



2026:AHC:179396-DB

## HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 20540 of 2026

Shyamji Shukla

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

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|---------------------------|-------------------------------------------------------------------------------------------|
| Counsel for Petitioner(s) | : Mr. Karan Prakash Tiwari, Advocate                                                      |
| Counsel for Respondent(s) | : Mr. Sanjay Kumar Ray, Standing Counsel for respondents nos. 1 to 5                      |
|                           | Mr. Arun Kumar, Advocate for Mr. Rajesh Srivastava, Advocate for respondents nos. 6 and 7 |

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A.F.R.  
**RESERVED**

**Court No. - 2**

**HON'BLE J.J. MUNIR, J.**  
**HON'BLE INDRAJEET SHUKLA, J.**

**(DELIVERED BY : INDRAJEET SHUKLA, J.)**

Heard Mr. Karn Prakash Tiwari, learned Counsel for the petitioner, Mr. Sanjay Kumar Ray, learned Standing Counsel for respondent nos. 1 to 5 and Mr. Arun Kumar, Advocate holding brief of Mr. Rajesh Srivastava, learned Counsel for respondent nos. 6 and 7.

2. Jurisdiction of this Court under Article 226 of the Constitution has been invoked by petitioner, challenging the validity and correctness of

order 13.01.2026 passed by respondent no. 2 carried in Annexure No. 7 to this petition, whereby, the relief of eviction against respondent nos. 6 and 7, who happen to be the son and daughter-in-law of petitioner, has been refused from residential accommodation bearing House No. 34, P Block Yashodanagar Police Station Sen Paschimpara, District Kanpur Nagar. The property is claimed by the petitioner to be his own acquisition. The reliefs claimed by petitioner *verbatim* is reproduced as under :

i. Issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 13.01.2026 passed by Respondent No. 2 to the extent the relief claimed by the petitioner for eviction of respondent no.6 and 7 from house in question has been denied.

ii. Issue a writ, order, or direction in the nature of mandamus commanding and directing the Respondent No.2 for allowing the petitioner's application dated 13.09.2024 under the Act of 2007, in totality.

Iii. Issue a writ, order, or direction in the nature of mandamus commanding and directing the Respondent No.3 for taking suitable action to protect petitioner's life and property.

iv. Issue a writ, order, or direction in the nature of mandamus commanding and directing the Respondent no.4 and 5 to provide all requisite assistance for implementing the order dated 13.01.2026 passed by respondent no.2 so that the petitioner's life and property may get protected.

3. The factual matrix, as emerges from pleadings necessary for adjudication of the cause between parties, is being recapitulated as under :

Respondent no. 6, Piyush Shukla (son) and respondent no. 7, Smt. Preeti Shukla (daughter-in-law) of petitioner are sharing same household/accommodation, which is claimed to be self-acquired property of petitioner. The petitioner imputes atrocities, abuses and misbehaviour to the private respondents. The petitioner moved an application under Sections 5 and 22 of the Maintenance and Welfare of Parents and senior

Citizens Act, 2007<sup>1</sup>, seeking relief of eviction before Tribunal constituted under the Act, 2007 presided over by the Sub Divisional Magistrate, Tahsil Sadar, District Kanpur Nagar, on the ground that his life and property, due to nuisance and mischief caused by private respondents, are in danger.

4. Parties exchanged their pleadings before the Tribunal raising allegation and counter allegation against each other.

5. Respondent no. 7, in her own independent right, instituted a case under the provisions of Section 12 of Protection of Women from Domestic Violence Act, 2005<sup>2</sup> in the Court of Additional Chief Judicial Magistrate-I, Kanpur Nagar on 06.02.2025. The proceedings of said case is pending adjudication.

6. In the meantime, the Tribunal concluded the proceedings under Act, 2007 *vide* order 13.01.2026 passed by the Joint Magistrate/Sub Divisional Officer, Sadar, Kanpur Nagar by partly allowing the claim of petitioner, protecting his life and limb. The police of Sen Paschim Para Commissionerate, Kanpur Nagar have been directed to protect the life and property of petitioner from being violated at the hands of respondent nos. 6 and 7. But, the relief of eviction has been refused. Aggrieved by the

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1 'Act, 2007' for short

2 'Act, 2005' for short

refusal of eviction against respondent nos. 6 and 7, the instant writ petition has been instituted.

7. Refuting the pleadings, respondent no. 6 and 7 filed a joint counter affidavit, asserting therein that due to non-fulfillment of the demand of dowry, proceedings under Act, 2007 have been resorted to. Further reliance has been placed on a compromise executed between the parties, which has been denied by petitioner. Respondent nos. 6 and 7 denied misbehaviour, threat, causing any coercion to petitioner and pleaded that they are victim of hostile discrimination as the petitioner, being the father, is siding with his younger son. The house in question is a **‘shared household’** within meaning of Section 2(s) of the Act, 2005, and as such, at least respondent no. 7 may not be evicted from the house in question. The Tribunal lacks the competence to exercise the jurisdiction in question, at least, so far against respondent no. 7, being the daughter in law is concerned.

8. Learned Counsel for the petitioner laid much emphasis upon the fact that the house in question is a self-acquired property, relating to which, house tax, electricity bills etc. are being borne by petitioner. The State has also filed a counter affidavit, laying much emphasis that in view of judgment of this Court at Lucknow, in Writ - C No. 30835 of 2021, decided on 31.05.2022, as well as the judgment and order in Writ Petition No. 23223 of 2019, Swaraj Varun and others v. State of U.P., decided on 21.10.2020, it has categorically been held that the Tribunal constituted

under the Act, 2007 is not vested with the power to order eviction of any person from the property of senior citizen. Thus, the order passed by Tribunal is legally sound.

