

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.5125 OF 2017

O R D E R

Petitioner herein is the daughter-in-law of respondents 3 and 4. Respondents 3 and 4 filed application before the 2nd respondent – Maintenance and Welfare of Parents and Senior Citizens Tribunal – cum – Revenue Divisional Officer, Karimnagar, under Chapter V of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') stating that their daughter-in-law harassed them, both physically and mentally, and evicted them from one of the portions of their house, and hence requested for handing over the possession of the subject house. The 2nd respondent passed the following order vide Proceedings No.M/2639/2016 dated 27.08.2016:

“With reference to application made by Smt. H.Bhagya Rekha, w/o Ramesh Rao, Kothirampur, Karimnagar, H.No.8-6-119/2, having their own house and one portion was rent and they were residing in the other portion. Application made by Smt. H. Bhagya Rekha, W/o H.Rameshwar Rao on 13.02.2016 to Revenue Divisional Officer informing that they made an application to Circle Inspector of Police, I town Police Station, Karimnagar that their daughter-in-law, Deepika Krishna, w/o H.Sandeep, harassed mentally and physically and evicted them from their house and requested to handover their house and seeking protection from their daughter-in-law but was not considered. Notices dated 06.06.2016, 20.06.2016, 04.07.2016, 08.08.2016 were sent to investigate the issue and Smt. H.Bhagya Rekha, W/o H.Rameshwar Rao attended and argued but Smt. Deepika Krishna, W/o H.Sandeep not attended to any of the investigations. After four investigations and keeping in view the applicants, as per Section 2(7) of Maintenance and Welfare of Parents and Senior Citizens Regulations, 2011, the order passed below:

It is directed to handover the house bearing H.No.8-6-119/2, Kothirampur, Karimnagar and house documents to H.Bhagya Rekha, w/o Rameshwar Rao by Smt. Deepika Krishna, w/o H.Sandeep.

As per the orders, if any violation of orders by Smt. Deepika Krishna, w/o H.Sandeep or any kind of ill-treatment made

against the applicant they will be prosecuted as per Section 2(9) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

In this connection, it is directed the Tahsildar, Karimnagar and Circle Inspector of Police, I town Police Station to provide protection to smt. Bhagya Rekha, w/o Rameshwar Rao and handover the documents bearing H.No.8-6-119/2, Kothirampur, Karimnagar from Deepika Krishna, w/o H.Sandeep. It is directed that if not satisfied with this order the same can be settled before District Legal Services Authority, Karimnagar."

Aggrieved by the above order passed by the 2nd respondent, petitioner filed appeal, before the 1st respondent – Maintenance and Welfare of Parents and Senior Citizens Appellate Tribunal, represented by its Chairman, District Collector, Karimnagar. The 1st respondent, vide proceedings No.A3/707/1/2015-16 dated 01.02.2017, passed the following order:

"It is to inform that as per the provisions of Section (18) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 no appeal lies on the orders passed by the learned Chairman, Maintenance and Welfare of Parents and Senior Citizens Tribunal, Karimnagar / RDO, Karimnagar Division as the orders are final. However, after hearing both the parties on appeal, it is decided to confirm the order passed by the Chairman, Maintenance and welfare of Parents and Senior Citizens tribunal, Karimnagar/RDO, Karimnagar Division, Dt.27.08.2016 and accordingly the appeal is dismissed and the appellant is hereby directed to comply with the orders of the Chairman, Maintenance and Welfare of Parents and Senior Citizens Tribunal, Karimnagar / RDO, Karimnagar Division, Dt.27.08.2016 otherwise the necessary action will be initiated as per law."

Challenging the above order, the petitioner, who is the daughter-in-law of respondents 3 and 4, filed the present writ petition.

