

Reserved on : 13.06.2025
Pronounced on : 09.09.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF SEPTEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13448 OF 2021 (GM – RES)

BETWEEN:

- 1 . SRI SUNIL H. BOHRA
S/O SRI HEERALAL A. BOHRA
AGED ABOUT 43 YEARS
R/AT NO.3, 2ND CROSS
RAJARAM MOHAN ROY EXTENSION
OFF K.H.ROAD, BENGALURU - 560 027.
- 2 . SRI HEMANTH H. BOHRA
S/O SRI HEERALAL A. BOHRA
AGED ABOUT 39 YEARS
R/AT NO.3, 2ND CROSS
RAJARAM MOHAN ROY EXTENSION
OFF K.H.ROAD, BENGALURU - 560 027.
- 3 . SRI INDER H. BOHRA
S/O SRI HEERALAL A. BOHRA
AGED ABOUT 37 YEARS
R/AT NO.3, 2ND CROSS
RAJARAM MOHAN ROY EXTENSION
OFF K.H.ROAD, BENGALURU - 560 027.
- 4 . SRI PRAMOD H. BOHRA

S/O SRI HEERALAL A. BOHRA
AGED ABOUT 35 YEARS
R/AT NO.3, 2ND CROSS
RAJARAM MOHAN ROY EXTENSION
OFF K.H.ROAD, BENGALURU - 560 027.

- 5 . SMT. PREETHI
W/O PRAMOD A. BOHRA
AGED ABOUT 32 YEARS
R/AT NO.3, 2ND CROSS
RAJARAM MOHAN ROY EXTENSION
OFF K.H.ROAD, BENGALURU - 560 027.

... PETITIONERS

(BY SRI K.S.MALLIKARJUNAIAH, ADVOCATE)

AND:

- 1 . THE ASSISTANT COMMISSIONER
NORTH SUB-DIVISION
KANDAYA BHAVAN, K.G.ROAD
BENGALURU - 560 009.
- 2 . SRI HEERALAL A. BOHRA
S/O LATE N. ANRAJ
AGED ABOUT 66 YEARS
- 3 . SMT. NIRMALA H. BOHRA
W/O SRI HEERALAL A. BOHRA
AGED ABOUT 60 YEARS
BOTH ARE RESIDING AT
NO.487, SUNSHINE TEJASSU
FLAT NO.202, 2ND FLOOR, 38TH CROSS
8TH BLOCK, JAYANAGAR
BENGALURU - 560 070.

... RESPONDENTS

(BY SRI SPOORTHY HEGDE N., HCGP FOR R1;
SRI M.VINOD KUMAR, ADVOCATE FOR R2 AND R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 16.04.2021 PASSED BY THE R1 IN CASE NO.MSC/CR/85/2019-20, VIDE ANNEXURE-A AS ILLEGAL AS FAR AS THE PROPERTY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before this Court calling in question an order dated 16-04-2021 passed by the 1st respondent/Assistant Commissioner under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act' for short) by which the 1st respondent has granted a token compensation of ₹5,00,000/- to be paid jointly and severally by the petitioners to respondents 1 to 5.

2. Heard Sri K.S. Mallikarjunaiah, learned counsel for the petitioners, Sri N. Spoorthy Hegde, learned High Court Government

Pleader appearing for respondent No.1 and Sri M. Vinod Kumar, learned counsel appearing for respondents 2 and 3.

3. Facts, in brief, germane are as follows: -

3.1. Petitioners 1 to 4 are the children of the 2nd respondent. The 3rd respondent is said to be the step mother of petitioners 1 to 4. 5th petitioner is the daughter-in-law of respondents 2 and 3 and wife of 4th petitioner. The mother of petitioners 1 to 4 dies on 30-08-1996. During the lifetime of the mother, it is the averment in the petition, that father of petitioners 1 to 4 had married the 3rd respondent/Smt. Nirmala H. Bohra. The father owned schedule properties. The petitioners and the 2nd respondent are said to have inherited certain immovable properties as described in the schedule. The petitioners and respondents 2 and 3 are in joint possession and enjoyment of the properties claiming legitimate share thereon. When things stood thus, the 1st petitioner caused a legal notice upon the 2nd respondent seeking allotment of his share in the properties. It was also contended that on the death of the mother of petitioners 1 to 4, the 2nd respondent got the katha of

item No.1 of the schedule properties to his name. It is averred in the petition as to how the properties came to the hands of the 2nd respondent or the entitlement of the petitioners.

