

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2392 OF 2018

WITH

CIVIL APPLICATION NO.533 OF 2018

WITH

CIVIL APPLICATION NO.949 OF 2018

WITH

CIVIL APPLICATION NO.1755 OF 2018

Shamim Akhtar Harron Rashid Khan and another ... Petitioners

Vs.

The State of Maharashtra through Public Secretary
and another ... Respondents

Mr. A. M. Saraogi for Petitioners.

Mr. Vedchetan Patil for Respondent No.2.

CORAM : R. G. KETKAR, J.

DATE : SEPTEMBER 05, 2018

P.C. :

Not on Board. At the request of Mr. Saraogi, taken up for admission.

2. Heard Mr. Saraogi, learned Counsel for the petitioners and Mr. Patil, learned Counsel for the respondent No.2 at length.

3. As the regular Court has passed 'Not Before Me' order, the petitioners have moved this Court as per the administrative order passed by the Hon'ble the Acting Chief Justice.

4. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 09.02.2018 passed by the Sub-Divisional Officer and Sub-Divisional Magistrate, Tribunal for Welfare of Parents and Senior Citizens, Mumbai Suburban (for short 'Tribunal'). By that order, the Tribunal allowed the application

made by the second respondent herein and directed the petitioners to vacate the premises namely, flat No.B-704, Ecohomes C.H.S.Ltd., MMRDA, Ram Mandir (W) / Jogeshwari (W), Mumbai 400 060 consisting of two bedrooms, hall and kitchen, admeasuring about 850 sq.ft. (for short 'suit premises') within 30 days. The Tribunal also directed the petitioners to make their own independent arrangement of residence. The Tribunal also issued direction to the petitioners for not causing any harassment, either bodily or mentally, to the respondent No.2.

5. In support of this Petition, Mr. Saraogi raised following contentions:

- a. In the complaint made by the second respondent, it is asserted that the suit premises is purchased in the name of his wife - Naiyar Sultana Haroon Khan and his daughter - Ms Nishat Haroon Khan. Petitioner No.1 is one of the children of the respondent No.2 and Naiyar Sultana Haroon Khan. Petitioner No.1's mother - Naiyar and sister – Nishat are not the beneficiaries under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act'). The complaint is essentially made on behalf of the petitioner No.1's mother and sister. The Tribunal was, therefore, not justified in passing the impugned order.
- b. Petitioner No.2 is daughter in law of the second respondent against whom as also against the children of the petitioners, no order could have been made by the Tribunal.
- c. By clause 3 of the operative part of the impugned order, Tribunal directs the petitioners to remove themselves along with the children within 30 days from passing of the impugned order. The Tribunal could not have passed order against the petitioner No.2, being the daughter in law of the second respondent and children of the petitioners.

d. Section 6 of the Act prescribes procedure for deciding the application made under Section 5 of the Act. Relying upon Section 6, he submitted that the Tribunal has to follow the procedure applicable to the summons case.

6. He has taken me through the documents on record to contend that in fact the mother and sister of petitioner No.1 are not residing in the suit premises though the application is made on their behalf. He has also taken me through the reply filed by the petitioners to the application filed by the second respondent and paragraphs 3a to 3p of the Petition to contend that the property does not belong to mother and sister of petitioner No.1 but it is acquired after selling various ancestral properties. Petitioner No.1 has paid consideration for purchasing the suit premises.

7. On the other hand, Mr. Patil supported the impugned order. He invited my attention to the definition of the expression “property” under Section 2(f) of the Act. He contended that the suit premises stands in the name of wife and daughter of respondent No.1. Section 2(f) defines the expression “property” to mean that property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and **includes rights or interests in such property**. Respondent No.2 being the husband of Naiyar, has undoubtedly interest in the suit premises. He relied upon the decision of this Court (Coram : R. D. Dhanuka, J.) **dated 26.06.2018** in the case of ***Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and two others, Writ Petition No.10611 of 2018***. He submitted that the learned Single Judge of this Court has referred to the decisions of Delhi High Court in the case of - (i) ***Sunny Paul Vs. State NCT of Delhi and others dated 15.03.2017 in W.P.(C) No.10463 of 2015***, (ii) ***Sachin Vs. Jhabbu Lal dated 26.11.2016*** in

R.S.A.No.136 of 2016 and (iii) *Nasir Vs. Govt. of NCT of Delhi*, 2015 (153) DRJ 259. The learned Single Judge also considered the decision of Gujarat High Court in the case of *Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania*, AIR 2013 Gujarat 160. He submitted that the learned Single Judge followed the decision of Delhi High Court in the case of **Sunny Paul** (*supra*) and observed that claim for eviction is maintainable under Section 4 read with other provisions of the Act by a senior citizen against the children and also the grand children. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is rather a matter of record that respondent No.2 has filed proceedings under Section 5 of the Act. The Statement of Object and Reasons of the Act reads thus,

“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.”

