

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.693 OF 2018

Rahul s/o Chandrakant Bharati,
Alias Sabadra, Age : 54 years,
Occu.: Business,
R/o.: Plot No.4, "Rimzim",
Near Mayur High School,
Wadi Bhokar Road, Deopur,
Dhule,
Taluka and District Dhule

.. PETITIONER

VERSUS

1. Gotu Nana s/o Narayanrao Patil,
Age : 75 years, Occu. Nil,
R/o.: C/o B-1/702, Lake Town,
Bibwewadi, Pune - 37 **(Ori. Applicant)**
2. Sub Divisional Officer,
Cum President of Tribunal
Constituted u/s 7 of the
Act No.56/2007, Old Collector
Office Building, Dhule
3. The Circle Inspector,
Dhule Town, Dhule
Tahsil Office, Dhule **.. RESPONDENTS**

Mr. C.R. Deshpande, Advocate for the petitioner
Mr. M.R. Sonawane, Advocate for respondent No.1
Ms. R.P. Gaur, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

Reserved On : 14th JUNE, 2018

Pronounced On : 21st JUNE, 2018

JUDGMENT :

Rule, returnable forthwith. With consent of the parties heard finally.

2. The petitioner has taken exception to the order dated 11th May, 2018, passed by the Tribunal constituted under Section 7 of the Maintenance of Welfare of Parents and Senior Citizens Act, 2007 ("the Act", for short), whereby the petitioner has been ordered to vacate the Bungalow named as "Rimzim", situate in Plot No.4, Survey No.50/2, Wadi Bhokar Road, Deopur, Dhule, Taluka and District Dhule (hereinafter referred to as "the disputed premises") and handover possession thereof to respondent No.1 (original applicant), within a period of seven days from the date of passing of that order.

3. Respondent No.1 (original applicant) is the owner of the disputed premises. Respondent No.1 is an old aged of about 75 years. He is presently residing with his son at Bibwewadi, Pune.

4. Respondent no.1, being a Senior Citizen, filed an application before the Tribunal under Section 5 (1)

of the Act, alleging that the petitioner has illegally occupied the disputed premises by committing breach of trust. He, therefore, prayed that the possession of the disputed premises may be given to him.

5. The petitioner filed reply before the Tribunal and strongly opposed the application. He denied that he has unlawfully occupied the disputed premises. He stated that he is in possession of the disputed premises as a tenant thereof since more than four years on monthly rent of Rs.3,000/-. He has paid deposit of Rs.1,00,000/- to respondent no.1 at the time of taking possession of the disputed premises. He is paying rent regularly to the daughter of respondent No.1 viz. Kavita, as per the instructions of respondent No.1. He contended that the application filed by respondent no.1 is not covered under any of the provisions of the Act. Therefore, the Tribunal has no jurisdiction to entertain and try it. He specifically stated that the dispute between the respondent No.1 and himself is subject to the jurisdiction of Civil Court. He, therefore, prayed that the application may be rejected.

6. The Tribunal, Presided over by the Sub-

Divisional Officer, Dhule, heard respondent No.1 and the petitioner. He noted that "Rimzim" bungalow i.e. the disputed premises is comprising of eight rooms, out of which three rooms are in possession of the petitioner as a tenant. However, there is no lease agreement executed by the parties. He further observed that there is no evidence to show that the petitioner paid Rs.1,00,000/- to respondent No.1 towards deposit. He then noted that respondent No.1 requested the petitioner to deliver possession of the disputed premises. However, the petitioner did not vacate the disputed premises and continued to be in illegal possession thereof. He, therefore, directed the petitioner to deliver possession of the disputed premises to respondent No.1 within 7 days, failing which respondent No.3, Circle Officer, was directed to evict the petitioner by taking help of Police on 24th May, 2018.

7. The learned counsel for the petitioner challenged the very jurisdiction of the Tribunal to entertain and try the application filed by respondent no.1 under the provisions of the Act. He submits that the petitioner is not relative of respondent no.1. There is sufficient evidence to show that the petitioner is

occupying the disputed premises as a tenant on monthly rent of Rs.3,000/-, which is being received by the daughter of respondent No.1 viz. Kavita, since the year 2012. The disputed premises were not let out by respondent No.1 to the petitioner with any condition except the condition of payment of rent at the rate of Rs.3,000/- per month. In the circumstances, the dispute between the petitioner and respondent No.1 in respect of taking possession of the disputed premises being purely of civil nature, is subject to the jurisdiction of Civil Court. He submits that the civil rights cannot be enforced through the Tribunal established under Section 7 of the Act. According to the learned counsel for the petitioner, if respondent No.1 wants to get possession of the disputed premises, he would have to approach the Civil Court by filing an appropriate suit. The Tribunal has passed the impugned order without jurisdiction. Therefore, it is nullity. On these grounds, he prays that the impugned order may be quashed and set aside.

