

IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

CWPIL No. of 2020

IN RE:

Ajai Kumar Srivastava

Versus

Union of India and Ors

...PETITIONER

...RESPONDENTS

INDEX

S.NO.	PARTICULARS	PAGE NO.
1.	Court fees	A
2.	Synopsis and List of Events	1-2
3.	Memo of Parties	3-4
4.	Civil Writ Petition along with affidavit in support.	5-27
5.	List of Documents	28
6.	Annexure P1- Copy of the Maintenance and Welfare of Parents and Senior Citizens Act 2007	29-36
7.	Annexure P2- Copy of The Himachal Pradesh Maintenance of Parents and Dependants Act 2001	37-50
8.	Annexure P3- Order No. 40-3/2020-DM-I(A) dated 1705.2020 issued by Ministry of Home Affairs.	51-59
9.	Annexure P4- Guidelines issued by Ministry of Health and Family Welfare Containing Updated Containment Plan for Large Outbreaks of COVID-19.	60-79

10.	Application under Rule 2 of writ rules.	80
11.	Application for Interim Relief under High Court Writ Rules along with Section 151 of the CPC alongwith affidavit.	81-84
12.	Power of attorney	85




PETITIONER

THROUGH COUNSEL

Place: Shimla

Dated: __.05.2020



ARJUN LAL AND SHRADHA KAROL
ADVOCATES

(HIM/53/2006 AND D/2241/2013)

(Add.- 42, the Mall, SHIMLA-171002)

(+91-9418842121 and +91-9910302809)

1

IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPIL No. of 2020

IN RE:

Ajai Kumar Srivastava

...PETITIONER

Versus

Union of India and Ors

...RESPONDENTS

SYNOPSIS AND LIST OF EVENTS

The Petitioner by way of the Present Petition seeks enforcement of the rights so conferred on the senior citizens under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The principal issue raised in the present petition pertains to the failure on part of the State of H.P to notify the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, promulgated by the Parliament under Entry 20 and 23 of List-III. The Respondent State though has its own enactment i.e the Himachal Pradesh Maintenance of Parents and Dependents Act, 2001, however the same apart from the fact is limited in its application, is repugnant to the Central Act in view of Article 254 and provision to Article 254(2) of the Constitution of India.

DATE	PARTICULAR
2001	The Himachal Pradesh Maintenance of Parents and Dependents Act 2001 is brought into existence by the State government.
31.12.2007	The Maintenance and Welfare of Parents and Senior Citizens Act 2007 was notified by the Central Government.
24.03.2020	In view of Corona a global Pandemic the Ministry of Home Affairs issued guidelines for containment of COVID-19 Epidemic within the Country. (First Phase)
15.04.2019	The Central Government announced the

2

	extension of the lockdown that was in existence till 3 rd May 2020.
04.05.2020	<p>The Central Government again announced the extension of the lockdown for a period of 2 weeks till 17th May 2020.</p> <p>It is submitted that as per the guidelines of the MHA though during this period even though certain activities were opened up in green zones however the movement of senior citizens i.e. citizens above the age of 65 years, children below the age of 10 years and pregnant women was expressly prohibited and these persons were termed as vulnerable persons.</p> <p>Furthermore, the State Government in consonance with the guidelines issued by MHA passed orders in every district opening certain activities however movement of vulnerable persons was strictly prohibited.</p>
17.05.2020	<p>The Central Government again announced the extension of the lockdown for a period of 2 weeks till 30th May 2020.</p> <p>While the MHA gave certain more relaxation in the green, orange and red zone but movement of vulnerable persons still remained prohibited.</p>
May 2020	The State Government till today has failed to notify the 2007 Act which particularly deals with Senior Citizens. Hence the present petition.

PETITIONER

THROUGH COUNSEL

Place: Shimla
Dated: __.05.2020

ARJUN LALLAND SHRADHA KAROL
ADVOCATES
(HIM/53/2006 AND D/2241/2013)
(Add.- 42, the Mall, SHIMLA-171002)
(+91-9418842121 and +91-9910302809)

3

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CWPIL No. of 2020

IN RE:

Ajai Kumar Srivastava **...PETITIONER**
Versus
Union of India and Ors **...RESPONDENTS**

MEMO OF PARTIES

Mr. Ajai Kumar Srivastava
Age about 57 years
S/o Late Shri. M.S. Srivastava
R/o C-208, Sector 3, New Shimla,
Shimla, Himachal Pradesh-171009. **...PETITIONER**

