

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-3443-LPA-2019 in/and
LPA-2379-2016 (O & M)**

Date of decision: 18.01.2021

Balbir Kaur @ Shallu

..... Petitioner(s)

V/s

The District Magistrate-cum-Appellate Authority under Maintenance & Welfare of Senior Citizen Act, Kurukshetra and ors.

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. shreenath A. Khemka, Advocate, for the petitioner(s).

Mr. Ankur Mittal, Addl.A.G., Haryana.

Mr. S.S. Momi, Advocate, for respondents No.3 and 4.

Rajan Gupta, J. (Oral)

Due to prevailing situation of COVID-19, matter has been heard through Video Conferencing.

CM-3443-LPA-2019

This is an application for payment of maintenance arrears, as per the order dated 20.03.2019 for maintaining status quo.

With the consent of the parties, main case is taken up for hearing today.

LPA-2379-2016

Present appeal has been filed against the order passed by learned Single Judge whereby he set aside the impugned order passed by District Magistrate, Pehowa, District Kurukshetra, on the ground that the order has not been passed by the duly constituted Tribunal. He, thus, remanded the case to the Tribunal for a decision afresh. Operative part of the order reads as under:-

“I have heard learned counsel for the parties and perused the record with able assistance and am of the considered opinion that the impugned order passed by the Appellate Authority is patently without jurisdiction because as per the Scheme of the Act, the Tribunal and the Appellate Tribunal are constituted by the State Government by way of notification and the appeal has to be decided by the duly constituted Tribunal. In the present case, notification dated 10.12.2012 has been relied upon to which there is no contrary notification produced before this Court. In this notification, the Tribunal has been specifically constituted for Kurukshetra in which there are three Members. District Magistrate may be the Chairman of the Tribunal but once there is a Tribunal of three Members, the District Magistrate has no jurisdiction to take decision alone and the decision has to be taken unanimously or by way of majority. Therefore, on this ground alone, the impugned order deserves to be set aside and thus the present writ petition is hereby allowed and impugned order is set aside and the matter is remanded back to the Tribunal constituted as per notification dated 10.12.2012 to decide the matter afresh after affording due opportunity of hearing to both the parties and by passing a reasoned order.

Parties are directed to be present before the Tribunal on 23.11.2016.

It is needless to mention that the Tribunal shall decide the lis between the parties as early as possible. The interim order passed by this Court on 14.09.2015 shall operate till the decision is taken by the Tribunal one way or the other”.

On perusal of the aforesaid order, we are of the considered opinion that there is no legal infirmity with the aforesaid directions. The matter has to be decided by duly constituted Tribunal(s) as specified in Notification dated December 10, 2021. Admittedly, by now, a judgment has been delivered by the Hon’ble Supreme Court in ‘S. Vanitha versus Deputy

1023’ and ‘Satish Chander Ahuja versus Sneha Ahuja (Civil Appeal No.2483 of 2020 arising out of SLP (C) No.1048 of 2020)’. We, thus, feel that the matter can be decided by the Tribunal as per law. We further feel that the Tribunal would not be swayed by the observations made in its earlier order. Even otherwise the said order was without jurisdiction. It shall also be at liberty to take all the facts and circumstances of the case into consideration.

Needless to observe that the learned counsel for both the parties shall be at liberty to cite the judgements before the Tribunal they seek to place reliance upon. The Tribunal may endeavour to decide the matter at the earliest, in any case, not later than six months.

The matter is disposed of in these terms.

Status quo be maintained till the decision of the issue by the Tribunal.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

January 18, 2021
sukhpreet

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No