

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No.1186 of 2014**

Dinesh Kumar Swarnkar S/o Shri Amarnath Swarnkar aged about 43 years  
R/o Soni Sales Station Road Sakti Tahsil and Police Station Sakti Distirct  
Janjgir-Champa Chhattisgarh Civil and Revenue District Janjgir-Champa  
Chhattisgarh

---- **Petitioner****Versus**

1. Smt. Rampyari Swarnkar W/o Shri Amarnath Swarnkar aged about 65 years Ward No.15 Station Road Sakti Tahsil and Police Station Sakti Distirct Janjgir-Champa Chhattisgarh Civil and Revenue District Janjgir-Champa Chhattisgarh
2. Shri Amarnath Swarnkar S/o Hemchand Swarnkar aged about 70 years R/o Ward No.15 Station Road Sakti Tahsil and Police Station Sakti Distirct Janjgir-Champa Chhattisgarh Civil and Revenue District Janjgir-Champa Chhattisgarh
3. Chairman Mother Father and Senior Citizen Maintenance Tribunal Sakti District Janjgir-Champa Chhattisgarh Civil and Revenue District Janjgir-Champa Chhattisgarh

---- **Respondents**


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| For Petitioner             | : | Shri Vipin Punjabi, Advocate. |
| For Respondents No.1 and 2 | : | Shri Sunil Otwani, Advocate.  |

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**Hon'ble Shri Deepak Gupta, Chief Justice****Order on Board****19/08/2016**

1. It is brought to notice of this Court that Respondent No.1 has expired. Therefore, her name is deleted from the array of Respondents. There is no need to bring the legal representative of Respondent No.1 because the

Petitioner is son of Respondent No.1.

2. This is a rather unfortunate case where there is a dispute between the son and the parents. The parents i.e. Respondent No.1-deceased who is mother and Respondent No.2 who is father of the Petitioner had filed a petition under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as 'the Act'). One of the reliefs claimed was that the son of the Respondents No. 1 and 2 has taken illegal possession of some portion of the premises and is illegally running a shop in those premises. An order has been passed directing the son to hand over the premises to his parents and the son has filed the petition challenging the said order. Various grounds have been taken in the petition.

3. However, I am not going into the other grounds because of the decision which I propose to take. The main challenge to the impugned order is that the father i.e. Respondent No.2 herein, himself was a member of the Mother Father and Senior Citizen Maintenance Tribunal (hereinafter referred to as 'the Tribunal') constituted to decide the cases under the Act and he has taken active part in the proceedings as apparent from the order dated 30.9.2010. This order was challenged by the son before the Appellate Authority and the Appellate Authority rejected the appeal as not maintainable. The second ground urged is that no reasonable opportunity was given to the son to contest the proceedings.

4. It is not disputed that Respondent No.2 was a member of the Tribunal and the order whereby the Petitioner- Dinesh Kumar Swarnkar was ordered to be deliver the possession of the disputed premises is the order passed on 30.9.2010 and has been signed by the father of the Petitioner i.e. Respondent No.2 as a member of the said Tribunal.

5. It is well settled law that no man can be a judge in his own case. If Amarnath Swarnkar claimed some relief before the Tribunal, he should have recused from hearing the matter or ceased to become a member of the Tribunal. He could not take part in the quasi judicial proceedings in which he himself is a member. Therefore, the entire proceedings are vitiated on this account and the order dated 30.9.2010 is set aside only on the ground that Respondent No.2 had no business to take part in proceedings where he himself was one of the parties as he could not be one of the members of the adjudicating Tribunal in his own case.

6. After setting aside the order, this Court directs the parties to appear before the Tribunal on 26.9.2016. Shri Amarnath Swarnkar-Respondent No.2 appeared before the Court and stated that he is no longer member of the Tribunal. Therefore, the Tribunal shall give an opportunity to the son to reply the allegations made and the parties shall be permitted to lead evidence by way of filing affidavits as per the procedure prescribed by the Tribunal. The decision on the application made by the Petitioner shall be taken latest by 30.9.2016. If necessary, the Tribunal may conduct day to day hearing to conclude the matter.

7. In case, there is no Tribunal, the parties shall be at liberty to approach this Court.

**Sd/-  
(Deepak Gupta)  
Chief Justice**