Versus

1. Union of India
Through the Secretary
Department of Social Justice and Empowerment
Shastri Bhawan, C-Wing
Dr Rajendra Prasad Road, New Delhi-110011
...RESPONDENT NO.1
2. State of Himachal Pradesh
Through the Chief Secretary
Civil Secretariat, Chotta Shimla.
Himachal Pradesh- 171002
...RESPONDENT NO. 2
3. Ministry of Social Justice and Empowerment
Through the Secretary
State of Himachal Pradesh
Civil Secretariat, Chotta Shimla.
Himachal Pradesh- 171002
...RESPONDENT NO. 3

(4)

4. Director Health Services
Department of Health and Family Welfare
SDA Complex, Kasumpti, Shimla.
Himachal Pradesh- 171009

...RESPONDENT NO. 4

5. The Secretary
Panchayati Raj
State of Himachal Pradesh
Civil Secretariat, Chotta Shimla.
Himachal Pradesh- 171009

...RESPONDENT NO.5



PETITIONER

THROUGH COUNSEL



ARJUN LAL AND SHRADHA KAROL
ADVOCATES

(HIM/53/2006 AND D/2241/2013)

(Add.- 42, the Mall, SHIMLA-171002)

(+91-9418842121 and +91-9910302809)

Place: Shimla

Dated: __.05.2020

5

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CWPIL No. of 2020

IN RE:

Mr. Ajai Kumar Srivastava
Age about 57 years
S/o Late Shri. M.S. Srivastava
R/o C-208, Sector 3, New Shimla,
Shimla, Himachal Pradesh-171009.

...PETITIONER

Versus

1. Union of India
Through the Secretary
Department of Social Justice and Empowerment
Shastri Bhawan, C-Wing
Dr Rajendra Prasad Road, New Delhi-110011
2. State of Himachal Pradesh
Through the Chief Secretary
Civil Secretariat, Chotta Shimla.
Himachal Pradesh- 171002
3. Ministry of Social Justice and Empowerment
Through the Secretary
State of Himachal Pradesh
Civil Secretariat, Chotta Shimla.
Himachal Pradesh- 171002
4. Director Health Services
Department of Health and Family Welfare
SDA Complex, Kasumpti, Shimla.
Himachal Pradesh- 171009
5. The Secretary
Panchayati Raj
State of Himachal Pradesh
Civil Secretariat, Chotta Shimla.
Himachal Pradesh- 171009

...RESPONDENTS

6

**CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF AN
APPROPRIATE WRIT, ORDER OR DIRECTION IN FAVOUR
OF THE PETITIONERS AND AGAINST THE RESPONDENTS
TO:**

- a) Issue an appropriate writ, order and direction in the nature of mandamus declaring the Himachal Pradesh Maintenance of Parents and Dependents Act 2001 to be repugnant to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and therefore be declared to be void in view of Article 254 (1) and (2) of the Constitution of India;
- b) In the alternative to issue an appropriate writ, order and direction in the nature of mandamus holding the Himachal Pradesh Maintenance of Parents and Dependents Act 2001 to have been expressly repealed by the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 being the exhaustive Act covering the entire field;
- c) Issue an appropriate writ order and direction in the nature of mandamus calling upon the Respondent State to forthwith notify on such appointed date, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in the Official Gazette;
- d) Issue an appropriate writ, order and direction in the nature of mandamus directing the Respondent State to make and thereafter forthwith notify the rules for carrying out the purposes of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
- e) Issue an appropriate writ order and direction in the nature of mandamus to the State Government to constitute the Maintenance Tribunal and the Appellate Tribunal as contemplated by Sections 7 and 15 of the said Act;
- f) Issue an appropriate writ, order and direction in the nature of mandamus to the State Government to appoint and designate the Maintenance Officers in terms of Section 18 of the said Act;

7

- g) Issue an appropriate writ order and direction in the nature of mandamus to the State Government to make provisions for medical support and care for senior citizens in terms of Section 20 of the said Act and to produce record with respect to steps taken with respect to the implementation of the National Program for the Healthcare of the Elderly;
- h) Issue an appropriate writ order and direction in the nature of mandamus to the Respondent State to take measures for publicity, awareness etc., for welfare of senior citizens in terms of Section 21 of the said Act by all means including social media platforms.
- i) Issue directions to the Respondent State to forthwith prepare a comprehensive action plan providing for the protection of life and property of senior citizens;
- j) Direct to the respondent no.1 to place on record the directions given/ periodic review qua the welfare measures undertaken by the Central Government under the Act and the compliance, if any, effected by the respondent State;
- k) Issue an appropriate writ order and direction in the nature of mandamus to the Respondent State to make a dedicated helpline where the senior citizens could call for any information or in case of emergency.
- l) Issue an appropriate writ order and direction in the nature of mandamus to the Respondent State to involve NGO's in the process of gathering details about old persons and raising awareness.
- m) Issue such further directions in aid of the effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
- n) Call for the records of the case from the Respondents.
- o) Allow any other relief deemed fit by this Hon'ble Court in favour of the petitioner and against the respondents in the peculiar facts and circumstances attending to the present case.
- p) Allow costs in favour of the Petitioner and against the Respondents.

