

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2748 OF 2023

Nitin Pralhad Ghute and Ors.

...Petitioners

V/s.

Pralhad Ganpati Ghute and Anr.

...Respondents

Mr. Girish R. Agrawal *for the Petitioners.*

Mr. Anil S. Anturkar, *Senior Advocate with Mr. Vaibhav Gaikwad, Mr. Atharva R.B, Mr. Yash Naik for the Respondent No.1.*

Ms. Kavita N. Solunke, *AGP for Respondent No.2-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 21 February 2025.

P.C. :

1) It appears that against the order dated 10 February 2023 passed by the Presiding Officer, Maintenance Tribunal and Sub-Divisional Officers, Karad, the senior citizen has already filed appeal before the Appellate Authority. Though Appeal under the provisions of Section 16 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (**the Act**) at the instance of the children is not expressly provided for, the Division Bench of this Court in ***Jagdish Pitamber Pawar V/s. Pitamber***

***Pundalik Pawar and Ors.*¹** has taken a view that an appeal under the provisions of Section 16 of the Act would be maintainable even at the instance of the children or relatives.

2) Mr. Agrawal, the learned counsel appearing for the Petitioners would invite my attention to the judgment of Division Bench of Karnataka High Court in ***Sri K. Lokesh V/s. The Bangalore District Maintenance and Welfare of Parents and Senior Citizens Appellate Tribunal***², in which it is held that an appeal under the provisions of Section 16 of the Act can be filed only by a senior citizen or a parent and not by any other party. Though there appears to be a conflict of view taken by the Division Bench of this Court and Karnataka High Court, I am respectfully bound by the view taken by the Division Bench of the Bombay High Court.

3) In the peculiar facts of the present case, where impugned order dated 10 February 2023 is already appealed by the senior citizen before the Appellate Authority, it would be appropriate that Petitioners are also relegated to the remedy of appeal before the Appellate Authority so that contentions of the rival parties can be heard and decided by the same authority.

4) Petitioners are accordingly granted leave to file appeal before the Appellate Authority under Section 16 of the Act challenging order dated 10 February 2023 passed by the

¹ Writ Petition No.36 of 2023, decided on 29 November 2023 (Aurangabad Bench).

² Writ Appeal No.254 of 2024, decided on 20 December 2024.

Maintenance Tribunal. Time spent in prosecuting the present Petition shall be considered for condonation of delay in filing the appeal.

5) By way of interim order passed by this Court, the senior citizen is already put in possession of the bungalow. Mr. Agrawal, on instructions makes a statement that Petitioners shall not disturb the possession with senior citizen in respect of the bungalow during his lifetime. Interim order dated 6 March 2023 shall continue to operate during pendency of the Appeal before the Appellate Authority.

6) With the above directions, Petition is disposed of.

7) All rights and contentions of the parties are expressly kept open to be decided by the Appellate Court.

[SANDEEP V. MARNE, J.]