

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION (ST) NO. 13114 OF 2018****Sevantilal Mulchand Shah****..... Petitioner****VERSUS****The Additional Collector,
Mumbai Suburban District & Ors.****..... Respondents**

Mr.Ravi Talreja for the Petitioner.

Mr.S.H.Kankal, A.G.P. for the State – Respondent nos.1 and 2.

Mr.Jay Bhatia, a/w. Mr.Chandrajeet Das for the Respondent nos. 3 and 4.

Mr.Sunil R. Rawal for the Respondent nos. 5 to 8, 8(a) and 8(b).

CORAM : R.D. DHANUKA, J.**DATE : 13th AUGUST, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 31st March,2018 passed by the respondent no.1 i.e. the Additional Collector thereby setting aside the order dated 18th August,2017 passed by the Tribunal constituted under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. The appellate authority has directed that an amount of Rs.10,000/- per month as a maintenance amount to be paid to the petitioner and has rejected the application for eviction of the respondent no.3 and respondent no.4 from the flat bearing no. 301, 3rd Floor, Amar Tower, Anandrao Devle Marg, Near Chandan Talkies,

Juhu, Mumbai – 400 049.

3. It is not in dispute that the flat was jointly owned by the petitioner and his wife in equal shares. The respondent no.3 is the son of the petitioner. The petitioner has four daughters who are impleaded as respondent nos. 5 to 7. The respondent nos. 8(a) to 8(b) are the grand-daughter and grand-son of the petitioner respectively, being daughter and son of the petitioner's deceased daughter Mrs. Neeta Niren Parekh.

4. The petitioner had filed a complaint under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 against the respondent nos. 3 and 4 and had applied for eviction of the respondent nos. 3 and 4 and maintenance and alleged that the respondent no.3 was not maintaining the petitioner, was ill treating him and was assaulting him physically for which the petitioner had filed complaints against the respondent no.3 before various authorities.

5. Several complaints filed by the petitioner are annexed to the writ petition filed by the petitioner.

6. In view of the fact that the respondent no.3 who is one of the son of the petitioner, claims 8.33% share in the said flat through his mother who expired and was having 50% share in the said flat, this court suggested to the parties whether the said flat no.301 could be sold by consent of all the parties. The respondent nos. 5 to 8(b) were accordingly impleaded as parties to the writ petition.

7. Except the respondent no.3, all the daughters of the petitioner and the respondent nos. 8(a) and 8(b) have no objection if the said flat is sold. The respondent no.3 however opposes any order that is prayed by the petitioner in this writ petition including the proposal for the sale of the said flat on the ground that the respondent no.3 has been maintaining the petitioner all throughout. He has also alleged to have rendered various financial assistance to the petitioner which according to the respondent no.3 had been gifted by the petitioner to his daughters.

8. It is also the case of the respondent no.3 that the respondent no.3 has paid substantial amount for renovation of the flat and is taking care of all the needs of the petitioner and has incurred huge amount on the medical treatment of the petitioner. In support of his submission, respondent no.3 has filed affidavit in reply and annexed various documents.

9. Pursuant to the order passed by this court on the last date, the petitioner himself is present in court who is 82 years old. This court inquired with the petitioner whether he wants to stay with the respondent nos. 3 and 4 in the said flat and whether he has been maintained by the respondent nos. 3. The petitioner informed this court that he doesn't want to stay with the respondent nos. 3 and 4. He further stated that the respondent nos.3 and 4 do not maintain him and are ill treating him. He informed the court that he is physically assaulted by the respondent nos. 3 and 4 and as a result thereof the

petitioner was required to file complaints against the respondent nos. 3 and 4 to various authorities. He also produced photographs in support of his statement made before this court. The statements made by the petitioner are accepted as correct as borne out from the documents on record.

10. The petitioner informed this court that instead of staying with the respondent nos.3 and 4, he will be more happy to stay alone and would engage a care taker who will take care of him at this age. He wants peace of mind and does not want such harassment and physical assault from the respondent nos. 3 and 4.

11. Insofar as the contentions raised by the respondent nos. 3 and 4 in the affidavit in reply filed by them before this court and more particularly to the effect that he has been taking care of the petitioner is concerned, a perusal of the record annexed to the petition and also the statement made by the petitioner before this court clearly indicates that the stand of the respondent nos. 3 and 4 that he has been taking care of the petitioner is *ex-facie* incorrect.

12. Insofar as amount alleged to have been spent by the respondent no.3 on renovation of the flat or the amount alleged to have been paid by the respondent no.3 to the petitioner and more particularly Rs.23,50,000/- is concerned, a perusal of record indicates that no such case was pleaded by the respondent no. 3 before the authorities. Be that as it may, it is for the respondent no. 3 to adopt the appropriate proceedings if he so desire, for recovery of said amount

from the petitioner.

