

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6172 OF 2021

Parmila Ramdas Thakare

...Petitioner

Versus

Arun Ramdas Thakare And Anr.

...Respondents

Mr. Sachin Gite, Advocate for Petitioner.

Mr. Pandit Kasar, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th AUGUST, 2022.

P.C. :-

1. The Petitioner is the mother of Respondent Nos.1 and 2. She had preferred RTS/Maintenance Application No.24 of 2020 under Section 5 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'Senior Citizen Act') seeking prayer for maintenance, care and shelter from Respondent No.2.

2. The grievance of the Petitioner is that on 14th June, 2019 the Respondent Nos. 1 and 2 and their wives had thrown the Petitioner out of house and since then she is residing with her daughter. Petitioner's husband had constructed two storeyed building admeasuring about 3000 square feet. The Respondents by throwing the Petitioner out of the premises took possession of the

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said building. The Petitioner does not have any independent source of income.

3. The Petitioner filed proceedings under the aforesaid Act and claimed maintenance of Rs.10,000/- each from Respondent Nos. 1 and 2. She also claimed the possession of ground floor block for her residence. The Respondent Nos. 1 and 2 filed reply opposing the reliefs and contended that the Petitioner had herself left the house and she is residing with their sister.

4. The Sub-divisional Officer, Nashik vide order dated 19th October, 2020 partly allowed the claim of Petitioner. However, the claim for maintenance was rejected. The Sub-divisional Officer directed Respondent Nos. 1 and 2 to hand over the possession of ground floor block to Petitioner for her residence. The Respondent Nos. 1 and 2 were restrained from disturbing the possession of the Petitioner.

5. Being aggrieved by the order dated 19th October, 2020 passed by the Divisional Officer, Nashik, the Respondent No.1 filed an appeal viz. Appeal No.5 of 2020 before the Senior Citizen Maintenance Tribunal/Appellate Authority. Vide order dated 3rd March, 2021 the appeal was allowed and the direction of Sub-

divisional Officer, Nashik directing Respondent Nos. 1 and 2 to hand over the possession of ground floor block to Petitioner was set aside.

6. Learned Advocate Mr. Pandit Kasar appearing for Respondent Nos. 1 and 2 has raised the preliminary objection about maintainability of the Petition in criminal side of this Court. According to him the Petition will have to be filed on the civil side of this Court. He submitted that if the entire scheme of the said Act is taken into consideration, there are two mechanisms established for enforcing right of the affected parties under the Act. Section 5 relates to maintenance and Section 23 refers to void transfer of property. Section 24 imposes punishment. The mechanism established to govern the procedure of tribunal is civil in nature and the mechanism established to enforce right in case of abandoning the senior citizen is criminal in nature. Under Section 8(2) the tribunal has been given all powers of civil Court for the purpose of taking evidence on oath and enforcing attendance of witnesses and has compelling the discovery and production of documents and material objects and such other purpose as may be prescribed and the tribunal shall be deemed to civil Court for all the purposes of Section 195 and Chapter-XXVI of Code of Criminal

Procedure. Section 27 of the Act provides that 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. The combine reading of Sections 8 and 27 establishes that the intention of the legislature was to govern the procedure before the tribunal and appellate tribunal under the civil jurisprudence. The punishment prescribed for abandoning the senior citizen will be governed under Code of Criminal Procedure, 1973. Section 24 of the Act prescribes punishment of three months or fine which may extend to Rs.5,000/- in case anyone having care of protection of senior citizen leaves such senior citizen in any place with intention of wholly abandoning such senior citizen shall be punishable with imprisonment of three months or fine. Section 25 contemplates that every offence under this Act is cognizable and bailable in nature and would be tried summarily by Magistrate. Hence, combined reading of Sections 24 and 25 establishes that jurisprudence to govern Magisterial power would be criminal jurisprudence. Learned counsel for Respondents referred to two illustrations. It is submitted that under Mumbai Municipal Corporation Act, there is civil remedy as well as criminal remedy. If aggrieved party has to challenge the notice under Section 354 of

the Mumbai Municipal Corporation Act the jurisprudence to exercise is civil jurisprudence. If the corporation has to file the complaint under Section 471 of the Act then the jurisprudence which has to be exercised is criminal jurisprudence. The Mumbai Municipal Corporation Act is *pari materia* to the present Act wherein two mechanisms are established providing two different jurisprudence. The second illustration is the Protection of Women from Domestic Violence Act, 2005. Section 28 of the said Act provides that the Act would be governed by Code of Criminal Procedure. However, the senior citizen's Act does not make such provision.

