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W.P.(MD)NO.26219 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.26219 of 2022

M.Mohamed Saffee

... Petitioner

Vs.

1. The District Collector,
Collector Office,
Thanjavur District.

2. M.Ameerjon

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent proceeding in Na.Ka. 19625/2022/G2 dated 30.09.2022 by conforming the order of the RDO dated 20.04.2022 by his proceedings in Na.Ka. 31/2021/A3 and to quash the same.

For Petitioner : Mr.A.Senthil Kumar

For R-1 : Mr.A.K.Manikkam,
Special Government Pleader.

For R-2 : Mr.V.Meenakshi Sundaram,
for Mr.I.Vel Pradeep.

* * *



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ORDER

Heard the learned counsel on either side.

2. The writ petitioner is none other than the son of the second respondent. The second respondent herein filed petition under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Maintenance Tribunal, Thanjavur. The Maintenance Tribunal vide order dated 20.04.2022 directed the writ petitioner to evict the petition mentioned premises within six months. Questioning the same, the petitioner filed an appeal before the first respondent herein. The first respondent vide Order dated 30.09.2022 declined to interfere with the order passed by the Maintenance Tribunal. Challenging the same, the present writ petition has been filed.

3. The learned counsel on either side raised very many contentions. The basic facts are not in dispute. The property in question belonged to Late Mohamed Ismail. He was the Principal of Rajah Serfoji Government College, Thanjavur. He



passed away in the year 2018 leaving behind his wife M.Ameerjon, son Mohamed Saffee and a daughter as surviving legal heirs. The case of the second respondent is that on 03.10.2020, the writ petitioner dispossessed her. She therefore wanted residential order from the Maintenance Tribunal. As already noted, the Maintenance Tribunal went to the extent of ordering eviction against the petitioner and the said order was also confirmed by the first respondent. Before I test the correctness of the impugned orders, I must note that under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, only aggrieved senior citizen can maintain appeal before the appellate authority. The Hon'ble Division Bench of Madras High Court in the decision reported in **2021 (2) CTC 129 (K.Raju V. Union of India)** had categorically held that only a senior citizen or a parent aggrieved by the order of the Maintenance Tribunal may prefer an appeal and that there is no room for others to prefer appeal. The Hon'ble First Bench of the Madras High Court disagreed with the view of the Punjab and Haryana High Court in the decision reported in **AIR 2014 P & H 121 (Paramjit Kumar Saroya V. Union of India)**. Therefore,



the first respondent ought to have returned the appeal memorandum filed by the writ petitioner straightaway.

4. I have come across several cases where the District Collectors have entertained appeals under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act at the instance of non senior citizens. I call upon the District Collectors to bear the scope of Section 16 of the Act in mind while entertaining appeals.

5. The learned counsel appearing for the writ petitioner draws my attention to Section 6(6) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 r/w. Rules 9 to 11 and 13 of Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. They are as follows:-

“ 6. Jurisdiction and procedure.—

...

(6) The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one



month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.

9. Appointment of Conciliation Officer.

- (1) The State Government shall by Notification in the Official Gazette, designate the District Social Welfare Officer as Conciliation Officer.

10. Reference to Conciliation Officer. -

(1) In case, on the date fixed in the notice issued under rule 5, the opposite party appears and show cause against the maintenance claim, the Tribunal shall seek the opinion of both the parties as to whether they would like the matter to be referred to a Conciliation Officer and if they are willing, the Tribunal shall ask them whether they would like the matter to be referred to the Conciliation Officer or to any other person acceptable to both parties.

(2) If both the parties agree on any person, the Tribunal shall appoint such person as the



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Conciliation Officer in the case, and shall refer the matter to the Conciliation Officer through a letter in Form 'E', requesting the Conciliation Officer to try and work out a settlement acceptable to both parties, within a period not exceeding one month from the date of receipt of the reference.

(3) The reference in Form 'E' shall be accompanied with copies of the application and replies of the opposite party thereto.

11. Proceedings by Conciliation officer.- (1) Upon receipt of a reference under Rule 10, the Conciliation Officer shall hold meetings with the two parties as necessary, and shall try to work out a settlement acceptable to both the parties, within a period of one month from the date of receipt of the reference.

(2) If the Conciliation Officer succeeds in working out a settlement acceptable to both the parties, he shall draw up a memorandum of settlement in Form 'F', get it signed by both



parties, and forward it, with a report in Form 'G', along with all records of the case received from the Tribunal, back to the Tribunal within a month from the receipt of the reference.

(3) If the Conciliation Officer is unable to arrive at a settlement within one month of receipt of a reference under Rule 10, he shall return the papers received from the Tribunal along with a report in Form 'H', showing efforts made to bring about a settlement and the points of difference between the two parties which could not be reconciled.

...

