

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3320 of 2017**

- Dinesh Kumar Swarnkar S/o Shri Amarnath Swarnkar, Aged About 46 Years R/o Station Road, Shakti, District Janjgir- Champa, Chhattisgarh

---- Petitioner**Versus**

1. Amarnath Swarnkar S/o Hemchand Swarnkar, Aged About 78 Years R/o Station Road, Shakti, District Janjgir- Champa, Chhattisgarh..... Applicant
2. Sub Divisional Officer (Revenue) Cum Presiding Officer, The Maintenance And Welfare Of Parents And Senior Citizens, Shakti , District Janjgir - Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Tarkeshwar Nande, Advocate with Shri Aditya Sharma, Advocate
For Respondent No.1	:	Shri Manoj Paranjpe, Advocate
For Respondent/State	:	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****02/09/2019**

1. Heard.
2. The present petition is against the order dated 29.11.2017 passed by respondent No.2.
3. Since the matter was mentioned before this Court on the ground that the respondent is a senior citizen aged about 80 years as of now, therefore, the petition is heard.

4. The brief facts of this case are that the instant petition is filed by the son and the father is arrayed as respondent No.1. The order under challenge is order of eviction passed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act, 2007'). It is contended that the respondent had filed an application for eviction before the Tribunal constituted under the Act, 2007 on the ground that the petitioner has not vacated the premises which was given to him by the father and the petitioner is not maintaining the father as is required. It is contended on behalf of the petitioner that the reply before the Tribunal would disclose the fact that the petitioner is earning Rs.20,000/- per month, whereas the respondent/father who was an ex-employee of railway is receiving the pension more than Rs.40,000/-. It is stated that the requirement of the shop wherein the petitioner is carrying on his business would be for further 10 years and apart from the shop, the another shop also exists, which is being used by the respondent. It is further stated that the petitioner is earning more than Rs.20,000/- per month in different heads. It is further contended that in order to get the benefit of the Act, 2007, the respondent has used the provisions of the Act, 2007 as in the earlier round of litigation, the petitioner has already paid Rs.25000/- and deposited before the Court in compliance of the order passed by this Court in WPC No.1183/2014. Learned counsel for the petitioner, therefore, submits that the impugned order passed by the Tribunal under the Act, 2007 is completely illegal.
5. Per contra, learned counsel for the respondent No.1 supports the order passed by the Tribunal and submits that the order is well merited. Further learned counsel went through the provisions of Section 23 of the Act, 2007 and submits that the Section 23 of the Act, 2007 gives the power for eviction, which has

been held by the different Courts. Further the reliance has been placed in ***Sunny Paul & Anr. Vs. State NCT of Delhi & Ors. {WPC No.10463/2015, passed by the Delhi High Court on 15th of March, 2017}, Justice Shanti Sarup Dewan, Chief Justice (Retired) and Another Vs. Union Territory, Chandigarh and Others {2013 LawSuit (P&H) 4541}*** and also in the case decided by this Court in ***Pramod Ranjankar & anr. Versus Arunashankar & Ors. {CRMP No.600 of 2018}***.

6. I have heard learned counsel for the parties at length.
7. Perused the order of the Tribunal dated 29.11.2017 (Annexure P-1). Perusal of the order would show that an application was filed by the father respondent No.1 Amarnath Swarnkar under Section 23 of the Act, 2007, wherein after reply, the Tribunal members themselves made the inspection of the spot and on inspection they found that the land bearing Khasra Nos.1256/5, 1256/8 & 1256/9 on the front part of it the superstructure exists, wherein at 200 sq. feet of area, the petitioner Dinesh Kumar Swarnkar is in possession and in the first floor one room is also in possession of the petitioner too and rest of the land is in possession of Amarnath Swarnkar. Both the parties were present at the time of inspection and they admitted those facts. Subsequently, the order would show that the Tribunal also made an inspection of the house of Dinesh Kumar Swarnkar (son) of his house situated at place Harethi and found that the house is situated abutting the national highway and is nearly 11.5 decimal and over 900 sq. feet two storey building situates, which is also not been disputed by the petitioner. Consequently, the Tribunal came to a finding that apart from the property son himself, out of property of father superstructure of 200 sq. feet along with superstructure is occupied by the son. It also records the fact that

the petitioner being the son is not looking after the father. It further held that not only son is financially sound, he is carrying on his business over 200 sq. feet of the land belonging to the father/respondent. Though the petitioner (son) contended before the Tribunal that he is not financially well, however, that part was negated and it was held that the petitioner though is capable to maintain his father, is not maintaining him. Eventually, the order for eviction under Section 23 of the Act, 2007 was passed to vacate the premises.