### SUBMISSIONS OF COUNSEL FOR THE PETITIONER

9. The learned Counsel for petitioner strenuously urged that the Tribunal has the authority to order eviction if it is necessary and expedient to ensure the maintenance and protection of senior citizens or parents, particularly, if it is an incident of enforcement of right to maintenance and protection.

10. Further reliance has been placed upon the judgment of the Supreme Court in the case of **Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District and others**<sup>3</sup>, particularly para no. 17, which reads :

17. The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a 'right to receive maintenance out of an estate' and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. **The Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection.** However, this remedy can be granted only after advertent to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was

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3 (2021) 15 SCC 370

sought of the daughter-in-law, i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favor of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father- Fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the on-going matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.”

11. The learned Counsel for the petitioner invited our attention to the judgment of the Supreme Court in **Kamla Kant Mishra v. Additional Collector and others**<sup>4</sup>, where the Supreme Court has held that the “Tribunal is well within its powers to order eviction of child or a relative from the property of a senior citizen, when there is a breach of the obligation to maintain the senior citizen”.

12. Lastly, reliance has been placed on a judgment of the Bombay High Court in **Bholenath Mevalal Nishad v. Shyamdulari Mevalal Nishad and others**<sup>5</sup>, emphasising para no. 41, which reads :

41. I am, thus, of the considered view that it cannot be laid down as an immutable and absolute rule of law that the application for eviction simplicitor sans the prayer for monetary maintenance is not maintainable, even when the senior citizen claims that she has been dispossessed of her property or she requires the property to generate income out of the said property to lead a normal life. To hold otherwise, would amount to defeating the very objective of the Act, 2007.

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4 2025 SCC OnLine SC 2077

5 2026:BHC-AS:11142 WP

### SUBMISSIONS OF COUNSEL FOR THE RESPONDENTS

13. The learned Counsel for respondents submitted with vehemence that the entire exercise undertaken by petitioner is motivated to oust respondent nos. 6 and 7, under the influence of his younger son. The further submission is that respondent no. 7, being a daughter-in-law, cannot be evicted from her ‘**shared household**’, in view of protection offered by Section 17 of Act, 2005.

14. In asserting the rights under Section 17 of Act, 2005 the respondents relied upon the authority of the Supreme Court in **Satish Chandra Ahuja v. Sneha Ahuja**<sup>6</sup>. In sum and substance, it has been urged that Authorities constituted under Act, 2007 have no jurisdiction to order eviction of the respondents, more particularly, respondent no. 7.

### ANALYSIS AND REASONING

15. Now, the question arises whether the Tribunal constituted under Act, 2007 has simplicitor jurisdiction to evict under Chapter V of the Act or it is to be followed by some contingency of maintenance in favour of a senior citizen and protection of his/her life.

16. In the judgment of the Supreme Court in the case of **Ravi Kant Gupta** (*supra*), it has been held that the Tribunal under the Act enjoys the authority and power to pass an order of eviction, the only caveat is if it is

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6 AIR Online 2020 SC 784

expedient to ensure the maintenance and protection of senior citizens or a parent. The eviction would be an incident to enforcement of the rights to maintenance or protection.

17. Similarly, in case of **Kamla Kant Mishra** (*supra*), the Supreme Court, while relying upon its earlier dictum in the case **Smt. S. Vanitha** (*supra*) has held that the Tribunal is well within its power to order eviction of a child or relative from the property of a senior citizen, when there is a breach of the obligation to maintain the senior citizen, more so, when the senior citizen's right to residence itself is under jeopardy. The relevant excerpts are reproduced below :

4.8. The High Court vide order dated 25.04.2025 allowed the petition observing that the Tribunal does not have the jurisdiction to pass an order for vacation of the property against a senior citizen.

7. The framework of the Act clearly notes that the law was enacted to address the plight of older persons, for their care and protection. Being a welfare legislation, its provisions must be construed liberally so as to advance its beneficent purpose. This Court on several occasions has observed that the Tribunal is well within its powers to order eviction of a child or a relative from the property of a senior citizen, when there is a breach of the obligation to maintain the senior citizen. In the present case, despite being financially stable, the respondent has acted in breach of his statutory obligations in not allowing the appellant to reside in the properties owned by him, thereby frustrating the very object of the Act. High Court fell in error in allowing the writ petition on a completely untenable ground.

(emphasis added)

18. The Supreme Court in the case of **Smt. S. Vanitha** (*supra*) considered the interplay of Act, 2007 and Act, 2005 and harmonised competing interests under aforesaid statutes. The proceedings under Act, 2007 may not prove as an innovative device to oust the beneficiaries of



Act, 2005 as the daughter-in-law has an inherent right to live on the ‘**shared household**’, which was recognised by the Supreme Court in case of **Satish Chandra Ahuja** (*supra*).

19. It is beyond cavil that Act, 2007 does not contain an express provision, enabling the Tribunal to pass eviction orders. Such power can only be inferred and jurisdiction assumed as an incident to rights of maintenance and protection the Senior citizen or parent. The remedial measures for protecting the life and property of senior citizens may, in the fitness of factual matrix, require an order of eviction, but that too, for ensuring protection of life and limb of an elderly person. Maintenance is defined under the Act, 2007 which includes food, clothing, residence, medical assistance and treatment. The right to **residence** includes right to residence with dignity.

