

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2039 OF 2019
WITH
NOTICE OF MOTION NO. 130 OF 2019

Yogesh Madhusudan Mehta	...Petitioner
<i>Versus</i>	
Union of India & Ors	...Respondents

Mr Chirag Mody, *with Mr Mohit Arora & ms Isha Maniar, i/b Desai & Diwanji, for the Petitioner.*

Mr Rajendra Kumar Singh, *with Mr Sahilesh S Pathak, for Respondent No. 1- Union of India.*

Mr HB Takke, AGP, *for Respondent No. 2-State.*

Mr Jitesh Agarwal, *for the Applicant/Respondent No. 4.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 30th August 2019

PC:-

1. After this writ petition was argued extensively earlier and today for a brief time, we notice that the dispute is unfortunate in nature. A senior citizen before this Court, the 4th respondent, Madhukanta, had to invoke the Maintenance and Welfare of Parents Senior Citizens Act 2007 against the petitioner, her son.

2. The proceedings are pending before the 3rd respondent, Maintenance Tribunal, Mumbai Suburban City. We do not think that the rival contentions require any in-depth consideration, simply because the main matter is not decided as yet by the 3rd respondent.

3. The 3rd respondent has not proceeded only because the parties informed him that there is a writ petition filed in this Court by Yogesh Madhusudan Mehta with a specific prayer that the records and proceedings in Application No. 15 of 2017 pending on the file of respondent No. 3 be called for and the order dated 24th August 2017, a copy of which is at Exhibit “A”, passed by the said respondent be quashed and set aside.

4. The order at Exhibit “A” to this writ petition says that the 4th respondent, Madhukanta has approached the Tribunal. Her allegation is that she has been cheated into executing a gift deed by her son, the petitioner before us, and that is how he has transferred Flat No. B/507, Radhakrishna Coop Housing Society Limited, Parsi Panchayat Road, Andheri (East), Mumbai 400 069 in his name. The request of Madhukanta is that this property, or at least her share in it, be returned to her.

5. The only argument before us is that such an order could not have been passed because the proceedings before the Tribunal were not maintainable. The Tribunal had no jurisdiction to entertain and try the application or decide the issue, particularly when Section 23 of the Act is not attracted.

6. Further the argument is that this order was passed without hearing the petitioner. This order is dated 24th July 2017 but before it was passed the possession was already handed over. After that order the petitioner approached this Court challenging it and the petition was instituted on 1st August 2017. It come up before a Division Bench of this Court and which made the following order on 3rd August 2017.

“Heard Mr. Ashish Kamat, the learned counsel for the Petitioner, Mr. Himanshu Takke, the learned AGP for Respondent No.2 and Ms. Babita Kesharwani, the learned counsel for Respondent No.9. The Petitioner to file affidavit of service, on or before the next date.

2 Meanwhile, considering the averments made and considering the events and the scheme of the Maintenance and Welfare of Parents and Senior Citizens Act, 2017, the effect and operation of order dated 24th July, 2017, is stayed till the next date.

3 Stand over to 18th August, 2017.”

7. Mr Mody, therefore, submits that this order be continued until the proceedings are pending before the Maintenance Tribunal.

8. We have considered this request and while we do not express any opinion on the maintainability of the proceedings pending before the Tribunal, and particularly the applicability of Section 23 thereof, we are mindful of the fact that the respondent No. 4, Madhukanta, is the mother of the petitioner. She has complained that this Act can be invoked by her because her own son, the present petitioner, Yogesh Mehta, has failed to maintain her. She is not in

possession of the immovable property and Yogesh Mehta claims she had purportedly gifted her share in it to him, which gift deed, a copy of which is annexed at page 133 of the paper-book, is under serious cloud.

9. In these circumstances, though we continue the ad-interim order till the main proceedings are disposed of, still, we do not think that if the ad interim order is so continued, and rights can be balanced by such an unconditional continuation, tomorrow, should an issue arise about the legality and validity of the gift deed, then it should not happen that the original gift deed and the transfer documents including the original share certificate issued by the cooperative housing society go missing or are not traceable or any Tribunal or competent Court will have to initiate proceedings to obtain the same. We do not wish to have a search launched for these either. Further, we think that in the facts and circumstances peculiar to this case, since the mother is a senior citizen complaining that she has not been maintained, the interest of justice would be served if without prejudice to the rights and contentions of both sides, the following order is passed:

- (a) The petitioner must deposit the original title deeds, including the gift deed in this Court within a period of two weeks from today;
- (b) The original title deeds shall be retained by the Prothonotary and Senior Master of this Court until further directions of this Court;

- (c) Liberty is given to the parties to apply for return of the original documents and if such a request is made, that will be considered on its own merits and in accordance with law;
- (d) Till the matter is pending before the Tribunal, the petitioner shall pay to the 4th respondent an ad hoc sum of Rs. 2,500/- per month. The first such deposit shall be made by 15th September 2019 and every subsequent monthly deposit shall be made on 15th day of each succeeding month.
- (e) In the event of two defaults, the Presiding Officer shall be free to pass an order directing that the possession of the flat be handed over to the 4th respondent;
- (f) We direct the 3rd respondent, Presiding Officer to conclude the proceedings as expeditiously as possible and in any event within a period of three months from the date of appearance of the parties before him after communication of this order;

10. Needless to clarify that the order of 3rd August 2017 stays the execution, operation and implementation of the order dated 24th July 2017 passed by the 3rd respondent, but does not stay the proceedings themselves.

11. We further direct that until the proceedings are pending before the Tribunal, the petitioner before us shall not induct any third party in possession of the subject flat nor shall he dispose it of or transfer it in any manner whatsoever, nor create any encumbrance on it or create any third party rights of whatsoever nature in it or in any part of it.

12. The writ petition is disposed of in these terms.

13. In view of this, the Notice of Motion does not survive and is disposed of as such.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)