13. Insofar as the respondent nos.5 to 8(b) are concerned, they are agreeable to the request of the petitioner that the said flat in which they jointly have share excluding 8.33% of the respondent no.3, for sale of the said flat to enable the petitioner to have peace of mind and to stay separately. The statement made by the learned counsel for the respondent nos. 5 to 8(a) and 8(b) are accepted.

14. The respondent no. 3 is not agreeable for sale of the flat though his claim in the said flat is restricted to the 8.33% only.

15. Considering the documents on record and the pleadings and the statement made by the petitioner before this court, in my view, the respondent nos. 3 and 4 cannot prevent the petitioner and the other claimants in the flat viz. respondent nos. 5 to 8(b) from selling the flat. I am thus inclined to appoint an officer of this court to sell the said flat in question by public auction. The learned Commissioner to obtain a valuation report from a valuer from the panel of this court and shall fix a reserve bid and publish the notice after obtaining further directions from this court.

16. The respondent no.3 also would be permitted to participate in the said auction of the said flat.

17. Upon realization of the sale proceeds, the learned Court Commissioner shall distribute the amount of sale proceeds after paying

liability of the society if any in respect of the said flat to the petitioner, the expenses on conducting auction sale and her fees and expenses. Insofar as respondent nos.8(a) and 8(b) are concerned, they will be entitled to total 8.33% share claiming through their predecessor i.e. through their mother who has expired. It is an undisputed position that the petitioner is separately entitled to 50% share in the flat in addition to 8.33% shares out of the share of his deceased wife. The learned Commissioner shall obtain further directions from this court before distribution of the amount.

18. The learned Court Commissioner shall take steps to sell the said flat within three months from today.

19. All the private parties to the proceedings shall co-operate with the the Court Commissioner in selling the said flat.

20. The petitioner, respondent no.3 and respondent nos. 5, 6, 7, 8(a) and 8(b) shall share such expenses equally and shall deposit the requisite amount with the Court Commissioner in advance as may be demanded.

21. The learned Additional Collector has totally ignored the behaviour of the respondent nos. 3 and 4 with the petitioner as pointed out aforesaid and did not make proper inquiry in the matter as to whether the petitioner has made out a case for the eviction of the respondent nos. 3 and 4 from the flat or not and has passed an erroneous order.

22. In my view, the situation in which the petitioner has been suffering in the hands of the respondent nos. 3 and 4, the request of the petitioner to sell the flat deserves to be accepted.

23. Mrs.Chandan Bhatt, an Officer of this court is appointed as a Court Commissioner for taking steps to sale the flat in question.

24. The respondent no.3 shall continue to pay the maintenance charges as awarded in the impugned order to the petitioner for a period of three months or till such period the flat is sold and vacant possession is handed over by the respondent nos. 3 and 4.

25. Learned counsel for the respondent no.3 on instruction from the respondent no.3 who is present in court undertakes to vacate the flat along with his family and will handover the possession thereof to the learned Court Commissioner upon the learned Court Commissioner issuing a notice to vacate within seven days from the date of such notice. Undertaking is accepted.

26. The respondent no.3 is permitted to remove all the furnitures and his personal belongings which are claimed by him as his personal assets from the flat at the time of vacating the said flat and handover the vacant possession thereof to the learned Court Commissioner.

27. The petitioner would be permitted to engage a care taker

to take care of him at his own cost during this period of three months.

28. The respondent no.3 and 4 shall not obstruct such care taker or the petitioner to stay in the flat till such time the flat is sold.

29. Learned counsel for the respondent no.3 on instruction from his client undertakes that his client will not create any problem against the petitioner, will not harass and assault the petitioner till the flat is sold. Undertaking is accepted.

30. It is made clear that if there is any breach of the undertaking rendered by the respondent no.3 before this court and if such breach is brought to the notice of this court by the petitioner, this court will take serious view in the matter and appropriate action against the respondent nos. 3 and 4.

31. The respondent no.3 has agreed to install CC TV in the flat and to maintain the recording thereof till the flat is sold. The recording shall not affect the privacy of the petitioner.

32. The parties to act on the authenticated copy of this order.

33. The learned Court Commissioner to issue notice to all the parties through their respective advocates.

34. The fees and expenses of the learned Court Commissioner also shall be borne by all the parties equally. The fees of the learned

Court Commissioner shall be decided by the Court after completion of sale.

35. The impugned order passed by the learned Collector is set aside in the aforesaid terms.

36. Writ petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]