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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 5th March, 2021

+ **W.P.(C) 2895/2021, CM APPLs. 8722/2021 & 8723/2021**

RAKHI SHARMA Petitioner
Through: Mr. Rajat Sang and Mr. Viney
Sharma, Advocates.

versus

THE STATE & ORS. Respondents
Through: Ms. Saumya Tandon, Advocate for R-
1 & 2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The present petition has been filed by the Petitioner, who is the wife of Respondent No.4 and daughter-in-law of Respondent No.3, against order dated 8th February, 2021 passed by the District Magistrate. By the said order, the Petitioner has been evicted from premises bearing no. C-28, Mansa Ram Park, Uttam Nagar, New Delhi-59 (*hereinafter, 'suit property'*). The impugned order has been passed by the District Magistrate while exercising powers under Rule 22 (3)(1) (i) of The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (*hereinafter, 'Rules'*), as amended on 19th December, 2016 vide notification F.No.30(405)/Amendment of Rules-MAWPSC2007/DD(SS)/DSW/2015-16/24836-865.
3. The submission of Id. Counsel for the Petitioner is that the writ petition ought to be entertained by this Court, as an appeal under the

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter, 'Act'*) can only be filed by a senior citizen. Ms. Tandon, Id. Counsel, on the other hand, submits that the impugned order is appealable to the Divisional Commissioner under Rule 22 (3)(4) of the Rules, as amended on 19th December, 2016. Accordingly, she submits that the Petitioner be allowed to approach the Divisional Commissioner.

4. A large number of writ petitions are filed before this Court challenging orders passed under the Act, as also the Rules. There appears to be some confusion as to which orders are appealable, to which forum and by whom. In order to properly appreciate the scheme of the Act and the Rules thereto, it is necessary to set out the provisions which are applicable separately *qua* maintenance and eviction proceedings.

Proceedings relating to Maintenance:

5. Insofar as maintenance proceedings for the welfare of parents and senior citizens are concerned, under Section 2(j), the Act provides that the '*Tribunal*' would be the forum for exercising first jurisdiction. '*Tribunal*' is defined under Section 2(j) as the '*Maintenance Tribunal*' constituted under Section 7. Section 7 reads as under:

"Section 7. Constitution of Maintenance Tribunal.

(1) The State Government shall within a period of six months from the date of the commencement of this Act, by notification in Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.

(2) The Tribunal shall be presided over by an officer not below the rank of Sub- Divisional Officer of a State.

(3) Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.”

6. Rule 3(2) further provides for the constitution of the ‘Maintenance Tribunal’ under Section 7 which reads as under:

“3. Constitution of Maintenance Tribunal

...

(2) The Tribunal shall consist of an ADM or SDM of the subdivision, as the case may be and two other members, of whom one shall be women. ...”

Thus, the Maintenance Tribunal under Section 7 of the Act would be the ADM or the SDM of the concerned sub-division.

7. Insofar as filing of appeals *qua* maintenance related matters are concerned, the same is governed by Section 15 of the Act, under which the State has to constitute an Appellate Tribunal. Section 15 of the Act reads as under:

“15. Constitution of Appellate Tribunal

(1) The State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.

(2) The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.”

8. Rule 16 of the Rules deals with the establishment and procedure of the Appellate Tribunal, under which, the District Magistrate of each District has been notified as the Appellate Tribunal. Rule 16 reads as under:

“16. Establishment and Procedure of Appellate Tribunal

The Government of National Capital Territory of Delhi shall, by notification in the official Gazette, constitute for each District one Appellate Tribunal as may be specified in the notification to hear the appeal against the order of Tribunal under section 15(1) of the Act.”

9. As per Section 16 of the Act, appeals can be filed by any senior citizen or parent against an order of the Tribunal within 60 days with the Appellate Tribunal. Thereafter, the Appellate Tribunal has to adjudicate and decided on the appeal. Section 16 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.”

10. Vide notification no. F.30(70)/MTC/DD(SS)/DSW/2009-10/25836-865 dated 11th February, 2011, Appellate Tribunals for each district were constituted, with the Deputy Commissioner of each district being appointed as its Presiding Officer.

11. The question as to who can prefer the appeal has already been decided by this Court in the following three judgments:

- i. Naveen Kumar v. GNCTD & Ors. [W.P.(C) 1337/2020, decided on 5th February, 2020];*
- ii. Shri Amit Kumar v. Smt. Kiran Sharma & Anr. [W.P.(C) 106/2021, decided on 6th January, 2021];*
- iii. Sh. Shumir Oliver & Anr. v. GNCTD & Ors. [W.P.(C) 2857/2021, decided on 3rd March, 2021]*

12. The abovementioned judgments clarify that any ‘*affected person*’ can prefer the appeal and not just a senior citizen or parent. The view taken by this Court is by following the judgment of the Id. Division Bench of the Punjab and Haryana High Court in ***Paramjit Kumar Saroya v. The Union of India & Anr., 2014 SCC OnLine P&H 10864***. The relevant observations are set out below:

“An appeal is envisaged “against the order of the Tribunal”. This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent “aggrieved by an order of the Tribunal”. This seeks to give an impression on a plain reading as if only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that the pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such order to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior citizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has been set out in Section 15 of the said Act.