3.2. When things stood thus, respondents 2 and 3 alleging that they have been continuously harassed by the petitioners, register a complaint against the petitioners before the elders' helpline. The allegation was that they have been abused by the petitioners and had unauthorizedly occupied the premises belonging to respondents 2 and 3. After registration of the complaint to the helpline, respondents 2 and 3 are said to have been forcibly dispossessed, due to which they are staying in a rented premise. Thereafter, the 2nd respondent registers a complaint before the Sampangiramanagara Police Station alleging harassment by the petitioners. This was closed after summoning the petitioners and recording a non-cognizable report. The petitioners also instituted a suit in O.S.No.4336 of 2021 seeking partition and separate possession of the schedule properties. The trial Court, in the said suit, passes an order directing the petitioners and respondents 2

and 3 to maintain *status quo* in respect of item No.1 in the schedule properties and the same is subsisting even today.

3.3. On the allegation that the respondents are now being interfered with or harassed, they approached the Assistant Commissioner under the Act by filing a petition. The Assistant Commissioner, on hearing the parties, holds that the respondents 2 and 3 are entitled for a token compensation of ₹5,00,000/- and accordingly directs payment of ₹5,00,000/- to respondents 2 and 3 from out of the rents collected by the petitioners within 15 days failing which, it shall be recovered as arrears of land revenue. It is then, the petitioners have approached this Court in the subject petition. When the matter appeared before this Court on 27-07-2021, the respondents have undertaken not to precipitate the matter and the said undertaking is subsisting even today.

4. The learned counsel Sri K.S. Mallikarjunaiah appearing for the petitioners would vehemently contend that the Tribunal headed by the Assistant Commissioner has grossly erred in granting an order, which the law does not permit. According to the learned

counsel under Section 9 of the Act what can be granted is only maintenance and there is no provision to grant compensation. The maintenance can only be to the tune of ₹10,000/-. The learned counsel submits that the order impugned is in violation of the principles of natural justice, as without giving any notice or opportunity of hearing to the petitioners, the order is passed. The order is also illegal for the reason that the properties are joint family properties and respondents 2 and 3 are also in possession of the property. The 2nd respondent receives ₹80,000/- per month from rented shops and it is the 3rd respondent who is the instigator of the litigation. On all these submissions, the petitioners seek quashment of the impugned order.

5. Per contra, the learned counsel Sri M. Vinod Kumar representing respondents 2 and 3 submits that the order was passed after following due process of law and within the ambit of Section 22 of the Act. The order records that respondents 2 and 3 had sustained financial hardship and trauma and there was no evidence to show that items 1 and 2 of the schedule properties are joint family properties. The petitioners have not discharged the

obligation to take care of respondents 2 and 3. In all, the learned counsel would seek to sustain the order.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts and link in the chain of events are a matter of record. Before embarking upon merits of the matter, certain provisions of the Act are germane to be noticed. Sections 4, 9, 22 and 23 read as follows:

"4. Maintenance of parents and senior citizens.—(1) A 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 in case of—

- (i) parent or grand-parent, against one or more of his children not being a minor;
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or

mother or both, as the case may be, so that such parent may lead a normal life.

(4) 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:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

... ..

9. Order for maintenance.—(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the 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 Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

... ..

22. Authorities who may be specified for implementing the provisions of this Act.—(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

23. Transfer of property to be void in certain circumstances.—(1) Where any senior citizen who, after the commencement of this 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, the said 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.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-section (1) and (2), action may be taken on his behalf by any of the organisation referred to in *Explanation* to sub-section (1) of Section 5."

8. The interpretation of the aforesaid provisions need not detain this Court for long or delve deep in to the matter. The Apex Court in the case of **URMILA DIXIT v. SUNIL SHARAN DIXIT**¹, has held as follows:

"....

12. It is in the above background that we must proceed to examine the Act. The Statement of Objects and Reasons of the Act indicates the purpose behind the enactment, as relied upon by this Court in *S. Vanitha v. Commr.* [*S. Vanitha v. Commr.*, (2021) 15 SCC 730] , is:

¹ (2025) 2 SCC 787

"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, **many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.**"

13. The Preamble of the Act states that it is intended towards more effective provisions for maintenance and welfare of parents and senior citizens, guaranteed and recognised under the Constitution.

14. Therefore, it is apparent, that the Act is a beneficial piece of legislation, aimed at securing the rights of senior citizens, in view of the challenges faced by them. It is in this backdrop that the Act must be interpreted and a construction that advances the remedies of the Act must be adopted.

15. Before advertng to the provisions of the Act, we must be cognizant of the larger issue that this case presents i.e. the care of senior citizens in our society. This Court in *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai* [*Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*, (1987) 2 SCC 278: 1987 SCC (Cri) 354] highlighted that it is a social obligation for both sons and daughters to maintain their parents when they are unable to do so.