2. The admitted facts on record are that the marriage of the petitioner was performed with one Mr. H.Sandeep, who is the son of respondents 3 and 4, on 28.11.2012 at Hyderabad. Unfortunately within a

year or two, disputes arose, due to which the husband of the petitioner filed O.P.No.40 of 2014 on the file of Family Court, Secunderabad, seeking divorce, and the petitioner also filed DVC No.103 of 2015 on the file of Additional Judicial First Class Magistrate Court, Karimnagar seeking certain reliefs. The petitioner is residing in her in-laws house at Karimnagar, and the case of the petitioner is that the whereabouts of her husband are not known at present. The same is disputed by respondents 3 and 4. It is also admitted that the house property, where the petitioner is residing, is in the name of the respondent No.3 and it is stated to be her stridhana property. Both the parties have also initiated criminal and civil proceedings against each other, and they are pending investigation/trial.

3. The allegation of respondents 3 and 4 is that the petitioner has forcibly occupied their house during April, 2015 and denied entry to them and consequently, they were forced to live in a rented house in Karimnagar. Therefore, they filed application under the provisions of the Act, and the above extracted orders were passed by both the primary and the appellate authorities. The petitioner has denied the allegations leveled against her, and stated that during marriage, which is an arranged one, her parents gave dowry and other articles and that her marriage did not consummate, as her husband is an impotent and thereafter, the disputes arose. These averments are disputed by

respondents 3 and 4. However, these averments being disputed questions of fact, this court is not inclined to go into the same.

4. Vide interim order dated 14.02.2017, this court granted interim suspension, and seeking to vacate the said order, the respondents 3 and 4 have filed counter affidavit and the petitioner has filed reply and the contesting respondents 3 and 4 have filed rejoinder. As stated above, since the averments in the writ affidavit, counter, reply and rejoinder relate the matrimonial dispute between the parties, which are in the nature of disputed questions of fact, they are not being reproduced, and this court is inclined to examine the validity of the impugned order in the light of admitted facts on record and the provisions of the Act.

5. Sri Vedula Srinivas, learned counsel appearing for the petitioner, mainly disputed the applicability of the provisions of the Act against the petitioner, who is the daughter-in-law of respondents 3 and 4. He submits that under Section 4 of the Act, senior citizen, including parent, who is unable to maintain himself from his earnings out of the property owned by him, is entitled to make an application under Section 5 of the Act against his children, and if he is childless, against such of his relatives seeking maintenance. He submits that 'children' are defined under Section 2(a) of the Act, and 'relative' is defined under Section 2(f) of the Act. He submits that 'children', includes son, daughter, grandson and granddaughters, but does not include a minor. 'Relative' means any

legal heir of the childless senior citizen, who is not a minor and is in possession of, or would inherit his property after his death. Learned counsel submits that the petitioner is 'daughter-in-law' of respondents 3 and 4, and hence does not come under the definition of either 'children', or 'relative', and hence the application under the provisions of the Act is not maintainable.

6. Learned counsel further submits that the Tribunal constituted under Section 7 of the Act, is entitled to grant monthly maintenance under Section 9 of the Act against such 'children' or 'relative' as the case may be. He submits that Section 2(b) of the Act defines 'maintenance', which includes provision for food, clothing, residence and medical attendance and treatment. Learned counsel contends that the Act does not provide for delivery of possession, and that under the provisions of the Act, only maintenance can be ordered, and hence the impugned orders, ordering for delivery of possession, are contrary to the provisions of the Act, and are liable to be set aside.

7. Learned counsel submits that the 1st respondent, who is the appellate authority under the Act, on the one hand held that, no appeal lies against the order passed by the 2nd respondent, but at the same time, entertained the appeal, and without recording any reasons, held that *"However, after hearing both the parties, it is decided to confirm the order passed by the Chairman, Maintenance and Welfare of Parents and Senior*

Citizens Tribunal, Karimnagar / RDO, Karimnagar Division, dated 27.08.2016 and accordingly the appeal is dismissed and the appellant is hereby directed to comply with the order.” Learned counsel submits that the Apex Court in *STATE OF ORISSA v. CHANDRA NANDI*¹, held that every judicial or/and quasi-judicial order passed by court/tribunal/authority concerned, which decides the *lis* between parties, must be supported with reasons in support of its conclusions and that if the order is not reasoned, it has to be remanded.