7. Learned Advocate Mr. Sachin Gite appearing for the Petitioner countered the preliminary objection and submitted that criminal writ petition is maintainable against the impugned order. It is submitted that Section 6 of the Act provides for jurisdiction and procedure. Section 8 refers to summary procedure in case of inquiry. Section 11 relates to enforcement of order of maintenance. It is submitted that the combine reading of Sections 6, 8 and 11 shows that from the stage of issuance of process till execution of maintenance order is similar in nature as provided by Code of Criminal Procedure. Section 11 Sub-clause-2 provides that the

maintenance order made under this Act shall have the same force and effect as an order passed under Chapter-IX of the Code of Criminal Procedure and shall be executed in the manner prescribed for the execution of such order by that Court. Section 15 relates to constitution of Appellate tribunal and it provides that it shall be presided over by the officer not below the rank of district Magistrate. Section 22 refers to authorities who may be specified for implementing the provisions of the Act. Section 24 refers to exposure and abandonment of senior citizen. Section 25 refers to cognizance of offence and Section 27 specify that jurisdiction of the civil Court is barred. Rule 19 of Maintenance and Welfare of Parents and Senior Citizen Rules, 2010 provides duties and powers of District Magistrate. Rule 20 relates to action plan for the protection of life and property of senior citizen. All these provisions provides for the procedure to be implemented by the tribunal while conducting the case and it also provides for the consequences for non implementation of the order. All the concerned officers in respect of procedure and its implementation are District Magistrate and Police Officers. Thus, the proceedings under the said Act are to be treated as of criminal nature and therefore the remedy against the impugned order is to be filed as criminal writ petition. Mr. Gite made reference to the Bombay High Court, Appellate Side Rules

1960 and referred to Rule 2 and Rule 2-B. Rule 2 refers to matters to be disposed by a Single Judge and Rule 2-B refers to petition/application under Articles 226/227 of the Constitution of India arising out of or relating to an order of penalty or confiscation etc. under any special statute. It is submitted that all the petitions/applications under Articles 226/227 arising out of or relating an order of penalty or confiscation etc. or the order in the nature thereof or otherwise of a penal character and passed under any special statute shall be heard by Division Bench hearing the writ petition.

8. Mr. Gite has relied upon the decision of this Court in the case of *Nagpur Cable Operators Association V/s. The Commissioner of Police Nagpur, 1995 (2) Mh.L.J. 753*.

9. Since the learned counsel for the Respondents has urged preliminary objection with regards to the maintainability of the petition on the criminal side, it would be appropriate to adjudicate on the preliminary objection before going into the merits of the case.

10. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 was enacted and brought into force to provide for

more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens guaranteed and recognised under the constitution and for matters connected therewith or incidental thereto. The statement of objects and reasons of the said Act is as under :-

Statement of Objects and Reasons.- Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to witherning 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 ageing 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 can 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 oldage 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.