16. In *Badshah v. Urmila Badshah Godse* [*Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51], this Court observed that when a case pertaining to maintenance of parents or wife is being considered, the Court is

bound to advance the cause of social justice of such marginalised groups, in furtherance of the constitutional vision enshrined in the Preamble. Recently, this exposition came to be reiterated in *Rajnesh v. Neha* [*Rajnesh v. Neha*, (2021) 2 SCC 324: (2021) 2 SCC (Civ) 220: (2021) 1 SCC (Cri) 749].

17. While issuing a slew of directions for the protection of senior citizens in *Ashwani Kumar v. Union of India* [*Ashwani Kumar v. Union of India*, (2019) 2 SCC 636: (2019) 1 SCC (L&S) 465], this Court had highlighted: (SCC p. 641, paras 3-4)

"3. The rights of elderly persons is one such emerging situation that was perhaps not fully foreseen by our Constitution-framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.

4. Eventually, age catches up with everybody and on occasion, it renders some people completely helpless and dependent on others, either physically or mentally or both. Fortunately, our Constitution is organic and this Court is forward looking. This combination has resulted in path-breaking developments in law, particularly in the sphere of social justice, which has been given tremendous importance and significance in a variety of decisions rendered by this Court over the years. The present petition is one such opportunity presented before *this Court to recognise and enforce the rights of elderly persons—rights that are recognised by Article 21 of the Constitution as understood and interpreted by this Court in a series of decisions over a period of several decades, and rights that have gained recognition over the years due to emerging situations.*"

(emphasis supplied)"

(Emphasis supplied)

The Apex Court holds that preamble to the Act indicates that the Act is intended towards more effective provisions for maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. It is a beneficial piece of legislation.

9. Section 8 of the Act is interpreted by the Madras High Court to hold that the inquiry is through a summary procedure. The Madras High Court in the case of **K.SURESH KUMAR v. V.KATHIRVEL**², holds as follows:

"....

(D) Summary Procedure for Speedy Relief:

54. While Section 23 of the Act provides a legal remedy for senior citizens to reclaim their property transferred under coercion, undue influence, or fraud, **Section 8 plays a crucial role in ensuring that such relief is granted in an expeditious manner.**

55. Section 8 of the Act mandates that the Maintenance Tribunal shall adopt a summary procedure while conducting inquiries. This provision ensures that senior citizens do not have to go through lengthy litigation to secure their rights, thereby making the remedies under the Act more accessible and effective.

56. The key features of Section 8 include:

² **W.A.No.3754 of 2024 decided on 08-04-2025**

- (1) **Expedited Proceedings – The Tribunal is empowered to conduct an inquiry in a summary manner, meaning that cases are resolved without unnecessary procedural delays.**
- (2) Quasi-Judicial Powers – The Tribunal possesses the powers of a Civil Court for summoning evidence, enforcing the attendance of witnesses, and compelling the production of documents.
- (3) **No Full Adjudication of Title Required – Senior citizens seeking eviction of abusive children/legal heirs or reclaiming transferred property need only demonstrate some right, title, or interest in the property, rather than proving absolute ownership.**

57. The summary nature of proceedings under Section 8 aligns with the spirit of the Act, which is to provide swift and effective justice to senior citizens facing neglect, harassment, or financial exploitation.

58. Additionally, Maintenance Tribunals, while adjudicating claims under Section 23, must take into consideration the need for prompt intervention. They have the discretion to call for relevant documents, including encumbrance certificates, to assess property claims. However, requiring a full title adjudication would go against the very objective of the Act, which is designed to provide immediate relief to senior citizens.

59. Thus, Section 8 complements Section 23 by ensuring that the rights conferred under the Act are enforced without procedural hurdles.”

(Emphasis supplied)

A Division Bench of the High Court of Madras holds that the summary nature of proceedings under Section 8 aligns with the spirit of the Act, which is to provide swift and effective justice to the senior citizens facing neglect, harassment and financial exploitation.

10. Certain Rules have been framed by the State Government invoking the provisions of the Act. Rules 6 and 9 of the Karnataka Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 are germane to be noticed. They read as follows:

"....

6. Procedure in case of non-appearance by the respondent: - In case, despite service of notice, the respondent fails to show cause in response to a notice, the Tribunal shall proceed ex parte, by taking evidence of the applicant and making such other inquiry as it deems fit, and shall pass an order disposing of the application.

... ..

9. Procedure to be followed by the maintenance Tribunal:- (1) Every order passed on any application shall be communicated within 7 days to the applicant and the respondent(s) either in person or by registered post free of cost.

(2) Where the children or relative is residing out of India, the summons shall be served by the Tribunal through such authority, as the Central Government may by notification, specify in this behalf.

