

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION {LODGING} NO.3373 OF 2019

Shrikant Devdas Naik & 3 Others Petitioners
Vs.
The State of Maharashtra & 4 Others Respondents

Mr. Omprakash Pandey with Ms Aneeta Vasani
for the Petitioners.
Ms Uma Palsuledesai, AGP, for Respondent No.1.
Mr. Prashant Sawardekar for Respondent Nos.3,
4 & 5.
Mr. Shriram Bhosale, PSI, Kasturba Marg Police
Station, Borivali, Mumbai, present.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : DECEMBER 16, 2019

P.C:

1. By this petition under Article 226 of the Constitution of India, the order of the Senior Citizens Maintenance Tribunal, Mumbai Western Suburb, functional under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is challenged.

2. The 3rd respondent before this Court is the original applicant/mother-in-law of petitioner No.2 and the grandmother of petitioner Nos.3 & 4.

3. The respondent No.4 is another son of respondent No.3 and the brother of petitioner No.1. The respondent No.5 is the wife of respondent No.4, daughter-in-law of respondent No.3 and sister-in-law of petitioner No.1.

4. All of them reside in a building which is situated at Borivali (East), Mumbai.

5. One Devdas Naik purchased Flat No.310, 3rd floor, B-Wing, Cascade-III, Opp. Sri Sri Ravi Shankar School, Kulupwadi, Borivali (East), Mumbai-400 066. It is a 2 bedroom hall kitchen flat. After the husband of respondent No.3 and respondent No.3 moved into the flat together with their children, later on the children were married, the daughters-in-law came so also the grandchildren. The said Devdas expired on 14-8-2018. He died intestate, leaving behind the above and particularly the wife/respondent No.3.

6. After the death of the said Devdas, there were disputes between the parties and that led to respondent No.3 making an application before the Tribunal.

7. A copy of this application is annexed as Exhibit "E", page 56 of the paper-book. The respondent No.3 says that, she resides in this flat along with her two sons, two daughters-in-law and grandchildren. Importantly, she said that she resides with

her mother, aged 83 years.

8. It is claimed that petitioner No.1 and his wife/petitioner No.2 are harassing respondent No.3, particularly for property rights and claiming a share in the estate of the deceased. It is complained that respondent No.5 runs a small creche for children from this flat. She and her husband Chandrakant (respondent No.4) have been taking care of respondent No.3. The petitioner No.1 has harassed them as well. Apart from that, he and his wife are threatening respondent No.3 and on account of these threats she apprehends that physical harm will be caused to her and her aged mother. Apart therefrom, because of this continuous harassment it has become impossible for her to live her life peacefully.

9. The petitioner No.1 before this Court had appeared before the Tribunal in the Application styled as S.R. 23/2019. The petitioners do not dispute that the flat was purchased by Devdas, father of petitioner No.1 and father-in-law of petitioner No.2 during his life time. It is not disputed that the flat is purchased in the name of Devdas and his wife, the 3rd respondent before us, in the year 2005. It is also not disputed that Devdas died on 14-8-2018, leaving behind him the widow and two sons. The petitioner No.1 does not dispute that he is

residing in the subject-flat along with his wife and children, mother and elder brother as also sister-in-law. The elder brother also has a daughter aged 13 years. All of them are residing together. However, there are allegations made against the sister-in-law Rashmi Chandrakant Naik. It is alleged that she unauthorisedly and illegally runs a baby-sitting/creche and she has not obtained permission from the statutory authorities. This is a business. He then alleges that the prices in the property market, particularly in the City of Mumbai, have increased and therefore the elder brother Chandrakant and his wife want to grab the share and right so also the title and interest of the petitioners in respect of the said flat. They want to forcibly dispossess him, namely, petitioner No.1 and his family.

10. It is said that grown-up daughters are disturbed also because of the illegal and wrongful activities of the brother and the sister-in-law. Thus, what is urged is that at the instance and instigation so also at the behest of Chandrakant that the mother has filed the application. It is said that the petitioners are ready and willing to look after the mother of petitioner No.1 and maintain her as well.

11. It is specifically alleged that on 17-6-2019, at about 8:30 a.m., the elder brother Chandrakant allegedly abused Shrikant, petitioner No.1 and his wife petitioner No.2. They

abused them in filthy and vulgar language and threatened that the flat should be vacated by them before 15-7-2019, failing which they will forcibly dispossess the petitioners before us.

12. That apprehending such forcible dispossession, S.C. Suit No.1577 of 2019 was filed in the City Civil Court at Mumbai. It is denied that petitioner No.1 ever threatened the mother, brother and sister-in-law. It is said that there is no dispute with the mother, brother and sister-in-law.