3. The Bill, therefore, proposes to provide for :-

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

4. The Bill seeks to achieve the above objectives.

11. As per Section 4 of the Act a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5. Application for maintenance under Section 4 may be made by a senior citizen or a parent as the case may be or if he is incapable, by any other person or organization authorize by him or the tribunal may take cognizance *suo moto* as per Section 5 of the Act. Section 6 relates to jurisdiction and procedure. As per the said provision the proceedings under Section 5 may be taken against any children or relatives in any district where he resides or last resided or where children or relative resides. On receipt of the application under Section 5, the tribunal shall issue a process for procuring the presence of children or relative against whom the application is filed. Sub-section 3 provides that for securing the attendance of children or relative the tribunal shall have the power of Judicial Magistrate of First class as provided under the Code of Criminal Procedure, 1973. Sub-section 4 provides that all evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made and shall be recorded in the manner prescribed for summons cases. Thus, the

aforesaid procedure under the Act, provides that the tribunal shall have the power of Judicial Magistrate First Class provided under Cr.P.C. and the evidence shall be recorded as per the procedure prescribed for summons cases. Section 8 of the Act provides for summary procedure in case of inquiry. Sub-section 2 states that the tribunal shall have all the powers of civil Court for the purpose of taking evidence on oath and enforcing attendance of witnesses and for compelling the discovery and the production of documents and material objects and for such other purposes as may be prescribed and the tribunal shall be deemed to be a civil Court for all purposes of Section 195 and Chapter – XXVI of Cr.P.C. Section 11(2) states that the maintenance order made under the Act shall have the same force and effect as an order passed by Chapter – IX of Cr.P.C. and shall be executed in the manner prescribed for the execution of such order by that Court. Section 22 of the Act provides that the State Government may confers 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 sub-ordinate 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. Chapter-VI of the Act relates to offences and procedure for trial. Section 24 refers to exposure and abandonment of senior citizen. As per the said provision whoever having the care or protection of senior citizen, leaves such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to Rs.5,000/- or with both. Section 25 is about cognizance of offences. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under the Act shall be cognizable and bailable. An offence under the Act shall be tried summarily by Magistrate. As per Section 27 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. Rule 19 of Maintenance and Welfare of Parents and Senior Citizen Rules, 2010 provides duties and powers of District Magistrate. The District Magistrate to perform the duties and exercise the powers mentioned in Sub-Rules 2 and 3 so as to ensure that provisions of the Act are properly carried out in his district. As per Sub-clause 2 the Magistrate is empowered to perform the various duties enumerated therein. As per Sub-clause 3

the District Magistrate shall be competent to issue directions not in consistent with the Act, Rules and general guidelines of the State Government as may necessary with a view to perform the duties mentioned in Sub-Rule 2. Rule 20 provides for action plan for the Protection of Life and Property of Senior Citizens. The District Superintendent of Police and in the case of City 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 citizen. Sub-Rule 2 issues directives to the Police Station for protecting the life and property of senior citizen. All these provisions of the Acts and Rules provides for the procedure to be implemented by the tribunal while conducting the case and it also provides for the consequences of non implementation of the order.

12. Learned Advocate for Petitioner had adverted to Rules 2 and 2-B of Bombay High Court Appellate Side Rules 1960. Chapter-I of the said Rules relating to conduct of business has been amended. Vide notification dated 28th August, 2013 existing Chapter-I and Chapter-XVII, Rules 1, 4, 17 and 18 of the aforesaid Rules were substituted. In the case of *Nagpur Cable Operators Association V/s. The Commissioner of Police Nagpur (supra)*, the

Division Bench of this Court has held that applying the tests laid down by the Apex Court in *Narayan Row And Anr. vs Ishwarlal Bhagwandas And Anr.*, AIR 1965 SC 1818, if the writ petition/application under Articles 226 and/or 227 of the constitution arises out or relates to a proceedings in which, if carried to its conclusion ultimately it may result in sentence of death or by way of imprisonment, fine or forfeiture of the property then such writ petition/application under Article 226 of Constitution of India and or under Article 227 of the constitution, should be treated as “Criminal Writ Petition” and styled as such. Learned Advocate Mr. Kasar submitted that some of the petitions are filed in the civil side of this Court. Security of the provisions under the Act which are enumerated hereinabove it can be seen that, the Act provides filing application before tribunal. For securing presence of children or relative the tribunal exercises the power of Judicial Magistrate First Class as provided under the criminal procedure code and evidence in such proceedings shall be recorded as per procedure prescribed for summons cases. For holding any enquiry under Section 5, the tribunal to follow summary procedure subject to any Rules prescribed in that behalf. The Act also provides that the tribunal will have powers of civil Court for taking evidence etc. The order of maintenance shall be executed in same manner