8. With the above submissions, learned counsel appearing for the petitioner submits that as the 1st respondent has not recoded any reasons and has also not considered the provisions of the Act in their proper perspective, the matter may be remanded for passing orders afresh by recording reasons after giving opportunity of hearing to the petitioner.

9. Sri K.Rajanna, learned counsel appearing for respondents 3 and 4, while opposing the above submissions of the learned counsel for the petitioner, and referring to provisions under Chapter –V of the Act and Rule 21 of the A.P. Maintenance of Parents and Senior Citizens Rules, 2011 (for short ‘the Rules of 2011), as adapted to the State of Telangana, submits that the provisions of the Act, are not only meant to grant maintenance, but also to protect the life and property of senior citizens. He submits that respondents 3 and 4 are the owners of the property and

¹ (2019)4 SCC 357

this is the admitted fact on record. The petitioner, who is their daughter-in-law, forcibly evicted the respondents 3 and 4, and occupied the property. He submits that daughter-in-law would be the legal heir of respondents 3 and 4, and hence would be entitled to inherit their property, and hence an application under the provisions of the Act for protection of the property against the petitioner, is maintainable and the authorities below appreciating the material facts and circumstances on record, ordered for handing over of the subject property to respondents 3 and 4, and the same may not be interfered with. In support of this contention, learned counsel relied on the judgment of a learned single Judge of the High Court of Delhi in *SMT. DARSHNA vs. GOVERNMENT OF NCT OF DELHI AND OTHERS*² and also judgment of a learned single Judge of the High Court of Punjab and Haryana in *BALBIR KAUR vs. PRESIDENT OFFICER – CUM – SDM. AND OTHERS*³.

10. Heard learned Government Pleader for Revenue for respondents 1 and 2.

11. The 1st respondent, who is the appellate authority, held that the appeal filed by the petitioner is not maintainable, but however, confirmed the order passed by the 2nd respondent. Appeal provision is provided under Section 16 of the Act to any senior citizen or a parent as the case may be, against the order passed by the Tribunal. In the present case, the

² W.P.(C) 6592 of 2019 dated 18.07.2018

³ Civil Writ Petition No.15477 of 2014 (O & M) dated 29.06.2015.

appeal is filed by the daughter-in-law. Therefore, maintainability of the appeal, is also an incidental issue that requires to be examined.

12. In view of the above rival contentions the issues that arises for consideration are :

1. Whether the respondents 3 and 4, who are senior citizens, can invoke the provisions of the Act against the petitioner, who is their daughter-in-law?
2. Whether the provisions of the Act are meant only for awarding maintenance to the senior citizen or a parent as the case may be, and not for protection of their life and property?
3. Whether the provision for appeal under Section 16 of the Act is confined only to a senior citizen or a parent as the case may be, as provided under the statute, or whether such provision can also be made available to any of the aggrieved party to the proceedings?

13. In order to consider issue No.1, it is necessary to note the objects and reasons of the enactment and the relevant provisions. The same are extracted as under for ready reference:

“Statement of Objects and Reasons

Traditional norms and values of the Indian Society laid stress on providing care for the elderly. However, due to withering of the joint family system a large number of elderly are not being looked after by their family. Consequently many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that aging has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

...

14. From a reading of the above statement of objects and reasons, it is clear that in order to give more attention to the care and protection for the older persons, who are neglected by their family, and lack physical and financial support, and to provide them simple, inexpensive and speedy justice, Parliament introduced the Act, and the Bill in this regard, further proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives.

15. Section 2(a) of the Act defines 'Children' and Section 2(g), defines 'relative'. They are extracted as under:

'Children' includes son, daughter, grandson and grand-daughter but does not include a minor.

