

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.461 OF 2022

Rambhau S/o Sakharam Nayse,
Aged 76 years, Occ-Retire,
R/o Zilla Parishad Colony, Amrut
Nagari, Khadki, Bk., Akola, Tq. & Dist.
Akola. At present, Boregaon Manju, Tq.
& Dist. Akola. ... Petitioner

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1. Rajkumar S/o Rambhau Nayse,
Aged about 49 years, Occ. Business,
R/o Zilla Parishad Colony, Amrut Nagari,
Khadki, Bk., Akola, Tq. & Dist. Akola.
2. District Magistrate & District Collector,
Akola, Tah. & Distt. Akola. ... Respondents

Shri N.R. Tekade, Advocate for Petitioner.
Shri C.A. Joshi, Advocate for the Respondent No.1.
Shri A.M. Kadukar, Advocate for the Respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 18 OCTOBER, 2022.

ORAL JUDGMENT

1. Heard.
2. **RULE.** Rule returnable forthwith. Heard finally by consent of the parties.

3. This is a writ petition filed under Article 226 and 227 of the Constitution of India challenging the order passed by the Collector dated 14.06.2022 in M.R.C.-81/Akola/24/22-23 under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act of 2007”), setting aside the order dated 10.05.2022 passed by the Sub-Divisional Officer (S.D.O.) to the extent the findings recorded by S.D.O. that the Gift Deed executed by the petitioner in favour of the respondent deemed to have been made by fraud and undue influence.

4. Shri Tekade, learned counsel for the petitioner submits that the reasons are the soul of any order and the Collector without recording any reason has set aside the finding recorded by the S.D.O. He therefore, submits that the impugned order suffers from principles of natural justice and needs to be quashed and set aside to the extent of the declaration recorded in clause (1) of the operative part of the impugned order.

5. On the other hand, Shri Joshi, learned counsel for the respondent No.1 is not disputing that there are no reasons recorded by the Collector. However, he submits that ultimate conclusion is proper and

therefore, even in absence of any reasons, the order is sustainable in the eyes of law.

6. He further submits that as the civil suit in respect of same property is pending, which was filed by the petitioner before filing the proceedings under the provisions of the Act of 2007, the Collector has rightly set aside the declaration recorded by the S.D.O. in respect of the Gift Deed as regards the said property. He therefore, submits that the present petition is liable to be dismissed.

7. I have perused the petition and the impugned order.

8. After going through the impugned order dated 14.06.2022, except the finding that the civil suit is pending, the Collector has not recorded any reason, namely whether the finding recorded by the S.D.O. that the Gift Deed executed by the petitioner in favour of the respondent, deemed to have been made by fraud and undue influence, is without jurisdiction or the said finding is not proper, in view of Section 23 of the Act of 2007 which empowers the S.D.O. to make such declaration. It is mandatory on the part of the Collector who is the Appellate Authority under Section 16 of the Act of 2007 to record the reasons before

interfering the order of the S.D.O. Thus, in absence of any reasons recorded by the Collector while interfering with the order of the S.D.O., I am of the opinion that the matter needs to be remanded back for fresh decision. In that view of the matter, I pass the following order:

- a) The writ petition is **partly allowed**.
- b) The impugned order dated 14.06.2022, passed by District Magistrate/ Collector, Akola is hereby quashed and set aside and the matter is remanded back to the Collector, Akola to decide afresh after hearing both the parties and recording the reasons in support of the order.
- c) It is expected that the Collector shall decide the appeal as expeditiously as possible and not beyond the period of two months.

The criminal writ petition is **disposed of** accordingly.

[ANIL S. KILOR, J.]