8. On the other hand, the learned counsel for respondent No.1 submits that the disputed premises were not leased out by respondent no.1 to the petitioner.

Respondent No.1 had simply permitted the petitioner to occupy the disputed premises in the year 2012, on the request of the petitioner since the house of the petitioner was under renovation. It is contended that the possession of the disputed premises was given to the petitioner on the condition that he should provide amenities to respondent No.1 and also should provide basic amenities and physical needs of respondent No.1. Though there is no agreement executed between the petitioner and respondent No.1, respondent No.1 is entitled to claim possession of the disputed premises under the provisions of the Act. It is stated that the petitioner has damaged the disputed premises extensively. He is a nuisance for respondent No.1 and his daughter. He is intending to grab the disputed premises. He filed criminal complaints against respondent No.1 and his daughter to pressurize them. According to respondent No.1, the petitioner, in fact, is not personally occupying the disputed premises. He is residing elsewhere. However, in order to grab the disputed premises, he is harassing respondent No.1 and his daughter. The learned counsel for respondent No.1 submits that the word "maintenance" as defined under Section 2(b) includes residence as well. Moreover under

sub-section (1) of Section 23 of the Act, the senior citizen is entitled to seek possession of the immovable property by approaching the Tribunal under the provisions of the Act. He submits that the Tribunal has rightly exercised the jurisdiction and rightly passed the impugned order. He, therefore, prays that the writ petition may be dismissed.

9. The basic question, which needs to be considered in this writ petition, is whether the Tribunal constituted under Section 7 of the Act has jurisdiction to entertain and try the dispute subject matter of this petition.

10. Before considering the relevant provisions of the Act, it would be necessary to reproduce here the "Statement of Objects and Reasons" of the Act, which read as under.

"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that

ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting up of oldage homes in every district.

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

11. Admittedly, the petitioner and respondent No.1 are not the relatives of each other. The application

filed by respondent No.1 before the Tribunal makes it clear that he asked for possession of the disputed premises only and not maintenance. It seems that respondent No.1 used a printed format of the application in which under the caption "Declaration" it is mentioned that respondent No.1 is unable to maintain himself at his own and therefore subject to the following conditions (which are not mentioned) he should be given maintenance from the petitioner. However, respondent No.1 did not claim maintenance when he was heard by the Tribunal as seen from the opening paragraph of the impugned order. The Tribunal has not directed the petitioner to pay maintenance to respondent No.1. Respondent No.1 has not challenged the order of the Tribunal on the ground that maintenance was not awarded to him. As such, the only claim made by respondent No.1 was for recovery of possession of the disputed premises. Even otherwise, as per sub-Section (1) of Section 4 of the Act parent or grand-parent is entitled to make application under Section 5 for maintenance against one or more of his major children, and a childless senior citizen is entitled to make application against such of his relative referred to in clause (g) of Section 2 of the Act, i.e. any legal heir of the childless senior

citizen who is not a minor and is in possession of or would inherit his property after his death. In the present case, the petitioner being a stranger, respondent No.1 is not entitled to make application against him for maintenance under Section 5 of the Act. Now, it will have to be seen whether possession of the disputed premises can be claimed by respondent No.1 under the provisions of the Act by approaching the Tribunal.

12. According to respondent No.1 the petitioner was in need of the disputed premises since he wanted to renovate his dwelling house and therefore, on the request of the petitioner, he permitted the petitioner to occupy the disputed premises for some period. He does not state that the petitioner had agreed to pay any amount towards the rent or licence fees. Thus, according to respondent No.1, the petitioner was gratuitous licensee of the disputed premises. However, the petitioner has come with a specific case that he had taken the disputed premises on monthly rent of Rs.3,000/- from respondent No.1. He has produced copies of some of the money order forms of the years 2013 and 2014 under which the rent was sent by him to respondent

No.1. The petitioner as well as respondent No.1 have produced the statement of Kavita, who is the daughter of respondent No.1, which was recorded by the Police of Deopur Police Station, Dhule on 28th September, 2013. In that statement, she specifically states that the petitioner repeatedly requested respondent No.1 for letting out the disputed premises to him and accordingly, he took possession thereof in the month of April, 2012, on monthly rent of Rs.3,000/-. She states that the petitioner had assured to vacate the disputed premises within one year, since the construction of his own house was going on. Respondent No.1 has produced the copies of report dated 23rd September, 2013 lodged by him in Police Station Deopur, Dhule against respondent No.1 and others seeking protection of his illegal dispossession from the disputed premises. It seems that during the course of investigation into that report, the statement of Kavita was recorded by the Investigating Officer.