prescribed for order under Chapter-IX of Code of Criminal Procedure. The Appellate Tribunal is presided over by an officer not below the rank of District Magistrate. The State Government may confer powers and duties on District Magistrate to ensure implementation of Act and the District Magistrate may specify the officer who shall exercise powers and duties prescribed. The Act prescribes punishment of imprisonment or fine and recognises the offences as cognizable. The Rules prescribed under the Act provides mechanism duties and powers of District Magistrate, action plays to protect life and property of senior citizens by Superintendent of Police or Commissioner of Police. Thus, the Act has facets of civil as well as criminal law and procedure. The Act also provides punishment in certain situation. In the present case the SDO had directed Respondents to handover possession of block to Petitioner and restrained them from disturbing the occupation of Petitioner. It is further directed that in the event the Respondents create objection for Petitioners residing in said premises the Senior Inspector of Police, Gangapur Police Station, Thane has been directed to take cognizance of Petitioner's complaint and initiate appropriate action against Respondents. I am of the considered opinion that this petition is maintainable in criminal side. It cannot be said that the Petitioner should have resorted only in the civil

jurisdiction of this Court. It may not be construed that this Court has given a finding that civil side jurisdiction in challenging the proceedings under the aforesaid Act is ousted.

13. Learned Advocate for the Petitioner submitted that, the Sub-Divisional Officer had rightly directed the Respondents to handover the possession of the ground portion of the property to the Petitioner. The Collector has committed an error in holding that since the dispute is pending before the civil Court, possession of the property cannot be given to the Petitioner. The pendency of civil proceedings is no bar for granting maintenance or to invoke the provisions of the Act. Will dated 24th December, 1998 was executed by deceased Ramdas Laxman Thakare. As per clause-5 it is specifically stated that the property owned by all the sons and daughters and the name of Arun Thakare was recorded only as a nominee and for administrative purpose, since the bungalow is constructed on a plot of co-operative housing society. As per clause-7 the Petitioner is entitled to receive the rent for both the blocks situated on the ground floor and after the death of Petitioner, both the daughters are entitled to enjoy the said property as per their own will. Since the Petitioner is entitled to receive the rent for both the blocks during her lifetime, the Petitioner is also entitled to

stay in the said blocks for her convenience. The Petitioner is a senior citizen aged about 87 years. The Petitioner has to visit the hospital frequently and it is impossible for her to climb the stairs hence it is for her convenience the possession of ground floor blocks should be given to Petitioner during her lifetime. The Respondents does not have any right over the said blocks. At the most the said blocks are transferred to the daughters as per the will. Hence, as per provisions Sections 23(1) and (2) the Petitioner is entitled to seek eviction of the Respondents from the blocks for her own residence. Though the name of Arun Thakare is recorded in respect of the plot, it is an internal arrangement among the parties as the plot was owned by all the children of deceased Ramdas Thakare. As far as report submitted by Assistant Police Inspector dated 15th December, 2021, the Respondents had taken signature of the Petitioner forcibly. The Collector ought not to have entertained the appeal preferred by Respondent No.1. As the Collector does not have jurisdiction to entertain such appeal. The Respondents has no right to challenge the order by preferring appeal.

14. Reliance is placed on the decision of this Court in the case of *Nayana Sudhir Shah & Ors. V/s. Sudhir Premji Shah, 2020 (5)*

Mh.L.J. 605.