MAY IT PLEASE YOUR LORDSHIPS:

1. That the present petitioner is a public spirited citizen and is the ordinarily resident of Shimla Himachal Pradesh. He has degree in Mass Communication and is working as Associate Professor, Department of Journalism, ICDEOL, H.P. University Shimla. The petitioner has been a part of various committees on welfare of persons with issues of mental health, persons with disabilities, difficulties faced by senior citizens etc. He is also the founding member of UMANG Foundation, a NGO which works for the betterment of the under privileged. The Petitioner was instrumental in the litigation pertaining to disabled persons in old age home before the Hon'ble High Court. He has won various awards for his work in the field of social services. The petitioner is therefore entitled to invoke the jurisdiction of this Court against the illegal acts of omission and Commission of the Respondent State.
2. That the Respondent no.1 i.e The Ministry of Social Justice and Empowerment is a Government of India ministry. It is responsible for welfare, social justice and empowerment of disadvantaged and marginalised sections of society, including scheduled castes, Other Backward Classes, the disabled, the elderly, and the victims of drug abuse. Respondent No. 2-5 are various department of the State Government and are responsible for the welfare of the citizens of the State.
3. That by way of the present petition, the petitioner seeks leave of this Hon'ble Court to raise the issue pertaining specifically to the maintenance and welfare of the senior citizens of the State of Himachal Pradesh, and ensuring their overall physical and

mental well-being as guaranteed and recognised under the Constitution.

4. That at the very outset, it is briefly brought to the notice of this Hon'ble Court that the issue raised in the present petition pertains to the failure on part of the Respondent State of H.P to notify the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, promulgated by the Parliament under Entry 20 and 23 of List-III. The Respondent State though as its own enactment i.e the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001, however the same apart from the fact is limited in its application, is repugnant to the Central Act in view of Article 254 of the Constitution of India, as would be evident from the pleadings below. Thus in a nutshell the present petitioner seeks enforcement of the rights so conferred on the senior citizens by means of the present petition.
5. That it would be pertinent to bring to the notice of this Hon'ble Court certain provisions enshrined in Constitution of India which specifically provide for the creation of a social order for all its citizens. The Preamble to the Constitution enjoins the State to provide Social Justice to its citizens as Social Justice is the cornerstone in nation building. The Directive Principles of State Policy as contained in Part-IV, though not enforceable in law, clearly provide in terms of Article 37 thereof, that the aforesaid principles are fundamental in the governance of the country and the same have to be given due weightage at the time of making/ framing of laws. The present petitioner most humbly brings to the notice of this Hon'ble Court Article 38 and 41 thereof which read as under:

“38. State to secure a social order for the promotion of welfare of the people-

(1)The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2)The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

41. Right to work, to education and to public assistance in certain areas- 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."

6. That in terms of an introduction in the revised Integrated Programme for Senior Citizens, which is a scheme of the Respondent no.1, there has been a steady rise in the population of senior citizens in India. The 2011 census indicated the population of senior citizens was 10.38 Crores. It has further been projected that the number of 60+ in India would increase to 14.3 Crores in 2021 and 17.3 Crores by 2026 i.e almost 18% of the total population. That in terms of Census report of 2001, the total population of Himachal Pradesh stood at 6,077,248. The elderly population at 5,48,000 which constitutes 9.02% of the total population. These facts and figures have been taken from a Draft Policy on Older Persons of the State of H.P as downloaded from the official website of the Ministry of Social Justice, State of H.P.
7. That the General Assembly of the United Nations in its 74th Plenary meeting adopted resolution No. 46/91, urging the Member nations to implement of the international plan of action on ageing and related activities. This resolution, further

encourages the governments of member nations to incorporate the following principles into their national programme whenever possible:-

8. Independence

1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
2. Older persons should have the opportunity to work or to have access to other income-generating opportunities.
3. Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
4. Older persons should have access to appropriate educational and training programmes.
5. Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
6. Older persons should be able to reside at home for as long as possible.