(3) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made and shall be recorded in the manner prescribed for summons cases:

Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is willfully avoiding

service, or willfully neglecting to attend the Tribunal may proceed to hear and determine the case ex parte.

(4) Language of the Tribunal shall be either in Kannada or in English.”

Rule 6 deals with procedure in case of non-appearance by the respondents. In a case, despite of service of notice, the respondent fails to show cause in response to the notice, the Tribunal is empowered to proceed *ex parte*, by taking evidence of the applicant and making such other inquiry as it deems fit. Rule 9 depicts procedure to be followed by the Tribunal. Rule 9 of the Rules is in pari materia with Section 6(4) of the Act. It provides that if the Tribunal is satisfied that the children or relatives against whom an order for payment of maintenance is proposed, willfully avoid service, the Tribunal may proceed to pass orders *ex parte*. The said provisions, as obtaining in Punjab and Haryana Rules, which are identical to the Karnataka Rules, are interpreted by the High Court of Punjab and Haryana in the case of **HARISH KUMAR v. STATE OF HARYANA**³, as follows:

“....

³ 2020 SCC OnLine P & H 2137

8. The first issue which arises as to whether the petitioner is entitled for setting aside the ex parte order dated 07.12.2018. **A perusal of the order dated 12.10.2018 (Annexure P-3) would go on to show that the Tribunal had noted that the present petitioner had appeared before Sub-Divisional Officer, Ambala Cantt. and, thereafter had not bothered to put in appearance when the proceedings were transferred to the Tribunal at Ambala City and thus, was well aware of the proceedings.** The case of the respondent No. 3 is also to the same extent in the written statement filed that the action of the petitioner was deliberate. The legal notice was sent thereafter on 25.01.2019 (Annexure P-4) and only then an appeal was came to be filed on 13.02.2019.

9. **No replication has been filed as such to the stand taken by the respondent No. 3 that the petitioner was not appearing before the Tribunal at an earlier point of time at Ambala Cantt.; neither it has been mentioned as to how he was not aware of the matter being transferred to the Tribunal at Ambala City or there was any hitch or disability the petitioner suffered and that he was not aware of the proceedings pending at Ambala Cantt. In spite of being aware of the proceedings pending, the petitioner chose to avoid appearance and thus is prolonging the agony of respondent No. 3.**

10. **In such circumstances, once there is no sufficient case made out for not appearing before the Tribunal to defend the proceedings as such, the orders passed by the Appellate Authority upholding the order of the Tribunal is justified in the facts and circumstances.** The factum of close relationship being a nephew has already been noticed and the fact that both the shop and house are in occupation of the petitioner."

(Emphasis supplied)

On a blend of the provisions of the Act and the Rules and as interpreted by the Apex Court and the High Courts of Madras and Punjab and Haryana, the order impugned requires to be considered.

11. The order impugned reads as follows:

"... .."

After service of notice the Respondents not appeared before this authority and not filed objections. I have carefully examined the contents of petition and documents produced by petitioners.

The history of this case reveals that, the schedule property is the self-acquired property of petitioners who are husband and wife and Senior Citizens. Respondent No.1 to 4 are sons and Respondent No.5 is the daughter-in-law of Petitioners. The contents of petition and documents reveals that Petitioners are absolute owners of Petition Schedule Property. The allegations go to show that Respondents forcibly taken possession of Petition Schedule Premises and collecting the rents illegally and not passing the same to the Petitioners. The Petitioners have no other sources of income to maintain themselves. The Respondents neglected the Petitioners though they are collecting rents from the Petition Schedule Premises. The support of their contentions the Petitioners produced copies of Lease Deed dated 01-05-2017 executed by Petitioners themselves in favour of two tenants in respect of Petition Schedule Properties. Under the said Lease Deed the said Lessees agreed to pay monthly rent of ₹55,000/- from 01-06-2017. The medical records goes to show that Petitioners are suffering from different ailments. The further documents goes to show that the Petitioners approached Elders Helpline, Sampangi Ramanagar Police Station. The Petitioners also produced the Title Deeds which prima facie discloses their title to the Petition Schedule Premises. The allegations made by Petitioners not at all denied by the Respondents. Hence, there is prima facie case in favour of Petitioners. However, there is no document to award compensation of ₹50,00,000/- as claimed by the Petitioners. **However, Petitioners are entitled for a token compensation of ₹5,00,000/- from Respondents jointly and severally and also for other reliefs. With these observations I proceed to pass the following order.**

The Petition of the Petitioner is hereby allowed.

By exercising the power conferred under Section 23(1) of The Maintenance and Welfare of Parents and Senior Citizens Act 2007, this Tribunal ordered that the Respondents shall pay ₹5,00,000/- towards amounts collected from the Tenants/Lessees to the Petitioners within 15 days from the date of this order failing which same shall be recovered as that of land revenue. The Respondent No.1 to 5 liable to pay this amount jointly and severally. The concerned Tahsildar is directed to recover the same as per procedure.