13. Here, a reference may be made to the judgment in the case of **Khatari and others Vs. State of Bihar and others, AIR 1981 SC 1068**, wherein it is held that in a civil proceeding or any proceeding under Article 32 or

Article 226 of the Constitution of India, the statement made before a Police Officer in the course of investigation can be used as evidence, provided it is otherwise relevant under the Indian Evidence Act. This statement seems to have been produced before the Tribunal as well. The statement of the daughter of respondent No.1 coupled with money orders received by respondent No.1, prima facie, show that the disputed premises were let out by respondent No.1 to the petitioner on monthly rent of Rs.3,000/-. Even the Tribunal has observed at Serial No.3 under the caption "Reasons and Conclusions" in the impugned order that the petitioner is residing in the disputed premises since last four years as a tenant.

14. As per sub-section (1) of Section 55 of the Maharashtra Rent Control Act, 1999, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant licensee, as the case may be, shall be in writing or shall be registered under the Registration Act, 1908. As per Sub-section (2), the responsibility of getting such agreement registered shall be on the landlord and in the absence of the written or registered agreement, the

contention of the tenant about the terms and conditions, subject to which a premises have been given to him by the landlord on leave and licence or have been let out to him, shall prevail, unless proved otherwise. In view of these provisions, the absence of written agreement between respondent No.1 and the petitioner in respect of letting out of the disputed premises could not have been considered as an adverse circumstance against the petitioner. On the contrary, in the absence of the written and registered agreement, the contention of the petitioner was liable to be accepted. In the present case, it is not merely a contention of the petitioner that he is occupying the disputed premises as a tenant on monthly rent of Rs.3,000/-, but it is supported by the statement of the daughter of respondent No.1 viz. Kavita and also by the money orders sent by the petitioner to respondent No.1 towards rent.

15. Even if it is accepted for a while that respondent No.1 permitted the petitioner to occupy and use the disputed premises without any consideration and as such, the petitioner was a gratuitous licensee, the relations between them would be that of licensor and licensee.

16. The real nature of the transaction between respondent No.1 and the petitioner in respect of the disputed premises would be decided by the Court of competent jurisdiction after considering the evidence on record. This Court has expressed prima facie opinion about the nature of transaction for the purpose of deciding the present writ petition.

17. Here it would be worthwhile to reproduce Section 23 of the Act, which reads as under:

"Transfer of property to be void in certain circumstances.-

(1) Where any senior citizen who, after the commencement of this Act, has 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 refuses or fails to provide such amenities and physical needs, the said transfer of property 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.

(2) 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.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5."

18. It seems that a feeble attempt has been made by respondent No.1 for the first time in his affidavit-in-reply that while transferring the disputed premises to the petitioner, a condition was imposed that the petitioner would provide basic amenities and physical needs to respondent No.1. There is absolutely nothing on record to substantiate this claim. It was not the case stated by respondent No.1 in his application filed before the Tribunal. The Tribunal also has not recorded any finding to that effect. Moreover, as discussed above, prima facie, the petitioner is either a tenant or licensee of the disputed premises. Consequently, the

contention of respondent No.1 raised before this Court for the first time that the disputed premises were transferred to the petitioner with the above mentioned condition, cannot at all be accepted.

19. In order to bring the case under sub-section (1) of Section 23 of the Act, the following conditions are necessary, which read as under:-

(a) The senior citizen has transferred by way of a gift deed or otherwise, after commencement of this Act;

(b) **The transfer was subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor;**

(c) Such transferee refused to provide such amenities and physical needs;

(d) In that event, the said transfer shall be deemed to have been made by fraud or coercion or under undue influence.

(e) Consequently, at the option of the transferor such transfer shall be declared void by the Tribunal.

