HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 43648 of 2026

Dr. Upasana Giri

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Nitin Pant, Satya Prakash Pandey
Counsel for Respondent(s)	:	Anand Prakash Paul, C.S.C., Shiv Kumar Pal

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Court No. - 5

HON'BLE PRAKASH PADIA, J.
HON'BLE INDRAJEET SHUKLA, J.

1. Counter affidavits filed on behalf of respondent nos. 5 and 6, are taken on record.

2. Heard Mr. H.R. Mishra, learned Senior Counsel assisted by Mr. Satya Prakash Pandey, and Nitin Pant, learned counsel for the petitioner, Mr. Kartikeya Saran, learned Additional Advocate General assisted by Mr. Dharmendra Prasad, learned Additional Chief Standing Counsel for respondent nos. 1 to 4, Mr. Anand Prakash Paul, learned counsel for respondent no.5 and Mr. Shiv Kumar Pal, learned counsel for respondent no.6.

3. Present writ petition has been filed i*nter alia* with the prayer to quash the order dated 03.10.2026 passed by the respondent no.3 namely Up-Ziladhikari/Sub Divisional Magistrate, Tehsil Sadar, District Prayagraj in Case No.21410 of 2026 (Computerized Case No.T202602030621410) under Section 7(1) of the Maintenance and Welfare of Senior Citizens Act, 2007 (hereinafter referred to as 'the Act, 2007').

4. Mr. Kartikeya Saran, learned Additional Advocate General appearing on behalf of State placed reliance upon as many as 13 judgements delivered by this Court as well as other High Courts having divergent opinion. He also placed reliance upon judgement and order dated 23.04.2019 passed by Division Bench of this Court in case of **Akhilesh Kumar and another Vs. State of U.P. and 3 others passed in Writ C No.11295 of 2019,** wherein the appeal filed by children being aggrieved by order of eviction passed by

Tribunal, has been held to be maintainable. On reproduction relevant excerpt, reads thus:

> *"Learned counsel for the petitioners submits that under section 16 of the Act, 2007 an appeal can only be filed by the senior citizens or parents who are aggrieved by the order of the Tribunal. He therefore, submits that no appeal would lie against the impugned order at the behest of the petitioners. Section 16 of the Act, 2007 reads as under:*
>
> > *"16. Appeals. ?(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:*
> >
> > *Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal: Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.*
> >
> > *(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.*
> >
> > *(3)The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.*
> >
> > *(4)The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.*
> >
> > *(5)The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final: Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.*
> >
> > *(6)The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.*
> >
> > *(7)A copy of every order made under sub-section (5) shall be*

sent to both the parties free of cost."

However, learned standing counsel has referred to a decision in Paramjit Kumar Saroya: Amanpreet and another vs. Union of India and another (2014 AIR (P&H) 121 wherein the Division Bench of the Punjab and Haryana High Court has held that a purposive interpretation should be given to Section 16(1) of the Act, 2007 and the only interpretation is that the right of appeal is conferred on both sides. The Court was of the view that it may be a case of an accidental omission and not of conscious exclusion and in order to give a complete and effective meaning to the statutory provision, the Court should read the words into it and the ultimate conclusion being that an appeal from both sides is envisaged under section 16(1) of the Act, 2007. Paragraph Nos. 19, 20, 23 and 27 of the said judgment reads as under:

> The textual reading of Section 16 of Act, 2007 do not indicate that appeal on the instance of children being aggrieved by order of eviction is maintainable but the Division Bench of this Court having regard to the purposive interpretation of the Act has held to be maintainable. There is no second opinion by this Court as yet. The Central legislature is already contemplating on the issue of maintainability of appeal giving rise to children but same has not yet been crystalized as informed by Mr. Pal, learned counsel representing Union of India. *"19. The petitioners assailed the provisions of sub section (1) of Section 16 of the said Act on the ground that there cannot be a right to appeal only to one of the affected parties, as anomalous situation would be created against the same order with which both the parties may be aggrieved i.e. where a greater or lesser claim is made in relation to any property or maintenance, as one party being the senior citizen or parent would prefer an appeal before the Appellate Tribunal, while the party which is liable to Sharma Amodh 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) give maintenance would have to take recourse to the supervisory jurisdiction of the High Court. Thus, two parallel proceedings in the different forums qua the same order would arise. The submission, thus, is that these provisions should be struck down as ultra-vires, the intent of the other provisions of the said Act or the constitutional scheme. In the alternative the provision should be read down to make it consistent with the other provisions*

and, thus, confer a right of appeal even to the other affected party.