13. Action by the Tribunal in case of settlement before a Conciliation Officer.- (1)

In case, the Tribunal receives a report from the Conciliation Officer under sub-rule (2) of Rule 11 along with a memorandum of settlement, it shall give notice to both parties to appear before it on a date to be specified in the notice, and confirm the settlement.



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(2) In case on the date specified in the notice as above, the parties appear before the Tribunal and confirm the settlement arrived at before the Conciliation Officer, the Tribunal shall pass a final order as agreed in such settlement.”

6. A reading of the aforesaid statutory provisions would indicate that an effort to conciliate the dispute must be made by the Maintenance Tribunal. In this case as well as in several other cases, I notice that the Maintenance Tribunals are oblivious of the existence of the scheme for conciliation. The Maintenance Tribunals are mandated to give effect to the aforesaid provisions before adjudicating the issue on merits.

7. The first question that calls for consideration is whether under the scheme of the Act, the Maintenance Tribunal can pass an order of eviction. There is a clear dichotomy of opinion among various High Courts. The High Court of Gujarat, the High Court of Bombay, the High Court of Rajasthan and the High Court of Delhi have taken the view that the Maintenance Tribunal can restore possession to



dispossessed senior citizens. However, Kerala High Court and Jodhpur High Court have taken a contra view.

8. In my view, this issue has already been laid to rest by the Hon'ble Apex Court in the decision reported in **2020 SCC OnLine SC 1023 (S.Vanitha V. Deputy Commissioner, Bengaluru Urban District and Others)** where the conflict between the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act and the Protection of Women from Domestic Violence Act was considered. While harmonising the statutory schemes of the Acts, the Hon'ble Apex Court clearly observed that the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act may have the authority to pass order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent's share. In other words, eviction would be an incident of the enforcement of the right of maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute.



9. However, this power of the Maintenance Tribunal to order eviction will have to be hedged with several qualifications. The senior citizens or parents must have exclusive title over the property in question. Secondly, it must be a case of dispossession. Thirdly, the issue should be one between the senior citizen / parent and the children. In other words, third party rights should not be involved. Otherwise, the senior citizen / parent and children can collude with each other to by-pass the Rent Control Act provisions.

10. Let me come to the facts of this case. The property belonged to Late Mohamed Ismail. Following his demise, as per Muslim Law, the petitioner as the son will be entitled to half share. The second respondent will be entitled to 1/4th share. Thus the petitioner is a co-owner with his mother and sister. An eviction order cannot be passed against a co-owner by the Maintenance Tribunal which could have only put the second respondent in possession of the property from where she claims to have been dispossessed. The Maintenance Tribunal clearly erred in directing eviction on the writ petitioner and the first respondent equally erred in failing to



note that there is no authority to direct eviction of a co-owner.

To this extent, I interfere with the order impugned in this writ petition.

11. I must place on record that the writ petitioner has clearly recognised the right of his mother to reside in the property. In fact the petitioner has gone to the extent of giving an undertaking that he will take care of the second respondent. This undertaking given by the writ petitioner in the form of affidavit is placed on record.

12. One other legal issue has to be gone into. Section 4(1) of the Act states that a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him shall be entitled to make an application under Section 5. It is not in dispute that the second respondent is getting a decent amount by way of pension. It is obvious that she is able to maintain herself. Whether such a person can maintain application is the moot issue raised by the learned counsel appearing for the petitioner.



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13. I must note that this restriction on the right of the applicant is confined only if remedy is sought under Section 5 of the Act. The power of ordering eviction is not exclusively traceable to Section 5 of the Act. On the other hand, this power is derived from overall statutory scheme and not with reference to any particular provision. Therefore, the condition that is applicable in the case of granting remedy under a particular provision ought not to be put against the second respondent. I therefore hold that the application filed by the second respondent is very much maintainable. As rightly pointed out by the learned counsel appearing for the second respondent, the Act is a beneficial legislation and it should not be interpreted in a manner so as to reduce the scope of remedies available to senior citizens / parents.

14. The learned counsel appearing for the writ petitioner submitted that petitions under Section 23 of the Act are being casually entertained and that the authority should insist that along with the petition, encumbrance certificate obtained up to date should be filed. Otherwise the rights of the subsequent



transferees will be infringed behind their backs. I am certain that the Maintenance Tribunals will bear this in mind while entertaining petitions under Section 23 of the Act. Section 8 of the Act states that the Maintenance Tribunal can adopt summary procedure while holding an enquiry and call for production of relevant documents. Certainly, encumbrance certificate would be a relevant document.

15. The petitioner / co-owner of the petition mentioned premises would not be evicted. However, the rights of the second respondent to reside in the premises in question is independently recognised. I place on record the undertaking given by the petitioner that the second respondent can reside in the petition mentioned premises without any let or hindrance.

16. This writ petition stands partly allowed. No costs.

20.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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W.P.(MD)NO.26219 OF 2022

To:

The District Collector,
Collector Office,
Thanjavur District.



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G.R.SWAMINATHAN,J.

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