

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 8021 OF 2018****Sadanand B. Joil & Anr.****..... Petitioners****VERSUS****The Deputy Collector and Presiding
Officer, The Maintenance and
Welfare of Parents and Senior
Citizens Tribunal, Mumbai City & Anr.****..... Respondents**

Mr.Purushottam Kulkarni for the Petitioners.

Mr.S.D.Rayrikar, A.G.P. for the State – Respondent no.1.

CORAM : R.D. DHANUKA, J.**DATE : 26th JULY, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 25th June, 2018 passed by the Deputy Collector and Presiding Officer, the Maintenance and Welfare of Parents and Senior Citizens Tribunal, Mumbai directing the petitioners to vacate the premises owned by the respondent no.2 who is a father of the petitioner no.1 and father in law of the petitioner no.2 under the provisions of section 4(2), 4(3) read with section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the said Maintenance Act).

2. It is the case of the petitioners that the petitioner no.1 married the petitioner no.2 on 19th March,2017 and started staying with the respondent no.2 in the premises owned by the respondent no.2. It is

the case of the petitioners that the respondent no.2 who is a father of the petitioner no.1 kept his hand on the back of the petitioner no.2 when the petitioner no.1 had gone out. The petitioner no.2 lodged a complaint with the local police station against the respondent no.2 after about one year after the said alleged incident. The respondent no.2 is retired and is 70 years old.

3. On the other hand, it is the case of the respondent no.2 that both the petitioners have been harassing the respondent no.2. They are not providing food and clothes to the respondent no.2. The petitioner no.2 has been abusing the respondent no.2 and has been ill treating him. The keys of the flat are not handed over to the respondent no.2 and is asked to wait outside the flat till 10.30 p.m.

4. Learned counsel for the petitioners submits that the father of the petitioner no.1 is of loose character. The petitioners allegedly came to know about his such alleged behaviour from the neighbours also. He however submits that the petitioners have no other alternate accommodation with them and if the petitioners are evicted, they will be on the street. It is submitted that the respondent no.2 is getting pension amount of Rs.10,000/- per month whereas the monthly salary of the petitioner no.1 is about Rs.8,000/- per month.

5. During the course of the arguments also learned counsel appearing for the petitioners repeated the allegations made by the petitioners against the 2nd respondent. It is submitted that the respondent no.1 has no power to evict the petitioners under the

provisions of the said Maintenance Act.

6. A perusal of the record indicates that such allegations are made for the first time on 20th March, 2018 in the letter addressed by the petitioner no.2 through her advocate alleging the incident of 23rd March, 2017. In last one year, no such complaint was made by the petitioners against the respondent no.2 father. When the respondent no.2 called upon the petitioners to vacate in view of the continuous harassment to the respondent no.2 by the petitioners, a false complaint came to be lodged by the petitioners against the respondent no.2 with the concerned police station.

7. It is submitted by the learned counsel for the petitioners that the respondent no.1 did not give any hearing to the petitioners nor furnished a copy of the complaint filed by the 2nd respondent. A perusal of the impugned order passed by the 1st respondent clearly indicates that the petitioners were informed about the date of hearing. The petitioners on the first date of hearing appeared before the 1st respondent and left the office of the 1st respondent contending that they did not want to participate in the proceedings before the 1st respondent. The matter was thereafter adjourned to 20th April, 2018. None of the petitioners remained present before the 1st respondent on the adjourned date.

8. The 1st respondent accordingly heard the respondent no.2 and considered the complaint filed by him and passed an order of eviction against the petitioners. The 1st respondent has noticed the unreasonable

behaviour of the petitioners before him in the hearing held on 21st March, 2018 and recorded that both the petitioners had refused to participate in the hearing before him and left the office of the 1st respondent during the course of the hearing. I am thus not inclined to accept the submissions made by the learned counsel for the petitioners that the papers and proceedings were not served upon the petitioners or that the 1st respondent has refused to hear the petitioners. There is no letter produced by the petitioners on record alleging that the papers and proceedings were not served by the respondent no.2 or by the respondent no.1.

9. Insofar as submission of the learned counsel for the petitioners that no order of eviction could be passed by the respondent no.1 under the provisions of section 4 read with section 23 with the said Act is concerned, this court invited the attention of the learned counsel for the petitioners on the judgment rendered by this court in case of ***Dattatrey Shivaji Mane vs. Lilabai Shivaji Mane and others*** dated 26th June, 2018 in ***Writ Petition No.10611 of 2018*** and furnished a copy to the learned counsel for the petitioners and to deal with.

10. This court has held that the authority under the said Maintenance Act has ample power to pass an order of eviction on the application filed by the senior citizen against his children or grand-children along with other family members on the conditions set out therein. In my view, the principles laid down by this court in the said judgment squarely applies to the facts of this case. The petitioners are not providing food and clothes to the 2nd respondent who is a senior

citizen. There are serious and irresponsible allegations made by the petitioners against the 2nd respondent father about his character. I am not inclined to accept those allegations made by the petitioners against the respondent no.2 as correct. Learned counsel for the petitioners could not demonstrate as to what legal right his clients have to continue to occupy the premises of the respondent no.2 father who is a senior citizen. On one hand the petitioners are making irresponsible allegations against the respondent no.2 about his character and at the same time want to stay with him.

11. I do not find any infirmity with the impugned order passed by the respondent no.1. The petition is devoid of merits and is accordingly dismissed.

12. The petitioners are directed to handover the vacant possession of the premise in question to the respondent no.2 within one week from today.

13. If the possession is not handed over to the respondent no.2 by the petitioners within one week from today, the concerned local police station shall assist the respondent no.2 for recovery of the possession from the petitioners and shall handover the possession thereof to the 2nd respondent exclusively.

14. During this period of one week, the petitioners shall not harass the respondent no.2 in any manner whatsoever. If it is brought to the notice of this court by the respondent no.2 that the petitioners have

continued to harass the 2nd respondent during this period, appropriate action under the provisions of Contempt of Courts Act, 1971 would be initiated against the petitioners by this court.

15. The parties are directed to act on the authenticated copy of this order.

16. The petitioners are directed to convey this order to the 2nd respondent no.2 within two days from today.

[R.D. DHANUKA, J.]