13. Then a reference is made to an FIR invoking Section 354 of the Indian Penal Code (“**IPC**”) r/w Sections 8 and 12 of The Protection of Children from Sexual Offences (POCSO) Act, 2012.

14. It is in relation to the latter case under the POCSO that we called for a report from the concerned police station.

15. It is stated that the police have registered the FIR, the statements are recorded, charge-sheet is filed and the proceedings are pending before the Competent Criminal Court.

16. At the outset, we do not agree with Mr. Pandey, learned counsel appearing for the petitioners, that this application made by the mother, a senior citizen, is at the behest and at the instigation of the elder brother and his wife. It

may be that the elder brother and his wife are named as an accused in a complaint as serious as invoking Section 354 of the IPC and Sections 8 and 12 of the POCSO but we are not concerned in this case with the pendency of that criminal case. The reasoning of the Tribunal, which has passed the impugned order, takes note of the incidents, including the threats administered to respondent No.3 by her own son, petitioner No.1. That continuous disputes between petitioner No.1 and the other son led to causing nuisance and annoyance to respondent No.3, is the foundation on which she has proceeded. She pointed out from her own statement and the entire material that the petitioners are not only neglecting her but causing harassment. It is always the paramount consideration of the Act that senior citizens should not suffer. The senior citizen, in this case, is aged 65 years and she resides in the flat along with her mother. The law itself is clear inasmuch as a senior citizen, including a parent who is unable to maintain himself/herself from his/her own earnings or out of the property owned or made, shall be entitled to make an application under Section 5 of the Act of 2007. The senior citizens have to be treated with dignity and respect which they deserve. The obligation of the children or relative to maintain a senior citizen/parent extends to the needs of such a citizen so that the senior citizen leads a normal life. The parents should not suffer at the fag end of their life, is the expectation. That this

expectation is belied because the maintenance, which is inclusively defined to mean provision for food, clothing, residence and medical attendance and treatment, is denied. The senior citizen in this case made the specific allegation and pointed out that it is the behaviour and conduct of petitioner Nos.1 and 2 which raise a serious apprehension in the mind of the mother, namely, respondent No.3/applicant before the Tribunal. She has listed the acts attributable to petitioner Nos.1 and 2 and which have been summarised during the discussion on Issue Nos.2 and 3, framed by the Tribunal. The Tribunal thus is not influenced only by the presence of Chandrakant, the elder brother, and his wife. That Chandrakant and his wife have ill-treated children in their home by running an illegal business is thus not the foundation for the whole case. The foundation is the relief claimed by the senior citizen by invoking the relevant provision by making specific allegations with regard to denial of maintenance. That petitioner No.1 has neglected the senior citizen, his own mother, is established and proved by the statement of respondent No.3 as also the other materials placed on record. The Tribunal has, in the discussion on Issue No.2, reasoned that the premises do not belong to either son. The premises belongs to the father and the mother of petitioner No.1. Though the respondent/petitioner No.1 might state that he is the joint holder in the property, but the ownership rights are with the applicant. During her lifetime there could not have been

any dispute with regard to the right, title and interest in the property. All the more when the petitioners do not deny the basic facts, as noted by us. In these circumstances, to then continuously blame each other, to then institute civil proceedings and also make it impossible for the mother to reside peacefully, is enough to grant the relief according to the Tribunal. To our mind, such reasoning of the Tribunal does not suffer from any error of law apparent on the face of the record or perversity warranting our interference in writ jurisdiction. All the more when respondent No.3 has proved before the Tribunal her allegation that in her old age and her failing health she does not want these disputes to continue forever. We are, therefore, of the opinion that the order passed by the Tribunal does not call for our interference in writ jurisdiction. The writ petition is devoid of merit and is dismissed.

17. At this stage, Mr. Pandey, appearing for the petitioners, stated on instructions that the petitioners would accept the order passed by this Court and remove themselves from the flat. However, bearing in mind the tender age of petitioner Nos.3 and 4 and because they are school going children, reasonable time to vacate the premises be granted.

18. This request is opposed on the ground that the mother is apprehensive that the continuing presence of the

petitioners in the premises would cause nuisance and annoyance to her.

19. On hearing both sides on this point, we find that the mother, who is respondent No.3 before us, should not be so insensitive to her own grandchildren. The petitioner Nos.3 and 4 are her grandchildren and they will suffer in the event petitioner Nos.1 and 2 are not granted time to vacate the premises and search for an alternate accommodation.

20. We, therefore, grant two (2) months' time to the petitioners to vacate the premises after which, if they do not vacate, they shall suffer all consequences including forcible eviction from the premises. If such an eventuality arises, the local police station shall render all assistance to the senior citizen to enforce and execute the order of the Tribunal.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

**SURESH
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SAJNAWAT**

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