



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.47/2025**

1. HERAMB SAVAIAKAR, aged
R/o H.No.254, Mayekarwada,
Maulinguem, North Goa.

2. SMT SHRADHA HERAMB
SAWAIKAR, aged
R/o H.No.254, Mayekarwada,
Maulinguem, North Goa.

... PETITIONERS

Versus

1. SHRI RAMESH NARAYAN
SAWAIKAR, R/o H.No.254,
Mayekarwada, Maulinguem, North Goa.

2. THE STATE OF GOA,
through Public Prosecutor, Porvorim
Goa.

... RESPONDENTS

Ms S. Correia, Advocate for the Petitioner.
Ms Swati Kamat Wagh, Advocate for Respondent No.1.
Mr S. Karpe, APP for Respondent No.2.

CORAM: VALMIKI MENEZES, J.**DATED: 12th AUGUST 2025****ORAL JUDGMENT :**

1. Registry to waive objections and register the matter.
2. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

3. The order impugned in this petition is dated 28.03.2023. The impugned order is passed by the Deputy Collector of Bicholim acting as the Maintenance Tribunal under Section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (said Act). By the impugned order the Tribunal has directed the petitioner no.1, who is the only child of the complainant, to pay Rs.10,000/- per month towards maintenance of respondent no.1 (original complainant). In addition the Tribunal has restricted both the petitioners from interfering with the complainant's/respondent's act of cultivating his agricultural fields.

4. The background facts which are relevant in deciding the legality of the impugned order, are as under:-

(a) From the record it appears that disputes have arisen between respondent no.1/original complainant in the proceedings and his wife Reshma. It appears that the petitioner no.1, who is the son of the complainant, and his wife petitioner no.2, according to the averments made in the complaint, restricted the entry of the complainant to his residential house situated at Village Maulinguem, Bicholim Taluka. There is an allegation also that the petitioners obstructed the complainant from entering upon an agricultural property (Kulagar) which bears Survey No.113/1A of the same village. This was the cause for the complaint to be filed before the Maintenance Tribunal.

(b) On issuance of notice, the petitioners filed their reply and the impugned order was passed after recording arguments of the parties.

(c) In the meantime, due to the differences that arose between the complainant and his wife Reshma, the said Reshma filed a D. V. proceedings bearing No.4/2022/A before the JMFC, Bicholim seeking maintenance from the complainant/husband. The D.V. proceedings are pending before the Magistrate's Court at Bicholim.

(d) As a sequel of the D. V. Case, the present situation, as alleged by the complainant is that the petitioners reside along with the mother of petitioner no.1 Reshma in the residential house situated in Survey No.113/1A whilst the complainant has been ousted from the residential house property as well as the cultivation of the land under Survey No.113/1A.

5. I have perused the record of the proceedings before the Maintenance Tribunal. On going through the record, it is seen from the proceeding sheet that the Tribunal has at no point of time attempted to have the parties subjected to a mediation proceedings. Sub-section (6) of Section 6 of the Act requires the Tribunal, to, before hearing an application under Section 5, refer the parties to a conciliation officer to attempt mediation of the dispute. The conciliation officer is defined under the Act and in terms of sub-section (1) of Section 5, the conciliation officer appointed by the State Government is required to attempt a

mediation between the parties. The Government of Goa has framed rules under the Act which are Maintenance and Welfare of Parents and Senior Citizens Goa Rules, 2009 (said Rules). Under Rule 3 of the said Rules the Government of Goa may appoint a conciliation officer or maintenance officer designated by the State Government under sub-section (1) of Section 18 may also be appointed as conciliation officer for the purpose of the said Act.

6. The Act mandates that the complaint and the parties thereto should first be subjected to the process of conciliation, considering that the dispute is usually between parents and children. Record reveals that no attempt whatsoever has been made by the Tribunal, which the Act otherwise mandates, to refer the matter to a Conciliation Officer. On this count alone, the impugned order dated 28.03.2023 would have to be set aside, to enable the parties to subject themselves to a mediation process to be a conciliation officer.

7. Sub-section (3) of Section 5 r/w sub-section (4) of Section 6, the Maintenance Tribunal is required to conduct an inquiry during the course of the proceedings. So also, Rule 13 under the Goa Rules makes specific reference to the procedure to be followed by the Tribunal in holding such inquiry, prior to passing any orders under the Act. A perusal of the record, and the entire proceeding sheet would reveal that no attempt at all has been made by the Tribunal to conduct an inquiry into the matter before arriving at any of the conclusions found in the impugned order. There is not even a document taken from any of the parties or any inquiry into the rival contentions of the parties

before the impugned order was passed. The impugned order therefore is not based upon any material gathered during the course of the inquiry, since such inquiry was never even attempted by the Maintenance Tribunal. The Maintenance Tribunal has therefore proceeded with material irregularity and has based its conclusion on any material collected during the course of the inquiry. The reading of the impugned order would leave no doubt that there are no findings at all but the conclusion arrived at that the petitioner no.1 is required to pay maintenance of Rs.10,000/- per month to the respondent no.1, is not based on any document or on any evidence that has been gathered by the Tribunal. The impugned order is therefore passed contrary to the provisions of Section 6 of the Act and the Rules made thereunder.

8. The very same provisions were considered by this Court in *Santosh Savlaram Morajkar v/s. Sumitra Savlaram Moraskar & Anr. - Writ Petition No.219/2025 decided on 09.06.2025* wherein, after making reference to the provisions of the Act and Rules made thereunder, this Court has observed the specific procedure to be followed by the Tribunal, failing which the orders passed by it would stand vitiated and would run contrary to the scheme of the Act. The relevant paragraphs of the judgment 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.”

9. The impugned order runs contrary to the aforementioned provisions and the directions given by this Court in Santosh Morajkar (supra). The impugned order is therefore quashed and set aside. The case stands remanded back to the file of the Maintenance Tribunal at Bicholim i.e. the Deputy Collector and SDO, Bicholim for fresh consideration in the light of the observations made above and in the light of the directions of this Court in Santosh Morajkar (supra) the Maintenance Tribunal shall immediately refer the dispute to the Maintenance Officer appointed by the State Government to conduct the conciliation and attempt in getting the parties to arrive at an amicable solution to their claims. The Conciliation Officer so appointed may submit findings on the conciliation proceedings, by the Tribunal within one month from the date of reference. The Conciliation Officer shall issue notice to the petitioners, respondent no.1 and in this case also to the wife of respondent no.1 Reshma Sawaikar, whilst attempting the mediation.

10. In the event of failure being recorded by the Conciliation Officer in terms of Section 8 of the Act r/w. Rule 13 sub-clause (iv) thereof, the Tribunal shall proceed to conduct an inquiry into the matter and after such inquiry shall then proceed to pass orders on the complaint of the respondent no.1.

11. Parties to appear before the Tribunal on 15.09.2025 at 3.00 p.m. The Tribunal shall permit the parties to be represented by an advocate of their choice, during the proceedings.

12. Until the disposal of the Maintenance Application before the Tribunal, the petitioner no.1 shall continue to deposit an amount of Rs.10,000/- per month directly into the account of respondent no.1. The details of the account are as under:-

Name: Ramesh Narayan Sawaikar
Bank Name: Canara Bank, Bicholim Branch
Account No.: 0333101010409
IFSC Code: CNRB0000333

This amount shall continue to be deposited until the disposal of the proceedings before the Maintenance Tribunal.

13. Rule is made absolute in terms of prayer clause (a) of the petition and in terms of the order contained above.

14. The Petition is disposed of.

VALMIKI MENEZES, J.