9. Participation

7. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
8. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.
9. Older persons should be able to form movements or associations of older persons.

10. Care

10. Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
11. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.

12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.

13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.

14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

11. Self-fulfillment

15. Older persons should be able to pursue opportunities for the full development of their potential.

16. Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

12. Dignity

17. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.

18. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

7. That in pursuance of the Resolution No. 49/1991, adopted by the General Assembly of the United Nations, the Madrid Plan of Action and the United Nations Principles for Senior Citizens adopted by the UN General Assembly in 2002, the Proclamation on Ageing and the global targets on ageing for the Year 2001 was already adopted by the General Assembly in 1992. The Shanghai Plan of Action 2002 and the Macau guidelines to encourage governments to design and implement their own policies from time to time, also pressed the Members Nations to pay adequate attention to the issues concerning senior citizens. The

Government of India was a signatory to all these International Agreements.

8. That in addition to the already quoted Directive Principles of State Policy The Hon'ble Supreme Court in *K.S. Puttaswamy (Retired) v. Union of India (2017) 10 SCC 1* has firmly accepted that the right to live with dignity is one of the facets of Article 21 of the Constitution of India. This in the humble submission of the present petitioner will obviously encompass the right of the senior citizens to live a meaningful life with dignity apart from the right to shelter and right to adequate medical care and health.
9. That for protecting and safeguarding the rights of the Senior Citizens and to comply with the mandate as laid in terms of Article 38 and 41 of the Constitution of India and the International Agreements, the Parliament enacted The Maintenance and Welfare of Parents and Senior Citizens Act, 2007(hereinafter referred to as the Act of 2007) on 29th December, 2007 to ensure need based maintenance for parents and senior citizens and their welfare. A copy of the Act of 2007 is annexed to the present petition as Annexure-P1.
10. This Act extends to the whole of India, except the State of Jammu and Kashmir, and was to come into force on such date as the State Governments may, by notification in the Official Gazette appoint. The Acts provides for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected incidental thereto. At this stage itself, it would be pertinent to mention that the Respondent State of Himachal Pradesh, despite the lapse of more than 13 years from the date of promulgation of the Act, have not notified the same and as such

the senior citizens of the State of H.P have been illegally deprived of the welfare and beneficial measures of the Act of 2007.

11. That the legislative Competence of the Parliament in enacting the Act of 2007, can in the humble submission of the present petitioner be traced to Entry 20 and 23 of the Concurrent List i.e List III of the Seventh Schedule. The same read as under:

Entry-20: Economic and Social Planning

Entry 23: Social Security and social insurance; employment and unemployment.

Thus as would be seen, both the Parliament and the Legislature of the State, have the requisite legislative competence to make laws qua the above entries.

Accordingly the State of H.P enacted the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001(hereinafter referred to as the Act of 2001), copy whereof is annexed hereto as **Annexure- P2**, and the Parliament has enacted the Act of 2001, as also in compliance with the mandate as prescribed in terms of Article 38 and 41 of the Constitution of India. However, as would be demonstrated by way of the present petition, it is the Act of 2007, being the Central Act which shall prevail over the Act of 2001 i.e the legislation of the State.

12. The Act of 2001 provides for maintenance of parents, wives and children and for matters connected therewith. The aim behind the act enactment of the act is to provide support to parents, wives and children and compel the individuals to undertake their moral obligation of maintaining them.
13. That a reading of the Act of 2007 will clearly show that the Parliament has intended the same to be a complete and exhaustive code/ enactment covering the entire filed relating to though not

limited to senior citizens. The provisions of the Act of 2007 are more comprehensive, beneficial and detailed and provide for far greater relief in comparison with the State Act of 2001. A perusal of both the Acts will prima facie show that the Act of 2007 is much wider in its application and has been enacted for the maintenance and welfare of parents as well as senior citizens, in terms of the Constitutional mandate guaranteed by the Constitution of India. The State Act of 2001 on the other hand is restrictive in its application to only parents, wives and children as defined under the Act. The present petitioner most humbly submits that it will endeavor to show from the contents of the succeeding paragraphs as to how and in what manner the Act of 2007 is infact a complete and exhaustive code on the subject of providing Social Justice and implementing welfare measures vis-à-vis, the State Act of 2001 and is therefore repugnant and liable to declared void.

