

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.29988 of 2019

W.M.P.No.29889 & 29890 of 2019

K.Raju

...Petitioner

Vs

1. Union of India,
rep. by Secretary to Government,
New Delhi.

2. The District Collector/Appellate Tribunal,
Villupuram District,
Villupuram.

3. The Revenue Divisional Officer,
Villupuram.

4. Krishnan

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that any aggrieved party to an order passed under The Maintenance and Welfare of Parents and Senior Citizen Act, 2007, Act No.56 of 2007, can file an Appeal under Sec.16(1) of the said Act, with reference to the case in Balbir Kaur v. Presiding Officer-cum-SDM of the Maintenance & Welfare of Senior Citizen Tribunal, Pehowa District, Kurukshetra and others dated 29.06.2015 and consequently, direct the 2nd respondent to take the appeal on file.

For Petitioner

: Mrs.P.Veena Suresh

For Respondents

: Mr.K.S.Suresh,G.A
for respondent Nos.2 and 3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petition is completely without any basis.

2. A perfectly simple provision lucidly enunciated is sought to be twisted to imply something that it clearly does not permit.

3. The matter pertains to Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Sub-section (1) of such provision permits only any senior citizen or a parent, who is aggrieved by an order of a tribunal passed under such Act, to prefer an appeal to the appellate tribunal. The first proviso to such provision adds that merely because an appeal has been filed by a senior citizen or a parent aggrieved by the quantum of maintenance allowed would not permit the children or relative who are directed to pay the maintenance to suspend the payment of the maintenance as directed. The second proviso enlarges the period of receiving an appeal upon sufficient cause being indicated. Sub-section (2) through sub-section (7) of Section 16 of the Act pertain to the conduct of the appeal and do not reflect anything on who may prefer an appeal and who may be regarded as a person aggrieved.

4. Section 16(1) of the said Act of 2007 is quoted:

"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:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time."

5. The words used in the provision are lucid and, by no stretch of imagination, can such clear words of the statute be read or understood or interpreted to imply that any class of persons other than any senior citizen or a parent may be entitled to prefer an appeal under such provision. The terms

"senior citizens" and "parent" are defined in Section 2 of the Act. The word "Tribunal" is also defined to mean the Maintenance Tribunal as constituted under Section 7 of the Act.

6. It is elementary that an appeal is a creature of a statute and no right of appeal inheres in any person unless such right is expressly conferred by any statute. It is possible for a right of appeal to be hedged with conditions or even a right of appeal to be granted to a class of persons and not granted to another. It is the wisdom of the legislature to decide what classes of persons would be entitled to the right of appeal and what conditions may be attached to the exercise of such right and how such right may be exercised.

7. At the highest, an appellate provision may be assailed as unreasonable as falling foul of the constitutional principles, particularly under Article 14 thereof. But merely because a class of persons has been conferred the right to prefer an appeal while another class may have not been given such right, ipso facto, would not make the appellate provision vulnerable to any challenge under Article 14 of the Constitution. Indeed, the right of appeal that inheres in a party to the lis at the time of initiation of the lis may also be subsequently taken away by legislature, the only caveat being that such a right must be expressly taken away and such right cannot be seen to be extinguished by implication.

8. The petitioner relies on a judgment of the Punjab and Haryana High Court reported at AIR 2014 P&H 121 (Paramjit Kumar Saroya v. The Union of India). There is no doubt that such judgment concludes, upon a reading of Section 16 of the Act, that any person aggrieved by an order of the Tribunal may prefer an appeal. However, we have not been able persuade ourselves to concur with the view. For the reasons indicated hereinabove, we respectfully disagree.

9. When the clear words of a statute do not permit any other meaning or interpretation, particularly when it pertains to a right of appeal, additional words cannot be read into the provision to discover a right in favour of a class of persons excluded by necessary implication in the appellate provision. When the words used in Section 16 of the Act are "Any senior citizen or a parent ... aggrieved by order of a Tribunal may ... prefer an appeal..." and the other words govern the time or describe the senior citizens or the parent in the alternative, there is no room to imagine that others aggrieved by an order of the tribunal may also prefer an appeal on the ground that the scales must be balanced between the two sides.

10. In the light of the above and there being no other issue involved, W.P.No.29988 of 2019 is dismissed. It is recorded that the petitioner says that the parties have come to a settlement, but no conclusive finding needs to be rendered in such regard in the context of the present lis and also since the private respondents are not represented.

There will be no order as to costs. Consequently, W.M.P.No.29889 and 29890 of 2019 are closed.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
Union of India,
New Delhi.
2. The District Collector/Appellate Tribunal,
Villupuram District,
Villupuram.
3. The Revenue Divisional Officer,
Villupuram.

+1cc to Mr.P.Veena Suresh, Advocate SR.No.10079
+1cc to Government Pleader SR.No.10299

W.P.No.29988 of 2019

RV(CO)
KKV/05/03/2021