The Petitioners is entitled for vacant possession of schedule property which shall be handed over by Respondent No.1 to 5 within 15 days from the date of passing of this order.

Further directed to take steps to restore, possession of the schedule property to the Petitioners and if necessary by taking the help of jurisdictional police.

The Respondents are hereby directed to deliver and hand over all the original title documents pertaining to the property of the Petitioners.

Further directed the respondents to restore the vacant possession of schedule property to the Petitioners.

Further Respondents shall not interfere with Petitioners from collecting rents/monthly lease amount from the lessees as per Lease Agreement dated 01-05-2017 from Sri Prahlad Talukdar and Sri Shakthi Krishnan who are lessees.

Further, Respondents shall not interfere from day to-day affairs of Petitioners' life and Petition Schedule Property.

Further, Respondents are hereby permanently restrained from interfering with the petitioners peaceful and lawful possession of Petition Schedule Property.

The Tahsildar is hereby directed to take steps to implement the order in the above petition."

(Emphasis added)

The order is undoubtedly *ex parte*, as the order begins that after service of notice the respondents did not appear before the Authority and have not filed objections. The petitioners have contended that there was no notice even issued to them. The petitioners are staying in the same premises. It cannot be said that the petitioners could not be notified. The order does not indicate as to the steps taken towards service. Whether the petitioners were served at all with the notice from the Tribunal is not forthcoming. Therefore, the order admittedly is *ex parte*, where narration in the order is only with regard to the allegations of respondents 2 and 3. This is the first limb of illegality in the order. The petition is allowed by directing the petitioners to pay ₹5,00,000/- to respondents 2 and 3 towards amounts collected from the tenants within 15 days. It is ununderstandable under what provision the Tribunal grants ₹5,00,000/- as maintenance. The power to grant maintenance is under Section 9 of the Act *quoted supra* and Rule 16 of the 2009 Karnataka Rules. These provisions would hold that maximum that can be paid is ₹10,000/- per month. This is interpreted by the

Allahabad High Court in the case of **ONKAR NATH GAUR v. DISTRICT MAGISTRATE**⁴, holding as under:

"....

69. The word 'maintenance' as defined in Section 2 (b) of the Act of 2007 clearly states and takes within its ambit the power to issue a maintenance order which takes within its fold inter alia provisions for food, clothing, residence and medical attendance and treatment. This assumes significance for the reason that being a social welfare legislation, the Act recognizes that the need of senior citizens/parents relating to food, clothing, residence and medical attendance or treatment which cannot be a one-time measure rather it may be a re-occurring or a variable need. Hence, the legislature has consciously used the word 'provision'. It is also to be kept in mind that the provision which is to be made for food, clothing, residence, medical attendance and treatment, together as per the current prescribed limit is not to exceed Rs. 10,000/- a month and can be varied at any stage, without breaching the ceiling of ten thousand rupees.

70. Here, it will be relevant to notice that the word 'maintenance' is not defined in Chapter IX of Cr. P.C., relatable to Section 125 Cr. P.C. or in Chapter X in terms of Section 144 of BNSS of 2023. However, the fact remains that in terms of the aforesaid provisions it is only monetary sum that can be to be awarded by the Magistrate and it does not refer to provide or make provision for grant of any non-monetary needs of the person. This indicates that even though under the general law which is applicable to inter alia a parent and not necessarily being a senior citizen but such parent can get a higher maintenance under the Cr. P.C. or BNSS than that can be awarded under the Act of 2007 as in the Act of 2007, the maintenance order cannot exceed Rs. 10,000/- per month (as per current limit) which is inclusive of all types of maintenance, both monetary and non-monetary.

⁴ 2025 SCC OnLine All 3241

71. Section 9 (i), empowers the Tribunal to pass a maintenance order after holding an inquiry for determining the amount of maintenance to be awarded and this amount/monthly allowance is determined after taking note of the specific need and circumstances of such senior citizen/parent. This is primarily a need-based remedy for a senior citizen/parent, which in a robust manner is granted, considering their need for food, clothing, residence and medical attendance and treatment, as the case may be, but not exceeding Rs. 10,000/- a month."

(Emphasis supplied)

The Allahabad High Court holds that the purport of maintenance is a re-occurring or variable need and maintenance order has to be capped on maximum amount of ₹10,000/- per month in terms of sub-Section (2) of Section 9 of the Act. The Bombay High Court again considers Section 9 of the Act in a judgment reported in the case of **NISHA NITIN KOPPIKAR v. STATE OF MAHARASHTRA**⁵, setting aside the order of maintenance of ₹26,000/- per month and restricting it to ₹10,000/- per month. The Bombay High Court holds as follows:

".... .."

