

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 174 OF 2019**

Mr. Melroy Fernandes, son of Mr. Caetano Fernandes, aged 34 years, married, business, resident of Bunglow No. 422, Rawanfond, Aquem Baixo, Margao, Goa. Petitioner

Versus

1. Mr. Caetano Fernandes, son of Francis Fernandes, aged 63 years, married, business, resident of first floor, Vailankanni Arcade Rawanfond, Aquem Baixo, Margao, Goa.
2. Mrs. Pedrinha Fernandes, w/o of Mr. Caetano Fernandes, aged 55 years, married, housewife, resident of first floor, Vailankanni Arcade Rawanfond, Aquem Baixo, Margao, Goa. Respondents

Mr. Gaurish N. Agni, Advocate for the Petitioner.

Mr. Emerciano V.L. Dias, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 5th July, 2019

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respondents, waives service. Heard finally by consent of parties.

2. Normally, this Court would be slow in interfering with the impugned order passed of the nature, which is challenged in this petition, in favour of the parents under the provisions of the

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act, for short). However, this is a case, which in my considered view, warrants such interference.

3. By the impugned order dated 26.10.2018, the learned Deputy Collector and Sub Divisional Magistrate, Margao (Maintenance Tribunal) has directed the petitioner (respondent no. 4 before the Maintenance Tribunal) to provide the respondents (complainants before the Maintenance Tribunal) health care and shelter and entry into the house, in which the respondents are staying. There cannot be any manner of dispute with para 2 of the operative order, by which, the petitioner has been directed not to cause any harassment to the respondents. The material dispute is as to para 1 of the operative order, by which, the petitioner has been directed to provide shelter and house to the respondents.

4. The only contention raised on behalf of the petitioner is that the respondents have been provided with a flat on the first floor of an adjacent building, in which, the respondents are presently residing. It is contended that Section 6 read with Section 8 of the Act, contemplate an inquiry in an application filed by the parents and the Maintenance Tribunal has not

conducted any inquiry of whatsoever nature and the impugned order on that count cannot be sustained.

5. The learned Counsel for the respondents has submitted that the respondents are senior citizens and have difficulty in staying on the first floor of the adjacent building and they are entitled to reside on the ground floor.

6. *Prima facie*, it appears that the respondents are residing on the first floor of the adjacent building. Section 6(4) read with Section 8 of the Act, would indicate that the Maintenance Tribunal is required to conduct a summary inquiry in an application filed by the parents before passing any order. The impugned order does not show that any such inquiry is conducted. In that view of the matter alone, in my considered view, the impugned order will have to be set aside. Needless to mention that what is contemplated under Section 8 of the Act is only a summary inquiry.

7. In the result the following order is passed:

O R D E R

- (i) The petition is partly allowed.
- (ii) The impugned order is hereby set aside.

- (iii) Case No. SDM/SAL/MAG/MWPSCA/01/2018/12156 is remitted back to the file of the learned Deputy Collector, Margao, for deciding it afresh in accordance with law, in the light of the observations made above.
- (iv) The parties to remain present before the learned Deputy Collector on 15.07.2019 at 10:30 a.m.
- (v) The learned Deputy Collector shall decide the application filed by the respondents as expeditiously as possible and preferably within a period of three months from the receipt hereof.
- (vi) The rival contentions of the parties are left open.
- (vii) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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