

(2023) 03 TEL CK 0099
In the Telangana High Court
Case No : Writ Appeal No. 847 Of 2022

Mogili Vijaya Laxmi

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Section 4(1), 15, 16

Citation : (2023) 03 TEL CK 0099

Hon'ble Judges : Ujjal Bhuyan, CJ;N. Tukaramji, J

Bench : Division Bench

Advocate : M.Arun Kumar, D.Ramakrishna

Final Decision : Dismissed

Judgement

1. Heard Mr. M.Arun Kumar, learned counsel representing Mr. D.Ramakrishna, learned counsel for the appellant and Mr. Rapolu Bhaskar, learned counsel for respondent No.4.

2. This appeal is directed against the order dated 13.12.2022 passed by the learned Single Judge dismissing W.P.No.40962 of 2022 filed by the appellant as the writ petitioner.

3. Appellant had filed the related writ petition assailing the legality and validity of the order dated 12.10.2022 passed by the Revenue Divisional Officer and Sub-Divisional Magistrate, Hyderabad Division, acting as the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (briefly, 'the 2007 Act' hereinafter).

4. It may be mentioned that respondents No.4 and 5 had filed a complaint before the Tribunal under the 2007 Act under Section 4(1) of the 2007 Act complaining that respondent No.4, being the mother, was subjected to harassment and physical abuse by the appellant and her husband on refusal of respondent No.4 in registering her husband's property in their name. After hearing the matter,

Tribunal passed the order dated 12.10.2022 recording the following findings and issued the below mentioned directions:

1. The petitioner Smt. Tadeshetti Vara Lakshmi W/o. (Late) Krishna Murthy admeasuring 62 Sq. Yards through Registered Sale Deed Doc. No. 2530 of 1981 and constructed the house G+2 and she is the absolute owner, possessor and enjoyer of the property bearing R/o. 2-2-1167/11/C/1, Tilak Nagar, New Nallkunta, Amberpet, Mandal, Hyderabad.

2. The respondents namely 1) Smt. Mogili Vijaya Lakshmi W/o. M. Ashok (daughter) 2) Sri. M. Ashok (son-in-law) 3) Sri. Mogili Anush S/o. M. Ashok (grandson) 4) Sri. Mogili Udia Kiran S/o. M. Ashok (grandson) should vacate the occupied portion in the premises 2-2-1167/11/C/1, Tilak Nagar, New Nallkunta, Amberpet, Mandal, Hyderabad within a period of (30) days. Moreover, there is no maintenance issue. If having any supported document/evidence in partition deed may approach the court of law, for redressal of their grievances.

3. The Petitioner desires to leave her rest of the life peacefully without any tension being created by respondents. In the interest of protection of life and property U/s.21 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

4. The respondents and other daughters are strictly directed to behave with the petitioner in a polite and sympathetic manner, not to create any physical and mental torture to the petitioner.

5. If any such unlawful activities are noticed, necessary action will be initiated against you under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

6. If aggrieved with the orders, the petitioner (or) respondents may file an appeal before the next appellate authority, i.e. District Collector, Hyderabad within the stipulated time.

5. Instead of filing appeal under Section 16 of the 2007 Act, appellant filed the related writ petition. Learned Single Judge recorded the admitted fact that appellant is staying in the subject property along with respondents No.4 and 5. Therefore, directing to maintain status quo for a period of fifteen days, appellant was relegated to the forum of appellate authority. Consequently, the writ petition was dismissed whereafter the appeal came to be filed.

6. On 23.12.2022 we had passed the following order:

Appellant is the daughter of respondent No.4. Appellant resides in the residence of respondent No.4. There appears to be a family dispute involving appellant, respondent No.4 and respondent No.5, who is the sister of the appellant and daughter of respondent No.4.

Respondent No.4 had approached the Revenue Divisional Officer functioning as the Tribunal for Maintenance and Welfare of Parents and Senior Citizens in

Hyderabad District under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, against the appellant. Respondent No.3 i.e., Tribunal passed order dated 12.10.2022 directing eviction of the appellant. Against this order, the related writ petition came to be filed, being W.P.No.40962 of 2022.

On the ground that there is a provision for appeal before the District Collector under Section 16 of the aforesaid Act, learned Single Judge declined to entertain the writ petition, but directed maintenance of status quo for a period of fifteen days to enable the appellant to avail the alternative remedy.

After hearing learned counsel for the parties we are of the view that as the dispute centres round family members, it would be just and appropriate if an endeavour is made for a settlement through the Court annexed Mediation Centre.

We, therefore, request both the appellant and respondents No.4 and 5 to appear before the Mediation Centre annexed to the High Court within a period of one week from today, whereafter the Mediation Centre shall nominate a competent mediator to mediate between the parties.

Copy of this order be sent to the Mediation Centre.

7. In the proceedings held on 09.03.2023 we were informed by the learned Mediator who had submitted report dated 27.01.2023 that despite his best efforts no settlement could be reached between the parties. Thereafter vide order dated 09.03.2023, it was directed that the appeal would have to be heard on merit.

8. Learned counsel for the appellant submits that respondent No.4 is a senior citizen but respondent No.5 is not a senior citizen. Respondent No.5 cannot avail the benefit of the 2007 Act. That apart, the Tribunal could not have passed an order of eviction under the 2007 Act.

9. However, learned counsel for respondent No.4 supports the order of the learned Single Judge.

10. The 2007 Act is a special legislation enacted by the Parliament to provide for more effective provisions for maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India and for matters connected therewith or incidental thereto.

11. Though primary objective of the 2007 Act is to ensure that parents and senior citizens are not deprived of maintenance, the Tribunal constituted under the said Act has power not only to decide maintenance but also on issues arising out of action denying maintenance.

12. We may mention that the related application was filed by respondents No.4 and 5 under Section 4(1) of the 2007 Act, which is an application for maintenance. Be that as it may, Section 15 of the 2007 Act provides for constitution of appellate tribunal by the State Government and Section 16 of the 2007 Act deals with appeals to the appellate tribunal.

13. Upon hearing learned counsel for the parties and on due consideration, we are of the view that learned Single Judge was justified in relegating the appellant to the forum of appellate tribunal.

14. No case for interference is made out.

15. Consequently, writ appeal is dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.