'Relative' means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

16. If the above definitions of 'children' and 'relative' are read, keeping in view the purpose of enactment as stated under the 'objects and reasons', it is clear that their meaning under the definitions, is restricted only to son, daughter, grandson and grand-daughter, and legal heir of the childless senior citizen, who is not a minor and is in possession or would inherit the property of a senior citizen after his death. As noted above, the object of the enactment is to cast an obligation not only on the family, but also on the 'persons' who inherit the property of their aged

relatives to maintain such aged relatives. Family has larger connotations and the same is also defined under the Act. In a given situation, like the present case, where the daughter-in-law is in possession of the property of parents-in-law, and made them to reside in a rented accommodation, and her husband, who is the son of respondents 3 and 4, living somewhere, can it be said that claim against the 'daughter-in-law' for protection of property of senior citizens, is not maintainable, as she is not covered under the above definitions? The answer would always be 'no'. In situations where the applicant will be having children, and the circumstances justify claim for maintenance, or for protection of life and property against his or her son-in-law and daughter-in-law, and also on such other persons who are in possession, and could inherit the property of senior citizen, then going by the definitions of 'children' or 'relative', the applicant would be disabled to make any claim, since those persons are not covered under the above definitions, and as such, the purpose of enactment, would be of no avail to such senior citizen, or a parent as the case may be, and they have to undergo the ordeal of regular trial under the common law remedies, which is of time consuming and expensive. In order to avoid such time consuming process, and to provide simple and inexpensive speedy remedy, Parliament in all its wisdom, have introduced the special enactment, to help people, who are in their old age. Therefore, if the persons like son-in-law and daughter-in-law and such other persons, who would be entitled in law, to inherit the property of such

relative, are not brought within the sweep of the definition of 'children' under Section 2(a), it would be amounting to giving a narrow interpretation, and in a way defeating the very purpose of enactment.

17. In such circumstances, this court has to take the aid of tools like purposive interpretation and *casus omissus*, to achieve the intended purpose of enactment. The Apex Court in *SURJIT SINGH KALRA v. UNION OF INDIA*⁴, held as under at paragraph No.9 of the judgment:

True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meanings, it is permissible to supply the words" (Craies Statute Law, 7th Edition, p. 109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar*, [1988] 2 SCC 513 at 524-25 where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sraful Haq Khan & Ors. v. The Sunni Central Board of Waqf*, [1959] SCR 1287 at 1299).

18. In view of the objects and reasons of the Act and the judgment of the Apex Court and to achieve the intendment of the enactment, and having regard to the facts and circumstances of the case, where the daughter-in-law has squat over the property of the parents-in-law and made them to reside in a rented accommodation, this court is of the considered view, that 'daughter-in-law', would also come within the sweep of the definition of 'children' and the respondents 3 and 4 herein,

⁴ (1991) 2 SCC 87

are entitled to maintain application against the petitioner invoking the provisions of the Act.

19. In the judgment of the High Court of Delhi in *Smt. Darshna v. Government of NCT of Delhi* (2 supra), there is a specific provision under Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016, which enable the senior citizen to make an application for eviction of his son and daughter or his legal heirs from the self-acquired property on account of non-maintenance and ill-treatment. Therefore, considering the said provision, the Delhi High Court held that daughter-in-law is also a heir in certain circumstances and accordingly held that application against daughter-in-law is maintainable. But in the present case, there is no such provision under the Act or the Rules of 2011. Therefore, this court cannot rely on the said judgment in toto, and has to resort to purposive interpretation of the provisions of the Act, in order to achieve the purpose of the enactment.

20. The other judgment of the High Court of Punjab and Haryana (3 supra) also cannot be made applicable to the facts of the present case concerning the present interpretation, since in the said judgment, the High Court held that application under Section 22 of the Act would be maintainable against any person irrespective of the fact whether the respondent in the application falls within the category of persons as defined in any of the definitions as provided under Section 2 of the Act,

and further held that *the only rider is that the applicant shall be a senior citizen*. Such an interpretation, in my considered opinion, would have far reaching consequences, and would be beyond the object sought to be achieved under the enactment. As already noted above, the object of the present enactment is to give more attention to the care and protection for the older persons, who are neglected by their family, and lack physical and financial support, and to provide simple, inexpensive and speedy justice and, further obligation is also placed on the persons who inherit the property of their aged relatives to maintain them. But that obligation cannot be extended to a third party, who is in no way connected with the senior citizen, and has no claim for inheritance against third party. In a given case, there may be a dispute in respect of immovable property, between a senior citizen, and a third party, who has an independent claim over the property and, who is not obligated to maintain such senior citizen. In such circumstances, the parties have to invoke the common law remedies, and merely on a ground that a party to the litigation is a senior citizen, he cannot be permitted to invoke the provisions of the Act, because that is not the purpose for which the Act has been introduced. This can be seen from the objects and reasons of the Act, which is already extracted above. In view of the same, this court regrets its inability to accept the reasoning adopted by the learned single Judge of the High Court of Punjab and Haryana, in this regard.