14. It is further submitted that the Act of 2001 doesn't even provide for a definition of senior citizen as opposed to the Act of 2007 which defines a senior citizen as a person who is a citizen of India and who has attained the age of Sixty years. The Act of 2001 only provides for a definition of a defendant.
15. That however the Respondent State of H. P, in its wisdom has till date, failed to notify the Act of 2007, probably under the mistaken belief that the since it has enacted the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001 and that the same is assumed to be in pari materia with the Central Act of 2007. However in essence the definition clauses of the two Acts clearly demonstrate that the ultimate beneficiaries of the provisions of the Acts are very different.

16. That the implementation of the Central Act of 2007 has assumed further significance in view of the spread of the pandemic COVID-19, which has resulted in the state of declaration of lockdown all over India. The country is facing uncomfortably peculiar circumstances. A pandemic, of the nature which affects the world today has resulted in causing unprecedented devastation, including human, economic, social and political. The measures, to which the executive administration has had to resort, to somehow contain the fury of the pandemic, are equally unprecedented. The situation of nationwide lockdown, in which we find ourselves today, has never, earlier, been imposed on the country. It is on account of the lockdown imposed by the government, that senior citizens have been compelled to stay at home. In this duration, many of the senior citizens who are living alone on account of various reasons/ factors for e.g their children are residing abroad or are out of town or have no family, do not have any support system and are unable to access facilities like banking, medical, etc. They are forced to step out of their houses for purchasing essential items like groceries, milk, medicines and for withdrawing money from banks. In view of their increased vulnerability, there is the likelihood of their getting infected with Covid-19, which may prove fatal to them. This is in view of the advisories qua Senior Citizens on account of COVID-19 issued by the Ministry of Home Affairs, Union of India. It is submitted that vide Order No.40-3/2020-DM-I(A) dated 17.05.2020 issued by Ministry of Home Affairs while issuing guidelines categorically state that vulnerable persons need to be protected which includes persons above the age of 65 years, persons with co-morbidities, pregnant women and children below the age of 10 years and that the same shall remain at home and not be allowed

to move outside except for essential or medical reasons. A copy of the Order is annexed herewith marked as Annexure-P3.

17. That the respondent no.1 Ministry of Health and Family Welfare, GOI has issued containment Plans for combating the Large Outbreak of COVID 19 including enabling delivery of essential health services during COVID-19 provide for various ways in which facilities can be granted during the pandemic and a copy of the same is being annexed herewith marked as Annexure P4.
18. That it is in this background that the present petition is being filed for seeking directions to the Respondents to ensure the effective implementation of the Act of 2007, which shall also be a step in aid in providing provide essential services at home to senior citizens within the State of Himachal Pradesh, during this lockdown period imposed by the State and also when the lockdown is lifted by the respondent State. Therefore in addition to the issue of repugnancy of the State Act of 2001, the present petitioner humbly seeks to also simultaneously raise the issue with respect to the right of the senior citizens to a standard of living adequate for their health and well being and ensuring the effective implementation of the Act of 2007, by way of the present petition.
19. That at this stage it is the duty of the Petitioner to bring to the notice of this Hon'ble Court, that the Hon'ble Apex Court has also dealt with the issue with respect to the implementation of the Act of 2007 in *Ashwani Kumar v. Union of India (2019) 2 SCC 636* wherein certain directions were given by the Hon'ble Court to all the States with regard to the implementation of the Act of 2007. However the issue that still remains and which is raised by way of the present petition, is whether the Respondent no.2 State,

could have withheld notifying the Central Law of 2007, which it was legally bound to do so. Further that in view of Article 254 and Article 254(2) and the *proviso* thereto, a consequential result of the enactment of the Act of 2007 by the Parliament, the State law stood automatically repealed, being repugnant on account of the fact that the Central Act of 2007 was more elaborate and extensive covering the entire field.

20. That the entire action of the Respondent State in not notifying the Act of 2007 is *malafide*, arbitrary and unreasonable and as a result of which the Senior Citizens of the State have been deprived of the welfare measures incorporated under the Act of 2007. That the Respondent no.2 State in terms of the mandate of Article 256, is obliged to ensure compliance with the Act of 2007 enacted by the Parliament, being the superior legislature to enact in terms of Entry 20 and 23 of the Concurrent List and a Social Welfare Legislation. Thus the in-action on part of the Respondent State in failing to notify the Central Act of 2007 is illegal and an antithesis to the rule of law which requires a State to comply with Central laws, moreso when the same are beneficial enactments.
21. That in any case in view of the mandatory provision of Article 254(1), which lays down the supremacy of the Parliament to frame laws with respect to the matters enumerated in the Concurrent List, the Act of 2007, even though passed after the Law made by the Legislature of the State of H.P, would in law prevail over the State Act and therefore the respondent State was duty bound in law to notify the same and to implement the social and welfare provisions of the Act for the benefit of the Senior Populace of the State of H.P.