20. The power and jurisdiction to order eviction was examined by the Supreme Court in the case of **Smt. S. Vanitha** (*supra*) with respect to the statutory prescription contained under sub-Section (2) of Section 23, particularly, in para no. 17, and the power/jurisdiction to ensure protection of life and limb and incidental relief of eviction to protect such rights were not considered by the Supreme Court in case of **Smt. S. Vanitha** (*supra*), being not the subject matter there, which has later on been clarified subsequently in **Ravi Kant Gupta** (*supra*), and for a very limited purpose, the jurisdiction of the Tribunal to order eviction has been recognised, that is if it is an incidental measure.

21. Though, the Full Bench decision of this Court in **Onkar Nath Gaur and another v. District Magistrate/President Appellate Tribunal, Lko. and others**<sup>7</sup> was not cited by the parties, but, being cognizant of the said decision, it is apposite to consider the ratio of same, for coming to a definite conclusion. The relevant remarks of the Full Bench in **Onkar Nath Gaur** (*supra*) are reproduced below :

1. Questions of seminal importance arising from The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act of 2007") are the subject matter of consideration of this Full Bench.

6. It is in the aforesaid backdrop that the following questions have been referred for consideration of this Full Bench:-

"(i) What is the true scope and powers of the maintenance Tribunal constituted under Section 7 of the Act of 2007 which is contained in Chapter-II of the Act of 2007 and whether the Tribunal in exercise of its power in context with Sections 7, 8 and 9 of the Act of 2007 would be empowered to pass an order of eviction while deciding an application preferred before it in terms of Section 5 of the Act of 2007?

(ii) What would be the true scope and power of the District Magistrate who exercises power as an Appellate Tribunal in terms of Sections 15 and 16 of the Act of 2016 [sic] and whether in exercise of such powers the Appellate Tribunal can pass an order of eviction?

(iii) What is the true scope of Section 21 of the Act of 2007 which deals with protection of life and property of senior citizen which is contained in Chapter-V of the Act of 2007 and to what extent the Authority can pass an order for adjudging certain transfers as void in terms of Section 23 of the Act of 2007 vis-a-vis the duties and powers of the District Magistrate conferred under Rules 21 and 22 of Rules of 2014 and in this context whether the orders for eviction can be passed?

(iv) Whether the Division Bench in Ms. Swarj Verma (Supra) (sic) and Bipraji Singh (Supra)

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<sup>7</sup> 2025:AHC-LKO:31522-FB

**lays down correct law or whether the law laid down by the Division Bench in Shivani Verma (Supra) lays down the correct law?"**

13. The learned counsel for the petitioners further submitted that the Apex Court in **S. Vanitha Vs. Deputy Commissioner, Bengaluru; 2021 (15) SCC 730** while considering the interplay between the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act of 2005") and considering the Act of 2007 held that the two Acts and their provisions have to be harmoniously construed and in certain circumstances, the power of eviction which lies in the hands of the Tribunal, can be exercised by it.

18. It was lastly urged that the later Division Bench decision of this Court in **Shivani Verma (Supra)** noticed the entire scheme of the Act and the Rules including the word 'maintenance' which includes the right of residence. It also noticed the impact and import of the decision of the Apex Court in **S. Vanitha (Supra)** and thus after taking an over all view, it has rightly concluded that to provide the right of residence/maintenance to the senior citizen/parent, if an order of eviction is required, then the same can be validly passed.

21. It has further been submitted that the Apex Court in **S. Vanitha (Supra)** had recognized the power of the Tribunal to pass an eviction order in compelling circumstances and the only caveat which is required to be exercised is that the Tribunal or the District Magistrate, as the case may be, must be satisfied and must record reasons relating to the existence of compelling circumstances which requires passing of such an order by recording its satisfaction that in case if such an order is not passed then it would deprive the senior citizen of his right to enjoy his property with dignity and peace.

26. These issues were becoming a challenge for the society, hence, in order to address such concerns, the Act of 2007 came into being. It provides for creation of a Maintenance Tribunal which is required to consider the issue of maintenance as defined in Section 2 (b) of the Act of 2007 but such a Tribunal has not been vested with any power to pass an order of eviction.

38. Since the power of eviction has not been specifically provided in the Act of 2007 nor in the Rules of 2014, hence, such powers cannot be exercised either by the Tribunal, Appellate Tribunal or the District Magistrate. Thus the view expressed by the Division Bench in **Shivani Verma (Supra)** may not be in consonance with the provisions of the Act of 2007 and the Rules of 2014.

41. For the sake of convenience, the questions no. (i) and (ii) are being reproduced hereinafter:-

“(i) What is the true scope and powers of the maintenance Tribunal constituted under Section 7 of the Act of 2007 which is contained in Chapter-II of the Act of 2007 and whether the Tribunal in exercise of its power in context with Sections 7, 8 and 9 of the Act of 2007 would be empowered to pass an order of eviction while deciding an application preferred before it in terms of Section 5 of the Act of 2007?

(ii) What would be the true scope and power of the District Magistrate who exercises power as an Appellate Tribunal in terms of Sections 15 and 16 of the Act of 2016 (sic) and whether in exercise of such powers the Appellate Tribunal can pass an order of eviction?."

**77.** From the reading of entire Section 16 of the Act of 2007, it does not indicate that any special power is conferred on the Appellate Tribunal to pass any order of eviction. The power of appeal to be exercised by the Appellate Tribunal is necessary to scrutinize the correctness of the order of Maintenance Tribunal. In the Act of 2007, if the Maintenance Tribunal is not empowered to pass an order of eviction then as a fortiori, the Appellate Tribunal also cannot pass any order of eviction. Significantly, there is no such indication in the Act of 2007, or even in the Rules, 14, 15 and 16 of the Rules of 2014 which may lead or give a hint of conferring such powers to order eviction upon the Appellate Tribunal.

