



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

District: Dhule

WRIT PETITION NO. 11433 OF 2023

Devba Pauladsing Girase,
Age: 70 years, Occ: Retired,
R/o. Plot No.40-D, Shrinagar,
Behind SDM College, Shirpur,
Presently R/o Plot No.106,
Ganesh Colony, Shirpur,
Tq. And Dist. Dhule.

.....PETITIONER

VERSUS

1. Kavita Himmatsing Girase,
Age: 30 years, Occ: Business,
R/o 67-B, Bijli Nagar, Shigave Shivar,
Shigave Taluka and Dist. Dhule.
2. Himmatsing Devba Girase,
Age: 38 years, Occ: Service,
R/o Primary Health Centre,
Wakwad, Tq. Shirpur, Dist. Dhule.
3. Balubai Devba Girase,
Age: 65 years, Occ: Housewife,
R/o Plot No.106, Ganesh Colony, Shirpur,
Tq. Shirpur.
4. Bhupendra Devba Girase,
Age: 40 years, Occ: Service,
R/o Flat No.41, Saraswati Colony,
Shirpur. Tq. Shirpur, Dist. Dhule.

.....RESPONDENTS

Mr. Amol Joshi, Advocate for the Petitioner
Ms. S. T. Kazi, Advocate for Respondent no.1

CORAM : AJIT B. KADETHANKAR, J.

DATED : 13TH AUGUST, 2026

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith.

2. By consent of the parties, Writ Petition is heard for final disposal considering the nature of controversy.

3. This is an example wherein the prosecution under the benevolent legislation i.e. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for brevity, “the Act of 2007”) is placed into service not for any entitlement, but to frustrate right of Respondent no.1 acquired through a judicial pronouncement. This Court is constrained to observe that due to the proceeding in hand is an abuse of process at the behest of the Petitioner, for the reasons recorded hereinbelow:

4. **Subject Matter:**

i. Feeling aggrieved by the decision and order dated 02.12.2022 passed by the 1st Authority u/s 4 and 5 of the Act in Senior Citizen Case No. 06 of 2022; and the decision and order dated 28.03.2023 passed by the Chairman of Senior Citizens Appellate Authority @ District Collector, Dhule thereby dismissing the appeal filed by present petitioner under Section 16 of the Act of 2007, the petitioner is before this Court.

5. Facts of the case could be summarized as below:

i. Respondent no.1 is petitioner's daughter-in-law whereas respondent no.2 is petitioner's son. Respondent Nos.1 and 2 are admittedly embroiled in matrimonial discord which has resulted into several prosecutions as also civil controversies.

ii. Respondent no.1 filed a Criminal Miscellaneous Application No.515 of 2017 in the Court of learned Judicial Magistrate First Class, Shirpur under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity, "the D.V. Act"). The prosecution was against the present petitioner and the other respondents. Wife of present respondent no.4 was also arrayed as respondent in that proceeding.

iii. After hearing the parties, learned Magistrate partly allowed the petition vide judgment and order dated 10.12.2018. Accordingly, monthly maintenance of Rs.11,000/- was ordered to be paid to the applicant and her two minor daughters [M-5000/- + D1 -3000/- + D2-3000/- = 11,000/-].

At clause no.3 of the operative order, learned Magistrate directed that respondent nos.1 to 5 shall not evict the applicants from the home plot no.67-B of Bijali Nagar,

Shingave and shall not cause any kind of obstruction into their possession over plot no.67-B of Bijali Nagar [“writ house” doe brevity] without adopting due procedure of law.

iv. Feeling aggrieved by the order dated 10.12.2018, present respondent no.2, 4 and Sonali w/o present respondent no.4 have preferred Criminal Appeal No.134 of 2018 under Section 29 of the D.V. Act. After hearing the parties, learned Additional Sessions Judge partly allowed the appeal vide order dated 21.01.2022 and confirmed order dated 10.12.2018.

v. Challenge to both the orders dated 10.12.2018 and 21.01.2022 reach to this Court; however, the same came to be turned down to some extent by this Court also.

vi. As such, the directions at paragraph no.3 of judgment and order dated 10.12.2018 passed by learned Magistrate continued to hold the field even today.

