

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

936 WRIT PETITION NO.10994 OF 2021

MARUTI GANPAT VIDHATE AND OTHERS
VERSUS
THE CHAIRMAN SENIOR OFFICER SUBSISTENCE TRIBUNAL AND
SUB DIVISIONAL OFFICER AND OTHERS

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Advocate for Petitioners : Mr. H.S. Bhoomkar h/f. Mrs. S.G. Sonawane
AGP for Respondent 1 : Mr. P.G. Borade
Advocate for Respondent 2 : Mr. S.S. Dixit

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CORAM : SMT. BHARATI H. DANGRE, J.
DATED : 23/02/2022

PER COURT :

1. Smt. Sundarabai Ganpat Vidhate is an unfortunate mother, who having three children, but is still made to lead her life of destitute.

This constrained her to approach the Chairman, Senior Officer, Subsistence Tribunal and Sub Divisional Officer, Sangamner by instituting Appeal No. 435/2021, where she sought relief of maintenance under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This proceedings resulted in order being passed on 6.9.2021, by the Chairman Senior Officer Subsistence Tribunal and Sub Divisional Officer Sangamner where application filed by Sundarabai was granted. The children as well as

their wives and the grand children are directed to deliver the vacant possession of the residential house constructed in Gat No. 381 within a period of one week. Similarly injunction has been imposed upon the respondents, in the proceedings to resist her cultivation in the property, which is mentioned in the order.

2. I have not gone deeper in the merits of the claim and impugned order since the learned counsel for the petitioners at the outset has advanced an argument that the petitioners were not heard before the order came to be passed on 6.9.2021.

3. Perusal of the impugned order would reveal that the application was filed by the respondent No. 2 Smt. Sundarabai on 22.7.2021 and notices were forwarded to the respondents in the application and they were afforded an opportunity.

The impugned order would reveal that the respondents did not appear nor they were represented by any counsel and their submissions are not at all taken into consideration while impugned order is passed. Though learned counsel Mr. Dixit would vehemently submit that it is always open for the authority to pass exparte order when the contesting party did not appear before the competent authority, it is equally true that opportunity of being heard is the first principle of civilised jurisprudence and is accepted by laws of

applicable globally. In short, before an order is passed against any person, reasonable opportunity of being heard must be given to him/her and since it is not done, the action cannot be sustain, since the fair opportunity before passing any order to the contestants is ingrained in the provisions of the Act and any order which fail to afford a reasonable opportunity, cannot be saved and deserve to be set aside.

The impugned order do not disclose as to whether any opportunity was afforded to the petitioners to represent themselves, but statement being recorded that notices were issued to them. The fact whether the notices were received by them and on receipt whether opportunity was granted to them to represent in the proceeding are conspicuously absent.

In the wake of the above, impugned order cannot sustain and deserve to be quashed and set aside and the matter deserves to be remanded back to respondent No. 1 authority for it's re-determination. However, the matter being remanded the petitioner Nos. 1, 2 and the respondent No. 3, the three sons of Sundarabai who are directed to under the impugned order to deposit an amount of Rs.10,000/- (petitioner No. 1 – Rs.3400/-, petitioner No. 2 and respondent No. 3 – Rs.3300/- each) for her sustenance and treatment which was directed

to be deposited in her account, the said direction shall be abided by and petitioner Nos. 1, 2 and respondent No. 3 shall deposit the arrears of amount from the date of order i.e. 6.9.2021 up to 20th February 2022 within a period of four weeks from today and thereafter, till the application is reheard by the respondent No. 1 and they shall continue to make said payment subject to further adjustments and modifications made.

The competent authority shall ensure compliance of the order and permit the mother to reside in the residential house.

4. Upon the appeal being remanded to the respondent No. 1, necessary opportunity of hearing shall be afforded to all the parties concerned.

Writ petition is accordingly disposed of.

[SMT. BHARATI H. DANGRE, J.]

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