**97.** Thereafter another decision of the Apex Court came in **Rajeshwar Prasad Rao Vs. State of Bihar: 2025 Live Law (SC) 418** where the right to issue an order of eviction in certain circumstances has been recognized and the relevant portion reads as under:-

"10. As far as the authority of Tribunal under the Act to order eviction is concerned, this court in *S Vanitha v Deputy Commissioner Bengaluru Urban Disincr & Ors*<sup>4</sup>, specifically held that the Tribunal under the Act has the authority to order eviction to ensure the maintenance and protection of the senior citizens. This case involved a similar challenge to the order of eviction by daughter-in-law. The relevant paragraph (Para 25) from the case is extracted below:

"25. The substance of sub-section (2) of Section 23, as submitted by the second and third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction 4 (2021) 15 SCC 730. SLP(CIVIL) NO.7675/2024 Page 10 of 12 of the appellant who is their daughter-in-law.

According to the submission, the power to order eviction is implicit in the provision guaranteeing a "right to receive maintenance out of an estate" and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act, 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law i.e. the appellant. The land, where the house has

been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in SLP(CIVIL) NO.7675/2024 Page 11 of 12 turn, executed a gift deed in favour of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father, fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the ongoing matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.

11. Furthermore, the counsels for Appellant have rightly pointed out Rule 21 (2) (i) of the Bihar Senior Citizens Rules, 2012 which specifically provides that it is the duty of the District Magistrate to ensure that the life and property of the senior citizens are protected and they are able to live with security and dignity. The present Appellant is 75 year old. It shall be a defeat of the purpose of the Act if Appellant is not granted the benefit of eviction against his son and daughter-in-law who have not only encroached his self-acquired property but also threatened him of false criminal complaints, abusing and creating hurdles in running of the Rest House and thereby causing mental and physical harassment to old parents."

However, with utmost respect, the said decision of the Apex Court is based on its own facts emerging from the State of Bihar, whereas the case of **Samtola Devi (Supra)** arises from the State of U.P. wherein, the learned Single Judge of the High Court (**in Krishna Kumar Vs. State of U.P.; 2023 SCC OnLine All 645**) had held that Tribunal under Chapter II could not order an eviction simplicitor. Even though the said cases have been decided on its own facts and they do not conclusively hold whether the Maintenance Tribunal, Appellate Tribunal or the Authority under the Act of 2007 have powers to order an eviction or not but **Samtola Devi (Supra)** is the closest decision of the Apex Court which holds that the Maintenance Tribunal/Appellate Tribunal do not have powers to order eviction.

99. For the aforesaid reasons, this Court is of the clear view that no such power of eviction has been conferred either on the Maintenance Tribunal or the Appellate Tribunal in the Act of 2007 or in terms of Rules of 2014, hence, no order of eviction can be passed by the Maintenance Tribunal or the Appellate Tribunal in exercise of its powers in terms of Section 7, 8 and 9 of the Act of 2007.

**100.** Thus, the questions nos. **(i) and (ii)** are answered accordingly.

**103.** Now, its time to consider question no. (iii) which is being reproduced for the purpose of recapitulation:-

(iii) What is the true scope of Section 21 of the Act of 2007 which deals with protection of life and property of senior citizen which is contained in Chapter-V of the Act of 2007 and to what extent the Authority can pass an order for adjudging certain transfers as void in terms of Section 23 of the Act of 2007 vis-a-vis the duties and powers of the District Magistrate conferred under Rules 21 and 22 of Rules of 2014 and in this context whether the orders for eviction can be passed.

**116.** Having said that, this Court does not find that there is any indication in any provision or rule which creates or confers special powers to take such action and pass an order of eviction against any third party or a person who may be living with the senior citizen or in the premises belonging to the senior citizen. The duties as provided in Rule 21 and Rule 22 is primarily for strengthening and securing the social fabric to provide a protected stress free environment for the senior citizen and certainly not to create a forum or conferring special powers to evict any person irrespective of the right and obligation of such a party whose presence or possession may be adverse to that of a senior citizen.

**150.** The court may be tempted to read something into the Act by invoking the doctrine of Casus Omissus but even to do so even in a social beneficial legislation, while taking an approach of purposive interpretation, there are guidelines and unless the said guidelines are attracted, the court under the cloak of exercising the power of interpretation is not empowered to re-write the law. In **Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323**, the Apex Court has held as under:-

“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as more than five years and as more than four years” in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony

and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries, (1990) 2 SCC 378 , Mangilal v. Suganchand Rathi AIR 1965 SC 101 , Sri Ram Ram Narain Medhi v. State of Bombay, AIR 1959 SC 459 , Hira Devi (Smt) v. District Board, Shahjahanpur (1952) 2 SCC 154 , Nalinakhya Bysack v. Shyam Sunder Halder (1953) 1 SCC 167 , Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593, G. Narayanaswami v. G. Pannerselvam (1972) 3 SCC 717 , N.S. Vardachari v. G. Vasantha Pai (1972) 2 SCC 594 , Union of India v. Sankal Chand Himatlal Sheth (1977) 4 SCC 193 and CST v. Auriaya Chamber of Commerce, Allahabad (1986) 3 SCC 50 . Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

**151. In Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, (2004) 6 SCC 672,** the Apex Court has held as under:-

"17. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse [(1997) 6 SCC 312 : AIR 1998 SC 74] .) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner [(1846) 6 Moo PC 1 : 4 MIA 179] , courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel [(1998) 3 SCC 234 : 1998 SCC (Cri) 737 : JT (1998) 2 SC 253] .) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd. [(1978) 1 All ER 948 : (1978) 1 WLR 231 (HL)] ] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. v. Evans [1910 AC 444 : 79 LJKB 954 (HL)] quoted in Jumma Masjid v. Kodimaniandra Deviah [AIR 1962 SC 847].)

18. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed

with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage* [218 FR 547] .) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* [(1990) 1 SCC 277 : AIR 1990 SC 981] (SCC p. 284, para 16).

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [(1977) 2 SCC 273 : AIR 1977 SC 842] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

20. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST v. Popular Trading Co.* [(2000) 5 SCC 511] ) The legislative casus omissus cannot be supplied by judicial interpretative process.

21. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."]

22. It is then true that,

"when the words of a law extend not to an



inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt”.

“But”, on the other hand, “it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom” (see *Fenton v. Hampton* [(1858) 11 Moo PC 347 : 6 WR 341] ). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - casus omissus et oblivioni datus dispositioni communis juris relinquitur; “casus omissus”, observed Buller, J. in *Jones v. Smart* [(1785) 1 TR 44 : 99 ER 963] (ER p. 967), “can in no case be supplied by a court of law, for that would be to make laws”.

23. The golden rule for construing wills, statutes and, in fact, all written instruments has been thus stated:

“The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further” (see *Grey v. Pearson* [(1857) 6 HL Cas 61 : 26 LJ Ch 473]).

The latter part of this “golden rule” must, however, be applied with much caution. “If”, remarked Jervis, C.J.,

the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied, where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely, because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning”. (See *Abley v. Dale* [(1851) 11 CB 378 : 138 ER 519] , ER p. 525.)”

**152.** Once, the legislature while framing the Act and the Rules has not conferred such powers of eviction nor there is any indication that such powers have been conferred either in the action plan then in such circumstances, it will not be appropriate for this Court to read something into the Act and invest an Authority or Tribunal with

limited jurisdiction with certain powers which the legislature in its wisdom had consciously excluded from the domain of such Authority or Tribunal.

159. Thus, for all the aforesaid reasons, this Court opines that the powers exercised in terms of Section 21 of the Act of 2007 or in terms of Rule 21 and 22 of the Rules of 2014 cannot include passing of an order of eviction except as explained above, where Section 23 of the Act of 2007 applies.

**G. Summary and Answers to the Questions Referred:-**

160. In light of the detailed discussions hereinabove we summarize and answer the reference as under:-

**Questions (i) and (ii)**

The Maintenance Tribunal constituted under Section 7 of the Act of 2007 in exercise of its power under Sections 7, 8 and 9 are not empowered to pass an order of eviction while deciding an application before it in terms of Section 5 of the Act of 2007. The Appellate Tribunal in terms of Section 15 and 16 of the Act of 2007 is also not conferred with the power to order an eviction except where in an appeal the Appellate Tribunal allows the prayer of the senior citizen/parent arising out of the plea of Section 23 of the Act of 2007.

**Question No. (iii)**

Considering the scope of Section 21 of the Act of 2007, the Authority is not competent to pass an order of eviction as Section 21 and the Rules 21 and 22 of the Rules of 2014 do not confer any power of eviction on the District Magistrate. However, the Maintenance Tribunal/Appellate Tribunal only in cases covered by Section 23 of the Act of 2007, after it holds a document/instrument to be void then as a concomitant exercising its restitutionary powers can revert back the possession to the senior citizen/parent.

**Question No. (iv)**

In response to Question No. (iv), we find that the decision rendered by the Division Bench in **Shivani Verma (Supra)** does not lay down the correct law and accordingly, it is overruled. The decision of the Division Bench in **Swaraj Varun (Supra)** and **Bipraji Singh (Supra)** in so far as they hold that the power of eviction is not conferred on the Maintenance Tribunal and the Appellate Tribunal or the District Magistrate is upheld with a modification that it is subject to the exception where a case is covered by Section 23 of the Act of 2007 and a document is declared void then the Maintenance Tribunal/ Appellate Tribunal while exercising its restitutionary powers may in a given case, where required, may restore/ handover the possession to the senior citizen/parent.

22. The judgment of the Supreme Court in the case of **Ravi Kant Gupta v. State of U.P. and others**<sup>8</sup>, decided on 04.08.2026, sheds light on

competence of Tribunal to order eviction. The relevant observations are reproduced herein below :

6. The son and the wife preferred an appeal under Section 16 of the Act before the District Magistrate. The District Magistrate by an order dated 09.08.2023, affirmed the order passed by the SDM and ordered the son and the wife to handover the possession of the premises to the appellant. The son and the wife, thereafter, approached the High Court by way of filing a writ petition namely, Writ-C No. 8139 of 2023. The High Court on 06.10.2023 noted that learned Single Judge has held that the Act did not empower the authorities to pass an order of eviction. Accordingly, the High Court quashed the orders dated 15.11.2022 and 09.08.2023 and allowed the writ petition.

9. The measure of a civilized society is often reflected in the dignity, respect and security it affords to its elderly. Across cultures, religions, and civilizations, senior citizens have been regarded not merely as dependents requiring care, but as repositories of wisdom, experience, and collective memory whose guidance enriches families and society alike. Article 21 of the Constitution as interpreted by this Court and Article 41 of the Constitution envisage a social order that protects the vulnerable and enables every individual to live with dignity throughout the course of life. This commitment finds statutory expression in the Act, enacted to ensure that advancing age does not become synonymous with neglect, insecurity, or indignity. In light of the aforesaid constitutional mandate, the Parliament has enacted the Act. The provisions of the Act incorporate the values deeply rooted in our country's civilizational ethos which revere the mother and the father as divine. The Act is intended to provide a speedy remedy for the senior citizen.

