

JPD-01
Ct No.01
30.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

WPA 651 of 2024
CAN 2 of 2024
CAN 3 of 2024

Joya Roy and another
VS
The State of West Bengal and others

Mr. Arnab Saha

.... for the petitioners

Mr. Momenur Rahman,
Mr. Bikash Singha

.... for the State

Mr. Rajat Das

.... for the respondent no.5

- 1.** On consent of parties, the writ petition itself is taken up for hearing along with the connected applications.
- 2.** The facts of the case in brief are as follows:
- 3.** The petitioners are the maternal grandmother and the aunt of a minor child whereas the respondent no.5 is the paternal grandfather of the said child.
- 4.** The respondent no.5, being the paternal grandfather, alleges that on the pretext of looking after the minor child, the petitioners have entered into the property of the present respondent no.5 and are not leaving the same, compelling the present

respondent no.5 to initiate a proceeding under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the 2007 Act”) which culminated in an order of eviction by the Sub-Divisional Officer (SDO), which was affirmed by the Appellate Tribunal.

5. The petitioners allege that the provisions of the said Act are not applicable at all and, as such, the impugned order ought to be set aside.
6. Learned counsel places reliance on the appropriate provisions of the 2007 Act, including Sections 4 and 5 of the same, in support of his contentions.
7. Learned counsel for the respondent no.5 argues that the respondent no.5, being a senior citizen, was entitled to invoke the provisions of the 2007 Act and in view of the occupation of the property of the respondent no.5 by the writ petitioners being palpably illegal, the Sub-Divisional Officer (SDO) and the Appellate Tribunal were completely justified in passing the impugned order of eviction.
8. Upon hearing learned counsel for the parties and on a bare perusal of the statute-in-question, it is evident that the impugned orders of both the fora below are palpably without jurisdiction.
9. Section 4 of the 2007 Act stipulates 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.

- 10.** Sub-Clause (ii) of Sub-Section (1) of Section 4 is applicable here, which envisages the case of a childless senior citizen, who can file a proceeding under the 2007 Act against such of his relative as referred to in clause (g) of Section 2 of the Act. Section 2(g) defines “relative” as 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.
- 11.** The respondent no.5 in the writ petition ticks all the wrong boxes in the present case. First, the said respondent is not a senior citizen vis-à-vis the writ petitioners, since the writ petitioners are not “relatives” of the respondent no.5 as defined in Section 2(g) of the 2007 Act. Secondly, the respondent no.5 is not a senior citizen who has proved himself to be unable to maintain himself from his own earning or out of the property owned by him. Thirdly, the respondent no.5 is not a ‘childless’ senior citizen. That apart, the entire contemplation of the Act is to provide protection to senior citizens and parents who are unable to maintain themselves against their children and relatives.

- 12.** The respondent no.5's appropriate remedy would be to file an eviction suit before a regular civil court and the invocation of the 2007 Act is a gross abuse of the process of court.
- 13.** The SDO and the Appellate Tribunal, for the above reasons, acted palpably *de hors* their jurisdiction in assuming authority erroneously under the 2007 Act and passing the order of eviction.
- 14.** Thus, the impugned orders cannot be sustained, being not tenable in the eye of law.
- 15.** Accordingly, WPA No. 651 of 2024 is allowed on contest, thereby setting aside the Order dated January 16, 2024 passed by the Appellate Tribunal in Appeal Petition No.10 of 2023 as well as the Order dated November 06, 2023 passed by the Sub-Divisional Officer, Alipurduar in Petition No.41 of 2023.
- 16.** CAN 2 of 2024 and CAN 3 of 2024 are disposed of as well in the light of the above observations.
- 17.** It is made clear that nothing in this order shall prevent the respondent no.5 from initiating appropriate proceedings for eviction against the writ petitioners in a competent civil court, if otherwise entitled in law.
- 18.** There will be no order as to costs.

- 19.** Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)