

(2022) 09 SIK CK 0022
In the Sikkim High Court
Case No : Writ Petition (C) No. 35 Of 2022

Karma Sonam Bhutia

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 19-09-2022

Acts Referred:

Code Of Civil Procedure, 1973 — Section 151

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 4, 5, 6, 9, 23

Code Of Civil Procedure, 1973 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2022) 09 SIK CK 0022

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Kazi Sangay Thupden, Udai Kunwar, Shristika Karki, Prena Rai, Sangita Pradhan, Natasha Pradhan, Dr. Doma T. Bhutia, Thinlay Dorjee Bhutia, Yadev Sharma, N. Rai, Yogan Rai

Judgement

Bhaskar Raj Pradhan, J

I.A. No. 01 of 2022

Heard the learned counsel for the parties and considered the application as well as the written objection.

This is an application praying for injunction under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 filed by the petitioner who has suffered two adverse Orders; one dated 25.02.2022 passed by the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (the Act) and the other Order dated 25.05.2022 passed by the Appellate Tribunal.

The Appellate Tribunal has confirmed the Order of the Maintenance Tribunal and directed the mutation of the disputed property in the name of the respondent nos.5 and 6. The Maintenance and Welfare of Parents and Senior Citizens Act,

2007 has been enacted to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.

Section 4 of the Act provides that the senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 against one or more of his children not being a minor. The obligation of the children to maintain a senior citizen extends to the need of such citizen so that senior citizen may lead a normal life. The obligation of the children to maintain his or her parent extends to need of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen.

Section 4 provides for entitlement for maintenance by a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him against one or more of his children not being a minor. As per section 5 of the Act an application for maintenance under section 4, may be made by a senior citizen or a parent, as the case may be or if he is incapable, by any other person or organisation authorised by him. The Maintenance Tribunal may also take cognizance suo motu.

Section 5 also provides that Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Maintenance Tribunal may from time to time direct. On receipt of an application for maintenance the procedure to be followed by the Maintenance Tribunal is provided under section 5 and 6 to hold an inquiry for determining the amount of maintenance.

Section 9 provides that if children neglect or refuse to maintain a senior citizen being unable to maintain himself, the Maintenance Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Maintenance Tribunal may, from time to time, direct.

On examination of Section 23 of the Act pointed out by Mr. N. Rai learned Senior Counsel appearing for the respondent no.5 in an attempt to defend the impugned Orders and in reply to the arguments made for by Mr. Kazi Sangay Thupden, learned Counsel appearing for the petitioner, prima facie, it appears that Section 23 would apply where any senior citizen who, after the commencement of the Act, has transferred by way of gift or otherwise, his property, subject to the

condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs. In such a situation under Section 23, the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal. Sans the relevant considerations, prima facie, the impugned Orders seems to be beyond the jurisdiction of the Maintenance Tribunal and so the Appellate Tribunal. The petition thus requires examination. The matter relates to family dispute. According to the learned counsel for the petitioner his tenants in the disputed property has already been ousted and therefore, he is seeking protection of only his building materials which are still in the compound where the disputed property is situated. The respondent nos. 5 and 6 seems to staying in the disputed property.

In view of the same, this court deems it proper to stay the operation of the impugned Orders and maintain status quo as of today. The respondent nos. 5 and 6 shall not take any adverse steps to remove the building materials. The hearing of the writ petition shall be expedited. The counter affidavit has been filed by the respondent nos.5 and 6. The State-respondents as well as respondent no. 1 are yet to file their counter affidavits. They shall, if they so desire, file their counter affidavits expeditiously and not beyond three weeks from today. Rejoinder to the counter affidavit filed by respondent nos.5 and 6 shall also be filed within three weeks. Two weeks time to file rejoinder on filing of the counter affidavit by other respondent is granted to the petitioner, if they, so desire.

I.A. No. 01 of 2022 is disposed.

W. P. (C) No. 35 of 2022

List on 07.11.2022.