

NOTE SHEET

File No. 332/WBHRG/GEN/2017

Dated: 16. 03. 2017

The petitioner Manjubala Kundal has lodged the complaint against her son Mukul Chandra Kundal and his wife which briefly stated is as follows:-

- (a) The said Mukul Chandra Kundal does not allow his youngest brother Sushil to occupy half of the dwelling house, though the dwelling house has been gifted to both of them by the husband of the complainant.
- (b) The said Mukul assaulted and/or attempted to assault the complainant and her husband.
- (c) A criminal case was lodged by the said Mukul against the complainant and her youngest son Sushil.
- (d) On 12.11.2016 the complainant was assaulted by the wife of the said Mukul which was aided and abetted by the said Mukul.
- (e) Mukul does not pay anything for the maintenance of the aged parents who are 86 and 76 years old respectively.
- (f) The said Mukul appears to be in a Government service.

The second son and his wife Rupuli regularly extort money from the complainant and do not pay anything for the maintenance of the aged parents.

Considering the gravity of the matter, the matter was referred to the Investigation Wing of the Commission for an enquiry. A report has since been received backed by documents, copies whereof are enclosed herewith. From the report it appears that the complaint prima facie is true. The situation is that the complainant and her husband are being looked after by their youngest son Sushil, who does not have any steady income. The eldest son Mukul is a Constable of West Bengal Police. He aided by his wife has been making the lives of his parents miserable. The second son Babul has regularly been extorting money from the complainant and her

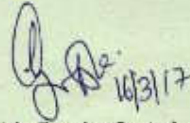
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husband. There is also pressure upon them to sell the balance property.

Considering the facts and circumstances, the matter is referred to the District Magistrate, South 24-Parganas who is the appropriate authority under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. District Magistrate, South 24-Parganas is directed to place the matter before the appropriate Tribunal constituted under the aforesaid act for redressal of the grievance of the complainant in accordance with law.

The matter is thus disposed of.

Let a copy of the order be communicated to the complainant by Speed Post.



(Justice Girish Chandra Gupta)
Chairperson

(Napanajit Mukherjee)
Member



(M. S. Dwivedy)
Member

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File No.332/WBHC/Gen/17


Reference notes of Hon'ble Chairman on the issue of Manjubala Kundal. I have following observations on this issue :

1. If the question is of maintenance of Smt. Manjubala Kundal and her husband who are both senior citizens then the matter has to be dealt with under provisions of Section 7 (1)(2) and (3) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read with Rule 3(1) in which it has been mentioned that the Tribunal would be presided over by the S.D.O. or in his absence by the officer performing the S.D.O.'s function. In the instant case it would be S.D.O., Bishnupur, South 24 Parganas. The Section 15(1)(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provide constitution of Appellate Tribunal. It would be presided over by an officer not below the rank of District Magistrate vide Notification of January 12, 2009, Rule 9 Appellate Tribunal has been constituted by the government which would be presided over by the D.M. and it shall sit at least once in a month.

In view of the above legal provisions it may not be proper to send the matter to the D.M. who is actually the appellate authority but to the SDO who is the Presiding Officer of the Maintenance Tribunal.

2. It is my humble opinion that in the instant case the complainant is not asking for any maintenance from her son as her husband is a pensioner drawing a sum of Rs.17,548/- per month. From the annexed statement question no.7 she has clearly stated that her intention is to equally divide the property between the two sons so that they can live in peace without any dispute. It is my humble opinion that this is totally a civil dispute which is within the capacity of the owner of property to resolve the matter.

3. Regarding Section 22 of Maintenance and Welfare of Senior Citizens Act, 2007 matter was checked from Principal Secretary, Deptt. of Social Welfare and they could not supply any Govt. order empowering the D.M. On the contrary, they gave a notification which is enclosed. This notification is part of the Rules framed under the Act by the government. In view of above matter may be considered for discussion.


(N. Mukherjee)
Member
22/03/17

Hon'ble Member(I)/Hon'ble Chairman

Seen. 22/3/17

Date: 27. 03. 2017.

