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Ct. 23

25.09.2020.

W.P.A. 24141 of 2019
(Via Video Conference)

Nepal Chandra Paul & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Mayukh Maitra
... For the Petitioners.

Ms. Karabi Roy
... For the State.

Mr. Sudeep Sanyal
Mr. Soumya Bhattacharyya
... For the Respondent No. 5.

The writ petitioners challenges an order dated 28th August, 2019 passed by the Chairman, Tribunal for Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Sub-Divisional Officer Barasat (Sardar) Sub-Division, North 24-Parganas as according to the petitioners the order is passed by the tribunal without any authority of law.

Affidavit-in-opposition filed by the private respondent no. 5 Bakul Rani Paul and the report filed by the State is kept with the record. Facts of the case are as follows:-

“The private respondent no. 5 after purchasing of 3 Cottahs 1 Chittak 3 sq ft. land constructed an one storied residential house of three rooms with asbestos shed for her residence in the year 2012. The private respondent no. 5, a widow, though having four sons, was

residing alone in the said property. The writ petitioners, namely, Nepal Chandra Paul and Sanjoy Paul, who are the sons of the private respondent no. 5 have taken possession of the property and the widowed mother of the writ petitioners was refused entry to the house. An application was filed under Section 5 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 being Misc. Case No. 11 of 2019 by the mother and after hearing both the parties the learned tribunal was pleased to pass an order on 28th August, 2019.

The facts, as narrated above that the writ petitioners are in possession of the property and the mother, respondent no. 5 is not residing in the said property is not disputed by either of the parties.

Mr. Maitra, learned Counsel appearing for the petitioners challenges the order dated 28th August, 2019 on the ground that the tribunal does not have power and authority to direct the Inspector –in-Charge Duttapukur Police Station to monitor the compliance of the impugned order where the tribunal has decided that the petitioners should vacate the entire house within six months i.e. within 28th February, 2019 and hand over the possession to the widowed mother. According to the learned Counsel the tribunal lacks power under the Act for such direction as not a single section of the said Act whispers of anything other than maintenance and maintenance does

not extend to mean to vacate the house.

Learned Counsel relying on *Nazir Ahmed Vs. The King-Emperor* dated June 16, 1936 submits that “Where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden”. He has also relied on a case in W.P. 15344 (W) of 2009 (*Manindra Nath Santra Vs. State of West Bengal & Ors.*) and submits that the respondent no. 5 should pursue other remedy under ordinary law and the tribunal has failed to appreciate the true meaning and purport of the word “maintenance” as defined in the said Act. Mr. Maitra concludes by praying that they are ready and willing to maintain their widowed mother by paying monthly maintenance and also provide a rented accommodation to her and rent to be borne by them.

Learned Counsel appearing for the State after filing the report submits that any order passed by this Court will be complied with.

Learned Counsel appearing for the private respondent no. 5 submits that the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 is a benevolent legislation, inexpensive and for speedy remedy to claim maintenance for parents. He relies on Section 2 (b) i.e. the definition of ‘maintenance’ under the Act. “Maintenance includes provision for food, clothing,

residence and medical attendance and treatment”. According to him while disposing of an application filed under Section 5 of the said Act the tribunal has not only considered monetary maintenance of the parents but also the residence and property of the elderly person. Relying of Section 22 and Section 32 of the said Act, he draws my attention to The West Bengal Maintenance and Welfare of Parents and Senior Citizens Rules, 2008. Rule 7 speaks of powers and procedure of tribunal. According to him, Rule 7 is the power of the tribunal regarding the protection of a person and property.

Learned Counsel relied on paragraph 62 of a judgement, reported in Supreme Court of India (From Karnataka) (F.B) State of Karnataka Vs. Vishwabarathi House Building Co-op. Society, reported in 2003 Law Suit (SC) 60, wherein Supreme Court quoted:

In Arabind Das V. State of Asam and others, (AIR 1981 Gau 18(FB)) where it has been held as follows:-

“We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step,

otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the Court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers powers on the authority in its exercise of such power.”

Heard both parties.

There is no dispute that the respondent 5 has 4 sons, all of them are well settled and have their own livelihood. Respondent no. 5 used to live alone in her own residential property. The petitioners wish that the property of the respondent no. 5 should be enjoyed by the petitioners and in turn, the petitioners will maintain their widowed mother by paying monthly maintenance and also provide a rented accommodation to her with the expenses of such rented premises being borne by the petitioners.

But contrary to the wish of the petitioners, Section 2 of the said Act defines maintenance and speaks otherwise. “Maintenance” includes provision for food, clothing, residence and medical attendance and

treatment. Thus, the word maintenance includes residential property of the elderly persons. The right of a parent to enjoy his property is clearly embedded under the definition "Maintenance". A harmonious reading of Section 22 of the said Act and Rule 7 of the said Rules gives power to the tribunal to achieve such purpose. The tribunal has rightly directed the petitioners to vacate the house and asked the Police Officer of the respective Police Station within its jurisdiction to ensure the protection of the person and property of the applicant.

In my view, the Tribunal has rightly passed its order on 18th August, 2019 and I further direct the Sub-divisional Officer, Barasat (Sadar) Sub-Division, North 24-Parganas to take police assistance and implement the order so passed by him at an earliest.

W.P.A. 24141 of 2019 is, thus, disposed of.

There will be no order as to costs.

Learned Counsel appearing for the petitioners, prays for interim stay against this order for seven (7) days. Such prayer is disallowed.

Urgent certified website copy of this order if applied for be made available to the parties upon compliance with the requisite formalities.

(Rajarshi Bharadwaj, J.)