vii. It appears that after suffering rejection to the challenge raised against the order dated 10.12.2018, the petitioner took recourse to Section 4 and 5 of the Act of 2007. Accordingly, an application came to be filed by the petitioner before the Sub Divisional Officer, Shirpur, which was registered as Senior Citizens Case No.6 of 2022. In the said application, a prayer

was made to direct respondent no.1 to vacate the Writ House. A further prayer is also made that respondent no.1 be prevented from obstructing the petitioner while taking possession of the Writ House. Notices were issued. The authority heard the parties and pleased to reject the application filed by the petitioner vide decision dated 02.12.2022.

viii. As against the decision and order dated 02.12.2022, the petitioner filed an appeal before the Appellate Authority @ District Collector, Dhule under Section 16 of the Act of 2007. After hearing both the parties, the Appellate Authority found that no error is committed by the first Authority. The Appellate Authority concurred with the findings recorded by the first Authority and pleased to reject the Appeal.

In view of this, the petitioner is before this Court vide the present petition.

6. Submissions:

i. Mr. Amol Joshi, learned Advocate for the petitioner would vehemently submit that the petitioner is the sole owner of the Writ House. He would submit that considering his age and the averments made in the application, the Authorities ought to have allowed his application. He would invite my

attention to the pleadings in the Writ Petition as well as to the application wherein he demonstrated the source of his title to the subject matter property. Referring to it, he would submit that for the personal reasons the Petitioner had to stay at a rented place and hence, his application was absolutely justifiable.

ii. Mr. Joshi further submits that the petitioner is no way concerned with the marital discord between his son and the daughter-in-law. He submits that the petitioner must not suffer the implications of the marital discord between his son and the daughter-in-law. Mr. Joshi further takes me to the Act of 2007 and would submit that the Act is a special enactment having been framed by the legislature with an object to secure life and the well being of senior citizens.

iii. learned advocate for the petitioner would then submit that the petitioner has no source of income and somehow he is managing his rent at the place where he is now residing. With this, Mr. Joshi, learned Advocate for the petitioner prays to allow the petition.

iv. Mrs. S. T. Kazi, learned Advocate for respondent no.1 would oppose the petition. Her submission is that it is nothing but to frustrate the order passed by learned Magistrate under

Section 12 of the Domestic Violence Act, the present proceedings have been filed by the petitioner. She would submit that the petitioner has suffered rejection to his challenges against the order passed by Magistrate. That, hence the Authorities are absolutely justified in passing the impugned orders. Mrs. Kazi concludes her argument with submission that if the Writ Petition is allowed, it will frustrate the very spirit of the orders passed by learned Magistrate and the order passed by this Court by which the order is upheld.

7. Observations and conclusion:

i. I have heard both the learned Advocates at length. It is an undisputed fact that there is a marital dispute between the son and daughter-in-law of the petitioner. The dispute has resulted into various litigations not only between the husband and wife but has also involved the other family members too. The order passed by learned Magistrate under Section 12 of the D.V. Act was after hearing the parties. After considering all the facts on record, the said order dated 10.12.2018 was passed. It is also a matter of record that the challenges raised by the petitioner to the order passed by learned Magistrate are turned down even by this Court. As such, directions issued

under Section 12 of the D.V. Act hold the field and have not been set aside by any higher/Appellate Court.

ii. Now, coming to the proceeding instituted by the petitioner under the Act of 2007 is concerned, it would be necessary to refer to the statement of object and reasons [“SOR”] of the Act in the peculiar circumstances of the fact. The SOR of the Act reads thus:

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 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.

4. The Bill seeks to achieve the above objectives

iii. In short, the legislature has enacted the special enactment to support the senior citizens and for maintenance and welfare of parents and the senior citizens. Section 4 of the Act of 2007 reads thus:

4. (1) A senior citizen including parents who is unable to maintenance 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) parents 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 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.

iv. In the light of this, I have gone through the pleadings of the petitioner which he has raised before the first Authority under the Act of 2007. The title clause of the said application shows that the petitioner is residing at plot/house no.106, Ganesh Colony, Shirpur, Tq. Shirpur, Dist. Dhule. It is fairly agreed by the petitioner before me that the said property is also self earned and absolute property of the petitioner.

v. The contents of the application further show that the petitioner left the Writ House on account of the threats given by respondent no.1 and started living at plot no.40-B, Shirpur which is owned by one Mr. L. P. Kulkarni. It is further submitted that the petitioner is residing over there on rent basis. Thus it is abundantly clear that although, the Writ House might be Petitioner's self acquired property, still fact remains that he has also another own house where he resides as per the title clause of the applications and the present petition.