20. 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. It has been submitted by learned Amicus Curiae that the subject matter of a right of appeal is not merely confined to the issue of maintenance upto the amount of ` 10,000/-, but of seriously affecting the rights of parties even qua immovable properties as set out in Sharma Amodh 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) Section 23 of the said Act. Thus, transfers of immovable properties can be declared void. This power is vested not only qua family members or children of senior citizens, but qua "every person". Not only that, as stated aforesaid, the provisions of Sections 15 and 16(1) have to be read harmoniously. Section 15 nowhere mentions that the appeal against the order of the Tribunal be confined to a senior citizen or parent. Similar is the proposition qua the first proviso to sub section (1) of Section 16 which would only have been in case of an appeal by the party liable to be maintained. The right to file an appeal is not excluded specifically by the provisions of Section 16(1) of the said Act, but it fails/omits to mention. We may also usefully refer to sub section (5) of Section 16 which provides finality to the order of the Tribunal. Such finality can only be achieved after hearing grievances of both the sides. If the appeal is confined to only one party, then the finality can only be qua the rights of that party which has preferred the appeal and cannot be envisaged qua the opposite party which would

have to take recourse to Article 227 of the Constitution of India. Thus, another sub section of the same Section gives credence to the plea that Section 16(1) of the said Act should be read in a manner as to provide for appeal to both the parties. The proviso to sub section (5) further stipulates that an appeal cannot be rejected unless an opportunity has been given to both the parties of being heard. The reference of right to both the parties has to be in the context of an appeal by either of the parties as otherwise it would have envisaged that no order could be passed without hearing the child or the other party.

Sub section (2) of Section 16 once again refers to causing a notice to be served upon the "respondent" and not the child or the other party which would be the situation if the right of appeal was only to a parent or a senior citizen.

23. While cautioning the Courts that the primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself, it was observed that statutes should be construed not as theorems of Euclid and that words are required to be construed with some imagination of the purposes which lie behind them. A casus omissus cannot be supplied by the Court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself. The objective is to put a construction on a particular provision so that it makes consistent enactment of the whole statute. A literal construction should not be adopted if it leads to a manifestly absurd or anomalous result which could not have been intended by the Legislature. It cannot be "an intention to produce an un-reasonable result". It is this very result, in our opinion, which would flow if we adopt an interpretation restricting right of appeal to only one of the parties under Section 16(1) Sharma Amodh 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) of the said Act. We would in fact have to strike down the provision and there is no reason to do so keeping in mind the intent of the Act if a casus omissus can save the provision.

(c) Gujarat Urja Vikas Nigam Ltd. Vs Essar Power Ltd. 2008(4), SCC 755. The Hon'ble Supreme Court in aid of

interpreting a statute pressed into service the traditional Mimansa system. These principles are the traditional principles of interpretation laid down by Jaimini and are stated to have been used regularly by great jurists who authored the Mitakshara and Dayabhaga laws. The principles were created for religious purpose, but they are stated to be so rational and logical that they began to be used in law, grammar, logic, philosophy and, thus, became of universal application. The three ways of dealing with the conflicts under the Mimansa system have been crystallized as under:-

"(1) Where two texts which are apparently conflicting are capable of being reconciled, then by the principle of harmonious construction (which is called the samanjasya principle in Mimansa) they should be reconciled.

(2) The second situation is a conflict where it is impossible to reconcile the two conflicting texts despite all efforts. In this situation the Vikalpa principle applies, which says that whichever law is more in consonance with reason and justice should be preferred. However, conflict should not be readily assumed and every effort should be made to reconcile conflicting texts. It is only when all efforts of reconciliation fail that the Vikalpa principle is to be resorted to.

(3) There is a third situation of a conflict Sharma Amodh and this is where there are two conflicting 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) irreconcilable texts but one overrides the other because of its greater force. This is called a Badha in the Mimansa system (similar to the doctrine of ultra vires)." It is in the aforesaid context that the Hon'ble Supreme Court observed as under:-

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the Court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

53. In the chapter on `Exceptional Construction' in his book on `Interpretation of Statutes' Maxwell writes:

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning."

54. Thus, in Surjit Singh Kalra vs. Union of India 1991(2) SCC 87, this Court has observed that sometimes courts can supply words which have been accidentally omitted.

55. In G.P. Singh's Principles of Statutory Interpretatio' Ninth Edition, 2004 at pages 71-74 several decisions of this Court and Sharma Amodh 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) foreign Courts have been referred to where the Court has added words to a statute (though cautioning that normally this should not be done)."

27. What is crucial is that the task of interpretation of a statutory enactment cannot be a mechanical task, nor can it be the own thoughts and words of the Judge. However, there is no perfect solution as in the words of Lord Denning it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. It is here that the role of the Court comes in. 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 Sharma Amodh 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) 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 Sharma Amodh 2014.05.31 11:40 I attest to the accuracy and integrity of this document chandigarh CWP-12340-2010 (O&M) 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.

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."

In a similar controversy the Madras High Court in Balamurugan vs.

Rukmani (C.R.P.(PD)(MD)No. 437 of 2015 & M.P.(MD)Nos. 1 & 2 of 2015 decided on, 29 April 2015) (Manu/TN/2190/2015) in agreement with the view taken in Paramjit Kumar Saroya (supra) has held that an appeal under section 16 of the Act, 2007 would be maintainable at the behest of both the parties, i.e. at the instance of the aggrieved party for the reason that where the Tribunal decides a case in favour of the senior citizens or parents, the children or dependent or relatives against whom the order is passed and against whom it can be enforced under section 11 of the Act, 2007 would be the aggrieved person and have a right to file an appeal.