**10. Under Section 7 of the Act, the tribunals have been constituted which have power under Section 8 of the Act to conduct an inquiry following a summary procedure with powers of a Civil Court. Section 27 of the Act explicitly bars the jurisdiction of the Civil Courts. It is a well-settled legal proposition that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution<sup>3</sup>. On this analogy, we have no hesitation in holding that the tribunal under the Act has power to order eviction in order to ensure the maintenance or protection of a senior citizen.**

11. It is noteworthy that a three-Judge Bench of this Court, while dealing with claims arising out of the provisions of the Act and the Protection of Women from Domestic Violence Act, 2005 held that the tribunal under the Act may have the authority to order an eviction if it is necessary and expedient to ensure the maintenance and protection of a senior citizen or a parent. It was further held that eviction would be an incident of enforcement of right to maintenance and protection. Taking into account the aforesaid observations, a two-Judge Bench of this Court, held that tribunal under the Act may order eviction

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if it is necessary and expedient to ensure the protection of senior citizens. Another two-Judge Bench of this Court reiterated the same view.

(emphasis added)

23. There is no doubt that the Full Bench decision of this Court in case of **Onkar Nath Gaur** (*supra*) recognises the power of the Tribunal to evict in the exercise of power under Section 23 of Act, 2007, where the conveyance/title deed, if found void or is cancelled due to non-compliance of consideration of maintenance, protection and failure to provide basic amenities to the elderly persons, who executed the deed, the order of eviction is nevertheless incidental to such proceedings. But, in the judgment of the Supreme Court in **Ravi Kant Gupta** (*supra*), the scope of eviction has not been restricted to the inquiry contemplated under Section 23 of Act, 2007 and the horizons of eviction stand extended by interpreting scope of Sections 7, 8 and 27 of the Act in paragraph no. 10, which unequivocally mentions that where an act confers jurisdiction, it implies also grant of the power of doing all such acts, or employing such means as essential to its execution. On this analogy, the Supreme Court further held that the Tribunal under the Act has power to order eviction in order to ensure maintenance or protection of a senior citizen.

(Emphasis added by us)

24. Thus, going by the dictum of the Supreme Court in case of **Ravi Kant Gupta** (*supra*), it comes out that the power of eviction of Tribunal stands recognised, subject to caveat that if it is a matter of maintenance or

protection of a senior citizen and passing of such order is expedient for protection of senior citizen, including his/her health, limb and life, the holistic view adopted, as aforesaid, by the Supreme Court, would make the provisions of Act, 2007 more meaningful, effective and justice-oriented.

**25.** According to Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The expression “all Courts” means Courts other than the Supreme Court. The decision of the Supreme Court is binding on all the High Courts. In other words, High Court cannot hold the law laid down by the Supreme Court as not binding on the ground that the relevant provisions were not brought to the notice of the Supreme Court, or, the Supreme Court laid down the legal position without considering all points. The decision of the Supreme Court binds as much in the pending cases as the future ones. Even directions issued by the Supreme Court in a decision constitute binding law under Article 141.

**26.** We are privileged to be guided by authoritative pronouncement by the Supreme Court on the question of *judicial precedent (stare decisis)* in **Director of Settlements, A.P. and others v. M.R. Apparao and another**<sup>9</sup>.

The relevant remarks read :

16. So far as the second question is concerned, it is no doubt true that the judgment of the Andhra Pradesh High Court in favour of the respondents, not having been challenged, has reached finality. The High Court in the

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9 (2002) 4 SCC 638

aforesaid two cases, following the reasoning and conclusion of the earlier decision in *Venkatagiri* case in Writ Petition No. 4709 of 1970 dated 22-9-1971 issued a writ of mandamus to make payments to the petitioners in accordance with law laid down in Writ Petition No. 4709 of 1970 dated 22-9-1971. Notwithstanding the aforesaid direction in favour of the respondents in Writ Petitions Nos. 3293 and 3294 of 1975, interim payments not having been made, the respondents approached the High Court again, by filing a fresh writ petition, which was registered as Writ Petition No. 730 of 1978. The High Court disposed of the matter on 28-3-1978, directing the State to implement the earlier order dated 7-6-1977 within a month from the date of the said order. Yet, no interim payments had been made and in the meantime, the Supreme Court reversed the judgment of the Andhra Pradesh High Court in *Venkatagiri* case in CAs Nos. 398 and 1385 of 1972 by judgment dated 6-2-1986 [*State of A.P. v. Rajah of Venkatagiri*, (2002) 4 SCC 660]. While reversing the judgment of the Andhra Pradesh High Court in *Venkatagiri* case independent of the concession made by the counsel for the said *Venkatagiri*, the Court also held that the amended provision is constitutionally valid and further directed that interim payments would be payable only till the date of the original determination made by the Director under Section 39(1) of the Act and on the deposit of the amount by the State, so determined. The original mandamus in favour of the respondents having been based upon the sole ground of the decision of the Andhra Pradesh High Court in *Venkatagiri* case and that decision of *Venkatagiri* having been reversed by the Supreme Court, the question of right of the respondents emanating from the judgment in their favour, requires to be decided. Mr P.P. Rao, in this connection argued with vehemence that the mandamus in favour of the respondents, could not have been ipso facto nullified on account of reversal of the decision of the High Court in *Venkatagiri* case and, therefore, the same would be enforceable even now, and in fact the Division Bench of the High Court has allowed such relief. Mr Rao relies upon the decision of this Court in the case of *Satyadhyan Ghosal v. Deorajin Debi* [AIR 1960 SC 941 : (1960) 3 SCR 590] wherein the Court was considering the principle of res judicata. The Court in that case came to the conclusion that the principle of res judicata applies as between the past litigation and future litigation and when a matter, whether on a question of fact or on a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. It was further held that the principle of res judicata applies as between two stages in the same litigation. Mr Rao also relied upon the decision of this Court in the case of *State of W.B. v. Hemant Kumar Bhattacharjee* [AIR 1966 SC 1061 : 1963 Supp (2) SCR 542 : 1966 Cri LJ 805] whereunder the question for consideration was whether the earlier decision of the High Court regarding the unconstitutionality of Section 4(1) of the West Bengal Criminal Law Amendment Act, would be binding between the parties and the correctness could not be collaterally or incidentally challenged. The Court held that it would not be permissible for the State Government to challenge the correctness of the earlier judgment either collaterally or incidentally, no appeal having been taken from the earlier decision. Mr Rao further relied upon the

