

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1036 OF 2018

Col. Vinay Vitthal Jadhav (Retd.)

... **Petitioner**

V/s.

Vikram Jadhav & Ors.

... **Respondents**

Mr. H.P. Vyas for the Petitioner.

Mr. A.R. Patil, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 25th SEPTEMBER 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 16.01.2018 passed in Appeal No.6/2017, by the learned Appellate Authority and Additional Collector, Pune, dismissing the appeal preferred by the petitioner under Section 15 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (the said Act).

2. Heard Shri. Vyas the learned counsel for the petitioner and perused the record.

3. The petitioner is father of Respondent No.1. The petitioner filed an application under Section 5 of the said Act, claiming

maintenance and for direction to vacate the premises from Respondent No.1 before the Sub-Divisional Officer, Pune, which has been rejected by an Order of February 2017 on the ground that, the petitioner is an ex-serviceman and is getting pension. It is further observed that, prayer for eviction of Respondent No.1 cannot be entertained as the Court of competent jurisdiction has already passed an Order for partition of the said house, wherein the petitioner and Respondent No.1 are residing.

4. Feeling aggrieved by the said order, the petitioner preferred an appeal bearing No.6/2017 under Section 15 of the said Act before the Appellate Authority and Additional Collector, Pune, which has also been dismissed by impugned Order dated 16.01.2018. It is observed by the Appellate Authority that, the dispute between the petitioner and Respondent No.1 is of civil nature and their disputes are pending before the Civil Court. That the Appellate Authority is precluded from evicting the Respondent No.1 under the provisions of the said Act. In view thereof, the prayer for eviction of Respondent No.1 was not entertained by the Appellate Authority.

5. Mr. Vyas, the learned counsel appearing for the petitioner

submitted that, under Section 22 of the said Act, the Maintenance Tribunal can issue an eviction order to ensure that, the senior citizens live peacefully in their house without being forced to accommodate a son who physically assaults and mentally harasses them or threatens to dispossess them. In support of his contention, he relied on the decision of this Court in the case of *Santosh Surendra Patil Vs. Surendra Narasgopnda Patil & Ors. Reported in 2017(4) Mh.L.j.(Cri.) 675* and submitted that the Appellate Authority has committed error in observing the afore-stated fact.

6. The record of the present case indicates that, the house wherein the petitioner and Respondent No.1 are residing is a one story building. The petitioner is residing on the ground floor, wherein Respondent No.1 is residing on the first floor. The petitioner is getting pension from the Government. It further appears that, Respondent No.1 has no independent place to reside. These aspects have weighed in the mind of both the Authorities. There is concurrent finding recorded by both the Authorities below.

7. After perusing the entire record, this Court is of the view that, both the authorities below have not committed any error in passing

the impugned order.

8. In view of the above, I find that, there are no merits in the petition and is accordingly dismissed in limine.

(A.S.GADKARI, J.)