

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1140 OF 2020

Shivaji Sambhaji Jagtap
And Anr.

....Petitioners

vs.

Janabai Sambhaji Jagtap
And Anr.

...Respondents

Mr. Rawool Mahesh Vijay, for the Petitioners
Ms. Vrushali Uday Kabre for respondent No.1
Ms. Anamika Malhotra, APP for State

CORAM : N. J. JAMADAR, J.

DATE : APRIL 25, 2022

P.C.:

1. Heard. The learned counsel for the petitioners and the learned counsel for the respondent No.1.
2. The challenge in this petition is to an order passed by learned Sub-Divisional Magistrate, and Maintenance Tribunal, Thane Division, Thane under Section 23(1) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') on 31st December 2019 whereby the Petitioner/Respondent Nos. 1 to 3 have been directed to deliver the possession of flat No. 1226, ground floor, Sukhshanti Bonkode, Koparkhairne, New Mumbai within a period of 8 days thereof. It is further directed that, in the event of non-compliance of the said order the

petitioner shall be liable to be punished for the offence punishable under Section 24 of the said Act.

3. The principal challenge in this petition is that the petitioner No.1, who is the step son of the respondent No.1, was not at all served with the notice of the proceedings before the Tribunal. The learned counsel for the petitioners invited the attention of the Court to narration of the facts in the impugned judgment, wherein it is recorded that notices were issued on 16th August 2019 and 30th February 2019. The learned counsel submits that, the narration is plainly incorrect as the Application was preferred on 26th July 2019 as is evident from the certified copy of the entire proceeding tendered before the Court. Indeed, the record indicates that the notice came to be issued to the petitioner on 30th July 2019, about the listing of the matter for hearing on 16th August 2019. However, there is no material to show that the notice was duly served on the petitioners.

4. The learned counsel for the respondent No.1 has placed a copy of Roznama which indicates that, on 16th August, 2019 the respondent No.1/complainant in the application was present before the Tribunal. The matter came to be adjourned to 20th August 2019. On 20th August 2019, none appeared for the respondent and the proceedings were closed for order. The

Roznama of 16th August 2019, however, does not show that notice was served on the respondent before the Tribunal.

5. Thus, there is no material to show that the notice was served on the respondents/petitioners before this Court. It appears that the Tribunal did not adhere to fundamental principles of judicial process. This furnishes a sure foundation for exercise of writ jurisdiction.

6. The learned counsel for respondent No.1 submitted that the petition is not maintainable on the criminal side as the order passed by the Tribunal is of 'civil nature'. It is pertinent to note that the Tribunal has referred to the provisions contained in Section 24 of the Act, which provide for the offence of exposure and abandonment of senior citizens. Non-compliance of the order passed under section 23 is visited with penal consequences, as provided in Section 24, to which express reference is made in the impugned order. Therefore, the objection does not merit acceptance.

7. The learned counsel for the respondent No.1 submitted that the petitioners have preferred an appeal under Section 16 of the Act before the Appellate Tribunal. The tenability of the appeal before the Appellate Tribunal, at the instance of the respondents before the Tribunal, is a disputed proposition. The

learned counsel for the petitioner, at this stage, submits that the Appeal has not at all been processed, and proceeded with.

8. Even otherwise since the tribunal has not followed the fundamental principles of judicial process, this court would be justified in exercising the writ jurisdiction. In the circumstances, it would be appropriate to remit the matter back for afresh decision after providing an effective opportunity of hearing to the parties.

10. Hence following order.

ORDER

I. The petition stands allowed.

II. The impugned order dated 31st December 2019 passed by the Tribunal in TD/C-4/Administration/Senior Citizen/Order/SR-16/2019 stands quashed and set aside.

III. The Application stands remitted back to the Tribunal for afresh decision after providing an effective opportunity of hearing to the parties.

IV. The parties shall appear before the Tribunal on 9th may 2022.

V. No separate notice is required to be issued by the Tribunal to the parties.

VI. The tribunal shall make an endeavour to decide the Application as expeditiously as possible and preferably within a period of 2 months from the date of the appearance of the parties.

VII. In view of the remand of the matter back to the Tribunal, the appeal before the appellate tribunal also stands disposed.

VIII. The learned counsel for the petitioners on instructions of petitioner No.1, submits that in the event, the respondent No.1 desires to reside with the petitioner, the petitioner No.1 has no objection.

The statement is accepted.

(N. J. JAMADAR, J.)