21. The issue No.1 is answered accordingly.

22. Coming to second issue, there is no dispute that under Section 5 of the Act, application can be made by a senior citizen, including parent, who is unable to maintain himself from his own earnings, or out of the property owned by him. But Chapters V and VII of the Act and Chapter VI of Rules of 2011, deal with the provisions for protection of life and property of senior citizens, and Section 2(f) defines 'property'. Therefore, to answer this issue, certain provisions under the Act and the Rules made thereunder, are required to be noticed, they are thus:

Section 2 (f): Property means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property.

Section 21. Measures for publicity, awareness, etc., for welfare of Senior Citizen: . . .

Section 22: Authorities who may be specified for implementing the provisions of this Act:

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens."

Section 32: Power of State Government to make rules:-

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(1) The State Government may by notification in the Official Gazette, make rules for carrying out the purposes of this act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for

. . .

(f) a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of Section 22.

...

CHAPTER–VI of the Rules of 2011

Rule 21: Action plan for the Protection of Life and Property of Senior Citizens:

(1) The District Superintendent of Police, and in the case of cities having a Police Commissioner, such Police Commissioner shall take all necessary steps, subject to such guidelines as the State Government may issue from time to time, for the protection of life and property of Senior Citizens.

(2) Without prejudice to the generality of sub-rule (1)

...

(v) complaints / problems of senior citizens shall be promptly attended to, by the local police.

23. Property as defined under Section 2(f) includes property of any kind, whether movable or immovable. Section 22 (2) of the Act provides for the authorities for implementing the provisions of the Act for the protection of life and property of senior citizens. Sub-section (1) of Section 32 empowers the State Government to issue notification in the Official Gazette, making rules for carrying out the purposes of the Act and clause (f) of sub-section 2 of Section 32 requires the State Government to provide for a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of Section 22 of the Act.

24. In conformity with sub-section 2 of Section 32 of the Act, Rules of 2011 have been framed. Rule 21 of these Rules provide action plan for the protection of life and property of senior citizens and sub-clause (v) of sub-rule 2 of Rule 21, obligates the local police to promptly attend the complaints/problems of senior citizens.

25. Therefore, from a reading of the above provisions, it is clear that the Act, which is a beneficial piece of legislation, has been introduced to protect the life and property of senior citizen or a parent as the case may be and hence, the provisions of the Act cannot be confined only for the claim of maintenance, and they extend to life and property of senior citizen or a parent as the case may be.

26. A learned Single Judge of this court in *MRS. V.SIVA LAKSHMI vs. THE STATE OF TELANGANA*⁵, in similar facts and circumstances, held as under:

“15. Having regard to the scheme of the Act and definitions noted above, I see merit in the contention of learned counsel for petitioner that even though petitioner has not crossed sixty years, as parent she is entitled to the protection under the Act in all respects including protection to the property, restoration of possession and granting police protection.”

27. The above judgment of the learned single Judge, has been confirmed by a Division Bench of this court in *V.SASHIKIRAN vs. MRS. V.SIVA LAKSHMI AND OTHERS*⁶.

28. Accordingly issue No.2 is answered.

29. To consider the third issue, Sections 16 and 27 of the Act, are required to be noticed and the said provisions, to the extent relevant, are extracted as under:

⁵ W.P.No.42210 of 2018 dated 08.03.2019

⁶ W.A.NO.276 OF 2019 dated 29.03.2019

Section 16. Appeals:-- (1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

...

Section 27: Jurisdiction of Civil Court barred:-- No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.

