

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

42 WRIT PETITION NO.30 OF 2020

**KISHOR KASHINATH YEOLE WANI AND OTHERS
VERSUS
THE SENIOR CITIZEN TRIBUNAL THE SUB DIVISIONAL
OFFICER DHULE AND OTHERS**

Mr. P. B. Patil, Advocate for the petitioners
Mr. K. N. Lokhande, Advocate for the respondents/State
Mr. Sachin Joshi, Advocate for the respondent No.4

CORAM : KISHORE C. SANT, J.

DATE : 19th JUNE, 2023

P. C.

1. Heard the parties.
2. Only grievance of the petitioners against the impugned order dated 18-11-2019 passed by the learned Senior Citizen Maintenance Tribunal, Dhule/ Sub-Divisional Officer is that the authorities have not considered the decision of maintainability of the proceeding. It is specific case of the petitioners that in view of section 2(g) defining the word 'relatives' does not cover them. The definition in section 2(g) of

the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reads as below:-

Section 2(g): "Relatives" means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

3. The petitioners happens to be nephews of respondent No. 4. Respondent No. 4 filed the proceeding before the tribunal under Sections 6, 7 and 23 against the present petitioners. In the application itself in para No. 2 there is averment that respondent has one son and three daughters and they are happily married and living at their respective places. Only ground on which maintenance is claimed is that for sometime respondent No.4 had given his premises for use of the petitioners to keep their materials as they carried business of caterers and decorators.

4. Said proceeding was opposed by the petitioners. The tribunal however has only considered that the petitioners are not taking care of the respondent No.4 and are residing in his

premises. Learned tribunal has not considered the aspect of the maintainability against the petitioners when the respondents' one son and three daughters are there. In absence of giving any finding on this aspect the impugned order is passed.

5. Learned advocate for respondent No.4 submits that in fact under the pretext of maintaining respondent No.4, the petitioners have taken his premises for their use. On one hand they have taken the property of respondent No.4 in possession and on the other hand they are not maintaining respondent No.4. Provision of the Act are squarely applicable to the present facts.

6. The order is only to the effect directing the petitioners to vacate the premises of respondent No.4. Nature of the order shows that practically order of eviction is passed against the petitioners. This court finds that the order is totally against the object of the Act. Object is to provide maintenance and welfare of parents of senior citizen same is reproduced as

below:-

“An act 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”.

7. Looking to the submissions and objects, this court finds that no other relief is available under the Act except for a maintenance and welfare of the parents. On going through the definition this court finds that the petitioners are not covered by the definition as respondent No.4 have one son and three daughters. This court finds on the face of record that the proceeding before the learned tribunal was not maintainable.

8. In this proceeding one consent deed is produced on record wherein it is only seen that respondent No.4 has given his premise for use of the petitioners for business of caterers and decorators and they will have no objection to grant license under the Shop Act.

9. Looking to this agreement also it is nowhere stated

that it is for some consideration. There is nothing to show that the petitioners had taken responsibility of maintaining respondent No. 4.

10. Considering all these above factors, this court finds that the proceeding before the tribunal itself was not maintainable. The impugned order therefore, deserves to be quashed and set aside by allowing the petition. The petition is, therefore, allowed in terms of prayer clause 'B'.

[KISHORE C. SANT, J.]

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