

Ankush Punjabrao Jamodkar,
Aged about 31 years, Occ. Labour,
R/o. Yatra Chowk, Akot
Tq. Akot, Dist. Akola

// VERSUS //

- (1) **The Appellate Authority,**
Collector, Akola, Tq. And Dist. Akola
- (2) **The President,**
Senior Citizen Maintenance Tribunal and
Sub-Divisional Officer, Akot,
Tq. Akot, District Akola
- (3) **Shobha Bapurao Jamodkar,**
Aged about 74 years, Occ. Household,
- (4) **Santosh Bapurao Jamodkar,**
Aged about 41 years, Occ. Carpenters,
R/o. Yatra Chowk, Akot, Tq. Akot, District Akola

.... RESPONDENT(S)

[illegible]

Shri V.B. Bhise, Advocate for the Petitioner(s)
Shri B.M. Lonare, AGP for the Respondent/State
Shri U.J. Deshpande, Advocate for the Respondent No. 3

[illegible]

CORAM : M.S. JAWALKAR, J.
FEBRUARY 07, 2025

ORAL JUDGMENT:-

(1) **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The present Petitioner has challenged the order dated 24/07/2024 passed by the Respondent No. 1 – Collector, Akola in Case No. 369/2024 thereby rejecting the Petitioner’s Appeal on account of not having the right to file Appeal under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the said Act”).

(3) The Respondent No. 3 had filed an Application before the Respondent No. 2 under Sections 5 and 22 of the said Act against the Respondent No. 4. The husband of the Respondent No. 3 died on 12/05/2021 who was working in the Water Supply Department. The elder son of the Respondent No. 3 had also died and the Respondent No. 4, since last 25 years, is residing at the house situated at Yatra Chowk, Akot along with his wife and children. That, the Petitioner was not earlier party to the Application filed by the Respondent No. 3. However, in Writ

Petition No. 1547/2023 filed before this Court, the matter was remitted back and he was added as Respondent in the said Writ Petition. After remand, the Petitioner filed his reply.

(4) Learned Counsel for the Petitioner submitted that the Sub-Divisional Officer, Akot i.e. Respondent No. 2, without considering the submissions of the Petitioner, arbitrarily proceeded to pass an order thereby directing the Petitioner to return the possession of the house situated at Asra Colony, Jupiter Motor Vehicle and other articles to the Respondent No. 3. The Petitioner preferred an Appeal before the Respondent No. 1 - Collector, Akola under Section 16 of the said Act. However, the said Appeal came to be dismissed by relying on the judgment of Madras High Court passed in Writ Petition No. 29988/2019 wherein it was held that only the senior citizens or parents can file an Appeal under Section 16 of the said Act. Being aggrieved by the said order passed by the Respondent No. 1, the Petitioner has preferred the present Writ Petition.

(5) Learned Counsel for the Petitioner relied on the judgment of this Court, Bench at Aurangabad in Writ Petition

No. 36/2023 (Jagdish Pitamber Pawar vs. Pitamber Pundalik Pawar & others) dated 29/11/2023. In the said matter, reliance was placed in the case of Paramjit Kumar Saroya vs. The Union of India, AIR 2014 P & H 121. In Paragraph Nos. 24, 32 and 33 of the judgment in Paramjit (supra), it is held as under:-

“24. We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no debate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than the senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded.

“32. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that

we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in N. Kannadasan's case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an

appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

33. *We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.”*

(6) Plain reading of Section 16 reveals that right to prefer an Appeal has been restricted to a citizen or parent. The provisions of the said Act do not seek to merely restrict the claims to maintenance but even complex issues in respect of rights in the property would be involved, having potential of even affecting the rights of third party. By taking aid of the principle of *casus omissus* and resorting to the purposive interpretation, this

Court held as above. This Court also considered the amendment bill to Section 16 by which Section 16(1)(i)(a) proposed to be amended, inserting the words “or any of the children or relatives” after the words “senior citizens or a parent”. Remedy of Appeal thus not only available to senior citizens and parents, but also to the children and relatives. As such, the order dated 24/07/2024 passed by the Respondent No. 1 - Collector is liable to be quashed and set aside.

(7) Hence, I proceed to pass following order:-

ORDER

(a) The Writ Petition is **allowed**.

(b) The order dated 24/07/2024 passed by the Respondent No. 1 - Collector, Akola in Proceedings bearing No. 369/2024 is hereby quashed and set aside.

(c) The matter is remitted back to the Respondent No. 1 - Collector for fresh consideration in view of the observations made above.

(d) The parties to appear before the Respondent No. 1 - Collector on 14/02/2025.

(e) The Respondent No. 1 - Collector shall decide the matter within one month from the date of appearance of the parties.

(f) The parties to maintain *status-quo* till the decision on the Application before the Respondent No. 1 - Collector.

The Petition stands **disposed of** in the above terms.
Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)