From a reading of Section 16 (1), it is clear that provision is made only to senior citizen or a parent, as the case may be, to file appeal before the Appellate Tribunal, and under Section 27 of the Act, the jurisdiction of the civil court is barred against any matters to which the provisions of this Act are applicable.

30. Now the issue that arises for consideration is, if the children or the relative, as the case may be, who are directed to pay maintenance, or against whom order for protection of the property is passed, are aggrieved by the said order, what would be their remedy? In the absence of any appellate provision, such party would have to invoke the jurisdiction of this court under Article 226, or the supervisory jurisdiction under Article 227 of the Constitution of India.

31. In a given case, against the order passed by the Tribunal, if both the parties are aggrieved, then under the statute the senior citizen or a parent as the case may be, will have to file an appeal under Section 16 (1) of the Act before the Tribunal, and the other party to the proceedings, will have to resort to constitutional remedies, as he is not

provided with opportunity to file appeal under the statute. In these circumstances, there is possibility of conflicting decisions and multiplicity of proceedings. But definitely, this could never be the intention of the legislation, and the omission to provide for appeal to the aggrieved party, can be treated as an accidental one, and to overcome the same, and to give a harmonious construction and taking the aid of principles of purposive interpretation and *casus omissus*, this court is of the view that Section 16(1) of the Act, shall be read to provide for the right of appeal to any of the affected parties.

32. In similar facts and circumstances, a learned single Judge of the High Court of Madras (Madurai Bench) in *M. VENUGOPAL Vs. THE DISTRICT MAGISTRATE – CUM – DISTRICT COLLECTOR, KANYAKUMARI DISTRICT*,⁷ had taken similar view, and the relevant portion is as under:

“17. During the course of the proceedings, I noticed that a plain reading of Section 16 of the Act gives an impression that an Appeal to the Appellate Tribunal would be only at the instance of a parent or a senior citizen. It gives further impression that the aggrieved children or the relatives have no right to Appeal. This does not appear to be a conscious omission by the Parliament. The Parliament would not have thought of differentiating between the rights of the aggrieved Parents and the Senior Citizens on one hand and the rights of the aggrieved children and relatives on the other hand. It is too well settled that the right of Appeal is a creature of statute and unless there is a specific provision made for Appeal, such right of Appeal cannot be readily inferred. If Section 16 of the Act receives literal interpretation, certainly it would lead only to an absurdity. For example, in a given case, if the parent is aggrieved by the quantum of Compensation, going by the plain reading of Section 16, he can file Appeal before the Appellate Tribunal, but, at the same time, the aggrieved children cannot go on Appeal challenging the quantum ordered. They may have to approach the High Court either under Article 226 of the Constitution of India or under Article 227 of the Constitution of India. Thus, as against the same order of the Tribunal, there may be two proceedings before

⁷ 2014(5) CTC 162

two different forums. This would not have been certainly intended by the Parliament. In order to avoid this absurd result, the Court use its interpretative tools to supply the missing words into the provision. In *N.KANNADASAN v. AJOY KHOSE AND OTHERS*, 2009(7) SCC 1, Hon'ble Justice S.B.Sinha, speaking for the Supreme Court Bench, has held as follows:

"Interpretative tools of Constitutional provisions and the Statutory provisions may be different. Whatever interpretative tool is applied, the Court must not forget that its job is to find out the intention of the legislature. It can be gathered from the words used. However, if plain meaning assigned to the Section results in absurdity or anomaly, literal meaning indisputably would not be applied. It is also well settled that the Court may have to change the interpretative tool in the event it is necessary to give effective contextual meaning to the Act."

Since I am of the firm view that the missing of the words 'aggrieved child or relative' in Section 16 of the Act is only an unconscious omission by the Parliament, by applying the Principal of "*casus omissus*", it should be held that such a right of Appeal is available for the aggrieved son/daughter/relative as well. I only hope that the law makers would take note of this anomaly and rectify the defect in the drafting of Section 16 of the Act."

