

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION NO: 3735 OF 2023

Between:

1. Abdul Saleem, S/o Abdul Gafoor, Aged 60 years, Occ. Private Employee,
2. Abdul Javeed, S/o Abdul Saleem, Aged 37 years, Occ. Private Employee,
3. Abdul Sattar, S/o Abdul Saleem, Aged 35 years, Occ. Private Employee,
4. Taimeena, D/o Abdul Saleem, Aged 33 years, Occ. Private Employee,

All are R/o H.No.12-2-823/A/159/A, Santosh Nagar, Mehdiapatnam, Hyderabad-500028.

...PETITIONERS

AND

1. State of Telangana, Rep. by its Principal Secretary Department Revenue, Secretariat Buildings, Saifabad, Hyderabad
2. The District Collector-cum-Appellate Tribunal, Under Welfare of Parents and Senior Citizens Act, Hyderabad District, Hyderabad.
3. The Revenue Divisional Officer-, cum-Sub-Divisional Magistrate and Tribunal Under Welfare of Parents and Senior Citizens Act, Hyderabad Division, Hyderabad District.
4. The Tahsildar, Asifnagar Mandal, Hyderabad.
5. The Assistant Commissioner of Police, Asifnagar, West Zone, Hyderabad Commissionerate, Hyderabad.
6. The Station House Officer, Asifnagar Police Station, Hyderabad.
7. Abdul Gafoor, S/o Late Mohammed Hussain, Aged 92 years, Occ. Nil, R/o H.No.12-2-823/A/159/A, Santosh Nagar, Mehdiapatnam, Hyderabad-500028.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to

a) issue an order or direction more particularly one in the nature of Writ of Certiorari and call for the records and quash Order, dated 28-12-2022 in Case No.D/5106/2022 (even without assigning appeal number), passed by the Respondent No.2-Appellate Tribunal, under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, in rejecting the appeal filed by the petitioners against the Order, dated 01-10-2022 in Case No.D/5106/2022, passed by the Respondent No.3-Tribunal, without consideration of the issue in a proper perspective, being illegal, arbitrary and contrary to the provisions of The

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and also the law laid down by this Honorable Court in W.P.No. 5125 of 2017, dated 05-03-2020 which was confirmed in W.A.No. 547 of 2020, dated 22-03-2022,

b) declare the action of the Respondents No.4 to 6 herein in interfering into the house property bearing H.No.12-2-823/A/159/A, Santosh Nagar, Mehdiapatnam, Hyderabad-500028, thereby by trying to vacate the petitioners from the said premises, being illegal, arbitrary, unconstitutional and without jurisdiction, contrary to the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and violative of Articles 14, 21 and 300-A of Constitution of India and

c) consequently set aside the Order, dated 01-10-2022 in Case No.D/5106/2022, passed by the Respondent No.3-Tribunal with a further direction to the Respondents not to interfere into the civil disputes pending between the petitioners and the Respondent No.7 under the guise of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filing of the Certified Copy of the Order, dated 28-12-2022 in Case No.D/5106/2022, passed by the Respondent No.2-Appellate Tribunal, pending disposal of the writ petition

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Suspend the operation of the Order, dated 01-10-2022 in Case No.D/5106/2022, passed by the Respondent No.3-Tribunal, pending disposal of the writ petition

Counsel for the Petitioners: SMT. G. POORNASRI

**Counsel for Respondent Nos. 1 to 4: SRI J. AMRUTH RAO,
AGP FOR REVENUE**

Counsel for Respondent Nos. 5 & 6: GP FOR HOME

Counsel for Respondent No. 7: ---

The Court made the following: ORDER

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.3735 of 2023

ORDER:

Heard Smt. G. Poornasri, learned counsel appearing for the petitioners, Sri J. Amruth Rao, learned Assistant Government Pleader for Revenue appearing for respondent Nos.1 to 4 and learned Government Pleader for Home appearing for respondent Nos.5 and 6. Perused the record.

In view of the nature of relief sought by the petitioners, this writ petition is disposed of at the admission stage, dispensing with notice to respondent No.7.

On the complaint filed by respondent No.7 – father of petitioners, respondent No.3 had passed an order dated 01-10-2022 in case No.D/5106/2022 granting certain reliefs to respondent No.7. Feeling aggrieved and dissatisfied with the said order, petitioners herein have filed an appeal in terms of Section 16 of the Maintenance

and Welfare of Parents and Senior Citizens Act, 2007 (herein after referred to 'the Act, 2007') before respondent No.2 / appellate authority. Vide order dated 28-12-2022 respondent No.2 has dismissed the said application on the ground that applicant is not satisfying the condition of Section 16(1) of the Act, 2007 and the petitioners are neither senior citizens nor parents.

Interpreting the statute and also considering Section 16 of the Act, 2007 in **H. Deepika v. Maintenance and Welfare of the Parents and Senior Citizens Appellate Tribunal**¹, a learned Single Judge of this Court held that appeal filed by the children against the order passed by the Maintenance Tribunal under the Act, 2007 is maintainable. The said order was confirmed by a Division Bench of this Court vide order dated 22.03.2022 in W.A. No.547 of 2020. The said aspects were not considered by respondent No.2 in the impugned order dated 28-12-2022. Therefore, without going into the

¹. Order in W.P. No.5125 of 2017, decided on 05.03.2020

merits, on the said ground alone, the impugned order dated 28-12-2022 in case No.D/5106/2022 passed by respondent No.2 is set aside. The matter is remanded back to respondent No.2 with a direction to consider the aforesaid appeal filed by the petitioners and pass appropriate orders, strictly in accordance with law by putting the petitioners and respondent No.7 on notice and affording them an opportunity of hearing.

At this stage, learned counsel appearing for the petitioners would submit that under the guise of order dated 01-10-2022 of respondent No.3, respondent No.7 is trying to execute the same. Petitioners have filed an Interlocutory Application seeking stay of the said order dated 01-10-2022 before respondent No.2 and the same was not considered. Therefore, respondent No.2 is directed to dispose of the aforesaid stay application filed by the petitioners in appeal No.D/5106/2022 within one week from the date of receipt of a copy of this order. Till disposal of the aforesaid stay application filed by the

petitioners, order dated 01-10-2022 in case No.D/5106/2022 passed by respondent No.3 shall not be given effect. There shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

- To,
1. The District Collector-cum-Appellate Tribunal, Under Welfare of Parents and Senior Citizens Act, Hyderabad District, Hyderabad.
 2. The Revenue Divisional Officer- cum-Sub-Divisional Magistrate and Tribunal Under Welfare of Parents and Senior Citizens Act, Hyderabad Division, Hyderabad District.
 3. The Tahsildar, Asifnagar Mandal, Hyderabad.
 4. The Assistant Commissioner of Police, Asifnagar, West Zone, Hyderabad Commissionerate, Hyderabad.
 5. The Station House Officer, Asifnagar Police Station, Hyderabad.
 6. One CC to Smt. G Poornasri Advocate [OPUC]
 7. Two CCs to GP For Revenue, High Court for the State of Telangana. [OUT]
 8. Two CCs to GP For Home, High Court for the State of Telangana. [OUT]
 9. Two CD Copies

MBC
BS



CC TODAY

HIGH COURT

DATED: 09/02/2023



ORDER

WP.No.3735 of 2023

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

(13) VLV
16/2/23