

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8969 OF 2017

Bhagwan Tanaji Sonawane and others ...Petitioners

versus

Tanaji Punaji Sonwane ...Respondent

...
Advocate for Petitioners : Mr. Subodh P. Shah with Mr. U.A. Bhadgaonkar
Advocate for Respondent No.1 : Mr. Mukul S. Kulkarni
.....

CORAM : V. K. JADHAV, J.
DATED : 19th APRIL, 2018

PER COURT:-

1. By consent, heard finally at admission stage.
2. Being aggrieved by the order dated 09.06.2017 passed by the Maintenance Tribunal, Dhule under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, "Act of 2007") in proceedings No. POL/NN/SR/05/2017, the petitioners have filed this Writ Petition.
3. Brief facts giving rise to the present Petition are as under:
 - a. Petitioner no.1 is the brother of petitioner nos. 2 to 5. The respondent is the father of all the petitioners. Petitioner nos. 2 to 5 are married since long and living happily at their matrimonial house.

Petitioner no.1 is also married and has a daughter and two sons. The mother of petitioners (wife of the respondent) died in the year 2011. According to the petitioners, the respondent-father is not financially dependent on any of his children. He has saved certain amount after his retirement and invested the same in fixed deposit with HDFC bank. He receives monthly interest of around Rs.5,000/- to Rs.6,000/-. Petitioner no.1 is self employed and earns around Rs.3,00,000/- per annum.

b. According to the petitioners, till 2017, petitioner no.1 along with his wife and children, was residing with the respondent-father. All the petitioners were trying their best to take care of their father-respondent after demise of their mother. However, due to passage of time, the respondent developed some grievance against petitioner No.1. At the instigation of some strangers to the family, he made an application bearing No. POL/NN/SR/05/2017 before the Maintenance Tribunal under the provisions of Act of 2007 seeking maintenance. On 30.03.2017, the petitioners were served with a show cause notice by the Tribunal as to why maintenance should not be awarded to the respondent-father.

c. The respondent-father abruptly left the residential house and started residing at a rented premises. He also appointed one Mr. Bhumish Kanubhai Patel as a nominee to his fixed deposit with HDFC bank to which, originally, petitioner no.1 was appointed as the nominee.

On 17.05.2017, the respondent made a representation to the Tribunal seeking directions to petitioner no.1 to vacate the residential house and the respondent may be put in possession of the same.

d. The Tribunal, by order dated 09.06.2017, decided the application bearing No. POL/NN/SR/05/2017 filed by respondent-father and directed petitioner no.1 to vacate the residential house within seven days, failing which, he would be liable for punishment of imprisonment for not more than one month as contemplated under Section 125(3) of the Code of Criminal Procedure. Hence this Writ Petition.

4. Learned counsel for the petitioners has also filed an affidavit-in-rejoinder denying all the contentions and allegations made by the respondent in his reply. The learned counsel for the petitioners submits that, all the petitioners earnestly wish that petitioner no.1 and the respondent-father should reside together which would be in the interest of all the concerned and great prejudice would be caused to the entire family in case petitioner no.1 is evicted from the residential house and the respondent-father starts residing separate and alone. The entire family would be the victim of these circumstances.

5. The learned counsel for the petitioner submits that Section 6(6) of the Act of 2007 requires that the tribunal should refer the matter for conciliation. However, no such efforts were made by the tribunal. The

learned counsel submits that even the hearing was not taken by the tribunal itself and was taken by the subordinate staff of the tribunal and only the final order is passed by the tribunal. The learned counsel submits that the order impugned in this Petition is without jurisdiction, without application of mind and based on incorrect appreciation of the material on record. The tribunal, under the provisions of Act of 2007, has no authority to deal with any immovable property. Moreover, the impugned order is passed without following the due procedure of law and without affording any opportunity of being heard to the petitioners.

6. The learned counsel for the respondent submits that although the fixed deposit receipts are in the name of the respondent, he is not getting the amount of interest accrued thereon. Even the cheque issued by the bank in favour of the respondent is in possession of petitioner no.1. The petitioner no.1 has issued a legal notice dated 25.11.2016 to the respondent alleging that the entire amount belongs to him. Petitioner no.1 has also instituted Special Civil Suit No. 09 of 2017 seeking declaration that the amount in the fixed deposit belongs to him and he is entitled for the same. The petitioners are guilty of deliberately and intentionally misleading this Court. Petitioner no.1 has also not offered any explanation as to how he came in possession of the cheque issued by the bank in favour of the respondent. This conduct of the petitioners requires consideration. The respondent does not have any property in his possession. He is forced to take shelter in a temple. The learned

counsel submits that the petitioners appeared before the competent authority in response to the notice received by them, however, they did not file any written statement. The matter was also placed for mediation and conciliation on 24.05.2017, however the matter could not be compromised. It is falsely stated in the Petition that no efforts have been made for mediation. The petitioners have, even after passing of the impugned order, never approached the respondent-father, neither made any attempts to settle the matter.

7. The learned counsel for the respondent further submits that as per Sections 2 and 23 of the Act of 2007, the competent authority is vested with all powers in respect of the property. The petitioners have not raised any objection in this regard before the competent authority and now it is not permissible for them to agitate the same before this Court after participating in the proceedings before the competent authority without any demur. The respondent is presently living at the mercy of strangers in a temple. He does not have any money or property. The petitioner owns a property-plot in the same society. The petitioner is also in possession of plot, which belongs the respondent. The respondent is deprived from enjoying his own property by the petitioners.

