

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 25744 OF 2022

1. Hemant Gamanlal Mehta,

2. Heena Hemant Mehta,

... Petitioners

Versus

1. The State of Maharashtra

2. Deputy Sub Divisional Officer
as well as President having its
Office at Neelkanth Business Park,
Ground Floor, Kirol Road, Vidyavihar (West)
Mumbai – 400 086.

3. Smt. Manjulaben Gamanlal Mehta

4. Shri Ravindra Gamanlal Mehta

.. Respondents

Mr. Pradeep Thorat a/w Mr. Rohan Kadam, Yohann Cooper, Aniesh Jadhav and Vedanshi Shah i/by Mr. Bipin Joshi for the Petitioners.

Mr. Dinesh Purandare a/w Ms. Mahek A. Kamdar, Mr. Rashmin Jain and Mr. Hiren Chokshi i/by Kanga and Co. for the Respondent Nos. 3 and 4.

Mr. Abhay L. Patki, Addl. Government Pleader a/w Mr. M. A. Sayed, AGP for the State.

**CORAM : S. V. Gangapurwala &
R. N. Laddha, J.J.**

Reserved on : 29th September, 2022

Pronounced on : 20th October, 2022

JUDGMENT (Per R. N. Laddha, J.) :

Heard the learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned counsel for the parties.

3. The challenge in this petition is to an order dated 28th July 2022 passed by the Sub Divisional Officer, Eastern Suburbs, Mumbai Suburban District, acting as Chairman of the Senior Citizens Welfare Tribunal (for short 'the Tribunal') on a complaint

made to the Tribunal by the respondent no.3. The respondent no.3 is the mother of petitioner no.1 as well as respondent no.4. Petitioner no.1 is the husband of the petitioner no.2. The reliefs sought were directions to the petitioners to vacate and hand over the possession of Flat no. 604, Siddhi Apartments, Tilak Road, Ghatkopar (East), Mumbai (in short 'the said flat') to the respondent no.3. Further, a direction is also sought to order the petitioners to pay Rs.1,32,00,000/- with interest accrued thereon to the respondent no.3, which the respondent no.3 and her husband had paid to the petitioners' firm-Neel Controls.

4. After hearing the parties, the learned Tribunal passed an order and directed the petitioners to pay Rs.25,000/- monthly maintenance allowance to respondent no.3 from August 2022 and vacate and hand over the possession of the said flat to respondent no.3.

5. Mr Pradeep Thorat, learned counsel appearing on behalf of the petitioners, submitted that respondent no.3 is not the sole owner of the said flat. Petitioner no.1 is entitled to 1/10th share in the said flat. The flat in question is not independent, and the same is merged in flats nos. 601 to 603, owned by the petitioners. There is no separate entrance to this flat. He submitted that the Tribunal

had not followed the summary procedure contemplated under Section 5(3), Section 6 and Section 8 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the said Act'). Also, the procedure under Rules 7 and 13 of the Rules was not followed. Additionally, the Tribunal did not permit respondent no.2 to lead the evidence. He submitted that the impugned order does not give any reason for directing the handing over of possession of the said flat to respondent no.3. It has been submitted that respondent no.2 had accepted additional documents from respondent no.3 after closing the matter for orders.

6. According to Mr Pradeep Thorat, the learned counsel for the petitioners, the amount of maintenance of Rs.25,000/- per month granted by respondent no.2 is beyond jurisdiction because the maximum amount of maintenance can be granted under Section 9 is Rs.10,000/- only. According to the learned counsel, the Tribunal could not have granted a relief sought by respondent no.3 in her complaint. He draws our attention to the complaint itself to contend that the same was primarily for eviction of the petitioners from the flat and recovery of the alleged loan amount and not for maintenance. Further, it has been submitted that respondent no.3 had stayed with the petitioners in flats nos. 601 to 604 till 2020 without any complaint. Under Family Arrangement dated 26th August 2009, the petitioners are entitled to flat no. 604.

Arbitration proceedings are also pending between the parties. It has also been submitted that the proceedings were collusive and were an attempt by respondent no.4 to remove the petitioners from the said flat. Lastly, it has been submitted that the Tribunal, while passing the impugned order, has not given any reasoning for concluding and therefore it cannot sustain in the eyes of laws. Additionally, he relied on (i) *Mavila Sathi w/o Surendran v/s. State of Kerala*¹, (ii) *Dnyaneshwar Rambhau Shinde v/s. Rambhau Govind Shinde & Anr.*², (iii) *Mr. Melroy Fernandes v/s. Mr. Caetano Fernandes & Anr.*³, (iv) *Ritika Prashant Jasani v/s. Anjana Niranjana Jasani & Ors.*⁴, (v) *Smt. S. Vanitha v/s. Deputy Commissioner, Bengaluru Urban District & Ors.*⁵ and (vi) *Anil Shankar Sharma v/s. Shankar Dayal Sharma*⁶, in support of his contentions.

7. Mr Dinesh Purandare, the learned counsel appearing on behalf of respondents nos.3 and 4, contested the contentions of the learned counsel for the petitioners. He submitted that the flat in question was jointly owned by respondent no.3 and her deceased husband, Gamanlal Mehta. Gamanlal Mehta had filed a

1 LAWS(KER) 2016 11 70.
2 Writ Petition No. 1954 of 2016 decided on 01.02.2017.
3 Writ Petition No. 174 of 2019 decided on 05.07.2019.
4 2021(5) ALL MR 352.
5 AIR 2021 SC 177.
6 2022(1) ALL MR 147.

nomination with the society in favour of respondent no.3. After the demise of Gamanlal Mehta, the said flat was transferred in the name of respondent no.3. Petitioners, however, did not allow respondent no.3 to close interconnected doors. He submitted that the petitioners have completely neglected the needs of respondent no.3. Respondent no.3 is constantly being pressured and threatened by the petitioners to vacate the apartment. Petitioners prohibit respondent no.3's relatives from meeting her. Petitioners forced respondent no.3 to sign the documents of flats nos. 601 and 602. A complaint was filed at the police station for that. He states that respondent no.3 wants to evict the petitioners from her flat to stop the harassment and torture from the petitioners. He submitted that the petitioners do not pay anything to the applicant for maintenance and medical treatment. The petitioners are not willing to repay the loan amount given by respondent no.3 and her husband to them.

8. The learned counsel relied on (i) *Shweta Shetty v/s. State of Maharashtra*⁷, (ii) *Dattatrey Shivaji Mane v/s. Lilabai Shivaji Mane*⁸, (iii) *Sunny Patil v/s. State of NCT of Delhi & Ors.*⁹, (iv) *Sunn Paul & Anr. v/s. State NCT of Delhi & Ors.*¹⁰ and (v) *Mr. Niraj*

7 2021 SCC OnLine Bom 4575.

8 (2018) 6 Mah. L. J. 681.

9 2018 SCC OnLine Del 11640.

10 2017 SCC OnLine Del 7451.

Shivkumar Maholay & Anr. v/s. The State of Maharashtra & Ors.¹¹,

in support of his contention.

9. The rival contentions now fall for our determination.
10. The Statement of Objects and Reasons of the Act indicates the purpose of the Act, therefore, the same is transcribed below:

“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;*

11 Criminal Writ Petition No. 5508 of 2018 decided on 11.03.2020.

- (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.”*

That is the spirit in which we examine the facts of this case.

11. At the outset, it should be noted that it is not disputed that the said flat originally belonged to respondent no.3 and her deceased husband. After the demise of the husband of respondent no.3, the said flat stands in the name of respondent no.3.

12. In *Dattatrey Shivaji Mane (supra)*, it has been held that where the parents' house is self-acquired, the son, whether married or unmarried, has no legal right to live in that house without the consent of the parents. This is evident upon reading paragraphs 22, 24, 25 and 31 of *Dattatrey Shivaji Mane (supra)*.

“22. The provision of section 4 of the said Act permits such application for eviction of child and grandchild if the condition set out in that provision read with other provisions are satisfied. In my view, there is thus no substance in the submission of the learned counsel for the petitioner that the order of eviction cannot be passed by the Tribunal under section 4 of the said Act read with other provisions of the said Act.

24. Insofar as the submission of the learned counsel for the petitioner that under section 4 of the said Act, no order of the eviction can be passed by the Tribunal, but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of Sunny Paul v. State NCT of Delhi (supra) has considered the

said issue at great length and has held that the claim for eviction is maintainable under section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grandchildren.

25. If the argument of the learned counsel for the petitioner is accepted by this Court, then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his/her property from the children or grandchildren during his/her lifetime. The said Act is enacted for the benefit and protection of senior citizen from his children or grandchildren. The principles of law laid down by the Delhi High Court in the case of *Sunny Paul v. State NCT of Delhi* (*supra*) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.

31. In my view, section 4 cannot be read in isolation but has to be read with section 23 and also sections 2(b), 2(d) and 2(f) of the said Act. The respondent No. 1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent No. 1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.”

13. The coordinate bench of this Court in *Shweta Shetty v/s. State of Maharashtra* (*supra*) also took note of the decision in *Dattatrey Shivaji Mane* (*supra*), holding that the Tribunal is empowered to pass an order of eviction under the provisions of the 2007 Act.

14. The above rulings are also authorities for the proposition that the Tribunal under the Senior Citizens Act, 2007, 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. However, this remedy can be granted only after advertng to the competing claims in the dispute.

15. In the present case, it is not disputed that the flat in question was purchased by respondent no.3 and her husband. Her husband had filed a nomination with the society in her favour. After the demise of the husband of respondent no.3, the said flat was transferred in the name of respondent no.3. The petitioner at no point in time took objection to the transfer of said flat in the name of respondent no.3 after the demise of her husband. In view of these well-established facts, it was not a summary case that necessitates oral evidence. The procedure is to be followed in deciding this case as per Section 8 of the Act 2007. There may be some cases where the recording of evidence would be imperative, but in the present matter, looking at the facts, the direction for oral evidence is not warranted. It is also not in dispute that respondent no.3 had filed a complaint at the police station against the petitioners. The Tribunal had recorded the finding that the flat in question is in the name of respondent no.3, and petitioners should vacate the flat and hand over possession immediately without any

hindrance to respondent no.3.

16. It is not the case of the petitioners that after they vacate the said flat, they do not have any tenement to reside. On the contrary, the record shows that, apart from the flat in question, the petitioners have other flats also. It appears from the record that in the arbitration proceedings, respondent no.3 was not a party. Moreover, the family MOU document dated 26th August 2009 specifically records that the property in question is out of the scope of arbitration.

17. In the Family Settlement Deed, it has been recorded that the whole estate of late Shri Gamanlal Mehta (comprising of all property whatsoever, whether movable or immovable) be transferred to respondent no.3, being his widow to be held by her absolute property. We do not find any document on record showing that the petitioners have any independent rights regarding the flat in question. Thus, we confirm the order that was passed by the Tribunal directing the petitioners to vacate and hand over the possession of the flat in question to the respondent-mother. In fact, the petitioners should have, with honour, allowed the mother-respondent to stay in the said flat.

18. From the above discussion viewed from any angle and with certainty, it is clear that the petitioners have no legal right

whatsoever in the flat in question to sustain a claim that they can evict the mother and take exclusive advantage of the said flat. The Tribunal has recorded findings which are based on the record and are following the law. We do not find any perversity in the findings recorded by the Tribunal requiring interference of this Court in its writ jurisdiction under Articles 226 and 227 of the Constitution of India.

19. We then examine the legality of the impugned order concerning maintenance. “Maintenance” has been defined in Section 2(b) to include *inter-alia*, provision of food, clothing, residence and medical attendance and treatment. Maintenance of parents and senior citizens is provided in Section 4. As per sub-Section (1), a senior citizen, including a parent who is unable to maintain himself from his earnings or out of the property owned by him shall be entitled to make an application under Section 5, in case of a parent or grandparent, against one or more of his children not being a minor and in case of a child of a senior citizen against such of his relative referred to in Section 2(g).

20. Sub-Sections (2) and (3) of Section 4 mandate that it is the obligation of the children or relative, as the case may be, to maintain a senior citizen or parent to the extent that the senior citizen or parent may lead an everyday life. Section 2(f) defines

property as property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible, and includes rights or interest in such property.

21. Respondent-mother sought monthly maintenance amount from the petitioners. In the complaint dated 22nd June 2022, the respondent-mother contended that she could not maintain herself. She is ill and requires regular medical checkups and treatment. It is alleged that petitioners have entirely neglected her needs. Because of the behaviour of the petitioners, she is facing emotional disturbances. The petitioners forced her to sign the Gift Deed of flats Nos. 601 and 602. A police complaint was also filed for the same. Petitioner No.1 does not pay her for her maintenance and medical treatment. On the contrary, he is not ready to return the loan amount given by her and her deceased husband.

22. We do not find anything on record to show the contrary. If the petitioners are not maintaining respondent no.3-mother and are creating a nuisance and emotional disturbances to her, the whole purpose of the Act would be frustrated. In such circumstances, we do not find any perversity in the finding recorded by the Tribunal while passing an order of maintenance. However, Sub-Section (2) of Section 9 mandates that the

maximum maintenance allowance that the Tribunal may order shall be as prescribed by the State Government, which shall, however, not exceed Rs.10,000/- per month.

23. In the present case, the maintenance amount granted by the Tribunal was Rs.25,000/- per month, which is not in accordance with sub-Section(2) of Section 9. Therefore, based on those described above, we find it difficult to approve the impugned order directing the petitioners to pay monthly maintenance of Rs.25,000/- to the respondent-mother. Thus, the impugned order stands modified so that the petitioners, instead of Rs.25,000/-, shall pay the respondent-mother a monthly maintenance amount of Rs.10,000/-.

24. The Petition shall stand disposed of in the above terms. There shall be no order for costs.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

25. At this stage, the learned counsel for the petitioners seeks stay of the order.

26. The learned counsel for the respondents opposed the said request.

27. Considering the request made on behalf of the petitioners, the present judgment shall not be implemented for a period of three weeks from today.

28. Needless to state that on lapse of three weeks, the protection granted shall come to an end.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)