22. That further in any case, the Act of 2001, in view of the mandate of law as prescribed under Article 254(1) and (2), must give way to the law made by the Parliament i.e the Act of 2007, irrespective of the fact, whether the State of H.P passed the Act of 2001 before the law made by Parliament i.e Act of 2007. Moreover since the Central Act 2007 is an exhaustive and complete code covering the entire field, the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001 in view of the proviso to Article 254(2), is required to be held to be repugnant to the Act of 2007 and thus void. In any case, even though obedience to both the Acts may be possible without disobeying the other, however since the Parliament being a competent legislature with superior efficacy, has enacted the Act of 2007 with an intention to cover the whole field, the State Act of 2001 has to be held to be overborne on the ground of repugnancy.
23. That in view of Section 3 of the Act of 2007 and the non obstante clause contained therein, the same shall have effect notwithstanding anything inconsistent therewith contained in any enactment or in any instrument having effect by virtue of any enactment other than this Act. Thus the respondent State was constitutionally bound to implement the Act of 2007 in letter and spirit.
24. That a perusal of the definition clause of both the Acts will show that the Act of 2007 i.e of the State Legislature is only restricted to parents who have children and have been deserted and are unable to maintain themselves. The Act of 2001 does not cater to and operate for the benefit of senior citizens who are childless and have no dependants. Further that the maintenance that can be granted under Section 3 of the Act of 2001 is only restricted to

and for the benefit of the wife, child or aged or infirm parent. It does not take within its fold the needs of a Senior Citizen who are childless and is thus restricted to only parents.

25. That in the humble estimation of the present petitioner, the Act of 2001 nowhere fulfils the constitution mandate of Article 38 and 41 of the Constitution of India, which has already been stated hereinabove, enjoin the State to promote the welfare of its citizens by providing a social order and provide necessary public assistance in cases of old age in particular. On the other hand in terms of Section 4 of the Act of 2007 i.e the Central Act, a childless senior citizen is empowered to make an application for maintenance against a "relative" as defined in clause (g) of the Act itself and is not in any manner restrictive in its application and the only criteria being whether the said senior citizen is unable to maintain himself/ herself.
26. That the State Government was required in law to establish within a period of six months from the date of the commencement of the Act of 2007, one or more Tribunal for each Sub-Division, presided over by an officer not below the rank of Sub-Divisional Officer of the State. The extent of powers conferred under the Central Act of 2007, is further evident from the fact that the Tribunal is authorized to take cognizance under Section 4, suo moto, in the absence of an application on behalf of a senior citizen/ parent who are unable to maintain himself. Therefore unlike the Act of 2001, whereby the Tribunal so constituted under the Act can only exercise its powers on the basis of an application, under the Act of 2007, the Tribunal is authorized to assume a pro-active role for the purpose of securing maintenance to those senior citizens and parents who are unable to maintain

themselves on account of varying factors. Moreover in terms of Section 18 of the Act of 2007, the State Govt is bound to designate District Social Welfare Officer as the Maintenance Officer under the Act who are empowered to represent the senior citizen/ parent before the Tribunal.

27. That most importantly Chapter-III of the Act of 2007 and Section 19 in particular, provides for the establishment of old age homes for the senior citizens who are indigent i.e not possessed of sufficient means. Section 20 mandatorily requires the State Government to ensure that sufficient provisions are made for providing medical care to the senior citizens. This provision in the humble submission of the present petitioner, gains utmost significance in view of the prevailing conditions relating to Covid-19. The Central Government has in terms of the advisories issued by it from time to time, has itself mandated that all senior citizens above the age of 65 years should isolate themselves completely as they are more prone to contacting the Covid-19 virus on account of the age factor. Therefore it is imperative that the Respondents ensure the effective implementation of the provisions of the Act. Thus it is clearly evident that the Act of 2007 is more comprehensive and exhaustive and thus the Act of 2001 may kindly be held to be repugnant and therefore void. Furthermore the aforesaid provisions are lacking in the Act of 2001 i.e the State Act.
28. That in compliance with Section 20 of the Act of 2007, The National Programme for the Health Care for the Elderly (NPHCE) and National Policy on Older Persons (NPOP) adopted by the Government of India in 1999, also expressly deal with provisions for medical care of Senior Citizens. Under the

aforesaid schemes, the basic aim is to provide specialized and comprehensive healthcare to senior citizens at various levels of the State Healthcare delivery system including outreach services. No such provision has been incorporated within the State Act of 2001.

