

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18777 of 2018

Ashok Sahu Son of late Cherubim @ Karobin Barno Sahu, resident of
Fairfield Colony, P.S.-Digha, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Patna.
2. Maintenance Tribunal Committee, through its Chairman, at Office of the
Sub-Divisional Officer, Patna
3. The Sub-Divisional Officer, Patna.
4. Marry Alice @ Rashmi Sahu Daughter of Late Cherubim Barno Sahu,
resident of Fairfield Colony, P.S.-Digha, District-Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Sourendra Pandey, Advocate
For the State	:	Mr. Md. Raisul Haque - SC-10
For respondent no.04	:	Mr. Nitesh Kumar, Advocate
		Mr. Binod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 08-11-2023

1. The present writ petition has been filed seeking the
following reliefs:-

*“For issuance of writ of certiorari for setting aside the
order dated 07.07.2018 passed by Chairman
Maintenance Tribunal Committee-cum-Sub-Divisional
Officer, Patna in Miscellaneous Case No.11/2018
whereby the learned Respondent No.2 has passed an
order of eviction of the petitioner in a case under The
Maintenance and Welfare of Parents and Senior Citizens
Act, 2007 and the possession of the petitioner be not
disturbed under the garb of the said order.”*



2. At the inception, a question has arisen as to whether the present writ petition is maintainable in its present form in view of availability of an alternative remedy to the petitioner, inasmuch as the aforesaid order dated 07.07.2018, passed by the Chairman, Maintenance Tribunal Samiti-cum-Sub-Divisional Officer, Patna in Misc. Case No. 11 of 2018 can be challenged by the petitioner by filing an appeal under Section 16 of the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (for short 'the Act, 2007'). A question has also been raised, as to whether an appeal, at the behest of the petitioner, who is brother of the private respondent no.4, would be maintainable.

3. This Court finds that Section 15 of the Act, 2007 provides for constitution of an Appellate Tribunal for each district to hear the appeal against the order of the Tribunal, however, the same nowhere mentions that the appeal against the order of the Tribunal is confined to a senior citizen or a parent and moreover, the right to file an appeal is also not excluded, specifically by the provisions contained in Section 16(1) of the Act, 2007. In fact, there is no negative provision in the Act, 2007, denying the right of appeal to the other parties, whereas the provisions of the Act, 2007 would show that on the contrary, an appeal from both sides is envisaged.



4. At this juncture, it would be relevant to reproduce herein below Sections 15 and 16 of the Act, 2007:-

15. Constitution of Appellate Tribunal-

(1). The State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.

(2). The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.

16. Appeals-

(1). Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2). On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3). The Appellate Tribunal may call for the record of



proceedings from the Tribunal against whose order the appeal is preferred.

(4). The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5). The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorized representative.

(6). The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7). A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.”

5. This Court finds that the aforesaid issue is no longer res integra, inasmuch as the same has stood decided by a learned Division Bench of the Hon’ble Punjab and Haryana High Court, by a judgment, rendered in the case of ***Paramjit Kumar Saroya vs. The Union of India & Another***, reported in ***2014 SCC Online P & H 10864***, relevant portion whereof is reproduced herein below:-

“An appeal is envisaged “against the order of the



Tribunal”. This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent “aggrieved by an order of the Tribunal”. This seeks to give an impression on a plain reading as if only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that the pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such order to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior citizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has been set out in Section 15 of the said Act.

The petitioners assailed the provisions of sub section (1) of Section 16 of the said Act on the ground that there cannot be a right to appeal only to one of the affected parties, as anomalous situation would be created against the same order with which both the parties may be aggrieved i.e. where a greater or lesser claim is made in relation to any property or maintenance, as one party being the senior citizen or parent would prefer an appeal



before the Appellate Tribunal, while the party which is liable to give maintenance would have to take recourse to the supervisory jurisdiction of the High Court. Thus, two parallel proceedings in the different forums qua the same order would arise. The submission, thus, is that these provisions should be struck down as ultra-vires, the intent of the other provisions of the said Act or the constitutional scheme. In the alternative the provision should be read down to make it consistent with the other provisions and, thus, confer a right of appeal even to the other affected party.

We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no debate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than the senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded.

It has been submitted by learned Amicus Curiae that the subject matter of a right of appeal is not merely confined



to the issue of maintenance upto the amount of Rs. 10,000/-, but of seriously affecting the rights of parties even qua immovable properties as set out in Section 23 of the said Act. Thus, transfers of immovable properties can be declared void. This power is vested not only qua family members or children of senior citizens, but qua “every person”. Not only that, as stated aforesaid, the provisions of Sections 15 and 16(1) have to be read harmoniously. Section 15 nowhere mentions that the appeal against the order of the Tribunal be confined to a senior citizen or parent. Similar is the proposition qua the first proviso to sub section (1) of Section 16 which would only have been in case of an appeal by the party liable to be maintained. The right to file an appeal is not excluded specifically by the provisions of Section 16(1) of the said Act, but it fails/omits to mention. We may also usefully refer to sub section (5) of Section 16 which provides finality to the order of the Tribunal. Such finality can only be achieved after hearing grievances of both the sides. If the appeal is confined to only one party, then the finality can only be qua the rights of that party which has preferred the appeal and cannot be envisaged qua the opposite party which would have to take recourse to Article 227 of the Constitution of India. Thus, another sub section of the same Section gives credence to the plea that Section 16(1) of the said Act should be read in a manner as to provide for appeal to both the parties. The proviso to sub section (5) further stipulates that an appeal cannot be rejected unless an opportunity has been given to both the parties of being heard. The reference of right to both the



parties has to be in the context of an appeal by either of the parties as otherwise it would have envisaged that no order could be passed without hearing the child or the other party.

