

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7662 OF 2018

Smt. Mamata wd/o Mahendrasingh Khutpale

vs.

State of Maharashtra, Through its Secretary, Ministry of Revenue, Mantralaya
Mumbai and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. N. C. Phadnis, counsel for petitioner.
Smt. Mrunal Naik, AGP for respondents No.1 to 3.
None appeared on behalf of respondents No.4 & 5.

CORAM : MANISH PITALE J

DATED : 17/12/2019

By this writ petition, the petitioner has challenged orders passed by the Sub Divisional Officer and the Collector i.e. the respondent Nos.2 & 3 in the present petition, whereby application filed by respondents No.4 & 5 under the provisions of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, has been allowed.

2. The brief facts leading to filing of the present writ petition are that respondents No.4 & 5 filed an application before respondents No.3 Sub-Divisional Officer, which is the Maintenance Tribunal constituted under the provisions of the said Act, claiming that they were entitled to half share in the family pension being received by their daughter-in-law after the death of their son. It was claimed by the respondents

No.4 & 5 that in terms of the provisions of the said Act, as they were the parents of their deceased son, they were entitled to the aforesaid relief. The said application was opposed by the petitioner, being the widow of the said deceased son of respondents No.4 & 5 and it was specifically stated that apart from the deceased son, the respondents No.4 & 5 were having two daughters, who were married. The said application filed by the respondents No.4 & 5 was not maintainable in the absence of daughters not being make party. The respondents No.3, Sub-Divisional Officer, did not refer to the said contention specifically raised on behalf of the petitioner in respect of daughters also being children of respondents No.4 & 5. It was simply concluded by the respondent No.3 that since the applicants before him i.e. respondents No.4 & 5 were admittedly the parents of deceased husband of the petitioner, they had made out a case for grant of relief under the provisions of the said Act. On this basis, 50% of the family pension being received by the petitioner was to be made over to respondents No.4 & 5.

3. The appeal filed by the petitioner against the said order before the respondent No.2, Collector was dismissed. The reasoning adopted by the respondent No.2 was similar to the one given by respondent No.3, Sub-Divisional Officer. Since the aforesaid Act lays down that there shall be finality to the order of respondent No.2 Collector as the Appellate Authority, the present writ petition has been filed by the petitioner challenging the impugned orders.

4. The learned counsel for the petitioner has pointed out that perusal of the impugned order would show that there is no reference to the relevant provisions of the said Act particularly, section 2 (definitions) under the said Act. By inviting attention of this Court to the definitions of “Children”, “Parents” and “Relative” the learned counsel for the petitioner submitted that the authorities below ought to have first ascertained as to whether such an application filed by the respondents No.4 & 5 was at all maintainable against the petitioner, who was admittedly their daughter-in-law. It was also submitted that specific contention raised on behalf of the petitioner that the application of respondents No.4 & 5 was not maintainable in the absence of the daughters being made party, was not even adverted to, thereby showing non-application of mind.

5. The learned AGP appeared on behalf of respondents No.1 to 3 and submitted that on proper interpretation of the provisions of the said Act, particularly, the definitions given in section 2 thereof, it was evident that no fault could be found with the orders of the two authorities below.

6. Despite service of notice, none has appeared on behalf of respondents No.4 & 5.

7. Having heard the learned counsel and upon perusal of the material on record, it becomes clear that the respondents No.2 & 3 in the impugned orders have not

analyzed as to whether the application filed by respondents No.4 & 5 against their daughter in law i.e. petitioner could be maintainable under the provisions of the said Act. There is no reference to the provisions of the said Act, particularly section 2 pertaining to definitions to examine as to whether the application filed by the respondents No.4 & 5 against their daughter-in-law was maintainable. It is also not stated by the respondent No.3, Sub-Divisional Officer, as to under which provision the Sub-Divisional Officer has power, to allow the application filed by respondents No.4 & 5 to direct that half the family pension would be paid to the said respondents.

8. The Appellate Authority i.e. respondent No.2, Collector, has also not referred to any provisions of the said Act and neither the Appellate Authority, nor the original authority has specifically dealt with the contention raised on behalf of the petitioner that the daughters of respondents No.4 & 5 were necessary parties and that the application would be maintainable, if at all, only against the daughters.

9. Considering the aforesaid obvious lacunae in the impugned orders passed by the authorities below, this Court is of the opinion that the matter needs to be considered afresh by the respondent No.3 on proper application of mind and after analysis of the provisions of the said Act, particularly, definitions given in section 2 thereof. The respondent No.3 is also expected to consider and decide as to whether the question raised on behalf of the petitioner that

the application filed by the respondents No.4 & 5 could have filed the application only against the daughters or whether the daughters were necessary parties to the said application.

10. In view of the above, the impugned orders passed by respondents No. 2 & 3 are quashed and set aside. The matter is remanded to respondent No.3 to decide the application filed by respondents No.4 & 5, under the provisions of the said Act, afresh by giving proper opportunity to the rival parties. As noted above, the respondent No.3 is expected to refer to the provisions of the said Act to apply them while considering the application, including the question as to whether the daughters of respondents No.4 and 5 are necessary parties to the application. The parties shall appear before the respondent No.3 on **07th January 2020**. The respondent No.3 shall decide the application of respondents No.4 & 5 expeditiously.

11. Writ petition is disposed of in above terms with no order as to costs.

JUDGE