29. That on account of the failure of the respondent State to have notified and implemented in letter and spirit, the Act of 2007, the respondent State has failed to prescribe a comprehensive action plan for protecting life and property of the senior citizens, which the State, in terms of Section 22(2), were statutorily enjoined to perform. Thus the inaction of the respondent State is in complete violation of Article 21 of the Constitution of India which guarantees all the right to life, and that too with dignity. The Respondent State has further miserably failed to perform the Constitution Mandate as enshrined under Articles 38 and 41 of the Constitution of India. Social Justice which is also incorporated in the Preamble to the Constitution, though the Preamble itself is not the source of power under the Constitution, however it is the guiding light for the State to frame its policies in a manner to achieve the concept of Social Justice as declared in the Preamble to the Constitution of India.
30. That in terms of Section 23 of the Act, which in effect declares that any transfer of property by a senior citizen subject to the condition that the transferee shall provide basic amenities to the senior citizen, can be declared to be void, in case such transferee refuses or fails to provide such amenities and physical needs. The aforesaid provision gains utmost significance in the present times, when the country is facing a tremendous financial crunch in view of the Covid-19. In the absence of a steady income, there

is a high possibility that senior citizens may, on the pretext of false assurances that they are going to be looked after incase they are agreeable to transfer their interest in the property, are fraudulently deprived of their property by children/ relatives. This threat looms large more so in villages, where there is complete lack of awareness with respect to be the welfare measures available under the Act and the schemes framed thereunder, in view of the non-implementation/ notification of the Act of 2007.

31. That in addition to above, the Respondent No.5 is also duty bound, to prepare plans / implementation of schemes with respect to social justice qua senior citizens, in compliance with the powers conferred under Article 243-G of the Constitution of India, taking into consideration Entry 26 of the Eleventh Schedule thereof and in terms of the Section 184 of the H.P Panchayati Raj Act 1994.
32. That in a democratic system like ours, voluntary public support like NGO's or voluntary organisation play an important role and is times of COVID 19 where they can provide support to the emergency responders and provide for a supplementary mechanism of support. There are various NGO's that are already working for the benefit of Old Persons who would be able to provide information and help regarding the grievances of Old Persons.
33. That the Petitioner has not filed any other similar writ petition relating to the same matter in this Hon'ble Court or in any other Court of Law nor is any such petition pending in any such Court. However as has already been stated in para supra, the Hon'ble Supreme Court is monitoring the issue qua the implementation

of the Act of 2007. However the issue in the present petition is qua the failure of the State of H.P to notify the Central Act of 2007 till date.

Furthermore, this Hon'ble Court while dealing with the limited issue of lack of Old Age Homes within the State of H.P and passing directions qua the opening of Old Age Homes in all districts, as raised in CWP No. 1077 of 2019. However the aforesaid petition is limited to the issue of establishment of Old Age Homes. The categorical stand of the respondent no.2 and 3 therein is that the State of H.P have not notified the Central Act of 2007.

34. That the Petitioners have no other equally efficacious or speedy remedy available other than by way of filing of the present writ petition.

PRAYER

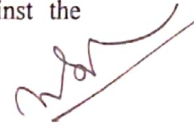
It is therefore respectfully prayed that this writ petition may kindly be allowed and this Hon'ble Court may kindly be pleased to allow this Writ Petition and may further be pleased to issue an appropriate writ, order or directions in favour of the Petitioners and against the Respondent to:-

- a) Issue an appropriate writ, order and direction in the nature of mandamus declaring the Himachal Pradesh Maintenance of Parents and Dependents Act 2001 to be repugnant to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and therefore be declared to be void in view of Article 254 (1) and (2) of the Constitution of India;
- b) In the alternative to issue an appropriate writ, order and direction in the nature of mandamus holding the Himachal Pradesh Maintenance of Parents and Dependents Act 2001 to have been expressly repealed by the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 being the exhaustive Act covering the entire field;