We find ourselves in agreement with the view taken by the Punjab and Haryana High Court in Paramjit Kumar Saroya (supra) and Balamurugan (supra) because if the right of appeal is denied to the aggrieved party, namely, child or children or relatives the appeal clause under the Act, 2007 would be frustrated and tantamount to denying them the similar right of appeal as provided to another party who is the senior citizens or parents.

The Supreme Court in Surjit Singh Kalra vs. Union of India (1991) 2 SCC 87) in paragraph no.19 has held as under:

> *"19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meanings, it is permissible to supply the words" (Craies Statute Law, 7th Edition, p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar, [1988] 2 SCC 513 at 524-25 where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: Sirajul Haq Khan & Ors. v. The Sunni Central Board of Waqf, [1959] SCR 1287 at 1299)"*

We, therefore, dismiss the writ petition with liberty to the petitioners to file an appeal before the appellate authority under section 16 of the Act, 2007 afresh or they may move an application for recall of the order dated

> *21.1.2019. In either case, the District Magistrate, Kanpur Nagar, respondent no.1 shall entertain the appeal of the petitioners, as the case may be, and pass an appropriate order in accordance with law after giving all the parties concerned, an opportunity of being heard.*

5. The aforesaid view of holding appeal on behest of children being aggrieved by order of eviction maintainable, was followed by the Chhattisgarh High Court in **Smt. Rita Roy Vs. Maintenance Tribunal and Sub Divisional Officer (revenue), District Durg (C.G.) and others passed in WA No. 188 of 2022 on 18.08.2022.**

6. A textual reading of Section 16 of Act, 2007, does not indicate that an appeal at the instance of children, being aggrieved by an order of eviction is maintainable but the Division Bench of this Court having regard to the purposive interpretation of the Act to rule out flagrant discrimination between senior citizen/parents and children by giving right of appeal to one set and denying to other, has held it to be maintainable on behalf of children too. There is no second opinion by this Court as yet. The Central legislature is already contemplating on the issue of maintainability of appeal giving right to children, but same has not yet been crystalized as informed by Mr. Pal, learned counsel representing Union of India.

7. Learned counsel for the petitioner as well as counsel for respondent no.5 could not dispute the legal position that Division Bench of this Court in case of **Akhilesh Kumar** *(supra)* has held the appeal to be maintainable. Thus, petitioner is willing and ready to approach the appellate jurisdiction of the District Magistrate. The only apprehension expressed that appellate authority may take long time in adjudication of appeal in utter disregard to statutory mandate contained in the act for disposal of appeal with promptness.

8. If District Magistrate being appellate authority is mandated to decide the appeal within the time bound manner by thrashing out the factual matrix and the law applicable on the point of eviction of children. The petitioner's grievance could be redressed in effective manner.

9. It is fundamental doctrine reflected from latin maxim ***stare decisis*** that requires Courts to follow previous judicial precedents. Thus, while sitting in Division Bench, we in order to maintain consistency follow the judgment of our own Court rendered in **Akhilesh Kumar** *(supra).*

10. In view of the legal position as thrashed out in **Akhilesh Kumar** *(supra)*,

we relegate the writ petitioner to the jurisdiction of Appellate Authority/District Magistrate, Prayagraj-respondent no.2.

11. At this stage, an undertaking has been extended by Mr. Anand Prakash Paul, learned counsel for respondent no.5 having instruction in the matter that respondent no.5 will not take recourse/press for eviction until appellate authority decides application for interim relief.

12. Thus, in view of undertaking as aforesaid, there is no occasion for us to grant any indulgence/protection.

13. Respondent no.2/District Magistrate, Prayagraj is further directed to decide the entire appeal filed by the petitioner after providing opportunity of hearing to all the parties, within a period of 30 days from the date of institution of Appeal as mandated by statute itself under Section 16(6) of the Act, 2007.

14. It is needless to mention that this Court has not adjudicated the challenge to the order impugned on its merits thus, the appellate authority shall marshell the factual matrix on its own in the light of applicability of law enshrined under the statute/ the Act, 2007 as well as various pronouncements of this Court as well as Hon'ble Supreme Court and would pass orders accordingly.

15. In this view of the matter and with the consent of the learned counsel for the parties, without interfering in the order dated 03.10.2026 passed by respondent no.3, we permit the petitioner to prefer an appeal along with application for interim relief before the respondent no.2/District Magistrate, Prayagraj/Appellate Authority within a period of **three days**, if needful is done in aforesaid period, the respondent no.2 will pass appropriate order on the application for interim relief, positively on or before 16th November, 2026.

16. The writ petition is **disposed of.**

17. Let this order be communicated to the respondent no.2/District Magistrate, Prayagraj by Registrar (Compliance) through Chief Judicial Magistrate, Prayagraj, **forthwith.**

November 2, 2026
Mohit

(Indrajeet Shukla,J.) (Prakash Padia,J.)

Digitally signed by :-
MOHIT KUMAR KUSHWAHA
High Court of Judicature at Allahabad