15. The Respondent Nos. 1 and 2 has filed affidavit-in-reply opposing the relief sought in this petition. Learned Advocate for the Respondents submitted that the appeal preferred by the Respondents before the District Collector under Section 16 of the Act is maintainable. The said provisions refers to two categories of aggrieved parties who are entitled for file an appeal i.e. 1) Senior Citizens and 2) Parents. The Respondent No.1 was born in 1959 and hence on the day of filing appeal he was above 60 years of age. Section 2(h) defines a senior citizen wherein it is specifically mentions that senior citizen is a person who has attained the age of 60 years or above. Hence, the appeal preferred by Respondent No.1 was maintainable. The Respondent Nos. 1 and 2 were taking proper care of Petitioner being their mother. She was provided proper food and medicines alongwith all necessities. The Respondent Nos. 1 and 2 were paying sum of Rs.8,000/- per month to the Petitioner for her daily necessity and medicines. The Respondent No.1 is the owner of house situated on Plot No.158, Mahatma Nagar, Nashik. The revenue record is in his name. The Nashik Co-operative Housing Society has issued membership certificate in his name in respect of the plot. Nashik Municipal

Corporation issued commencement certificate in respect of the property in his name on 13th May, 1985. He is paying necessary property tax and water tax to the corporation. The Plot No.158, Mahatma Nagar, Nashik and bungalow situated upon it is self acquired property. The Petitioner had given a statement to the Police Officer that she has no complain against Respondents and their family and they had taken proper care of her. Hence, complaint was disposed off. The Petitioner is being instigated by the sister of Respondents. There is litigation pending between them. The Respondents and their families are happily staying with their mother at the aforesaid place and they have other place for residence. In the event any order is passed with regards to the residence the families of Respondents would be disturbed and they would be shelterless.

16. Learned Advocate for Respondent has relied upon the following decisions :

i. Akhilesh Kumar and Another V/s. State of U.P. and Others, 2019 0 Supreme(All) 509.

ii. Paramjit Kumar Saroya V/s. The Union of India and Anr., decided by Punjab and Haryana High Court in C.W.P No.7282 of 2010, dated 28th May, 2014.

17. Undisputedly, the Petitioner is a senior citizen aged around 87 years. She is the mother of Respondent Nos. 1 and 2. The Petitioner had preferred an application under Section 5 of the Senior Citizens Act. Vide order dated 19th October, 2020 the Sub-Divisional Officer, Nashik partly allowed the application. The possession of subject block was directed to be handed over to the Petitioner. Respondent Nos. 1 and 2 were directed not to create hurdle to the Petitioner in occupying/residing in the subject block. In the event Respondent Nos. 1 and 2 restrains or objects the Petitioner from residing in the block, the Police Inspector, Gangapur Police Station shall initiate appropriate action against the Respondents. The order dated 19th October, 2020 refers to the fact that the grievance of Petitioner is that she has been forced to leave the house by her sons and their wives on 14th June, 2019. She went to stay with her daughter. Her husband Late Ramdas Laxmanrao Thakare had constructed two storeyed building at Mahatma Nagar on a plot admeasuring 3000 square feet. Her son has claimed possession and disposed her from the premises. The possession of her house be given to her and Respondents may be directed to take care of the Petitioner. They may be directed to provide maintenance. The order reproduces the contentions of

Respondents that they have denied the grounds urged by the Petitioner/Applicant. Sisters of Respondents are entering the premises under the garb of meeting their mother and disturbing peace. The Respondent No.1 has been paying an amount of Rs.15,000/- to the Petitioner. Since last six months he is depositing Rs.8,000/- per month into her account. She can come to the residence and should not get influenced by her daughters. Petitioner's daughters are interfering in the house of Respondents for claiming property. The Respondent No.2 had contended that there is dispute relating to property with his sisters. Complaint was filed against them. The Petitioner/Applicant had left the house on her own. She has not forced her to leave. Since last 30 years the Petitioner has been taking rent of Rs.15,000/- per month on the house which is in the name of Respondent No.1. The Respondents are taking care of the house.