Sub section (2) of Section 16 once again refers to causing a notice to be served upon the “respondent” and not the child or the other party which would be the situation if the right of appeal was only to a parent or a senior citizen.

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What is crucial is that the task of interpretation of a statutory enactment cannot be a mechanical task, nor can it be the own thoughts and words of the Judge. However, there is no perfect solution as in the words of Lord Denning it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. It is here that the role of the Court comes in.

Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but



suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in *N. Kannadasan's* case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in *Board of Muslim Wakfs Rajasthan's* case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.



We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.”

6. The aforesaid aspect of the matter has also been considered by a learned Single Judge of the Hon’ble High Court of Karnataka in a judgment dated 20.07.2021, passed in the case of ***Smt. M. Sunitha vs. Smt. M. Sashikala Mugadura & Anr.*** [***Writ Petition No. 147056 of 2020 (GM-RES)***], paragraph no. 12 whereof is reproduced herein below:-

“12. In view of the above discussion, the only interpretation can be the right of appeal under Section 16(1) of the said Act is conferred on both side. It is case of an accidental omission and not of conscious exclusion. Therefore, the impugned order passed under Section 7 of the Act is an appeal under Section 16 of the Act. Since the petitioner has an alternative remedy of appeal under Section 16 of the Act, the above writ petition is disposed of reserving liberty to the petitioner to file an appeal before the appellate authority under Section 16 of the Act. If such an appeal is filed within four weeks from today, the interim order granted by this Court will be continued till the disposal of the appeal before the appellate authority. The Appellate Authority is directed to dispose of the appeal not late than three months from the date of receipt of certified copy of this order. The Revenue Secretary, Government of Karnataka, is directed to communicate this order to all the Maintenance Tribunals



and Appellate Tribunals.

Accordingly, writ petition is disposed of.”

7. In yet another judgment, the aforesaid aspect of the matter has been decided conclusively, i.e. in the one rendered by the learned Single Judge of the Hon’ble High Court of Delhi at New Delhi, in the case of *Rakhi Sharma vs. The State & Others.*, reported in *2021 SCC Online Del 1327*, paragraphs nos. 12 and 13 whereof are reproduced herein below:-

“12. The question as to who can prefer the appeal has already been decided by this Court in the following three judgments:

i. *Naveen Kumar v. GNCTD* [W.P.(C) 1337/2020, decided on 5th February, 2020];

ii. *Shri Amit Kumar v. Smt. Kiran Sharma* [W.P.(C) 106/2021, decided on 6th January, 2021];

iii. *Sh. Shumir Oliver v. GNCTD* [W.P.(C) 2857/2021, decided on 3rd March, 2021]

13. The abovementioned judgments clarify that any ‘*affected person*’ can prefer the appeal and not just a senior citizen or parent. The view taken by this Court is by following the judgment of the Id. Division Bench of the Punjab and Haryana High Court in *Paramjit Kumar Saroya v. The Union of India*, 2014 SCC OnLine P&H 10864.”

8. Considering the interpretation of Section 16 (1) of the Act, 2007, as made in the abovementioned Judgments, rendered



by various High Courts, this Court is also of the opinion that the only legal and correct interpretation of Section 16 (1) read with the other provisions of the Act, 2007, is that the right of appeal, under Section 16(1) of the Act, 2007 is conferred on both sides i.e., an appeal can be filed by any of the affected parties.

9. Having regard to the facts and circumstances of the case, as also taking into account the position, as is existing in law, this Court is of the view that the petitioner has an alternative remedy, by way of preferring an appeal under Section 16 of the Act, 2007 against the order dated 07.07.2018, passed by the respondent no. 2.

10. Considering the aforesaid aspect of the matter, the learned counsel for the petitioner seeks not to press the present writ petition, however, seeks liberty on behalf of the petitioner to file appropriate appeal before the appellate authority under Section 16 of the Act, 2007, challenging the order dated 07.07.2018, passed by the respondent no.2. Liberty so sought is granted.

11. At this juncture, the learned counsel for the petitioner prays that some protection be granted to the petitioner during the interregnum period. Having regard to the prayer made on behalf of the petitioner, not opposed by the respondents, this Court directs that for a period of six weeks from today, status



quo existing as on today qua the possession of the petitioner vis-a-vis respondent no.4 with regard to the house in question shall be maintained, in order to enable the petitioner to file appropriate appeal along with petition for grant of interim stay.

12. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

Kanchan./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.11.2023
Transmission Date	NA

