

IN THE HIGH COURT OF KARNATAKA AT BENGALURUDATED THIS THE 22ND DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE P. KRISHNA BHAT**WRIT PETITION NO.6720/2016(GM-RES)****BETWEEN:**

1. MRS DEPHNY GLADYS LOBO
W/O FREDERICK LOBO,
AGED 44 YEARS,
2. MR FREDERICK LOBO
S/O PAUL LOBO,
AGED 55 YEARS,

BOTH ARE R/AT DOOR NO.1-330,
NEAR: HOLY FAMILY SCHOOL,
BAJPE, MANGALURU-574142 D.K

...PETITIONERS

(BY SRI. O. SHIVARAMA BHAT, ADVOCATE)

AND:

1. ASST COMMISSIONER AND PRESIDENT
SENIOR CITIZEN MAINTENANCE TRIBUNAL,
MANGALURU SUB DIVISION,
MANGALURU-575001
2. SMT CAROBINA FERRAO GUREIN
AGED ABOUT 68 YEARS,
W/O MR JOHN CHRISTOPHER GUREIN
PERMANENT RESIDENT OF UNITED KINGDOM
REPRESENTED BY HER POWER OF ATTORNEY
MR JOSEPH D'SOUZA
SON OF LATE MR ANTONY D'SOUZA
R/AT "FRAGRANCE" D'SOUZA COMPOUND
NEAR PUTTUR RAILWAY STATION,
PUTTUR, D.K

...RESPONDENTS

(BY SRI. RAMESH GOWDA, AGA FOR R1;
SRI. GAJENDRA G., ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE PROCEEDINGS INITIATED BY THE R-1 VIDE ANNEX-A AND ETC.

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, THROUGH VIDEO CONFERENCE/PHYSICAL HEARING, THE COURT MADE THE FOLLOWING:

ORDER

The short point calling for consideration in this writ petition is whether a person who is not an Indian citizen can maintain a petition before the Sub Divisional Magistrate under the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') and at the instance of such person whether the Sub Divisional Magistrate can initiate proceedings?

2. The petitioners have approached this Court under Article 226 of the Constitution seeking quashing of the entire proceedings in ಎಂ.ಎಸ್.ಸಿಸಿಆರ್.103/15-16 (Annexure-A).

3. The impugned proceedings has been initiated by the respondent No.1 at the instance of respondent No.2

against the petitioners herein. The passport of respondent No.2 is produced at Annexure-B. It shows that respondent No.2-Carobina Ferrao Guerin is a British citizen. Her photograph is also affixed to the passport. It is therefore evident that she is not an Indian citizen as the Constitution of India does not provide for dual citizenship. Sub-section (h) of Section 2 of the Act defines 'Senior Citizen' and it reads as follows:

"h. "senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above;"

4. It is evident that one of the essential elements for being designated a 'Senior Citizen' for the purposes of the Act is the person being an Indian citizen. The passport at Annexure-B clearly shows that respondent No.2 at whose instance proceedings has been initiated by the respondent No.1, is not an Indian citizen. In that view of the matter, respondent No.1 had no jurisdiction to initiate the proceedings under the Act. Accordingly, same is liable to be quashed.

5. Accordingly, a writ of certiorari is issued against the entire proceedings in ಎಂ.ಎಸ್.ಸಿಸಿಆರ್.103/15-16 (Annexure-A) and same is quashed. Writ Petition is allowed and *rule-nisi* issued is made absolute.

**Sd/-
JUDGE**

DR