

Mamta

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.P. Sharma, Advocate for the petitioner.

Mr. Pankaj Middha, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing/ setting aside order dated 26.05.2022 (Annexure P-7) passed by respondent No.2 allegedly being unconstitutional and against the law and the provisions under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act'), whereby respondent No.2-Appellate Authority remanded the matter to respondent No.3-Maintenance Tribunal. Further direction has been sought to uphold order dated 06.03.2020 (Annexure P-6) passed by respondent No.3 under the Act, whereby the Maintenance Tribunal cancelled the Will dated 04.11.2011, transfer deed dated 17.01.2017, another transfer deed dated 24.01.2017 and mutations No. 2375, 2380 and the land received by virtue of Will, with immediate effect and ordered the land to be transferred on the name of the petitioner.

2. I have heard the respective competing contentions of the learned seniors. Keeping in view the nature of controversy involved herein, since the same is already *res judice*, I need not labor all over again. Reference may simply be had to my earlier decision rendered in **CWP-25148-2018** titled **Surindera Devi versus**

State of Punjab and others, vide judgment/order dated 14.07.2022, relevant thereof is extracted herein below:-

“7. In this background, the meaning and intent of Section 16 of the Act assumes even more significance inasmuch as a bare reading of the same would reveal that while the appellate authority has been specifically conferred the power to examine the appeal and the records and either call for same before it from the Tribunal and thereafter either to allow it or reject it. The words ‘remand’ are missing in Section 16 of the Act, unlike the case under Order 41 Rules 23 and 25 of CPC where the appellate Court is specifically conferred the power of remand.

X-X-X-X-X-X-X

8. In the totality of circumstances and as an upshot of the above discussion, I am of the view that the appellate Tribunal is not conferred with the power of remand under Section 16 of the statute and upon entertaining the appeal must either reject or accept the same, wholly or partly as the case may be. Therefore, the impugned appellate order herein is not sustainable and is accordingly set-aside. The matter is remanded back to the appellate Tribunal for fresh consideration and adjudication. The parties are at liberty to move appropriate application before the appellate Tribunal.”

3. In the premise, writ petition is disposed of in terms of judgment *ibid* and appellate order is quashed. Since the order impugned herein is being set aside, it is expected of the Appellate Authority to decide the pending appeal afresh after examining every aspect of it on its own merits without being influenced by its earlier order of remand. Given the age of the petitioner-Senior Citizen, who is stated to be currently 70-year old, it is expected that the Appellate Tribunal shall not grant unnecessary adjournments and decide the case as expeditiously as possible, in any case, within a period of 6 months.

4. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 06, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No