9. Section 2 defines the expressions “children”, “maintenance”, “minor”, “parent”, “property”, “relative”, “senior citizens” and “welfare”. The said provisions read thus,

“2. In this Act, unless the context otherwise requires,-

- (a) “children” includes son, daughter, grandson and grand-daughter but does not include a minor;
- (b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;
- (c) “minor” means a person who, under the provisions of the Majority Act, 1875, is deemed not to have attained the age of majority;
- (d) “parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;
- (f) “property” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property;
- (g) “relative” means any legal heir of the children senior citizen, who is not a minor and is in possession of or would inherit his property after his death;
- (h) “senior citizen” means any person being a citizen of India, who has attained the age of sixty years or above;
- (k) “welfare” means provision for food, health care, recreation centres and other amenities necessary for the

senior citizens.”

10. A perusal of the definition of the expression “property”, extracted hereinabove, shows that the property means the property of any kind and includes rights or interests in such property. In paragraph 2 of the reply filed by the petitioner No.1 to the application filed by the second respondent shows that it is contended therein that it was the decision of the petitioner No.1 to take the suit premises in the names of respondent No.2's wife namely, his mother - Naiyar and divorced sister - Nishat. It, therefore, has to be held that respondent No.2, being the husband of Naiyar, has rights or interests in the suit premises.

11. Section 4 deals with maintenance of parents and senior citizens. In the case of **Sunny Paul** (*supra*), the Delhi High Court has considered the issue of passing of eviction order by the Tribunal at great length and has held that the claim is maintainable under Section 4 of the Act. It was further observed that if the argument of the learned Counsel for the petitioner is accepted 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 grand children during his / her lifetime. The Act is enacted for the benefit and protection of senior citizen from his children or grand-children. I fully agree with the ratio laid down by the Delhi High Court in the case of **Sunny Paul** (*supra*). In the case of **Nasir** (*supra*), the Delhi High Court held that once it is found that a senior citizen was the owner of the subject property, no error can be found with the directions issued by the Tribunal.

12. A perusal of the record shows that several complaints were required to be lodged by the second respondent against the petitioners herein. In so far as the submission of Mr. Saraogi that no document of title is produced by the second respondent on record is concerned, I do

not find any merit in this submission. The reply filed by the petitioners herein does not even remotely challenge the title of mother and sister of petitioner No.1. In fact, in paragraph 2, petitioner No.1 contended that it was his decision to take the suit premises in the names of respondent No.2's wife, namely his mother - Naiyar and divorced sister - Nishat. In other words, petitioner No.1 has accepted that the suit premises is in the name of his mother and sister. During the course of hearing, I repeatedly made query as to whether petitioners have any right, title or interest in the suit premises. Mr. Saraogi was not in a position to establish that petitioners have any right, title or interest in the suit premises.

13. Mr. Saraogi submitted that the suit premises was purchased after selling the ancestral properties. Petitioner No.1 has paid consideration for purchasing the suit premises. It will be open to the petitioners to establish their case by approaching the appropriate Civil Court. The Tribunal constituted under the Act cannot determine the issue of title. Even otherwise, I do not find that in the present proceedings, petitioners have challenged the title of Naiyar and Nishat.

14. In the light of the aforesaid discussion, I do not find that the Tribunal committed any error in passing the impugned order. Petitioner No.1, being ungrateful son, is not entitled to any equitable relief in exercise of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

15. At this stage, Mr. Saraogi orally applies for stay of this order for a period of two weeks from today.

16. Having regard to the conduct of the petitioners and the harassment meted out by them to his aged parents and divorced sister,

no case is made out for granting any relief to the petitioners. The impugned order was passed on 09.02.2018. The petitioners should have made their own arrangement for residence. Hence, oral application is rejected. It is made clear that in case the petitioners do not handover possession of the suit premises within one week from today, respondent No.2 will be at liberty to approach Goregaon (West) Police Station and the police officials attached to that Police Station will extend full co-operation for dispossessing the petitioners.

17. All parties, including the police officials attached to Goregaon (West) Police Station, shall act upon the authenticated copy of this order.

18. In view of the dismissal of the Petition, nothing survives in Civil Applications and the same are disposed of accordingly.

(R. G. KETKAR, J.)

Minal
Sandip
Parab

Digitally signed
by Minal Sandip
Parab
Date: 2018.09.07
05:39:35 +0500

Minal Parab