

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4334 OF 2014

Jairam Sakharam Gaikwad and Another. ..Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. Pradeep Havnur for the Petitioners.

Mr. J. P. Yagnik, learned APP for the State.

Mr. Sanjog Parab i/b Ms. Sulbha Rane for Noticee - Contemnors.

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.

Date : **January 4, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties.

2. The prayers in the petition are as under :

“(a) That this Hon'ble Court be pleased to issue a writ of mandamus and/or writ in the nature of certiorari and/or any other appropriate writ directing the State of Maharashtra to enforce the provisions of Maintenance & Welfare of Parents and Senior Citizens Act 2007 in its true letters and spirit;

(b) That this Hon'ble Court be pleased to issue a writ of mandamus and/or writ in the nature of certiorari and/or any other appropriate writ directing Senior Inspector of Police, Matunga Police Station to remove Respondent Nos.2 and 3 from the petition premises, i.e., Flat No.1003, Prathamesh Co-operative Housing Society Ltd, MMGS Marg, Dadar (East), Mumbai – 400014 vide Agreement dated 28th November 2002 and further direct Matunga Police Station to ensure

that Respondent Nos.2 and 3 not to cause any nuisance, harassment, annoyance or cause any assault on the Petitioners hereinafter;

- (c) That this Hon'ble Court be pleased to call for the record and proceedings from the Matunga Police Station including diary entry with respect to the Petitioner's complaints as set out in the petition and upon perusal of the same, be pleased to direct the Matunga Police Station to register FIR against Respondent No. 2 and 3 under section 24 and 25 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 and section 506 Part II of the Cr.P.C.;
- (d) That this Hon'ble Court be pleased to direct Respondent Nos. 2 and 3 to forthwith vacate the petition premises, i.e., Flat No. 1003, Prathamesh Co-operative Housing Society Ltd, MMGS Marg, Dadar (East), Mumbai – 400014 vide Agreement dated 28th November 2002 so as to enable the Petitioners to live peacefully in the petition premises."

3. On 8th July 2015, learned APP for the State on instructions made a statement that if the Petitioners approach the officer in-charge of the Police Station of Matunga Police Station, their statements would be recorded and in case such statements disclose the commission of cognizable offence, FIR would be registered. When matter again appeared before the Court, the Petitioners made a grievance that despite their visits to the Police Station and pointing out this court's order dated 8th July

2015, their complaints were not entertained by the police nor their statements were recorded. Mr. Yagnik, the learned APP had also submitted that order dated 8th July 2015 was communicated by him to Matunga Police Station. Having found that in-charge officer of Matunga Police Station was in contempt of the order dated 8th July 2015, we issued show-cause notice to the Senior Inspector of Police of Matunga Police Station calling upon why action shall not be initiated against him under the Contempt of Courts Act. In response to the said notice, Mr. Kakad, Senior Inspector of Police, Matunga Police Station has filed an affidavit. Mr. Kakad has not disputed that the order dated 8th July 2015 was received by Matunga Police Station. He has stated that the said order was marked to Police Inspector Vinod Kamble who was waiting for the Petitioners to approach Police Station for the purpose of recording their statement, however, the Petitioners did not visit the Police Station. It is further stated in the affidavit that the Petitioners have not visited the Matunga Police Station on 12th July 2015, therefore, their statement could not be recorded. It is further stated in the affidavit that letter dated 28th July 2015 written by the Petitioners was received by the Police

Station however for want of contact numbers, the Petitioners could not be contacted. Mr. Havnur at this stage pointed out that in the last paragraph of the letter dated 1st April 2014 [Exhibit-I to the petition], contact numbers of the Petitioner are given. Mr. Parab, learned Counsel appearing for the police officers [noticee contemnor], on instructions, submitted that his clients have not received the letter dated 1st April 2014.

. Be that as it may, after receipt of the order dated 21st September 2015, Mr. Kamble, PI Matunga Police Station has visited the residence of the Petitioners and recorded their statement on 5th October 2015 and on the basis of that statement, FIR has also been registered against Respondent Nos. 2 and 3. Mr. Kakad has tendered an unconditional apology for not recording the statement of the Petitioners in time. In these facts and circumstances, we do not find it necessary to proceed further with the contempt notice issued to Mr. Kakad. Contempt notice accordingly stands discharged.

4. As stated above, FIR is already registered against

Respondent Nos.2 and 3. Therefore, relief claimed in prayer clause (c) is rendered infructuous.

5. So far as the relief claimed in prayer clause (a) is concerned, learned Counsel appearing for the Petitioner does not dispute that in order to enforce the provisions of the Maintenance & Welfare of Parents and Senior Citizens Act 2007, the Government has already taken steps and made functional the authorities under the said Act.

6. So far as prayer clauses (b) and (d) are concerned, the Petitioners have asked, by taking recourse to the provisions of sections 24 and 25 of the said Act, for the removal of Respondent Nos.2 and 3 from the petition premises, i.e., Flat No.1003, Prathamesh Co-operative Housing Society Ltd. We have gone through the said provisions. We are of the considered opinion that the reliefs as claimed by the Petitioners in prayer clauses (b) and (d) cannot be granted by taking recourse to sections 24 and 25 of the said Act. Mr. Havnur in this regard also pressed into service section 23 of the said Act. We are of the opinion that

section 23 deals with when the transfer of property by senior citizens can be declared void. It is not the case of the Petitioners that they are transferors and Respondent Nos. 2 and 3 are the transferees. Therefore, provisions of section 23 also cannot be taken in support by the Petitioners. It needs no mention that the Petitioners are always at liberty to approach the civil Court for the reliefs claimed in prayer clauses (b) and (d).

7. In the backdrop of above, writ petition is dismissed.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]