides that instruments sought to be cancelled by the Tribunal must have been executed by a senior citizen after the commencement of this Act. The Tribunal in its zeal to show its existence to the world thought it proper to put the Act into dustbin and take upon its responsibility of legislating also. The Tribunal considered that irrespective of the Act providing that only an instrument executed after its coming into force can be annulled under given circumstances; it has authority to cancel an instrument which was executed even before passing of the Act. The Tribunal observed that public interest does not demand that the Tribunal should interpret Section 23 of the Act in the manner the language provides and Tribunal is not concerned with the actual effective date of the registration of the gift deed but the Tribunal considered that the real transfer of the property took place in the name of Mrs. Priti Dhoundial on 26th November, 2008, that is, the date on which mutation of property was done by MCD in its record.

12. This is a novel way of interpreting a statute by the Tribunal. Recording of mutation by MCD in its record under no circumstances can be considered as an execution of an instrument of transfer. The instrument of transfer involved in this case was the gift deed. If the Tribunal considered that mutation in MCD record was the instrument of transfer, the Tribunal could have only cancelled the mutation in the record of MCD. However, the Tribunal by this order while observed that the transfer of the property took place on 26th November, 2008 when it was entered into the records of the MCD, it cancelled the gift deed dated 28th June, 2007, which was executed much before the Act coming into force. Thus, the Tribunal acted beyond its jurisdiction. This even raises serious doubt about the legal knowledge of the members of the Tribunal and their competence to act as such. The Tribunal under the Act is a quasi judicial body and is bound by the constitutional mandate of equality before law. It cannot be overwhelmed by eminence of a victim. It is bound to give equal treatment to all whether he is a poor parent or an eminent parent. While the cause of eminents may be taken up by media, often the cause of the poor goes unnoticed. The eminence of a person also cannot be a ground to treat media reports as gospel truth. The Tribunal, however, seemed to be bent upon to trash the concept of fairness and judiciousness. Without examining Mrs. Lotika Sarkar and without knowing her version of the things, the Tribunal just on the basis of media reports made following observations about the petitioners :-

“This Tribunal holds that the various claims of the Dhoundiyals that Lotika Sarkar gifted the house voluntarily, out of love and affection, to them and that it was a legal transfer, is manufactured, deceptive and far from truth. Motivated by financial gain and greed and to enrich their resources, the Dhoundiyals preyed upon this precious national resource, an extremely distinguished senior citizen-scholar and organized their activities to carry out their planned heist and robbed Lotika Sarkar of her estate and in the process also deprived her of her right to live in her house with dignity. The Dhoundials, instead of respecting her right to live

with dignity in what remains to her at the age of 87 years, have relegated Lotika Sarkar – stated to be the first Indian woman to go to Cambridge and the first woman to obtain a Ph.D in law at the renowned university – merely as an estate, to which they now ferociously claim legal rights and this act of Dhoundials eminently deserves to be deplored and declared as a well-planned robbery as it involved fraudulently appropriating the property of Lotika Sarkar which she legitimately owned.”

13. The order passed by the Tribunal is highly unjust and totally biased. The entire proceedings initiated by the Tribunal on the basis of the NGO's complaint, whose credentials were not investigated, are liable to be quashed. It is advised to the Government that before constituting the Tribunal, the Government must ensure the competence of the members and should ensure that the members not only have basic knowledge of law but should also have basic knowledge of a fair trial and a trial in accordance with natural justice and they should have respect for legislative enactments and respect for common man.

14. The petition is allowed. The order dated 29th October, 2009 is hereby quashed. The proceedings initiated by the Tribunal without authority of 'Mrs. Lotika Sarkar' are hereby quashed.

SHIV NARAYAN DHINGRA J.

NOVEMBER 26, 2009
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