8. The learned for the respondent submits that the petitioners are children of the present respondent. Despite this, the respondent is

homeless and penniless. The petitioners have failed to maintain the respondent without any reason. They are depriving him from his house and also the amount of fix deposit with interest thereon. In the Petition, it is alleged by the petitioners that respondent can survive on monthly interest received by him. However, due to the suit instituted by the petitioners, the respondent is not receiving any amount and the petitioners have also not paid him anything for all these days. The learned counsel submits that the contents of Petition are false and incorrect. The petition is devoid of merits and needs to be dismissed.

9. The learned counsel for the respondent, in order to substantiate his contentions, placed reliance on the following cases:

1. *Sunny Paul v. State (NCT of Delhi)*, reported in 2017 SCC Online Del 7451,
2. *Santosh Surendra Patil vs Surendra Narasgopnda Patil and Ors.*, reported in 2017 All M.R. (Cri) 4065 and
3. *LPA 783/2017 (Shadab Khairi & Anr. Vs The State & Ors.)* with connected matters, decided on 22.02.2018 by the High Court of Delhi.

10. Learned counsel for the petitioners has vehemently submitted that Section 9 of the Act of 2007 empowers the Tribunal to award the monthly maintenance, if the children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain

himself, and the Act does not provide any power to the Tribunal to deal with any immovable property and particularly the order of eviction from any immovable property.

11. In the case of **Sunny Paul and another vs. State (NCT of Delhi) (supra)** the High Court of Delhi held that the direction of eviction is necessary consequential relief or a corollary to which a senior citizen would be entitled and the Maintenance Tribunal has jurisdiction to pass eviction order and also to issue direction to give effect to the same. In para Nos. 69 and 71, the Delhi High Court has made the following observations:-

“69. The directions of eviction is a necessary consequential relief or a corollary to which a senior citizen would be entitled upon a transfer being declared void. In Promil Tomar (supra) the Punjab and Haryana High Court has held that once the transfer of the property to the petitioners is held void by the Tribunal, the consequential benefit would be to restore senior citizens to a position which would be in the shape of status quo ante i.e. a situation which existed prior to the transfer so far as the title and possession is concerned.

71. Consequently, the Maintenance Tribunal has the jurisdiction to not only pass an eviction order but also to issue directions to give effect to the same under Section 23 of the Act 2007.”

12. In the case of **Santosh Surendra Patil vs. Surendra**

Narasgopnda Patil and others (supra) this Court has also taken similar view and by referring the provisions of Section 23 of the Act of 2007 held that the Maintenance Tribunal can issue eviction order to ensure that senior citizen live peacefully in their house without there being forced to accommodate a son who physically assaults and mentally harasses them or threatens to dispossess them.

13. In the instant case, the respondent is 77 years old and literally he is staying in a temple. He was subjected to physical and mental harassment, particularly at the hands of wife of petitioner No.1. It is also a part of record that relations have strained to such an extent that the wife of petitioner No.1 has also approached the police station against the respondent and lodged a complaint. Instead of giving certain amount as maintenance to the respondent, the petitioner No.1 has instituted Special Civil Suit No. 9 of 2017 seeking declaration that the amount in the fixed deposit is belonging to him and he alone is entitled for the same. Instead of vacating the suit house, petitioner No.1 has categorically made a statement before this Court that he was ready to accommodate the respondent in rented premises. It is also not disputed that one another house property is available wherein petitioner No.1 can shift alongwith his family. However, petitioner No.1 apprehends that with the help of strangers, the respondent may dispose of the property and therefore, petitioner No.1 is reluctant to vacate the suit house. It is not disputed that the suit house is self acquired property of the

respondent and thus he has every right to dispose of the said house property as per his will and wish. Prior to this litigation, the respondent was residing with petitioner No.1 and his family members, however, it appears that the respondent now find it difficult to stay with them and carry on the relations further. I have observed that it is difficult for the respondent to come at Aurangabad even for withdrawing the amount which came to be deposited before this Court, as per the interim order. It was incumbent upon petitioner No.1, who is the only son to take care of his father, who is at the fag end of his life. This is an unfortunate litigation. I also agree with the view taken by the Delhi High Court and also this Court in the above mentioned cases. In such a contingency, I concur with the view taken in the above cited cases that the Maintenance Tribunal has jurisdiction of not only to pass the eviction order but also issue direction to give effect to the same. I find no fault in the impugned order. The respondent is staying in a temple at present. It would be thus necessary to give effect to the order passed by the Tribunal forthwith. Thus, I do not find any substance in this writ petition. Writ petition deserves to be dismissed. The writ petition is accordingly dismissed with costs of Rs.5000/- to be paid by the petitioners to the respondent.

14. The petitioner has deposited the amount of Rs.20,000/- before this court and as per the earlier arrangement, the office is directed to transfer the said amount to the District Court, Dhule and the respondent

is permitted to withdraw the said amount from the District Court, Dhule.

15. At this stage, learned counsel for the petitioners prays that the effect of this order may be stayed for a period of two weeks from today so as to enable the petitioners to approach the Supreme Court. However, since respondent is 77 years old and residing in a temple so also an alternate accommodation is available to petitioner No.1, I am not inclined to grant stay to the effect of this order. The prayer for stay stands refused.

(V. K. JADHAV, J.)

rlj/