



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.811/2024**

1. SHRI DINESH MUKUL KANTAK,
Age 49 years, c/o Mukul Manguesh
Kantak, Service, R/o 1st floor, Sita Smriti
Building, St. Inez, Panaji-Goa
Pincode: 403001.

... PETITIONER

Versus

1. SHRI MUKUL MANGUESH
KANTAK, Age 82, C/o late Manguesh
G. Kantak, retired, R/o 1st floor,
Sita Smriti Building, St. Inez,
Panaji-Goa, Pincode: 403001.

2. SMT JYOTI MUKUL KANTAK,
Age 78, C/o late Bhaskar Bandari,
housewife, R/o 1st floor,
Sita Smriti Building, St. Inez,
Panaji-Goa, Pincode: 403001.

3. SHRI SANDEEP M. KANTAK,
Age 52, C/o Mukul Manguesh Kantak,
Service, R/o 1st floor,
Sita Smriti Building, St. Inez,
Panaji-Goa, Pincode: 403001.

4. THE MAMLATDAR,
Tiswadi, Goa.

... RESPONDENTS

Mr Rohit Bras de Sa, Advocate for the Petitioner.

Mr A. Sardesai, Advocate U/LAS for Respondents No.1 and 2.

Mr J. J. Mulgaonkar with Ms. S. Parulekar, Advocates for
Respondent No.3.

Mr S. P. Munj, AGA for Respondent No.4.

CORAM: VALMIKI MENEZES, J.**DATED: 13th AUGUST 2025**

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

2. This petition impugns order dated 06.06.2023 passed by the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (said Act). By the impugned order the Tribunal has directed the petitioner/original opponent no.2 - Dinesh Kantak in Maintenance Application No.3/2020 to pay Rs.10,000/- per month towards maintenance to respondent nos.1 and 2 (his parents) and has been further directed to vacate the suit house and make alternate arrangements for his accommodation within six months of the passing of the order.

3. The main contentions raised in this petition are as follows:-

(a) That the impugned order is devoid of any reasons and does not make any reference to the rival pleadings of the parties and documents placed on record.

(b) The impugned order has been passed contrary to the scheme of the said Act, more specifically, contrary to the provisions of Section 6 of the said Act and to Rule 4 of the Maintenance and Welfare of Parents and Senior Citizens Goa Rules, 2009 (said Rules), since no inquiry has been conducted by the Tribunal before passing the impugned order.

(c) That the impugned order has been passed without following the procedure set out under sub-section (6) of Section 6 r/w Section 5 of the Act which requires the Tribunal to refer the parties to the Conciliation Officer to attempt in mediating a solution to the disputes between them. Reliance is placed on the judgment passed by this Court in *Santosh Savlaram Morajkar v/s. Sumitra Savlaram Moraskar & Anr. - Writ Petition No.219/2025 decided on 09.06.2025*.

4. Respondent Nos.1 and 2 are represented by Mr A. Sardessai has opposed the petition and supports the impugned order. It was further submitted that the appeal filed by the petitioner before the Collector, has been rejected. Hence the impugned order does not call for interference. It is further submitted that the order of the Collector considers the record in detail and has varied the order of 06.06.2023 by directing both, the petitioner and respondent no.3 who is the other son of respondents no.1 and 2, to each pay an amount of Rs.10,000/- as maintenance to their parents. However, there is no interference recorded by the Appellate Court to the directions in the impugned order to the petitioner, directing him to vacate the suit house.

5. I have considered the record of the proceedings and the submissions by the learned counsel for the parties.

6. The impugned order has been passed after hearing the detailed arguments of the parties who appeared in person, as recorded in the proceeding sheet of 06.06.2023. However, a

perusal of the entire proceeding sheet from the commencement of the maintenance proceedings would reveal that there has been no inquiry whatsoever conducted by the Deputy Collector/ Maintenance Tribunal in terms of the provisions of Section 6 of the Act r/w Rule 7 of the said Rules. These provisions contemplate that the Maintenance Tribunal should conduct an inquiry into the rival submissions and material placed by the parties on record. The provisions of Rule 7 even empower the Tribunal to take evidence of the parties if it is so required.

7. The provisions of sub-section (6) of Section 6 of the Act require the Tribunal to, before hearing, under Section 5 of the Act, to refer such an application to a Conciliation Officer. The Conciliation Officer is defined in the Act as a person who may be either specifically appointed by the Tribunal or the Maintenance Officer who is designated by the State Government under sub-section (1) of Section 18 of the Act may also be appointed to conduct mediation between the parties. This is a mandate of Section 6 of the Act, which in the present case has not been followed.

8. There is yet another aspect of the matter where perusal of the record reveals that the petitioner had made an application opposing the representation of the appellant by an advocate, which appears to have been allowed, and the entire matter proceeded on the basis that the provisions of Section 17 of the Act were on the statute book. Thus none of the parties to the proceeding were represented by an advocate during the course of the proceedings, on the premise that the Act prohibited

representation of the parties by an advocate. This Court in *Santosh Savlaram Morajkar (supra)* has considered earlier judgments passed by the Kerala High Court in *Adv. K. G. Suresh v/s. Union of India – v/s Union of India- 2021 SCC OnLine Ker 1686 decided on 30.03.2021* which has declared provisions of Section 17 of the Act to be *ultra vires* Section 30 of the Advocates Act, 1961. In *Santosh Savlaram Morajkar (supra)*, a further judgment by the Delhi High Court in *Taruna Saxena v/s. Union of India & Ors. - 2021 SCC OnLine Del 2600* was also considered, which has taken a similar view as the one taken by the Kerala High Court. Applying the ratio laid down by the Supreme Court in *Kusum Ingots and Alloys Ltd. v/s. Union of India & Anr. - (2004) 6 SCC 254*, this Court has, in *Santosh Savlaram Morajkar (supra)*, held that the provisions of Section 17 stand struck down from the statute book. In view of these two judgments, and consequently the proceedings before the Maintenance Tribunal, without allowing representation of the parties through advocates would be contrary to the scheme of the Act and would be denying parties legal counsel. This would vitiate all the proceedings before the Maintenance Tribunal, and consequently the impugned order.