decision of this Court in the case of *B.N. Nagarajan v. State of Mysore* [AIR 1966 SC 1942 : (1966) 3 SCR 682] whereunder while allowing the appeals filed by the State as well as private persons and setting aside the judgment of the High Court, the Court also observed that those who have not prosecuted their appeals, they would also have the benefit of the judgment and this the Supreme Court could do in exercise of its power under Article 142 of the Constitution. We really fail to understand as to how the aforesaid decision is of any application. According to Mr Rao, since in *Venkatagiri case* [*State of A.P. v. Rajah of Venkatagiri*, (2002) 4 SCC 660] there has been no such observation notwithstanding the reversing of the judgment of the High Court, those of the persons against whom the State did not come up in appeal, their rights are concluded by the earlier judgment of the High Court and that must be allowed to operate. It is however difficult for us to accept this contention in the facts of the present case, particularly in the context of the issuance of mandamus by the Court. Mr Rao also strongly relied upon the judgment of this Court in the case of *Authorised Officer (Land Reforms) v. M.M. Krishnamurthy Chetty* [(1998) 9 SCC 138]. In this case, this Court held that the order of the High Court, directing the authorised officer to examine the dispute in the light of the judgment of the High Court in the case of *Naganatha Ayyar v. Authorised Officer* [84 LW 69] became final although the very judgment on which the grievance had to be examined itself was reversed later by the Supreme Court and, therefore, the orders which may not be strictly legal, having become final and binding between the parties, if they are not challenged before the superior courts, the same has to be followed. The aforesaid judgment of a two-Judge Bench of this Court, undoubtedly supports Mr Rao's contention but it had not taken into consideration a three-Judge Bench decision in *Shenoy and Co. v. CTO* [(1985) 2 SCC 512] wherein under identical circumstances, this Court had held that when a large number of writ petitions were filed challenging the Act and all those writ petitions were grouped together, heard together, and were disposed of by the High Court by a common judgment and the dispute in the cause between the State and each of the petitioners had no personal or individual element in it, and on the other hand, challenge was to the constitutional validity of the 1979 Act, when the Supreme Court held that the Act is constitutionally valid, it would be difficult to contend that the law laid down in the judgment would bind only Hansa Corporation, who had approached the Supreme Court and not the other petitioners against whom the State of Karnataka had not filed any appeal. According to the aforesaid judgment, to do so, would be to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. The Court further held that if the law which was declared invalid by the High Court is held constitutionally valid, effective and binding by the Supreme Court, then the mandamus forbearing the authorities from enforcing its provisions would become ineffective and the authorities cannot be compelled to perform a negative duty. The declaration of the law is binding on everyone and it would, therefore be futile to contend that the mandamus would still survive in favour of those parties against whom appeals were not filed. In our considered opinion, the ratio in the aforesaid case fully applies to the case in hand, particularly, when the Court is examining the question whether while issuing a mandamus, the earlier judgment notwithstanding having been held to be invalid,

can still be held to be operative. Mr Rao also relied upon the judgment of this Court in *Ram Bai v. CIT* [(1999) 3 SCC 30] which was a case arising from an assessment made under the Income Tax Act. Having examined the aforesaid decision at length, we do not find anything stated therein which will be of any assistance to the respondents in the present case. Mr Rao, no doubt submitted with force that in *Shenoy case* [(1985) 2 SCC 512] the Court never focussed its attention as to the finality of the earlier judgment and the principle of *res judicata* and accordingly, the said decision requires a consideration by a larger Bench. But we are not persuaded to accept this submission inasmuch as when the Court is examining the question of any right having emanated from a judgment of the High Court and the said judgment squarely having emanated, on following an earlier judgment of the said Court, without any further reasoning advanced and no question of facts involved but purely a question of constitutionality of an Act, the moment the earlier judgment of the High Court is reversed by the Supreme Court, that becomes the law of the land, binding on all parties. In other words, the judgment of the Andhra Pradesh High Court in *Venkatagiri case* holding the Amendment Act to be constitutionally invalid, on being reversed by the Supreme Court on a conclusion that the said amendment is constitutionally valid, the said dictum would be valid throughout the country and for all persons, including the respondents, even though the judgment in their favour had not been assailed. It would in fact lead to an anomalous situation, if in the case of the respondents, the earlier conclusion that the Amendment Act is constitutionally invalid is allowed to operate notwithstanding the reversal of that conclusion in *Venkatagiri case* and only in *Venkatagiri case* or where the parties have never approached the Court to hold that the same is constitutionally valid. This being the position, notwithstanding the enunciation of the principle of *res judicata* and its applicability to the litigation between the parties at different stages, it is difficult for us to sustain the argument of Mr Rao that an indefeasible right has accrued to the respondents on the basis of the judgment in their favour which had not been challenged and that right could be enforced by issuance of a fresh mandamus. On the other hand, to have uniformity of the law and to have universal application of the law laid down by this Court in *Venkatagiri case* [*State of A.P. v. Rajah of Venkatagiri*, (2002) 4 SCC 660] it would be reasonable to hold that the so-called direction in favour of the respondents became futile inasmuch as the direction was on the basis that the Amendment Act is constitutionally invalid, the moment the Supreme Court holds the Act to be constitutionally valid. We are, therefore, of the considered opinion that no indefeasible right on the respondents could be said to have accrued on account of the earlier judgment in their favour notwithstanding the reversal of the judgment of the High Court in *Venkatagiri case*.

27. Similar is the view expressed by the Supreme Court in **Suganthi**

**Suresh Kumar v. Jagdeeshan**<sup>10</sup>. The observations read :

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10 (2002) 2 SCC 420



9. It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in *Anil Kumar Neotia v. Union of India* [(1988) 2 SCC 587 : AIR 1988 SC 1353] that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.

28. The law declared by the Supreme Court is binding upon all Courts within the country. It founds the core and legal basis for doctrine of *judicial precedent (stare decisis)*. Thus, this Court owns and prefers the dictum of the Supreme Court in **Ravi Kant Gupta** (*supra*), despite being cognizant of the Full Bench decision. Thus, the jurisdiction of ordering eviction vested in the Tribunal for securing the protection of life and limb of elderly person being incidental relief is also followed by this Court.

29. The *sine qua non* for assuming the jurisdiction of eviction is, if it is to ensure the protection of life of senior citizens or their protection. It is then alone that the incidental order of eviction of children or relatives can be passed by the Tribunal and not otherwise. The Tribunal, while passing the order impugned dated 13.01.2026, completely failed to address whether any incidental relief of eviction of respondent nos. 6 and 7 was justified in the given factual matrix to ensure protection of life and limb of the elderly person i.e. the petitioner and a blatant declaration by the Tribunal that it is bereft of any jurisdiction to order eviction is completely unsustainable, being in the teeth of judgment of the Supreme Court rendered in **Kamla Kant Mishra** (*supra*) and **Ravi Kant Gupta** (*supra*). The

refusal of exercise of jurisdiction of eviction without recording cogent reasons for such refusal is, *ex facie*, bad.

30. Thus, a writ of *certiorari* is issued to quash the portion of order impugned dated 13.01.2026, by which, the Tribunal declined to entertain the relief of eviction.

31. The jurisdiction of Tribunal to order eviction is not akin to the plenary jurisdiction of the Civil Court. It can be assumed in extraordinary circumstances, depending upon the facts of a case, where grant of incidental relief of eviction of children or relatives occupying same ‘**shared household**’ is expedient to advance protection of life and limb of the elderly person as a last resort/measure and should be exercised sparingly and rarely to give effect to the true spirit of the Act, 2007, which is a beneficial piece of legislation enacted by the Parliament to meet the challenges of modern times on account disintegration of families.

32. The Tribunal’s power of eviction is not a blanket and unfettered one. It is rather an indirect one for relief of protection and maintenance as incidental relief to order eviction.

33. It is made clear that we have not applied our mind to the veracity and truthfulness of allegations and counter allegations. That is the domain of the Tribunal in the first instance to examine and reach a conclusive finding whether eviction of respondents is an incidental relief to be granted to ensure protection of life and limb of petitioner, being an elderly

person. Thus, for the aforesaid and limited purpose, proceedings of the Tribunal in Case No. 18460 of 2025, Shyamji Shukla v. Peeyush Shukla and another are restored.

34. We have noticed pendency of proceedings of Complaint Case No. 9602 of 2025, filed under Section 12 of Act, 2005, regarding which, we issued an interim mandamus to the Court concerned i.e. learned Additional Chief Judicial Magistrate, Kanpur Nagar to conclude the proceedings, and in response to our interim *mandamus*, we have been made aware of by the Court concerned, that proceedings of domestic violence case is at an advanced stage i.e. arguments and the next date fixed is 27.08.2026, which simply denotes the proceedings of domestic violence are likely to be concluded. Keeping in view the mandate of the Supreme Court issued in the case of **S. Vanitha** (*supra*), we leave it open to respondent no. 7 to pursue her remedies under Act, 2005 before the Additional Chief Judicial Magistrate, Court No. 6, Kanpur Nagar and the Tribunal shall await the outcome of proceedings of Complaint Case No. 9602 of 2025, under Section 12 of Act, 2005 and proceed accordingly against respondent no. 7 also, if required.

35. It is needless to mention that the Tribunal is at liberty to proceed with expedition against respondent no. 6 in the interregnum for any order of eviction, only after coming to and recording a conclusion that it is expedient for protecting the life and limb of petitioner, in view of law declared in **Ravi Kant Gupta** (*supra*). The Tribunal shall endeavour to

conclude the proceedings with promptitude, preferably in the next three months.

36. With the aforesaid directions, the instant writ petition is **allowed**, and the order dated 13.01.2026, declining eviction, on the ground of lack of jurisdiction is hereby **quashed**.

37. The Registrar (Compliance) is directed to communicate this order to the Joint Magistrate/Sub Divisional Magistrate, Sadar, Kanpur Nagar, the learned Tribunal/Joint Magistrate and the Sub Divisional Officer, Kanpur Nagar, all through the learned Chief Judicial Magistrate, Kanpur Nagar.

**(J.J. MUNIR, J.)**

**(INDRAJEET SHUKLA, J.)**

Allahabad  
**August 25, 2026**  
I. Batabyal

Whether the order is speaking : Yes

Whether the order is reportable : Yes