

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(208)

CWP-12025-2023

Date of decision: - 21.07.2023

Rajbir Kaur and another**....Petitioners****Versus****Guriqubal Singh and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. P.P.S. Duggall, Advocate, for the petitioners.

None for respondents No.1 and 2.

Mr. Rohit Bansal, Sr. DAG, Punjab, for respondent No.3.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to set aside the order dated 17.04.2022 (Annexure P-6) passed by respondent No.3, vide which the application filed by the petitioners under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as 'Act of 2007') was dismissed.

2. Learned counsel for the petitioners has submitted that petitioner No.1 is a senior citizen and had filed an application against respondents No.1 and 2 seeking their eviction under the Act of 2007. It is further submitted that the Sub-Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Kharar vide order dated 17.04.2022 had dismissed the said application on the ground that the Maintenance Tribunal had no authority to evict the private respondents from the house

and in case so advised, the petitioners could pursue the matter in the higher Court. It is stated that the petitioners had accordingly prepared an appeal (Annexure P-7) to be filed before the Appellate Tribunal, which is the District Magistrate under Section 16 of the Act of 2007. However, the said appeal was not entertained and the grounds of appeal were returned alongwith a copy of letter dated 17.02.2023. It is argued that the office of the statutory authority i.e., the Appellate Tribunal/District Magistrate was duty bound to get the appeal listed before the Appellate Tribunal and it is for the appellate authority to decide the said appeal by passing a judicial order after considering all the aspects including the aspect of its maintainability and that the office of the appellate authority cannot refuse to accept the appeal in case it is complete in all respects. Learned counsel for the petitioners has made a limited prayer in the present writ petition and has submitted that the petitioners be permitted to file an appeal with the appellate authority within a period of 10 days from today and in case of their doing so, the appellate authority be directed to decide the same on the judicial side in accordance with law.

3. Learned State counsel on the other hand has submitted that there is nothing on record to show that the appeal was filed by the petitioners, but has submitted that in case any such appeal is filed under Section 16 of the Act of 2007, the same would be decided by the appellate authority in accordance with law.

4. Notice of motion was issued to respondent No.2 and as per the Registry, notice issued to respondent No.2 has been received back served, but no one has appeared on behalf of the respondent No.2 to

oppose the prayer made by the learned counsel for the petitioners.

5. This Court has heard learned counsel for the parties and has gone through the paper-book.

6. The petitioners had filed an application before the Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Kharar, which was dismissed by the said authority on 17.04.2022 on the ground that the Maintenance Tribunal had no authority to evict the private respondents from the house and it was observed in the said order that in case so advised, the petitioners could pursue the matter in the higher Court. It is the case of the petitioners that they had gone to file an appeal (Annexure P-7) before the Appellate Tribunal, but the same was returned by the office of the appellate Tribunal and was not listed on the judicial side. It is not in dispute that against the order passed by the Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Kharar, an appeal under Section 16 of the Act of 2007 lies before the Appellate Tribunal and thus, the office of the appellate Tribunal cannot refuse to put up the same before the Appellate Tribunal. The question as to whether the said appeal is maintainable or not or whether the pleas raised by the petitioner are meritorious or not, are to be considered by the Appellate Tribunal and thus, the same cannot be returned by the office of the Appellate Tribunal.

7. Keeping in view the above-said facts and circumstances, the present writ petition is disposed of with the following directions: -

- (i) Petitioner is at liberty to file an appeal under Section 16 of the Act of 2007 within a period of 10 days from today

against the order dated 17.04.2022 passed by the Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Kharar.

- (ii) In case the petitioners file the said appeal within the aforesaid period, complete in all respects, then, the office of the Appellate Tribunal would put up the case for hearing before the Appellate Tribunal as expeditiously as possible.
- (iii) The Appellate Tribunal on the case having been put up before it, would decide the same in accordance with law as expeditiously as possible.

8. This Court has not opined on the merits of the appeal and it is open to the appellate authority to decide the same independently and in accordance with law.

July 21, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No