20. In the present case, respondent No.1 has transferred the disputed premises to the petitioner, either by way of lease or under leave and licence. There is no written agreement evidencing that this transfer was on the condition that the petitioner shall provide

the basic amenities and basic physical needs to the transferor. The application filed by respondent No.1 before the Tribunal is totally silent about the ingredients of sub-section (1) of Section 23 of the Act. Even the impugned order is also silent about these ingredients. As stated above, it is for the first time that respondent No.1 whispered about conditional transfer of the disputed premises before this Court. When no such condition was attached to the transfer of the disputed premises, there was no question of refusal or failure on the part of the petitioner to provide such amenities and physical needs to respondent No.1.

21. Considering the objects of the Act, the disputes between the senior citizen and others in respect of civil rights pertaining to movable or immovable property would not be covered under Section 4 or Section 23 of the Act. Here, a reference may be made to the judgment in the case of **Sukumaran Vs. Sumesh and Ors. MANU/KE/0204/2018**, delivered on 19th January, 2018, by the Division Bench of the High Court of Kerala at Ernakulam, wherein the father had executed a sale deed in favour of his son. Subsequently, father filed an application before the Tribunal under Section 23 of the

Act. The Tribunal declared the sale deed as null and void and cancelled it. It was found that the sale deed did not contain any reservation making the transferee (son) liable to provide the basic amenities and basic physical needs to the transferor (father). Consequently, it was held that the case pleaded by the father, was not one to which section 23 would apply and the father was left to seek to invalidate the sale deed on any valid ground only through the Civil Court. In the present case also, the transfer of the disputed premises to the petitioner was not subject to any condition as mentioned in sub-section (1) of Section 23 of the Act. Consequently, the provisions of Section 23 would not be applicable. Respondent No.1 would have to approach the Civil Court or Competent Authority, as the case may be, depending upon his interpretation about the nature of the transaction in respect of the disputed premises i.e. either lease or leave and licence, for necessary reliefs.

22. The learned counsel for respondent No.1 cited the judgment in the case of **Santosh Surendra Patil Vs. Surendra Narasgopnda Patil & Others, (2017) 4 Mh.L.J. 70**, wherein it is held that under Section 23 of the Act,

2007, Maintenance Tribunal can issue an eviction order to ensure that the senior citizens live peacefully in their houses without being forced to accommodate a son who physically assaults and mentally harasses them or threatens to dispossess them. It is, thus, clear that in that case the dispute was between the father and son and not between third parties.

23. The learned counsel further relied on the judgment in the case of **Sunny Paul & Anr. Vs. State NCT of Delhi & Ors.** in **W.P.(C) 10463/2015 & CM APPL. 43227/2016**, delivered by Delhi High Court on 15th March, 2017, wherein the primary issue for consideration was whether the Act of 2007 provides the sole remedy of monetary maintenance by the children / relative and/or does it provide for eviction of adult children in cases of parental abuse. In paragraph 73 of the judgment, the Court concluded that the Act of 2007, amongst other remedies, provides for eviction of adult children in cases of parental abuse. In that case also, the dispute was between the parents and children.

24. The third unreported judgment cited by the learned counsel for respondent No.1 is delivered by this

Court on 19th April, 2018 in **Writ Petition No.8969 of 2017** in the matter of **Bhagwan Tanaji Sonawane and others Vs. Tanaji Punaji Sonawane**, wherein also, the father had approached the Tribunal seeking directions against petitioner No.1 (son) to vacate the residential house and deliver possession thereof to the father. Since the provisions of Section 23 of the Act were applicable, the order passed by the Tribunal directing petitioner no.1 to vacate residential house was upheld by this Court.

25. As stated above, the petitioner and respondent No.1 are strangers. There are no family relations between them. Moreover, the provisions of Section 23(1) of the Act are not applicable to the facts of the present case. Therefore, the judgments cited above by the learned counsel for respondent No.1 would be of no help to respondent no.1 to justify the impugned order.

26. The Tribunal seems to have travelled beyond the scope of jurisdiction vested in it under the Act. It encroached upon the jurisdiction of the Civi Court and passed the impugned order. The Tribunal has passed the impugned order without jurisdiction. It is a nullity. It is liable to be quashed and set aside. In the result, I pass the following order:-

O R D E R

- (A) The Criminal Writ Petition is allowed.
- (B) The impugned order dated 11th May, 2018 passed by the Tribunal is quashed and set aside.
- (C) No costs.
- (D) The Criminal Writ Petition is disposed of accordingly.
- (E) Rule is made absolute.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE