

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

WRIT PETITION NO.2141 OF 2019

Suryakant Kisan Pawar

...Petitioner

V/s.

1. Deputy Collector, Mumbai and Presiding
Officer Parents and Senior Citizens Subsistence
Tribunal, Mumbai City

2. Smt. Kusum Kisan Pawar.

...Respondents

Mr. Akshay Petkar with Mr. Aniket Mali, for Petitioner.

Mr. Himanshu Takke, AGP for Respondent No.1.

Mr. P. R. Yadav with Mr. Saumitra Salunke for Respondent No.2.

CORAM : G. S. KULKARNI, J.

RESERVED ON: DECEMBER 10, 2021.

PRONOUNCED ON : DECEMBER 18, 2022

JUDGMENT:

1. The plight of a benighted widowed mother, a senior citizen, to gain a roof over her head in a tenement of 300 sq. feet owned by her and the hard struggle faced by her from one of her sons, is the subject matter of the present unfortunate proceedings.

2. This is a writ petition arising out of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. An order dated 3 February 2018 passed by the Presiding Officer of the Parents and Senior Citizens Subsistence Tribunal, Mumbai City, is challenged in the present petition, by

the petitioner, who is the son of respondent No.2 – Smt.Kusum Kisan Pawar who is a senior citizen (for short '**the mother**'). The mother approached the tribunal as constituted under Section 7 of the the Maintenance and Welfare of Parents and Senior Citizens Act,2007 (for short '**the Senior Citizens Act**') invoking its jurisdiction under Sections 4 and 5 read with Section 23 of the Act against the petitioner, inasmuch as, the mother was dis-housed from her only abode being a small tenement admeasuring 300 sq. ft. being No.209 Swapna Safalya Building, Dhan Mill Naka, Prabhadevi, Mumbai-400025 (for short '**the said tenement**').

3. The facts are quite peculiar and to some extent which would shock the conscience of the Court. There was an original tenement which was possessed by the petitioner's father and respondent no.2's (the mother's) husband- Kisan Rangu Pawar. The building in which such tenement existed was taken up for redevelopment and on completion of the redevelopment, Kisan Rangu Pawar would have become entitled to be housed in the redeveloped premises, that is the tenement in question. However, as Kisan expired, the landlord, namely, the Mumbai Municipal Corporation incorporated the mother's name to be the tenant and permitted allotment of the redeveloped tenement in favour of the mother. The developer accordingly issued an allotment letter of the said tenement in favour of the

mother, who was also put in possession of the said 300 sq. ft. tenement. At an old age, the said tenement is the only roof over the mother's head. It is not in dispute that the mother all along was residing in the said tenement. She has four children, two sons (one of them being the petitioner) and two daughters. It appears that all the children are married.

4. It is matter of common knowledge that the tenement in question is located in a prime locality at Mumbai, namely, at Prabhadevi. This being the position, it appears that the petitioner to the exclusion of other siblings started asserting a right of residence on the said tenement belonging to the mother. The petitioner in such pursuit, along with his family members foisted himself on the mother, who was occupying the said tenement and appears to have entered the tenement on a specious ground that his children are taking education in a nearby school.

5. It is quite evident from the record that the petitioner at all material times was aware that the tenement exclusively belonged to the mother. The petitioner appeared to be aware that at least during the lifetime of the mother, the petitioner and other siblings would not have any right to seek occupation or possession of the tenement. On this backdrop, the petitioner thought of a novel method to dis-house the mother of the tenement. This,

by taking advantage of her old age, her lack of education and that she being not literate and benighted, by entering into a rent agreement with the mother. The rent agreement was part of the record before the Tribunal as is also before this Court. The rent agreement in fact militates against the position taken by the petitioner in purportedly asserting independent rights qua the tenement, which would be discussed little later.

6. Under the rent agreement, the petitioner agreed to pay the mother a monthly rent of Rs.5000/-, which he never paid. The rent agreement was executed on 18 June 2016 for a period from 1 July 2016 to 31 May 2017, being a period of 11 months. During such period, the petitioner was to pay Rs.5,000/- p.m. as rent to the mother. However, what is significant about the rent agreement is that in the recital clause of the rent agreement, which is also under the petitioner's signature, he agrees that the tenement is owned by the mother. He further agrees that he is availing the tenement for a period of eleven months, on payment of such rent. He also agrees that he would vacate the tenement after the agreement period is over. The petitioner despite the agreement period having expired continued to enjoy the tenement to the exclusion of the mother, who was required to take shelter along with other extended family members in her village. What is glaring to be noted, is that as far as the petitioner was concerned, the rent

agreement was only a piece of paper and was never to be acted upon, either by making payment of rent as agreed and/or vacating the tenement. The petitioner also conveniently choose to forget that in such agreement he had recognized the mother to be the absolute owner of the tenement. It cannot be disputed that the mother had decided to receive income for her survival from the petitioner/her own son, under the rent agreement which was only for a period of 11 months.

7. It is the mother's case that the petitioner did not make payment of the rent which was also a source of her livelihood. She made complaints to different authorities including the police that she has been ousted from her residence as also she was not paid by her son/petitioner.

8. In these circumstances, the mother approached the Senior Citizens Tribunal invoking provisions of the Senior Citizens Act by filing the complaint in question. However, prior thereto, as noted above, she also made complaints to the police against the petitioner. On the mother making such complaints, one day prior to the mother filing her application before the Senior Citizens Tribunal, the petitioner deposited in the mother's bank account an amount of Rs.30,000/- and thereafter, took a position that he is willing to regularly make monthly payments to the mother.

9. The petitioner appeared before the tribunal having received notice of

the said proceedings. The reply filed by the petitioner to the mother's application speaks volumes about the petitioner's approach and his feelings about his own mother. It is difficult to believe that a son can make reckless allegations against the mother only for paper's sake and that too, merely with an intention to assert rights on the tenement and opposed to the mother possessing and occupying the same. The primary contention of the petitioner before the Senior Citizens Tribunal was to the effect that as the original tenement belonged to his father, the petitioner had become a co-sharer in the tenement and thus, he would have an exclusive right to occupy the tenement. The petitioner, thus contended that the mother was not the exclusive owner of the tenement. The petitioner purportedly urged that he was always willing to maintain his mother and therefore, he ought not to be asked to vacate the premises.

10. The tribunal after considering the rival contentions, by a well reasoned order dated 3 February, 2018, as impugned, has directed the petitioner to vacate the premises by the following directions issued under Section 4(2), Section 4(3) read with Section 23 of the Senior Citizens Act:-

"ORDER

1. From the view point that the Senior Citizen may lead normal life, in pursuance of the Sections 4 (2) 4 (3) and Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 and

Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rules 2010, opponent Shri. Suryakant Kisan Pawar should leave the possession of the house viz. 209, Swapna-Satalya, Building, New Prabhadevi Road, Prabhadevi, Dhanmill Naka, Prabhadevi, Mumbai – 400025 with family within 30 days from the date of issuance of this order and should handover the possession to the Applicant and Senior Citizen Smt. Kusum Kisan Pawar.

2. In pursuance of Sections 5, 5(7) and 9, Shri. Suryakant Kisan Pawar shall pay the subsistence allowance at the rate of Rs. 5000/- per month to Smt. Kusum Kisan Pawar from the date of receipt of application to the Tribunal i.e. from May, 2017 till February, 2018, within 30 days from the date of issuance of this order.

3. After receiving possession of the said house, Smt. Kusum Kisan Pawar shall meet expenses towards her maintenance therefrom.

If the senior citizen intends to prefer an appeal against the aforesaid order, the same may be filed to the Hon'ble Appellate Authority, Appellate Tribunal, Mumbai City and the Collector, Mumbai City, Old Custom House, Shahid Bhagatsingh Marg, Fort, Mumbai, within 60 days.

Presiding Officer
Maintenance Tribunal for
Parents and Senior Citizens and
The Deputy Collector (G. A.)
Mumbai City.”

11. Learned Counsel for the petitioner in assailing the impugned order has limited submissions. Firstly, he would submit that the approach of the tribunal is perverse as the tribunal has overlooked that the petitioner had equal rights over the tenement, along with the mother and being a co-sharer, the petitioner had an exclusive right to occupy the premises. It is his submission that this was the categorical stand of the petitioner before the

tribunal which has not been considered in its proper perspective. He submits that the mother can stay in the village, as the petitioner is willing to maintain her by paying an amount of Rs.5000/- per month. Thus, the petitioner ought not to be called upon to vacate the tenement. Learned Counsel for the petitioner has vehemently argued that the case of the mother that the petitioner is causing harassment to the mother, was not correct. Learned counsel for the petitioner lastly has relied on the interim order dated 13 March, 2018 passed by this Court (S.C. Gupte, J. as His Lordship then was) on this petition, to contend that the tribunal would not be correct to direct the petitioner to vacate the tenement.

12. In support of the contentions as urged on behalf of the petitioner, learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in **“S.Vanitha Vs. Dy. Commissioner, Bengaluru Urban District and Others”**¹ and the decision of the Division Bench of this Court **“Ritika Prashant Jasani Vs. Anjana Niranjan Jasani & Ors.”**².

13. On the other hand, learned Counsel for the mother would submit that the mother was pressurized to enter into the rent agreement and which she had placed on record, as recorded by the tribunal in the impugned order.

1 2020 SCC OnLine SC 1023

2 Writ Petition no.2631 of 2021 decided on 13 August 2021

The relevant extract of the impugned order needs to be noted, which read thus:

(Official translation of a copy of the marked portion, typewritten in Marathi pg.92 of the paper book)

“ The complaint application of the senior citizen – Applicant Smt. Kusum Kisan Pawar, is as under.

“I, the aforesaid Applicant Smt. Kusum Kisan Pawar, hereby request you as under:-

The room at 209, Swapnasaphalya Building, New Prabhadevi Road, Dhanmill Naka, Prabhadevi, Mumbai-400 025 **stands in my name** and my elder son Shri. Suryankant Kisan Pawar resides at the said place alongwith his family. **I am an aged woman of the age of 70 years and the said person and his family members cause me mental harassment. In order to get money in the form of help for my maintenance, I had given the room at the aforementioned address to my elder son on rental basis and an Agreement to that effect was also entered into.** However, after the Agreement was executed, he has not given me even a single money. When he was asked to vacate the room, he does not vacate the said room.

I am suffering from high blood pressure and I cannot see by one eye properly. Therefore, in such situation, a question arises before me as to where I should go.

Therefore, considering my age and situation, I request you to render me help for meting out appropriate justice to me and for leading remaining life happily and contentedly.”

... ..

The Complaint – application dated 10/08/2017 of the Senior Citizen – Applicant Smt. Kusum Kisan Pawar is as under :-

“I, the abovementioned Applicant Smt. Kusum Kisan Pawar, residing at Prabhadevi, Mumbai, state that you are aware about the dispute between me and my elder son. **As I approached Your Court for seeking justice, my son is causing harassment to me and indirectly pressurizing me time and again to withdraw my complaint. At present, I do not have any support from anyone else. My other children live somewhere else outside. I say that in the same manner, even this son should leave the house and should let me to live peacefully. After my death, the possession of the land and house should be**

taken by children by way of heir-ship right. I may be allowed to enjoy my house and Order may be given to my said son to leave the said house.”

(emphasis supplied)”

14. Learned Counsel for the mother would next submit that the petitioner cannot take a stand contrary to what the petitioner agreed in the rent agreement, wherein the petitioner in terms agreed that the mother was the owner of the premises. It is his submission that the petitioner hence cannot assert that the petitioner being a co-sharer would have a right to be in occupation and possession of the premises, to the exclusion of the mother and the other legal heirs. Learned Counsel for the mother would submit that the petitioner has not placed any material to show that the petitioner on any document acceptable in law, was asserting rights on the tenement. It is submitted that the petitioner also could not show that the mother had any other place of residence and in fact, the petitioner attempted to misguide the tribunal by -pointing out the ancestral land of four acres out of which even assuming that one acre belonged to the mother, she did not have any income whatsoever, as the said land was barren land not capable of being used for any agricultural activities. He would submit that in any case such land would not satisfy the mother’s residential requirements in Mumbai derived from the tenement, where she has spent her entire life. He would submit that the petitioner’s false assertions has been rightly dealt by the tribunal in the impugned order and are held to be of no relevance,

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insofar as the mother's case being ousted from the own tenement was concerned. Learned Counsel for the mother has drawn my attention to a letter dated 5 June 2015 addressed by the mother to the Secretary of the society to the effect that she had the sole entitlement to the tenement in question, in which she also recorded that she had taken a decision that she would not permit both her sons to reside in the said premises and that without her permission, both the sons should not be permitted to enter the premises. The said letter is required to be noted which reads thus:

(Official translation of a copy of an Application, typewritten in Marathi.)

Date – 05/06/2015

To,
The Secretary,
Sati Asara Co-op. Society,
Prabhadevi, Mumbai- 400025.

Subject - Request Application.

Sir,

I, Smt. Kusum Kisan Pawar, age-68 years, am a resident of 209/A, Swapnasaphalya Building, New Prabhadevi Road, Dhanmill Naka, Opp. Samana Press, Prabhadevi, Mumbai-400025.

I had given you the information about the dispute in my family and now, the said dispute has been totally aggravated. **I am an absolute right holder of my flat and therefore, I have taken a decision that I will not keep my both the sons in my flat and that I am putting a lock to the said flat. Therefore, I humbly request that my both the sons should not be allowed to enter in the said flat without my permission. However, if my sons act to the extreme level, then, they shall be personally responsible for the consequences to be arrived therefrom.** Hence, it is requested to the Committee to render me full co-operation.

Received
(Signature)
Date-

Yours faithfully,
Sd/- Kusum Kisan Pawar
(Kusum Kisan Pawar)

(emphasis supplied)

15. Learned Counsel for the respondent-mother has also drawn the Court's attention to several letters addressed by the mother to the different authorities including to the police, complaining about the conduct of the petitioner. Learned Counsel for the mother has contended that the mother being the lawful owner of the premises is clear from the allotment letter dated 26 February 2018 issued by the developer in favour of the mother wherein in the first paragraph itself, it was recorded that the Mumbai Municipal Corporation had accepted the mother to be the tenant of the Municipal Corporation after the death of her husband Kisan Rangu Pawar. Learned counsel for the mother has also referred to the letter dated 1 February 2018 issued by the Assistant Engineer, (Town Planning), G/South Ward of the Mumbai Municipal Corporation addressed to the mother, which was so referred by the developer in the said allotment letter dated 26 February, 2018. Learned Counsel for the respondent-mother has placed reliance on the decision of this Court in **Ashish Vinod Dalal & Ors. vs. Vinod Ramanlal Dalal & Ors.**³ and the decision of the Division Bench of this Court in **Shweta Shetty Vs. State of Maharashtra & Ors.**⁴, on the interpretation of Sections 4 and 23 of the Senior Citizens Act so as to contend that it is a settled principle of law that when the tenement in question was not an ancestral property and when in the present case the

³ 2021 SCC OnLine Bom 2976

⁴ Writ Petition (I) no.9374 of 2020, decided on 25/11/2021

tenement was the property belonging to the deceased husband of respondent no.2 (mother), the petitioner could not assert any legal right to contend that he is entitled to be in exclusive possession and occupation of the said tenement to the exclusion of the mother who is the rightful owner.

16. Having heard learned Counsel for the parties and having perused the record, it appears to be not in dispute that after the death of the petitioner's father and the husband of respondent no.2 (the mother), the Mumbai Municipal Corporation had recognized the mother as the person lawfully entitled to possess the tenement in question. The mother accordingly was issued an allotment of the tenement by the developers, as noted above. Thus, the petitioner as a son certainly could not have asserted any legal right of occupation or possession of the tenement when such documents showed that the mother was exclusively entitled to the tenement. In these circumstances, it is difficult to conceive that the petitioner could take any steps to oust the mother from the said premises. As asserted by the mother, the petitioner who is 48 years of age although claims to be truck driver, he is in the business of letting out the trucks. He appears to be married and well settled. As also the other son namely Chandrakant, the petitioner's younger brother is 39 years of age is also staying in independent premises. He is not asserting that the mother should not possess and occupy the

tenement so as to oust the mother from the tenement. Two daughters Ranjana and Kalpana who are aged 45 and 42 respectively, are married and they are also not opposed to the mother possessing and occupying the tenement.

17. It however appears that the petitioner has not spared any effort and has taken every possible step to retain the possession of the tenement and for that matter, he also tried to enter into such rent agreement, with the mother, however, in doing so he completely overlooked that such a rent agreement was a temporary relief to him, inasmuch as, in the rent agreement in the recital clause, he accepted the mother to be the exclusive owner of the tenement oblivious of the consequence of such recital. The petitioner cannot set up a defence which is contrary to such document, to which he is himself a party.

18. The question in the aforesaid circumstances is as to whether the mother was justified in invoking the provisions of the Senior Citizens Act to safeguard her rights as a senior citizen as ordained under Section 4, Section 5 read with Section 23 of the Act, so as to be entitled for an order to be passed by the tribunal, to evict the petitioner. In my opinion, the mother was justifiably entitled to the relief as granted by the tribunal. The following discussion would aid such conclusion.

19. The Senior Citizens Act as seen from its preamble is a legislation to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto. It is also evident from the statement of objects and reasons that the intention behind the Senior Citizens Act is to provide for institutionalization of a suitable mechanism for protection of life and property of older persons. In the light of such object and intention, the legislature has framed Section 4, 5 and 23 of the Senior Citizens Act. Section 4 provides for maintenance of parents and senior citizens. Section 5 provides for remedy for an application for maintenance to be filed under Section 4 inter alia by a senior citizen or a parent as also by any other person or organization authorised by him, or the tribunal may take *suo motu* cognizance. Section 23 provides for transfer of property to be void in certain circumstances.

20. In my opinion, the present case clearly attracts the said provisions. The mother was entitled to invoke the provisions of Section 4 to make an application under Section 5 when she was unable to maintain herself from her property and when her right to lead “her normal life” was being deprived by the petitioner, as recognized by sub-sections (2) and (3) of Section 4. In this context, it would be useful to refer to the decision of this

Court in **Ashish Vinod Dalal & Ors. vs. Vinod Ramanlal Dalal & Ors.** (supra). In such decision, this Court considered the scope and ambit of the provisions of Sections 4 and 5 of the Senior Citizens Act to hold that the intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizen's rights, which are fundamental to their very survival and/or livelihood at their old age. It was observed that in dealing with the grievances of the senior citizens falling under Section 4, the Court's approach cannot be narrow and pedantic in applying the provisions of the Senior Citizens Act. It was held that a protection from harassment, exploitation, neglect, psychological disturbances, psychological needs, and all possible facets to safeguard the senior citizen's physical and mental health are required to be recognized under sub-section (2) and sub-section (3) of section 4 as it categorically provided that the obligation of the children or relatives was to cater to the needs of the senior citizens, so that they 'live a normal life'. It was held that the words "normal life" as used in these provisions would possess a far deeper and wider concept, deriving its meaning and having a bearing on the fundamental rights of livelihood as guaranteed and enjoyed by senior citizens under Article 21 of the Constitution.

21. In so far as Section 23 is concerned, it caters to a situation where any

senior citizen, after the commencement of the Act, had transferred by way of “gift” or “otherwise”, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee having refused or failing to provide such amenities and physical needs, the transfer of property in such case, shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal. Sub-section (2) of Section 23 provides where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

22. In my opinion, in the facts of the present case, the tribunal has rightly recognized the applicability of Section 4, Section 5 read with Section 23 of the Act. The tenement in question was undoubtedly allotted to the mother. This was informed by the Mumbai Municipal Corporation to the mother vide letter dated 1 February 2018. The developer has also allotted the tenement to the mother recognizing the mother’s right to receive the same as approved by the Mumbai Municipal Corporation, by issuing an allotment

letter dated 26 February 2018 in her favour. There is no material whatsoever on record which would show that the petitioner has any independent right in respect of the tenement in question. Neither there is any allotment letter issued by the Mumbai Municipal Corporation in his favour nor there is an allotment letter of the developer to allow the said redeveloped premises in favour of the petitioner. This apart, there is nothing on record to show as to how and in what manner, except for the rent agreement, the petitioner came into possession of the premises. Even in the rent agreement, the petitioner categorically admits that the mother is the owner of the said tenement. It is, however, quite astonishing that the petitioner invented such a novel method namely to enter into a rent agreement with the mother and only to be breached, as it is seen that only when the mother made a police complaint, the petitioner paid the amounts to the mother.

23. This appears to be another clear case where the petitioner has no other intention but to enjoy the tenement exclusively, ousting the roof over his mother's head, taking advantage of her incapacity at such an old age. There appears to be no justification whatsoever, for the petitioner to take possession of the mother's premises even if the petitioner claimed that he is the co-sharer on the ground that the tenement had devolved on the mother

from his father and she had limited rights as a co-sharer.

24. The petitioner could not have abused the law by ousting the mother claiming an exclusive entitlement to remain in possession of the premises. The law in this regard is well settled. The only remedy for the petitioner was to file appropriate proceedings before the Civil Court and establish his rights. This apart, it is also clear that the tenement in question is not an ancestral property and it was held by the deceased father of the petitioner as a tenant and the tenancy came to be transferred in the name of the mother by the municipal corporation and the mother in her own right was entitled to possess the said tenement. If such plea as urged on behalf of the petitioner is accepted, it would nullify the very allotment permitted by the Municipal Corporation to be made in favour of the mother which also recognized her independent right in respect of the tenement to the exclusion of all others.

25. Learned Counsel for the petitioner has made submissions referring to the interim order dated 13 March, 2018. In my opinion, learned counsel for the petitioner is not correct in his contention for two fold reasons – firstly, the interim order dated 13 March, 2018 records only a prima facie observation. An interim order cannot be elevated to the status of any binding decision and/or to lay down any conclusive position in law.

Secondly and most importantly, in the period after such interim order was passed, the position in law as laid down in several decisions interpreting the provisions of Senior Citizens Act has brought about new dimensions, to make the provisions of the Senior Citizens Act more meaningful in catering to the interest of the senior citizens, in fulfilling the legislative intent and object behind the said legislation. Some of the decisions in that regard can be noted, namely the decision of the Supreme Court in **S.Vanitha Vs. Dy. Commissioner, Bengaluru Urban District and Others** (supra) as also the decision of the Division Bench of this Court in **Shweta Shetty Vs. State of Maharashtra & Ors.** (supra). The decision of the Single Judge of this Court in **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane & Ors.**⁵ as also the decision of this Court in **Ashish Vinod Dalal & Ors.** (supra) are relevant and which cannot support the petitioner's contention passed on the interim order. The legal position can be discussed hereunder.

26. In **S.Vanitha Vs. Dy. Commissioner, Bengaluru Urban District and Others** (supra), the Supreme Court has clearly recognized that the tribunal under the Senior Citizens Act would have the authority to order an eviction. The relevant observations of the Supreme Court can be noted, which reads thus:

“20. The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the Tribunal had the

5 2018(6) Mh.L.J. 681

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 adverting to the competing claims in the dispute.**”
(emphasis supplied)

27. In **Shweta Shetty vs. State of Maharashtra & Ors.** (*supra*), the Division Bench observed that removal of a person with no right in the premises is not eviction so as to attract any such prohibition. Referring to the decision of the Division Bench in **Ritika Prashant Jasani** (*supra*), as cited on behalf of the petitioner, the Court observed thus:

“12. In *Jasani*, therefore, the claim of the appellant was that the house was a ‘shared household’, i.e. that she had a legally definable right in the property itself. That is not the case before us at all, where Shweta accepts that she has no right in the flat in question. The mere use of the word ‘eviction’ is not by itself determinative. To constitute eviction, or to invoke any prohibition against eviction, it must be shown that some legally enforceable civil right of the appellant in the property itself has been determined and that the appellant has been denied that right. Removal of a person with no right in the premises is not eviction so as to attract any such prohibition. After all, as *Jasani* notes, the statutory intent is to protect senior citizens. It is not to foist on senior citizens an imaginary claim over their own property where the claimant has no such right to begin with. The statutory intent is not to limit the rights of senior citizens, but exactly the reverse.”

28. It would be useful to refer to the decision of the learned Single Judge

of this Court (R.D. Dhanuka, J.) in **Dattatrey Shivaji Mane** (*supra*) wherein the Court observed thus:

“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.”

29. It also needs to be noted that in **Shweta Shetty's** case (*supra*), the Division Bench approving the view taken by this Court in **Ashish Vinod Dalal & Ors.** (*supra*) in interpreting the provision of Section 4 of the Act has observed thus:

“13. There is also a recent decision of learned Single Judge of this Court (GS Kulkarni J) in **Ashish Vinod Dalal and Ors. vs. Vinod Ramanlal Dalal and Ors.** which observes in paragraphs 14 and 15:

“14. Before parting and having noticed that this is a case where the old parents are suffering at the hands of petitioner no.1 the only son and petitioner no.2 – daughter-in-law, it appears that there is certainly some element of truth in the popular saying that “Daughters are daughters forever and sons are sons till they are married” albeit there would surely be exemplary exceptions. Be that as it may, the present case is a sad story of desperate parents who intend to be in peace at such advanced stage in life. Whether such bare minimum expectations and requirement should also be deprived to them by an affluent son, is a thought which the petitioners need to ponder on. Petitioner no.1 appears to be totally blinded in discharging his obligations to cater to his old and needy parents and on the contrary has dragged them into litigation. The vehemence with which arguments were advanced by the learned Counsel for the petitioners also bears testimony to the approach of the petitioners. It is

painful to conceive that whatever are the relations between the son and the parents, should the son disown his old aged parents for material gains? This has become more clear from what Mr. Khandeparkar has said, that recently father was required to be hospitalized. In the entire vehemence of the submissions advanced on the flat, not a whisper was uttered on behalf of the petitioners on any attention the petitioners would like to provide to the father's medical need. I am certainly wrong in presuming such expectations from petitioner nos. 1 and 2 considering their relations with the parents.

15. Lastly, the contention as urged on behalf of the petitioners relying on the decision in Ritika Prashant Jasani's case needs to be out rightly rejected, inasmuch as, the question which fell for consideration of the Court in such case was as to whether the tribunal under the Senior Citizens Act could evict a person from the tenement in which he has ownership rights. In the said case the property/ flat in question was the ancestral property having joint rights and it is in such context the right to reside in a shared household under the D.V. Act was examined by the Court. In the present case admittedly the property/flat in question is not an ancestral property on which the petitioner no.1 can lay any claim. It was the property of the father (respondent no.1) who had gifted it to his daughters within his own legal rights. Moreover, paragraph 23 of the decision in Ritika Prashant Jasani's case goes completely contrary to the contention as urged on behalf of the petitioners, wherein the Division Bench has observed thus:

“23. At this stage, we may mention that in Smt. S. Vanitha (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure 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.”

(Emphasis added)

15. We note, in particular, the anguish expressed by Kulkarni J in Ashish Vinod Dalal. That is also our view. Indeed, it is our experience that in this city, and particularly or most especially amongst the wealthy of this city, senior citizens and elderly parents are being subjected to all kinds of harassment and deprivation in their twilight

years. In case after case, we have complaints from senior citizens that their own sons and daughters are harassing them. In every case, the harassment is an attempt to somehow grab the senior citizen's property in his or her lifetime without thought spared to the mental or physical health well-being or happiness of these seniors. The present case is no different. Mr Shetty says Shweta demands 'her share'. What is her 'share' while he is alive? She has none. He may indeed give his flat and all wealth away inter vivos. That is his choice. She cannot prevent him from doing so. So long as he is alive, Shweta has no 'share' in his property.

16. We are of the considered view that this is not an isolated experience at all. It is, in fact, a widely noticed trend and it is to address this evil — we will not even call it mischief — that the 2007 Act was brought into force. The statement of objects and reasons says this:

“1. 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 old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizen 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 old age homes in every district.

4. The Bill seeks to achieve the above objectives.”

30. In the facts of the present case, the rent agreement is required to be clearly looked at only as an attempt and a struggle on the mother’s part to receive benefits from the tenement, so as to avail such small money from the petitioner for her survival/livelihood. Even to make such payment to the mother, the petitioner defaulted, for no justifiable reason. The petitioner in fact deprived the mother of her right to “live a normal life” apart from the fact that he has failed to maintain and support her livelihood.

31. In so far as reliance on behalf of the petitioner on the decision of the Division Bench of this Court in **Ritika Prashant Jasani** (supra) is concerned, it would not assist the petitioner in any manner in as much as in the said case the property was an ancestral property and an issue of a shared household under the Domestic Violence Act was raised. The legal position as arising from the said decision is considered by this Court in **Ashish Vinod Dalal**’s case (supra), wherein referring to the decision of the Division Bench in **Ritika Prashant Jasani** (supra), the Court made the following

observations:-

“15. Lastly, the contention as urged on behalf of the petitioners relying on the decision in Ritika Prashant Jasani’s case needs to be outrightly rejected, inasmuch as, the question which fell for consideration of the Court in such case was as to whether the tribunal under the Senior Citizens Act could evict a person from the tenement in which he has ownership rights. In the said case the property/ flat in question was the ancestral property having joint rights and it is in such context the right to reside in a shared household under the D.V.Act was examined by the Court. In the present case admittedly the property/flat in question is not an ancestral property on which the petitioner no.1 can lay any claim. It was the property of the father (respondent no.1) who had gifted it to his daughters within his own legal rights. Moreover, paragraph 23 of the decision in Ritika Prashant Jasani’s case goes completely contrary to the contention as urged on behalf of the petitioners, wherein the Division Bench has observed thus:

“23. At this stage, we may mention that in Smt.S.Vanitha (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure 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.”

32. From the above discussion looked from any angle and with certainty it is evident, that the petitioner has no legal right whatsoever in the tenement in question so as to sustain a claim, that he can dis-house the mother and exclusively enjoy the tenement. The tribunal has recorded findings which are based on record and are in accordance with law. There is no perversity whatsoever in the findings as recorded by the tribunal requiring interference of this Court in its jurisdiction under Articles 226 and 227 of the Constitution. The petition is wholly misconceived. It is

accordingly, dismissed. Rule discharged. No costs.

33. As the mother has substantially suffered for a long period, it is imminently in the interest of justice that the petitioner expeditiously vacates the premises. The petitioner is directed to hand over the vacant possession of the premises to the mother within a period of fifteen days from today.

34. At this stage, learned Counsel for the petitioner prays for continuation of the interim relief for a longer period. In the facts of the case, the request is rejected.

(G. S. KULKARNI, J.)