- c) Issue an appropriate writ order and direction in the nature of mandamus calling upon the Respondent State to forthwith notify on such appointed date, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in the Official Gazette;
- d) Issue an appropriate writ, order and direction in the nature of mandamus directing the Respondent State to make and thereafter forthwith notify the rules for carrying out the purposes of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
- e) Issue an appropriate writ order and direction in the nature of mandamus to the State Government to constitute the Maintenance Tribunal and the Appellate Tribunal as contemplated by Sections 7 and 15 of the said Act;
- f) Issue an appropriate writ, order and direction in the nature of mandamus to the State Government to appoint and designate the Maintenance Officers in terms of Section 18 of the said Act;
- g) Issue an appropriate writ order and direction in the nature of mandamus to the State Government to make provisions for medical support and care for senior citizens in terms of Section 20 of the said Act and to produce record with respect to steps taken with respect to the implementation of the National Program for the Healthcare of the Elderly;
- h) Issue an appropriate writ order and direction in the nature of mandamus, to the Respondent State to take measures for publicity, awareness etc., for welfare of senior citizens in terms of Section 21 of the said Act by all means including social media platforms.
- i) Issue directions to the Respondent State to forthwith prepare a comprehensive action plan providing for the protection of life and property of senior citizens;
- j) Direct to the Respondent no. 1 Union to place on record the directions given/ periodic review qua the welfare measures undertaken by the Central Government under the Act and the compliance, if any, effected by the respondent State;
- k) Issue an appropriate writ order and direction in the nature of mandamus to the Respondent State to make a dedicated

helpline where the senior citizens could call for any information or in case of emergency.

- l) Issue an appropriate writ order and direction in the nature of mandamus to the Respondent State to involve NGO's in the process of gathering details about old persons and raising awareness.
- m) Issue such further directions in aid of the effective implementation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
- n) Call for the records of the case from the Respondents.
- o) Allow any other relief deemed fit by this Hon'ble Court in favour of the petitioner and against the respondents in the peculiar facts and circumstances attending to the present case.
- p) Allow costs in favour of the Petitioner and against the Respondents



PETITIONER

THROUGH COUNSEL



ARJUN LALL AND SHRADHA KAROL
ADVOCATES

Place: Shimla

Dated: __.05.2020

(HIM/53/2006 AND D/2241/2013)

(Add.- 42, the Mall, SHIMLA-171002)

(+91-9418842121 and +91-9910302809)

IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

CWPIL No. of 2020

IN RE:

Ajai Kumar Srivastava

...PETITIONER

Versus

Union of India and Ors

...RESPONDENTS

AFFIDAVIT IN SUPPORT OF THE WRIT PETITION

I, Mr. Ajai Kumar Srivastava, S/o Late Shri M.S. Srivastava about 57 year,
Occupation Asst. Professor, R/o C-208 Sector 3, New Shimla, Shimla H.P.-
171009, do hereby solemnly affirm and declare on oath as under:

1. That the accompanying Petition has been prepared and drafted at my instance and under my instructions. The contents the paragraphs 1-33 of the Petition are true and correct to the best of my knowledge and upon legal advise received and no part of it is false and nothing material has been concealed there from.
2. That the Annexures P1-P4 annexed along with the Petition are true to the best of my knowledge and no part of it is false and nothing material has been concealed there from
3. That the deponent further declare that this affidavit of mine is true and correct to the best of my knowledge, no part of it is false and nothing material has been concealed there from.



DEPONENT

VERIFICATION:

I, Ajai Kumar Srivastava, above named deponent, do hereby verify on this ___ day of May 2020 at Shimla that the contents of the paragraph nos. 1 – 3 of the above-affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.



DEPONENT

(28)

IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPIL No. of 2020

IN RE:

Ajai Kumar Srivastava

...PETITIONER

Versus

Union of India and Ors

...RESPONDENTS

LIST OF DOCUMENTS



S.NO.	PARTICULARS	PAGE NO.
1.	Annexure P1- Copy of the Maintenance and Welfare of Parents and Senior Citizens Act 2007	29-36
2.	Annexure P2- Copy of The Himachal Pradesh Maintenance of Parents and Dependants Act 2001	37-50
3.	Annexure P3- Order No. 40-3/2020-DM-I(A) dated 1705.2020 issued by Ministry of Home Affairs.	51-59
4.	Annexure P4- Guidelines issued by Ministry of Health and Family Welfare Containing Updated Containment Plan for Large Outbreaks of COVID-19.	60-79


PETITIONER

THROUGH COUNSEL

Place: Shimla

Dated: __.05.2020



ARJUN LALL AND SHRADHA KAROL
ADVOCATES
(HIM/53/2006 AND D/2241/2013)
(Add.- 42, the Mall, SHIMLA-171002)
(+91-9418842121 and +91-9910302809)