After discussion and in view of the opinion dated 22nd March, 2017 expressed by the Hon'ble Member Mr. N. Mukherjee, the matter is disposed of by the following order:

The petitioner Manjubala Kundal has lodged the complaint against her son Mukul Chandra Kundal and his wife which briefly stated is as follows:-

- (a) The said Mukul Chandra Kundal does not allow his youngest brother Sushil to occupy half of the dwelling house, though the dwelling house has been gifted to both of them by the husband of the complainant.
- (b) The said Mukul assaulted and/or attempted to assault the complainant and her husband.
- (c) A criminal case was lodged by the said Mukul against the complainant and her youngest son Sushil.
- (d) On 12.11.2016 the complainant was assaulted by the wife of the said Mukul which was aided and abetted by the said Mukul.
- (e) Mukul does not pay anything for the maintenance of the aged parents who are 86 and 76 years old respectively.
- (f) The said Mukul appears to be in a Government service.

The second son and his wife Rupali regularly extort money from the complainant and do not pay anything for the maintenance of the aged parents.

Considering the gravity of the matter, the matter was referred to the Investigation Wing of the Commission for an enquiry. A report has since been received backed by documents, copies whereof are enclosed herewith. From the report it appears that the complaint prima facie is true. The situation is that the complainant and her husband are being looked after by their youngest son Sushil, who does not have any steady income. The eldest son Mukul is a Constable of West Bengal Police. He aided by his wife has been making the lives of his parents miserable. The second son Babul has regularly been extorting money from the complainant and her husband. There is also pressure upon them to sell the balance property.

It is true that the petitioner is not asking for any direction upon her sons for payment of maintenance. She, on the contrary, is looking for peace so that she and her husband can lead a normal life. There is prima facie evidence to show that the eldest son Mukul aided by his wife and the second son aided by his wife Rupali have regularly been making the petitioner's and

Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as Act) provides for mechanism to avoid a transfer of property. In this case property has admittedly been transferred by the husband of the petitioner in favour of the eldest son Mukul and the youngest son Sushil. The complaint is that the said Mukul is not allowing Sushil to occupy the 50% of the property. Disputes concerning enjoyment of the aforesaid property are seriously affecting the normal life of the petitioner and her husband. In the case of Sunny Paul Vs. State reported in 2017 SCC Online Del 7451 it was held by the Delhi High Court that "in the Indian context, there would be a presumption that the transfer was subject to petitioner No. 1 son providing all the basic necessities and looking after the physical needs of the senior citizens".

Therefore, an order avoiding the transfer made in favour of the eldest son can be passed by the tribunal constituted under the Act. The tribunal can also pass order directing eviction of the eldest son and his family. The aforesaid views has been expressed by the Delhi High Court in Sunny Paul Vs. State (Supra) by holding as follows :

"Consequently, the Maintenance Tribunal has the jurisdiction to not only pass an eviction order but also to issue directions to give effect to the same under Section 23 of the Act 2007".

Considering that the tribunal constituted under the Act is empowered under Section 23 to declare a transfer void, it is to be implied that the tribunal is also entitled to pass such interim relief as may be required in the facts and circumstances of the case. Reference in this regard may be made to the judgment of the Apex Court in the case of Medical Council of India Vs. JSS Medical College And Another reported in (2012) 5 SCC 628 wherein the following views were expressed:

"Power to grant final relief implies within itself power to grant interim relief unless it is specifically prohibited by law".

Needless to mention that law declared by the Supreme Court is the law of the land under Article 141 of the Constitution of India.

Therefore, the tribunal can pending hearing of the matter pass such interim relief as regards the enjoyment of the property transferred to Mukul as it may consider fit and proper. The tribunal can also pass an order of injunction restraining the sons of the petitioner from insisting upon transfer of any property belonging to the petitioner and her husband. The tribunal can also under Rule 7 of the West Bengal Maintenance and Welfare of the Parents and Senior Citizens Rules, 2008 direct the Police Officer of the concerned Police Station to ensure protection of the person and property of

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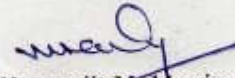
There is no question of asking the petitioner to file a civil suit because jurisdiction of the civil court has been barred under Section 27 of the aforesaid Act.

The matter is accordingly relegated to S.D.O., Alipore, South 24-Parganas who is the Presiding Officer of the tribunal constituted under the Act with the direction to take expeditious steps for protection of life and property of the petitioner and her husband so that they can lead a normal life.

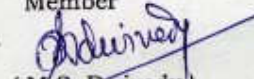
Let a copy of this order be also communicated to the Petitioner.



(Justice Girish Chandra Gupta)
Chairperson



(Napanarajit Mukherjee)
Member


(M.S. Dwivedy)
Member