8. Since the initial order was passed under Section 23 of the Act, 2007, therefore, the reasons and the object of the Act, 2007 would be of much significance, which is reproduced hereunder:-

“INTRODUCTION

Ageing has become a major social challenge because of decline in the joint family system. A large number of elderly persons, particularly widowed women are not being looked after their families. They are forced to spend their twilight years all alone and are exposed to emotional neglect and are not being provided financial support. To combat this social challenge there is a need to give more attention to the care and protection for the older persons. Though there is a provision in the Code of Criminal Procedure, 1973 under which parents can claim maintenance from their children but the procedure is time consuming and expensive. It is desired that simple, inexpensive and speedy provisions may be made to claim maintenance by the suffering parents. To cast an obligation on the persons who inherit the property of their aged relatives to maintain them and to make provisions for setting up oldage homes for providing maintenance to the indigent older persons and to provide better medical facilities to the senior citizens and to make provisions for protection of their life and property the Maintenance and Welfare of Parents and Senior Citizens Bill was introduced in the Parliament.

STATEMENTS OF OBJECTS AND REASONS

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 citizens 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 institutionalization 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 23 of the Act, 2007 would be relevant in this case, under which the order is passed, is reproduced hereinbelow:-

“23. Transfer of property to be void in certain

circumstances.-- (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is

gratuitous, but not against the transferee for consideration and without notice of right.

(3) If, any senior Citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5.”

10. By virtue of Section 23 of the Act, 2007, it will have an overriding effect notwithstanding anything inconsistent therewith contained in any other statute. In the instant case, admittedly the premises wherein the petitioner is carrying on his business belongs to the father. The application which is filed before the Tribunal by the father raises serious allegations on the son which includes that the mother & father were subjected to mental, financial and physical torture by the son. It is further contended that because of the torture meted out by the son the father could not continue in the rest of premises and had to leave the same. The application further includes that during the pendency of the petition, the mother of the petitioner also died as she suffered cancer and despite that during the ailment, no support was extended by the son and the petitioner being the father is running from pillar to post for his legal right from one Court to another.
11. Delhi High Court in the case of ***Sunny Paul (supra)*** has decided the issue whether the maintenance Tribunal constituted under Act, 2007 has jurisdiction to pass eviction order under Section 23 of the Act, 2007? In that issue the Delhi High Court held that the Tribunal has jurisdiction to evict in exercise of power under Section 23 of the Act, 2007. Similar ratio of law was decided by the Punjab & Haryana High Court reported in ***2013 LawSuit (P & H) 4541*** wherein the Court held that the Tribunal has jurisdiction to issue an order of eviction.

12. In the given case admittedly the petitioner was not the owner of the premises, wherein he is carrying on his business, therefore, it can be presumed that the business is being carried on with the permission of the parents i.e. the respondent. The permission has been long withdrawn, as such the petitioner cannot be asked to file a traditional suit of eviction by filing a civil suit as this cannot be ignored that the respondent has already attained the age of nearly 80 years and specially the Act is meant for benefit of senior citizens. Therefore, this Court as held earlier in CRMP No.600 of 2018 that anxiety to stop the right of the abuse of senior citizen is to be made effective as otherwise it would be a symbolic collapse of the legal system by not responding to the request or by adhering to the dummy mode by Courts. This Court further held that the object is to compel a man to perform the moral obligation which he owes to his parents and give support to the shivering hands. Likewise this cannot be forgotten that the children were protected during their childhood to become a competent adult. The object of the Act, 2007 calls for a simple, speedy but limited relief and seeks to ensure that the parents are not shelved as a commodity or a good under the scrap/heap of society and allow the children to sail on their immorality for their own subsistence.

13. In view of this, I am not inclined to entertain this writ petition, as otherwise it will make the object of the Act, 2007 porous. Consequently, the petition is dismissed.

Sd/-

Goutam Bhaduri
Judge