vi. Although the authorities below have discussed on the controversy as to whether the Writ House is the absolute/self earned property of the petitioner or not; in my opinion it is not much material to decide the present Writ Petition. Fact remains that the petitioner has atleast more than one owned properties at Shirpur. The reason mentioned by the petitioner that for his personal reasons he has shifted to a rental premises is not at all justifiable. On one hand the Petitioner says that apprehended by the threats at the behest of the Respondent no.1 he had to leave the Writ House; and on another hand he says that he left his another own house situated at Ganeshnagar on account of his personal reason.

vii. The proceedings nowhere show as to why the petitioner has made such averment that he has left his own premises and is residing in a rental premises. Even the entire set of documents produced before me, and the pleadings do not show any evidence showing that the petitioner is residing on rental basis in the premises of the said Mr. L. P. Kulkarni. Mere allegation that due to threatening by Respondent no.1, the Petitioner had to leave the Writ House is of no avail to the Petitioner. It is apparent that this is a cooked story.

viii. The prayer clause-A of Petitioner's application makes the object and intention of the petitioner very clear. An order is sought that the respondent no.1 be directed to vacate the Writ House and possession be handed over to him under police protection; with further injunction against respondent no.1 that she should not create any objection while delivering the possession. The prayer is nothing but an attempt to circumvent the judicial orders of protection to the Respondent no.1 and her minor daughters granted by learned Magistrate vide order dated 10.12.2018 in the proceedings under Section 12 of the D.V. Act.

ix. At this juncture, a profitable reference can be made to the latest pronouncement by the Honorable Supreme Court in a case reported as ***S. Vanitha v. M. Vannankutty (2021) 15 SCC 730***. A bench comprising Three Judges of the Supreme Court observed at para 37 thus:

37. The above extract indicates that a significant object of the legislation is to provide for and recognise the rights of women to secure housing and to recognise the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act, 2007 to have an overriding force and effect in all situations, irrespective of

competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act, 2005, would defeat the object and purpose which Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act, 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act, 2007.

Needless to mention, Petitioner's case is perfectly within the teeth of the law laid down in ***S. Vanitha'*** case (supra).

x. Looking to the facts of the case, the record and conduct of the petitioner, I am of the considered view that the present proceedings initiated by the petitioner are not at all bonafide . To frustrate the claims raised by his daughter-in-law and two minor granddaughters, the present proceedings seem to have lodged by the petitioner. Certainly, the object of the legislation in the Act of 2007 does not prescribe for this. In the light of the above discussion, I must observe that the proceeding under the 2007 Act can not be termed "*due procedure of law*" in the context of the learned Magistrate in his order dated 08.12.2018 at clause 3 of the operative order.

Conclusion:

- i. In view of this, I find that both the authorities under the Act have rightly passed the impugned orders and there is no error in those orders. It must be borne in mind that the proceedings under such benevolent legislation must be prosecuted bonafidely, with a bonafide intention, and for a bonafide object. The protection awarded u/s 4 r/w 5 of the Act of 2007 must not be used as a weapon. In this context , the right under the 2007 Act is not absolutely unfettered. The provisions cannot be used to frustrate the orders passed by the competent Courts or to harass the party who is otherwise protected by a judicial order under other legislature. I have also observed that the present proceeding is a proxy petition which is raised at the behest of petitioner's son. This court strongly deprecates such practice and procedure; and finds that the 1st authority and the Appellate authority under the 2007 acts have rightly refused to subscribe to the case sought to set up by the Petitioner.
- ii. In view of this, I deem it appropriate to dismiss the Writ Petition with exemplary costs. Hence, I pass the following order:

ORDER

- a. Writ Petition stands dismissed with costs of Rs.50,000/-
- b. The cost be paid in this Court within a period of two months from today. If not deposited, the same shall be recovered as land revenue.
- c. Upon deposit of the cost, the registry shall allow the Respondent no.1 to withdraw the entire cost amount for herself and her two minor daughters, by drawing a cheque in the name of the Respondent no.1 or by electronically transmitting the entire cost amount to the account of Respondent no.1.
- d. Rule stands discharged.

(AJIT B. KADETHANKAR, J.)