17. Thus, under sub-section (1) of Section 9, the Maintenance Tribunal is vested with the jurisdiction to direct the 'children' or relatives, who neglect or refuse to maintain 'a senior citizen', to pay monthly allowance as directed by the Tribunal. Subsection (2) of Section 9

⁵ 2024 SCC OnLine Bom 768

imposes a cap on the maximum amount of payment of such maintenance allowance at Rs. 10,000/- per month. In my view, sub-section (1) of Section 9 uses the word "a senior citizen". Thus, the Order that can be passed by the Maintenance Tribunal would be *qua* 'a senior citizen'. Thus, the Maintenance Tribunal is empowered to pass separate order *qua* each of the senior citizens in respect of the 'children' or 'relatives'. Each of the senior citizen can independently file proceedings for payment of maintenance under Section 9 against same children or relatives. Therefore, the maximum cap of Rs. 10,000/- under sub-section (2) of Section 9 would apply to each of the senior citizen and not *qua* all senior citizens in the family. Similarly, the same cannot apply to each child or relative. This is because under Section 9, an Order directing maintenance is to be made in respect of 'a senior citizen'. A particular senior citizen may have single or multiple children or relatives. If the intention of the Act was to apply cap of Rs. 10,000/- *qua* each child or relative, the same would result in incongruous situation, where one senior citizen having one child will get maximum maintenance of Rs. 10,000/- whereas another senior citizen having multiple children would be in a position to draw higher amount of maintenance. The intention of the Act is not to create disparity amongst senior citizens, but to create a uniformity amongst them, by ensuring that each senior citizen can receive maximum maintenance allowance not exceeding Rs. 10,000/-.

.... ..

20. I therefore hold that under sub-section (2) of Section 9, the Maintenance Tribunal can order children or relatives to pay maximum maintenance allowance of Rs. 10,000/- *qua* each senior citizen. In the present case, there are two senior citizens and therefore the maximum amount that can be ordered by the Maintenance Tribunal could not have exceeded Rs. 20,000/-. To this limited extent, the Order of the Tribunal directing payment of maintenance allowance of Rs. 26,000/- by all three children to two senior citizens is clearly unsustainable and is liable to be modified."

(Emphasis supplied)

12. The order of the Tribunal refers to grant of compensation or payment of compensation of ₹5,00,000/-. The word 'compensation' is not found either in the Act or in the Rules. What is found is only grant of maintenance to the aged parents relating to food, clothing, residence and medical attendance. This cannot become a onetime measure. It is re-occurring or variable need as held by the Allahabad High Court. Therefore, maintenance could have been granted, but not compensation of ₹5,00,000/- lumpsum. The order thus suffers from twin illegalities – one it is an *ex parte* order and the other the compensation of ₹5,00,000/- is contrary to the Act or the Rules. The interpretation of the Act by different High Courts *qua* the issue in the *lis* concerning grant of compensation in place of maintenance, would undoubtedly lead to the obliteration of the order impugned and the matter being remitted back to the Assistant Commissioner for a fresh consideration, to pass necessary orders, after affording opportunity of hearing the parties to the subject *lis*.

13. Before I say omega, to the subject order, certain observations with regard to the enactment *qua* Section 9

would not be inapt. The Act was promulgated in the year 2007 and it has undergone several amendments up to August 2023. The Act came into force on 29-12-2007. The objects and reasons for bringing in the enactment are germane to be noticed. They read as follows:

“Statement of Objects and Reasons. - Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. **This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.**

2. The Bill proposes to cast an obligation on the persons who inherit the property of children or their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for—

- (a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;**

- (b) **providing better medical facilities to senior citizens;**
- (c) **for institutionalisation of a suitable mechanism for protection of life and property of older persons;**
- (d) **setting up of oldage homes in every district.”**

(Emphasis supplied)

The Act was brought into force for the reason that traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly were not being looked after by their family. Therefore, the Act brought in appropriate mechanism to be set up to provide need based maintenance to the parents and senior citizens for providing better medical facilities to senior citizens, institutionalisation of a suitable mechanism for protection of life and property of older persons. **The enactment is no sudden manifestation, it is the legislative echo of Article 41 of the Constitution of India, which enjoins the State with compass of its economic strength to extend public assistance in cases**

of unemployment, sickness, disablement and most crucially, in the fragile twilight of old age. Article 41 reads as follows:

"41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

Article 41 deals with right to work, to education and to public assistance in certain cases. It mandates that the State should make effective provision, for securing among others cases of old age and disablement. **The statement of objects and reasons which forms the very heart of the statute, is traceable to the Directive Principles of State Policy, it speaks with unmistakable poignancy. It laments the withering of the joint family system and draws attention to the plight of countless elderly citizens who are abandoned, to face not only penury, but also the aching void of neglect. The law, thus, arose as a protective canopy to those citizens.**

14. As observed, the Act has come into force on 29-12-2007. The provisions have undergone several amendments. It was

amended by, Act 34 of 2019. But, one provision has remained the same. A bill comes to be introduced in Bill No.374 of 2019, called the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill 2019. The bill, in particular, envisaged substitution of Section 9. The substitution thought of, was as follows:

"9. For section 9 of the principal Act, the following section shall be substituted, namely:-

"9. (1) The Tribunal may, on being satisfied of the neglect or refusal on part of the children or the relative, as the case may be, to maintain a parent or senior citizen who is unable to maintain himself to lead a life of dignity, pass an order for maintenance directing such children or relative to provide such monthly allowance, other resources and care for the maintenance of the parent or senior citizen, as it may, from time to time, determine.

(2) While determining the maintenance, the Tribunal may take into consideration the standard of living of the parent or senior citizen and the earnings of such parent or senior citizen and of the children or relative.

(3) The order for maintenance shall be enforceable from the date of such order or, if so ordered by the Tribunal, from the date of the application.

(4) A copy of the order for maintenance shall be-

- (i) made available free of cost to the parent or senior citizen, as the case may be;
- (ii) posted on the Notice Board of the Tribunal;
- (iii) made available online on the website of the concerned Department of the State: and
- (iv) provided to the Maintenance Officer.

(5) Where an order for maintenance is made against more than one person, the death of one of them shall not affect the liability of the others to continue providing the maintenance."

It is noteworthy that the 2019 amendment Bill sought to efface the aforesaid ceiling of ₹10,000/-, empowering Tribunals to determine maintenance in proportion to the dignity and the place of the senior citizen. *Alas*, the legislative seed never sprouted and the cap remains frozen in time. Section 9 even today reads as follows:

"9. Order for maintenance.—(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the 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 Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by

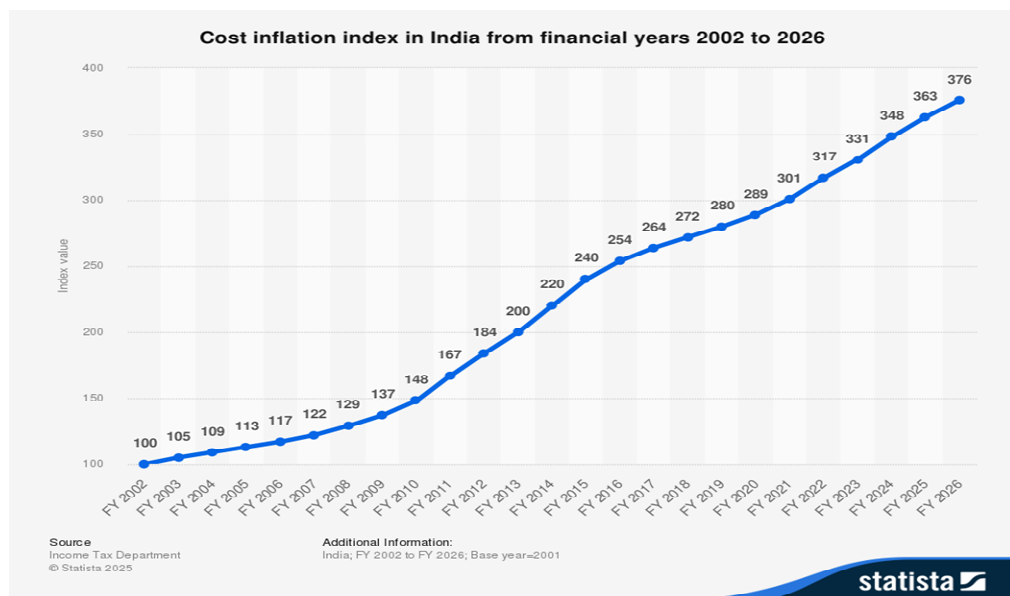
the State Government which shall not exceed ten thousand rupees per month.”

Sub-section (2) of Section 9 mandates maximum maintenance allowance which may be ordered by the Tribunal shall be as may be prescribed by the State Government, which shall not exceed ₹10,000/- per month. Therefore, the central enactment caps it at ₹10,000/-. No State can frame Rules, which could travel beyond sub-section (2) of Section 9 on grant of maintenance beyond ₹10,000/-. Therefore, the State of Karnataka or every other State has formulated Rules which cap it at ₹10,000/-; ostensibly so, as the State Rules cannot be contrary to the Act, under which the Rules are framed. Therefore, it remained at ₹10,000/- maintenance today.

