

October 11, 2023  
ARDR (23)

**C.O. 76 of 2023**

Kamal Chand Bothra  
Vs.  
Atul Chandra Das

Adv. Bikramaditya Ghosh,  
Adv. Supriya Singh,

...for the petitioner.

Affidavit of service filed by the petitioner is taken on record.

In spite of service, none appeared on behalf of the opposite party.

The instant revisional application has been filed against the impugned order dated 15<sup>th</sup> May, 2023 passed by the Sub-Divisional Officer, Alipurduar under the provision of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short the said Act of 2007).

Learned advocate appearing for the petitioner submits that the Petitioner is a lessee in respect of a land more or less measuring an area 0.11 acres of land situated at L.R. Plot No.4626 and 4627 of Mouza-Alipurduar, J.L. No.99 appertaining to Alipurduar Municipal holding No. 1017/893 and 570/182 of Ward No.12 under the P.S Alipurduar, District Alipurduar.

It is further submitted that the Petitioner and his wife running a shop in the said land under the name and style of M/S Manjushree. Due to widening of the road, the Government of West Bengal and

Municipality, Alipurduar asked several shop owners including the Opposite party to vacate and/or deliver portion of land belongs to the Public works Department. The Opposite party's shop was situated on the land of Public Works Department and adjacent to the petitioner's shop. Opposite party approached the Petitioner to provide space to relocate his shop on the land of the petitioner and thereafter to Town Babsayee Samity. The matter finally came before the sub-Divisional Officer, Alipurduar for resolving the dispute though there is no jurisdiction to deal with such type of case when no relation exists between the petitioner and the opposite party under the said Act of 2007.

Learned Advocate also refers Sections 2A and 2G of the said Act of 2007 and submits only parents or senior citizen can file the case for their maintenance and welfare against their children or relatives. The opposite party had filed the case against the present petitioner without any relationship. He is mere a neighbor and adjacent shop owner. He is raising dispute regarding a land adjoining to his property. So he can relocate his shop in the land of the petitioner without any legal right.

I have heard Ld. Advocate for the Petitioner and on perusal of the Statute, it is clear that under the said Act of 2007 a parent or senior citizen can seek maintenance and for welfare from his/her children or

relatives, but here the case is totally different. The Sub-Divisional Officer, Alipurduar has decided the case outside his ambit and scope of the said Act of 2007 and passed the impugned order, as follows:

*“The OP appeared with his Ld. Advocate. The petitioner appeared after hearing with op. the OP stated that the case is Maintenance & Welfare of Parents and Senior Citizens Act, 2007 does not lie in this matter. The petitioner filed a petition regarding a case initiated by S.D.O and passed an award. But the OP filed a case vide T.S. 2/2016 regarding this matter. Perused the case records, the fact is during construction of widening of P.W.D road the shop of petitioner is demolished and prayed for contiguous to his shop. Considering the above fact, the order dated 02.1.2016 by the S.D.O. Alipurduar is hereby upheld. The Sri Atul Ch. Das, proprietor of M/s. Lakshmi may be provided a minimum quantum of space preferably 6(six) feet X 8 (eight) feet contiguous to his present possessed area, which would be demolished, in consideration with Kamal Chand Bothra i.e. op. and also with Alipurduar Town Babasayee Samity.*

*Inform to all concerned.*

*The case is disposed of ”.*

S.D.O has no power to decide the landed property disputes arose amongst others under the said

Act, 2007. The said Act is beneficial piece of legislation and enacted for the welfare of the parent.

In the light of aforesaid discussions, the impugned order appears to be bad in law and without jurisdiction. Which is required to be set aside.

Accordingly, the impugned order dated 15<sup>th</sup> May, 2023 is set aside.

With the aforesaid observations, C.O. 76 of 2023 is disposed of.

Let a copy of this order be communicated to the Sub-Divisional Officer, Alipurduar for information.

There shall be, however, no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

**(Ajay Kumar Gupta, J.)**