33. The High Court of Punjab and Haryana in *Balbir Kaur case* (3 *supra*), examining Section 16 of the Act, held that Section 16(1) of the said Act is invalid, but must be read to provide for the right of appeal to any of the affected parties. The relevant portion of the judgment is extracted as under for ready reference:

"27. Then in Paras 26 to 29, judicial pronouncements referred to by the learned amicus-curiae have been discussed, followed by the conclusions in Paras 30 to 32, which are reproduced below:-

"30. What is crucial is that the task of interpretation of a statutory enactment cannot be a mechanical task, nor can it be the own thoughts and words of the Judge. However, there is no perfect solution as in the words of Lord Denning it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. It is here that the role of the Court comes in.

31. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and *casus omissus*. The Parliamentary

discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in N. Kannadasan's case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (supra), even while cautioning supply . . . (1) [N. Kannadasan v. Ajoy Khose](#), 2009 (7) SCC 1 (2) [Board of Muslim Wakfs, Rajasthan V. Radha Kishan and others](#), 1979 (2) SCC 468 of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

32. We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties."

28. In the end, it was concluded that right of appeal is conferred on a party aggrieved under Section 16 of the Act.

29. In view of the above, the answer to the second question posed is answered by holding that the petitioner, who is a daughter-in-law, being an aggrieved party, has a right of appeal under [Section 16](#) of the Act.

34. For the foregoing reasons and having regard to the facts and circumstances of the case, and the judgments of the Apex Court and other High Courts referred to above, this issue is answered holding that right of appeal is available under Section 16 of the Act to any of the aggrieved party to the proceedings and in the present case, to the

petitioner, who is the daughter-in-law. The issue No.3 is answered accordingly.

35. The other contention of the learned counsel for the petitioner is that on the one hand, the appellate authority – 1st respondent held that appeal is not maintainable and at the same time, without recording any reasons, confirmed the order passed by the Tribunal and this amounts to violation of principles of natural justice.

36. When the 1st respondent – appellate authority, found that appeal is not available, then it ought not have entered into merits of the case, and ought to have simply rejected the appeal on that ground alone, leaving it open to the parties to avail remedies available under law, but it went head and without recording reasons, confirmed the order. This is an anomaly, which requires to be taken into consideration.

37. As discussed above, this court held that provision to file appeal under Section 16 (1), is available to the daughter-in-law who is the aggrieved party in the present case. In view of the same, the portion of the order of the 1st respondent holding that appeal is not maintainable, is set aside.

38. The 1st respondent, did not record any reasons, while confirming the order of the Tribunal. This amounts to violation of principles of natural justice. But it is to be kept in mind that though remedy is available to the

senior citizen or a parent as the case may be, under other enactments, which are time consuming as well as expensive, the Parliament envisaging the said difficulties, in order to have simple, inexpensive and speedy provisions to claim maintenance, brought the present enactment. The proceedings in the present case, under the provisions of the Act, were initiated by respondents 3 and 4 during the year 2016. Therefore, keeping in view the object of enactment, and having regard to the facts and circumstances of the case, and as the respondents 3 and 4, who are senior citizens, aged more than sixty and seventy years respectively, instead of remanding the matter, this court is inclined to consider the merits of the case, to see whether the conclusion arrived at by the 1st respondent is justified.

39. As noted at the threshold, this court is not entering into the arena of disputed questions of facts between both the parties, and this court is inclined to consider only the admitted facts on record to see whether the conclusion arrived at by the authorities below warrant any interference. The facts on record, which are already noted above, would disclose that the marriage of the petitioner was performed with the son of respondents 3 and 4 on 28.11.2012, and due to disputes, both the parties have initiated civil and criminal proceedings against each other, and they are pending adjudication, and the petitioner admitted that she is residing in her in-laws house at Karimnagar, which is the subject property. The

allegation is that the petitioner forcibly evicted respondents 3 and 4 from the subject house. The truth or otherwise of this allegation cannot be gone into in this writ petition, but the fact remains that respondents 3 and 4 are residing in a rented accommodation. It is to be seen that when respondents 3 and 4 are having accommodation of their own, there is no reason why they shall reside in a rented accommodation and, therefore, seeking for protection of their property and for handing over of possession, they rightly invoked the provisions of the Act.