...

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.

...

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.

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."

13. Mr. Rajat Sang, Id. counsel has cited the judgment of the Id. Division Bench of the Madras High Court in ***K. Raju v. UOI & Anr. [W.P. No. 29988/2019, decided on 19th February, 2021]*** which takes a contrary view. Since this Court has already taken a view following the Punjab and Haryana High Court, appeals by any affected party who may be aggrieved by an order of the Tribunal, as constituted under the Act and the Rules, would be liable to be entertained before the Appellate Tribunal. Thus, the procedure in respect of maintenance cases would be to first approach the ADM/SDM concerned and thereafter, the Appellate Tribunal which is presided over by the Deputy Commissioner of the concerned district.

Proceedings relating to eviction:

14. Insofar as eviction proceedings are concerned, the same are governed by The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016. By the said amendment, after sub rule 2 of Rule

22, sub-rule 3 was inserted. Rules 22(3)(1) and 22(3)(4) are relevant and are set out below:

“22. Action plan for the protection of life and property of senior citizens. –

...

(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents, –

(i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate (DM) of his district for eviction of his son and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.

(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.

(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.

(iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The notice shall–

(a) specify the grounds on which the order of

eviction is proposed to be made ; and

(b) require all persons concerned, that is to say, all persons who are , or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) Appeal

(i) The appeal against the order of Dy. Commissioner/DM shall lie before the Divisional Commissioner, Delhi.

(ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

15. As per the above Rules, a senior citizen can approach the Deputy Commissioner/DM seeking eviction of the son, daughter or any other legal heir from his self-acquired property on account of his non-maintenance and ill-treatment. The term ‘*self-acquired property*’ has been amended to include ‘*property of any kind*’, vide notification dated 28th July, 2017 numbered F.No.40(405)/Amendment of Rules MAWPSC2007/DD(SS)/DSW/2015-6/1168411712. Thus, the senior citizen can approach the Deputy Commissioner/DM for eviction from any property over which he/she enjoys rights. The title of the senior citizen is checked. A report is submitted by the concerned SDM after verifying both the title as also the facts pleaded. If the Deputy Commissioner/DM is satisfied, then notice is issued to the children/relatives whose eviction is sought and thereafter orders are passed.

16. Under Rule 22(3)(4), an appeal against the order of the Deputy Commissioner/District Magistrate would lie before the Divisional Commissioner, Delhi. Thus, in respect of eviction, the first forum would be

the Deputy Commissioner/District Magistrate. A challenge to the order of the Deputy Commissioner/DM would lie before the Divisional Commissioner.

17. The Act and the various Rules and Notifications thereto are not readily available to litigants, as also lawyers, in the form of a separate publication. This may be one of the causes for confusion in filing multiple writ petitions directly against the first order of the tribunal or, in the case of eviction, from the order of the Deputy Commissioner/DM. The said orders would be appealable as explained hereinabove. Thus, lawyers and the litigating public ought to avail of the remedies available to them under the Act and the Rules, as per the narration above.

Directions:

18. Since, in most cases, the appellate forum and the period of limitation is not within the knowledge of litigants and sometimes even lawyers, it is directed that the following two sentences be added at the end of every order passed by the initial forum i.e., the Tribunal under Section 7 of the Act or, in eviction cases, the Deputy Commissioner/DM under Rule 23(3) of the Rules as amended on 19th December, 2016:

For maintenance cases:

“The present order would be appealable, under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read with Rule 16 of The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, to the Appellate Tribunal, presided over by the Deputy Commissioner of the concerned District. The period of limitation for filing of appeal is 60 days.”

For eviction cases:

“The present order would be appealable under Rule 22(3)(4) of The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, as amended on 19th December, 2016 before the Divisional Commissioner, Delhi. The period of limitation for filing of appeal is 60 days.”

19. The present order be communicated to all the Maintenance Tribunals and Appellate Tribunals, as also the concerned Presiding Officers who are exercising powers under the Rules. The present order be also sent to the worthy Registrar General for placing a copy at the filing counter so that whenever writ petitions are filed against original orders, the Registry can also inform lawyers of the availability of the alternate remedy, in case they wish to avail of the same.

20. In view of the above discussion, it is clear that the impugned order dated 8th February, 2021 would be appealable to the Divisional Commissioner under Rule 22(3)(4). The petition is, accordingly, permitted to be withdrawn, with liberty to the Petitioner to approach the Divisional Commissioner.

21. If the appeal is filed before the Divisional Commissioner within one week, the eviction order shall not be given effect to till the date the Divisional Commissioner considers the application for *ad-interim* relief in the appeal. The Divisional Commissioner shall initially decide the stay application, after hearing parties and thereafter proceed to adjudicate the Appeal on merits.

22. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 5, 2021/dj/T
(corrected and released on 9th March, 2021)