

(2023) 03 CHH CK 0042
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 183 Of 2023

Beena Thakur

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Section 5, 7

Citation : (2023) 03 CHH CK 0042

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Sumit Singh Rathore, Ishwari Dhritlahre, Shashank Thakur

Final Decision : Disposed Of

Judgement

1. This writ petition under Article 227 of the Constitution of India is directed against the order dated 6.2.2023 (Annexure P-5) passed by the District Magistrate-cum-Appellate Tribunal, Durg, in Appeal Case No.03/B-121/2002-23, upholding the order dated 25.11.2022 (Annexure P-2) passed by the Sub Divisional Officer (Revenue), Durg in Case No.202108100400035/A-74/2020-21, whereby the learned Sub Divisional Officer has directed the petitioner to vacate the house in question within 15 days, which was granted on lease in favour of respondent No.3 by his ex-employer Bhilai Steel Plant.

2. At the outset, Mr.Shashank Thakur, learned counsel for respondents No.3 and 4, fairly submits that though he has a good case, but initial order was not passed by the Maintenance Tribunal and as per Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act of 2007'), the jurisdiction is vested to the Tribunal, which has been properly constituted under Section 7 of the said Act, though in both the orders it was rightly observed that the house in question belongs to sole ownership of respondent No.3 and the petitioner has no right to remain in possession without consent of respondent No.3, but the order was not passed in accordance with law. He placed reliance of

this Court in the matter of Rajesh Yadav and another v. Shyamlal Yadav (WP227 No.217/2020), decided on 03.12.2022. In a similar situation, this Court has remitted back the matter to decide afresh after constitution of the Tribunal in accordance with provisions of Section 7 of the Act and Notification dated 24.01.2009.

3. Taking into consideration the peculiar issue, this Court has sought an opinion of learned Senior Counsel Ms. Fouzia Mirza, who is present in the Court. She fairly submits that as the order was not passed by the initial Court goes to the root of the matter and such legal objection can be raised at any stage.

4. Considering the submission at the Bar as initial order was not passed by the Maintenance Tribunal and the order was passed by the Sub Divisional Officer (Revenue), against which, the Appellate Tribunal has passed the order which has been challenged before this Court, this Court finds it appropriate to set aside both the orders for want of such technicalities.

5. Accordingly, the order dated 25.11.2022 (Annexure P-2) passed by the Sub Divisional Officer (Revenue), Durg in Case No.202108100400035/A-74/2020-21 and the order dated 6.2.2023 (Annexure P-5) passed by the District Magistrate-cum-Appellate Tribunal, Durg, in Appeal Case No.03/B-121/2002-23 are set aside. The matter is remitted back to the Sub Divisional Officer (Revenue), Durg to decide the case afresh strictly in accordance with the mandate of law of the Act of 2007 after constitution of the Tribunal in accordance with provisions of Section 7 of the Act of 2007. The concerned Tribunal upon receipt of a copy of this order shall decide the matter expeditiously preferably within a period of one month.

6. Though this Court asked the learned counsel for the petitioner to seek instruction from his client as the spirit of the Act of 2007 is that family members are bound to obey the order of the parents especially when the parents who are owners of the house withdraw permission to reside in the house. A senior citizen cannot be asked to file a traditional suit of eviction against their own family members.

7. Upon instruction, learned counsel for the petitioner informs to this Court that his party is not ready to vacate the house voluntarily and prays that the order has to be passed on merits by the concerned Tribunal. In such premises, the concerned Tribunal is directed to pass the order afresh expeditiously with the spirit of the Act of 2007.

8. Before parting, this court appreciates the valuable assistance rendered by Ms. Fouzia Mirza, learned Senior Counsel.

9. With the aforesaid observation / direction, the writ petition stands disposed of. No cost(s).