40. Perusal of the order passed by the 2nd respondent dated 27.08.2016 goes to show that notices dated 6.6.2016, 20.06.2016, 04.07.2016 and 08.08.2016 were sent to the petitioner herein for attending the proceedings, but she did not attend. Therefore, after about four adjournments, the 2nd respondent, allowed the application and ordered for handing over the subject house to respondent No.3.

41. In the affidavit filed in support of the writ petition, the petitioner at paragraph No.10, stated as under:

“I received notice from the 2nd respondent posting the case to 06.06.2016 and I entrusted the same to my counsel, Mr.Madhusudhan Rao, Advocate, Karimnagar to defend me. I signed vakalat in his favour and paid fees to him. It appears that he did not attend before the 2nd respondent and the 2nd respondent has proceeded *ex-parte* and passed an order dated 27.08.2016 directing me to handover the house property to the respondents 3 and 4 along with the documents relating to the property.”

42. From the above averments of the petitioner it is clear that she received notice, but could not attend the proceedings and she seeks to

blame her advocate. But the fact remains that notice was served on the respondent and, as there was no representation, the impugned order came to be passed based on the material available on record.

43. Having regard to the admitted facts on record, this court is of the considered view that though the 1st respondent – appellate authority failed to record reasons while confirming the order of primary authority, the same warrants no interference.

44. To sum up, in the present case, as the petitioner has married the son of respondents 3 and 4, she became their daughter-in-law, and by virtue of said relation, she has come into the possession of the subject property, and she is also asserting her right over the property by virtue of said relation. Admittedly, the property belongs to the 3rd respondent, which is stated to be her stridhana property. As the respondents 3 and 4, are forced to reside in a rented accommodation, in spite of having their own, which is in the possession of the petitioner, they sought for restoration of possession by invoking the provisions of the Act. As discussed above, this court held that provisions of the Act are applicable not only for seeking maintenance by the senior citizen or a parent as the case may be, but also for seeking protection of their life and property, and that the petitioner who is their daughter-in-law, would fall within the ambit of definition of 'children' under Section 2(a) of the Act, and hence amenable to the jurisdiction of the Act. To resist the claim of

respondents 3 and 4 for restoration of possession, the petitioner has no justifiable defence. Therefore, the Tribunal, considering the facts and circumstances of the case, ordered for restoration of possession, and hence no exception can be taken. Moreover, this court is not sitting in appeal over the findings given by the Tribunal.

45. Before parting with the case, it is to be seen that, the glaring anomaly which is appearing on record, and as already noted above, is that the appellate authority failed to record reasons while confirming the order of the primary authority, and this amounts to violation of principles of natural justice. In normal circumstances, this court would have remanded the matter to the appellate authority to pass orders afresh after giving opportunity to both the parties and by recording cogent and convincing reasons. But having regard to the facts and circumstances of the case, which are discussed above, this court found that though reasons are not recorded, the conclusion arrived at by the appellate authority, is just and proper. Further, this court is of the view that if this glaring anomaly is sought to be rectified by way of remand, it would amount to erasing the justice in the name of correcting the error of law, which this court is not inclined to undertake, having regard to the present facts and circumstances of the case.

46. Extraordinary jurisdiction conferred on this court under Article 226 of the Constitution of India, is discretionary in nature and even if case is

made out, still the court has discretion not to entertain the writ petition.

The Apex Court in *ROSHAN DEEN vs. PREETI LAL*⁸, held that:

“Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. {vide *State of Uttar Pradesh vs. DISTRICT Judge, Unnao and Ors* (AIR 1984 SC 1401)}. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the laws. The look out of the High Court, is therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.”

47. In view of the above facts and circumstances of the case, I am of the considered view, that it is not a fit case where this court should exercise its equitable and extraordinary jurisdiction under Article 226 of the Constitution of India.

48. For the foregoing reasons, I do not find any merit in the writ petition and the same is accordingly dismissed. Consequently, the miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A. RAJASHEKER REDDY, J

DATE: 05—03 —2020

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⁸ 2002(1) SCC 100