18. The Sub-Divisional Officer analyzed the facts and granted relief as stated hereinabove. It was observed that the will dated 24th December, 1998 prepared by the father of Applicant/Petitioner indicate that the property has been equally divided and the rent towards the bungalow is received by Applicant/Petitioner and hence there is no need of grant of maintenance to her. However, It

is necessary to provide her the block situated in the bungalow for her residence. However, the appellate authority vide order dated 3rd March, 2021 set aside the directions issued by the Sub-Divisional Officer to handover the block to the Petitioner/Applicant. The appellate authority while passing the said order had observed that dispute relating to property is pending in the civil Court. Hence, it would not be appropriate to handover the possession of the premises to the Petitioner. She is getting rent towards the premises. The civil Court is expected to take appropriate decision in respect to the dispute relating to the property.

19. Apparently, the learned appellate authority has not appreciated the contents of the will in proper perspective. The appellate authority is also influenced by the fact that the civil suit is pending in the civil Court in relation to the property. Pendency of civil proceedings is no bar to grant maintenance or invoke the provisions of the Act. The Respondents have not disputed that the Petitioner was occupying the block. It is their contention that she has left the premises voluntarily. In fact the submissions of Respondents No.1 recorded by the Sub-Divisional Officer indicate that if mother joint them she would be accepted by them. Apparently, the grievance of Respondents was apparently against

their sisters who according to them are claiming right in the property. The appellate authority ought not to have set aside the order of Sub-Divisional Officer.

20. Although, I am setting aside the order passed by the appellate authority on merits, the learned Advocate for the Petitioner had submitted that the appellate authority ought not to have entertained the appeal preferred by Respondent Nos. 1 and 2 challenging the order passed by the first authority. The right to prefer an appeal has been provided in Section 16 of the Act. It provides that any senior citizen or a parent as the case may be aggrieved by an order of tribunal may within 60 days from the date of order prefer an appeal to the appellate tribunal. The learned counsel for the Petitioner had submitted that the aggrieved party referred to under Section 16 could be a person who had made an application under Section 5 for maintenance. Merely because the Respondent No.1 is a senior citizen on account of his age, he is not entitled to prefer an appeal challenging the order passed in favour of the Petitioner. Whereas learned counsel for the Respondent Nos. 1 and 2 submitted that Section 16 refers to two category of person viz. senior citizen and parents and since Respondent No.1 is a senior citizen even he can challenge the said order. Learned

Advocate has relied upon two decisions referred to hereinabove. In the Case of *Paramjit Kumar Saroya V/s. The Union of India and Anr. (supra)*, delivered by Punjab and Haryana High Court, it is held that the right of appeal under Section 16 of the Act is conferred in both sides. It is an case of accidental omission and not of conscious exclusion in *Akhilesh Kumar and Another V/s. State of U.P. and Others (supra)*, the Allahabad High Court accepted the view taken by Punjab and Haryana High Court in the aforesaid decision.

21. This Court in the case of *Nayana Sudhir Shah & Ors. V/s. Sudhir Premji Shah (supra)*, has observed that it is only senior citizen or parent as the case may be is permitted to prefer an appeal to appellate tribunal. Children or relative are precluded from preferring an appeal against an order of tribunal. Paragraph Nos. 23, 26, 27 and 28 of the said decision is as follows :-

23. Sub-Section (1) of Section 16 permits 'any Senior citizen or a parent as the case may be' aggrieved by an Order of a Tribunal, to prefer an Appeal to the Appellate Tribunal. A plain reading of the said Section would clearly disclose that, 'children' under Section 2(a) or 'relative' under Section 2(g) of the said Act, are precluded from preferring an Appeal against an Order of Tribunal. It is only the 'Senior Citizen' or 'a parent' as the case may be, is permitted to prefer an Appeal to the Appellate Tribunal under Section 16 of the said Act.

26. It is the settled position of law by a catena of Judgments that, a statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according to the intent of them, that make it and the duty of judicature is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the Legislature, in other words the 'legal meaning' or 'true meaning' of the statutory provision. The statute must be read as a whole in its context. It is now firmly established that, the intention of the legislature must be found by reading the statute as a whole.