15. The Act came into force in the year 2007. 18 years have passed by. The avowed objective of the Act was primarily three-fold – (i) need based maintenance to the parents and senior citizens, (ii) to provide better medical facilities and (iii) suitable mechanism for protection. Therefore, the enactment was to be need based. Securing the need for a senior citizen cannot be seen to remain the

same as it was in 2007. Cost of living inflation has increased exponentially. With the inflation index today, what a senior citizen would have got in 2007 is reduced by 10% today even to the medical facilities. Therefore, the amount of ₹10,000/-, that is now subsisting, cannot be enough to achieve the real intent of the enactment. I say so on empirical validity.

16. The Ministry of Finance, in the Department of Revenue, has notified from time to time, the cost inflation index. The graph of cost inflation index as found in the website of the Ministry of Finance, Government of India, depicts the growth in the following manner:



Notification No. 44/2017/F.No.370142/11/2017-TPL⁶

The numbers tell a tale, more eloquent, than words. In the year 2007-08 the cost inflation index stood at 129; today, it sores at 363. Thus, what one could procure for ₹100/- in 2007, requires nearly a ₹1000/- in 2025. Prices of food, shelter and medicine have climbed steeply; only the statutory cap of ₹10,000/- has remained petrified, untouched, notwithstanding the march of time.

17. Can maintenance so meagre, achieve the objects of the Act? Can a citizen secure dignity, subsistence and medical aid within the confines of Section 9? requires pondering, so to say otherwise would be to reduce the existence of those senior citizens "as a mere animal existence". This Court, cannot legislate, it cannot rewrite Section 9, yet it bears the responsibility to sensitize the Government of India, that a provision which stood

⁶ Income Tax Department, Cost inflation index in India from financial years 2002 to 2026 Statista, <https://www-statista-com/statistics/1360962/india-cost-inflation-index/>

meaningful in 2007, now mocks its own benevolence in 2025.

18. Maintenance cannot remain a mirage shimmering in the desert of inflation, nor an oasis that vanishes on approach. Relief that is illusory is no relief at all. It is, but a *rope of sand*, incapable of sustaining those for whom it is meant. Therefore, this Court deems it fit to recommend, with earnestness that the Union revisit Section 9 and revise the ceiling in tune with the cost of living index, so that the Act may not be reduced to a hollow promise, but remain a living guarantee of dignity in old age, as the Nation's wealth is not measured by its material progress, but by the welfare of the child and the care of the elderly-old, *albeit, inter alia*.

19. Diving back to the facts of the case, in the light of spiralling inflation rate and high cost of living index today, to do complete justice between the parties, I am of the considered opinion that, maintenance at ₹30,000/- to each senior citizen, should be appropriate to be granted by the Tribunal, during the

subsistence of the proceedings before the Assistant Commissioner now remitted. While granting such maintenance, the Assistant Commissioner should look into the income of the senior citizen in the case at hand and direct the senior citizen to file an affidavit of the property standing in their name if any, and income derived from the said property, if any and then, assess continuance of maintenance, as is granted in the subject petition.

20. In sum, this order does not merely adjudicate the dispute.

The Court laments of neglected elders and resonates as a clarion call to the legislature that the aged must not be abandoned to indignity, that maintenance must match reality and the twilight of life must not be shadowed by want, but illuminated by care.

21. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed.

- (ii) Order dated 16-04-2021 passed by the 1st respondent in Case No.MSC/CR/85/2019-20 stands quashed.
- (iii) The matter is remitted back to the hands of the 1st respondent for consideration afresh, bearing in mind the observations made in the course of the order and pass orders in accordance with law.
- (iv) The petitioners shall pay ₹10,000/- per month each to respondents 2 and 3 as maintenance from 16-04-2021, till the date of the order of the Assistant Commissioner.
- (v) The order of maintenance at ₹10,000/- stands enhanced to ₹30,000/-, to each of the petitioners, from today, till the matter is decided by the 1st respondent/Assistant Commissioner. On failure of the petitioners to pay the amounts specified in clauses (iv) and (v), the 1st respondent is at liberty to pass necessary orders in accordance with law, in terms of the Act.

- (vi) In the event the amount of ₹5,00,000/- is already paid by the petitioners to respondents 2 and 3 as ordered by the 1st respondent, the same shall be given set off towards arrears to be paid at ₹10,000/- each per month from the date of the order dated 16-04-2021.
- (vii) The Registrar is directed to forward a copy of this order to the Additional Solicitor General of India to place it before the Ministry of Finance to consider the recommendation so made in the course of the order.

Consequently, pending I.As also stand disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:SS