9. Given the fact that the impugned order was passed without holding any inquiry or without referring the matter to conciliation, where issues considered by this Court in *Santosh Savlaram Morajkar (supra)* and the relevant paragraphs of that judgment shall apply to the facts of the present case. The same are quoted below:-

“8. Sub Section 4 of Section 6 requires that all evidence to such proceedings be taken in the presence of the children or the persons, who are by law required to maintain the Applicant. Here again, in the present proceedings, it appears that no evidence or any inquiry was conducted by the Tribunal in the presence of the children, three of the daughters having not even having been summoned. There appears to have been a complete go by given to the procedures laid down under Sections 5 and 6 of the Act.

9. Perusal of the impugned order reveals that no reference has been made on the conduct of the inquiry or to ascertain the liability of each of the children to maintain the Applicant, and on what basis the Tribunal concluded that the maintenance required to be paid by the Applicant was quantified at Rs.10,000/- (Rupees Ten Thousand only) or for that matter, how the Tribunal concluded the apportionment of such maintenance amount amongst the children of the Applicant. These are not empty formalities, but are issues to be dealt with by the Tribunal under Section 6 of the Act, which Tribunal has totally failed to follow.

10. In terms of Section 32 of the Act read with Section 8 thereof, the Government of Goa has framed the Goa Maintenance and Welfare of Parents Senior Citizen Rules, 2009, (herein after referred to as Rules). Rule 4 provides for procedure for filing an application for maintenance. Rule 9 provides for impleadment of other children of the

Applicant, which can be exercised either at the behest of the opposite party or by the Tribunal Suo Moto. Rule 10 provides for reference of such application to the Conciliation Officer. Under Rule 10, it is the duty of the Tribunal to seek the opinion of the parties before it, as to whether they desire the matter to be referred to the Conciliation Officer, and if they express their willingness, he shall refer the matter to the Conciliation Officer for attempting to work out a settlement. Sub Section 6 of Section 6 enjoins the Tribunal, before hearing any application under Section 5 to refer the application to the Conciliation Officer, the Conciliation Officer being defined under the explanation to Section 6. The Tribunal may refer the matter to the Conciliation Officer specifically appointed for that purpose in terms of Sub Section 1 of Section 5 of the Act or to the Maintenance Officer designated by the State Government under Sub Section 1 of Section 18 or on its own motion, refer the matter to the Conciliator to be appointed by the Tribunal.

11. The record does not disclose any such attempt on the part of the Tribunal to facilitate conciliation among the parties before passing of the impugned order. There appears to have been a complete go by given to the procedures laid down under Sections 5 and 6 of the Act read with provisions of Rules which are referred above. The impugned order, as noted by me in the preceding paragraphs, is devoid of any reasoning recorded therein, nor does it state how it has arrived at the conclusion that it was only the Petitioner,

who was responsible to pay the entire maintenance; the Petitioner is one of the four children who is responsible or as to how it has arrived at the quantum of maintenance. On this count alone, the impugned order would have to be set aside.”

10. Consequently, and for the reasons referred to above, the impugned order dated 06.06.2023 cannot be sustained and is hereby quashed and set aside. The provisions of Section 16 of the Act do not provide for any appeal at the behest of the opponent but provides an appeal only to the aggrieved senior citizens or parents. In the present case the appeal itself before the Collector was not maintainable at the behest of the petitioner and for that reason the order passed by the Collector is without jurisdiction and need not be looked into for the fact that the appeal itself ought to be rejected as not maintainable. Consequently, the appellate order dated 20.05.2024 stands quashed and set aside.

11. Considering that the impugned order dated 06.06.2023 is set aside, the matter shall stand remanded back to the Maintenance Tribunal at Panaji. The parties shall appear before the Tribunal on 22.09.2025 at 3.00 p.m. After the parties appear, and the Tribunal notifies all other parties who are required to be heard, including respondent no.3, the Tribunal shall refer the case to a Conciliation Officer to be appointed by it for that purpose or the Maintenance Officer appointed by the Government of Goa under the provisions of the Act. The Conciliation Officer or the Maintenance Officer as appointed by the Tribunal shall attempt to mediate a settlement amongst the parties and submit a report

on the conciliation within eight weeks of the commencement of the conciliation proceedings. If the conciliation fails, the Maintenance Tribunal shall proceed to conduct an inquiry into the matter, and if necessary record evidence in a summary manner, and shall thereafter pass its order. Considering that these matters require to be completed within a time-bound manner, the Maintenance Tribunal shall endeavour to pass its order by 14.11.2025.

12. It is made clear, that in the interregnum and during the pendency of the maintenance proceedings, the petitioner and respondent no.3 shall each deposit into the account of respondents no.1 and 2 an amount of Rs.10,000/- per month until the disposal of the maintenance application. The account number has been specified in the first order of the Deputy Collector dated 08.09.2021.

13. Rule is made absolute in terms of prayer clauses (a) and (b) of the petition with the directions mentioned in the above paragraphs.

14. The Petition is disposed of. No cost.

VALMIKI MENEZES, J.