The statute to be construed to make it effective and workable and the Courts strongly lean against a construction which reduces a statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative. The Courts should therefore, reject that construction which will defeat the plain intention of the Legislature even though there may be some inaccuracy or inexactness in the language used in a provision. Every provision and word must be looked at generally and in the context in which it is used. Elementary principle of interpreting any word while considering a statute, is to gather the intention of the Legislature. The Court can make a purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order to defeat the intention of the Legislature wholly or in part. By now, it is well settled principle of law that, it is to be presumed that, each and every word used by the Legislature has been used with an intention and the Courts are bound to give effect to the Legislative intent.

27. The relevant provisions of this Act which have been quoted/reproduced hereinabove therefore will have to be construed harmoniously to promote the cause of the 'Senior Citizens' under this Act. The Act is enacted for a particular class of citizens i.e. Senior Citizens and Parents, with an avowed object to provide them maintenance by adopting simple inexpensive and speedy remedy. It is the settled position of law that, the provisions of a statute has to be interpreted in a manner which will give ultimate effect to the intention of legislature in enacting it and not to frustrate it.

28. Though, the learned single Judge of the Madras High Court in the case of *M. Venugopal Vs. The District Magistrate Cum District Collector, Kanyakumari District and Ors. (Supra)* by relying on a decision of the Hon'ble, the Supreme Court in the case of *N. Kannadasan Vs. Ajoy Khose and Ors. Reported in 2009(7) SCC 1* and by adopting the interpretative tools of Constitutional provisions and statutory provisions has held and observed that, the words 'aggrieved child or relative' in Section 16 of the said Act is only an unconscious omission by the parliament and by applying the principle of 'casus- omissus', it should be held that, such a right of Appeal is available for the aggrieved son/daughter/relative as well. The learned Judge, therefore, with a hope, had requested the Legislature to take note of the said anomaly and rectify the defect in drafting of Section 16 of the said Act.

It clearly appears that, till today sub-Section (1) of Section 16 of the said Act has not been amended by the Legislature and therefore, as of today, it is only 'Senior Citizen' or 'the parent' as the case may be, are only permitted to prefer an Appeal to the Appellate Tribunal under the said Section. The submission of the learned counsel for the Petitioners that, in view of Sub-Section (5)

of Section 16 the Appellate Tribunal ought to have heard the Petitioners before disposing off their Appeal under Section 16 of the Act, therefore cannot be accepted.

22. In the present case the Petitioner is parent and Respondent Nos. 1 and 2 are her major children. An application under Section 5 has been preferred by the Petitioner against Respondent Nos. 1 and 2 and not *vice versa*. The object of the Act is to provide for more effective provisions for the Maintenance and Welfare of Parents and Senior Citizens. In the impugned proceedings the Respondent No.1 cannot claim that being senior citizen he has right to prefer an appeal. The senior citizen reflected under the provisions of the Act he is an aggrieved person who claim maintenance. Section 4 contemplates a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him shall be entitled to make an application under Section 5. The Respondent No.1 is not a senior citizen covered by Sections 4 and 5 of the Act. The Respondents cannot file appeal as Senior Citizens or even as aggrieved party. The Petitioner is aged around 87 years. The Appellate Authority had set aside order of tribunal. Hence, this petition is heard on merits by giving opportunity to both sides instead of setting aside the order on the ground of maintainability and than allowing the

Respondents to challenge the tribunals order before this Court.

ORDER

- i. This Writ Petition is maintainable in Criminal Appellate Side.
- ii. The impugned order dated 3rd March, 2021 passed by Senior Citizen Maintenance Tribunal Appellate Authority and Collector Nashik in Appeal No.5 of 2020 is quashed and set aside.
- iii. The order dated 19th October, 2020 passed by Senior Citizen Maintenance Tribunal and Sub-Divisional Officer, Nashik, Sub Division, Nashik in RTS/Maintenance Application No.24 of 2020 is confirmed.
- iv. The Petitioner is permitted to stay on the ground floor block situated in Sahyadri Bungalow, at Nashik.
- v. The Respondents shall comply order dated 19th October, 2020.
- vi. Writ Petition is disposed off.

[PRAKASH D. NAIK, J.]