

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5772 OF 2019

Ajay Shriram Raut
And ors.

... Petitioners

-vs-

Shriram Shrawan Raut
and ors.

... Respondents.

Shri Vijay A. Kothale, Advocate for petitioner.

Shri Y. P. Kaslikar, Advocate for respondent No.1.

Smt H. N. Prabhu, Assistant Government Pleader for respondent Nos.2 and 3.

CORAM : A.S.CHANDURKAR, J.

DATE : December 16, 2019

P.C.

The challenge raised in the present writ petition is to the order passed by the Collector dated 14/05/2019 by which the appeal preferred by the respondent No.1 under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the said Act) has been allowed. As a result of that adjudication the order passed by the the Sub-Divisional Officer on 25/02/2016 has been set aside and the respondent No.1 has been held entitled to receive back possession of his house situated on Survey No.565.

2. The petitioner Nos.1 and 3 herein are the sons of respondent No.1. The petitioner Nos.2 and 4 are his daughters-in-law. It is the case of the

respondent No.1 that through his own earnings he purchased land at Survey No.565 after which he constructed his house therein. The aforesaid property was purchased on 08/04/1969. He along with his family members started residing in the house constructed therein. The respondent No.1 retired from service in July 1994. According to him he was being harassed by the petitioners and was forced to live in a small varandah of his own house. He made various complaints and ultimately on 19/01/2015 he filed proceedings under provisions of the said Act praying therein that the petitioners be directed to vacate the said residential house and he be given vacant possession thereof. The Sub-Divisional Magistrate initially allowed that application by order dated 13/04/2015. That order came to be challenged by the petitioners herein by filing an appeal. The Collector initially passed an interim order in favour of the petitioners after which that order was vacated. The petitioners approached this Court by filing Criminal Writ Petition No.560/2015. The Collector was directed to consider the question of interim relief after hearing both the parties. Ultimately by the order dated 20/10/2015 the Collector remanded the proceedings to the Sub-Divisional Magistrate for fresh adjudication. After remand the Sub-Divisional Magistrate held the application to be not maintainable and granted liberty to the respondent No.1 to file a fresh application. Such application was made on 23/03/2016. The said application was however rejected by the Sub-Divisional Magistrate and hence that order was challenged in appeal. By

the impugned order that appeal has been allowed.

3. Shri V. A. Kothale, learned counsel for the petitioners submitted that in proceedings under the said Act there was no jurisdiction with the Authorities to order eviction of the occupants of the premises in question. The proceedings under the said Act were conducted in a summary nature and the object of the said Act was to ensure grant of maintenance and welfare of parents as well as of senior citizens. If any relief of eviction from the premises owned by the parents/senior citizens was prayed for, the jurisdiction was only with the civil Court. Placing reliance on the decision in *Anand Kumar Agarwal & Anr. vs. Ashok Kumar Agarwal 2019 ALLMR (Journal) 37* it was submitted that the aspect of there being no jurisdiction with the Sub-Divisional Magistrate to order eviction stands accepted therein. He further referred to the provisions of Sections 4(4), 5 as well as Section 6(4) and its proviso of the said Act. It was further submitted that the petitioners had given an undertaking that they were willing to provide maintenance to the respondent No.1 and take his full care but this was not acceptable to the respondent No.1. Since the petitioners also had a right in the aforesaid property which was the subject matter of R.C.S. No.124 of 2019, they were not liable to be evicted. The impugned order therefore was liable to be set aside.

4. Shri Y. P. Kaslikar, learned counsel for the respondent No.1 supported the impugned order. According to him the plot in question was purchased by the respondent No.1 in the year 1969 and the respondent No.1 had constructed a house thereon. The petitioner Nos.1 and 3 were minors at that time and in view of the harassment and ill-treatment given to him by the petitioners, the respondent No.1 was justified in initiating the present proceedings. According to him the Sub-Divisional Magistrate was vested with the jurisdiction under Section 4 of the said Act to direct eviction of the children of the senior citizen and in that regard he referred to the order dated 23/03/2017 passed in Criminal Writ Petition No.1791 of 2016 (*Shri Santosh Surendra Patil vs. Shri Surendra Narasgopnda Patil and ors.*) as well as the decision in *Dattatrey Shivaji Mane vs. Lilabai Shivaji Mane and ors.* **2018(6) Mh.L.J. 681**. These decisions of this Court were liable to be followed in preference to the judgment of the Calcutta High Court in *Anand Kumar Agrarwal and Anr.* (supra). He then referred to various proceedings which were required to be initiated by the respondent No.1 in view of the conduct of the petitioners who were harassing the respondent No.1 and were infact attempting to evict the respondent No.1 from the premises in question. It was urged that the petitioner Nos.2 and 4 had filed false cases against the respondent No.1 and he did not desire to permit the petitioners to reside in the house in question. Moreover since the respondent No.1 was receiving pension he did not desire to receive any amount of maintenance from the

petitioners. He therefore submitted that the impugned order did not deserve to be interfered with.

5. On 25/11/2019 on the suggestion made by the learned counsel for the petitioners and the respondent No.1, the Court had interacted with the petitioner Nos.1, 3 and the respondent No.1 in the chamber. Since it was found that the matter could not be resolved amicably the writ petition is therefore being decided on merits.

It is seen from the record that the property in question is claimed to have been purchased by the respondent No.1 in the year 1969 and a house has been constructed thereon. The documents of title are shown to be in favour of the respondent No.1. Being aggrieved by the harassment of all the petitioners the respondent No.1 was constrained to initiate the present proceedings under Section 5 of the said Act. He sought vacant possession of the house in question on the premise that he was not being maintained by the petitioners and on the contrary he was being subjected to continuous harassment by them. Since it is urged on behalf of the petitioners that there was no jurisdiction with the Sub-Divisional Magistrate to direct eviction of the petitioners in proceedings under this Act, it would be necessary to refer to the decisions of this Court holding otherwise. In *Santosh Surendra Patil* (supra) a similar contention was raised and it was held by the learned Single Judge that the Authorities under the said Act had the necessary jurisdiction

to order eviction and also direct vacant possession being delivered to the parents/senior citizens. In *Dattatrey S. Mane* (supra) same view has been reiterated and it has been held in clear terms that while considering the application for grant of maintenance, parents/senior citizens cannot be called upon to file civil proceedings for recovery of possession especially when the family members do not maintain the parents/senior citizens but infact create nuisance and also cause mental/physical hurt to them. It is thus found in the light of these two decisions that the Authorities under the said Act are empowered to order eviction of the children and grandchildren from the premises of the parents/senior citizens. In the light of aforesaid two decisions the ratio of which binds this Court I am not inclined to follow the view as taken by the Calcutta High Court in *Anand Kumar Agarwal and Anr.* (supra).

6. Coming to the facts of the present case it has been found by the Collector that the respondent No.1 is aged about 82 years and various litigations were initiated against him by the petitioners. For that he was required to agitate for his rights in the Court of law. The respondent No.1 on account of the mental and physical harassment alleged to be caused by the petitioners did not intend to permit the petitioners to reside in his premises. After noticing these facts the Collector has proceeded to order eviction of the petitioners.

7. It is no doubt true that the petitioner Nos.1 and 3 have filed an undertaking that they would take care of respondent No.1 in future. However this intention expressed by the said petitioners was not acceptable to the respondent No.1 and he was not willing to accept any amount of maintenance from them. On the contrary the respondent No.1 has stated that he receives pension which amount is sufficient to satisfy his needs. In these facts therefore the respondent No.1 cannot be compelled to continue to reside with the petitioners especially in view of his experiences and the ill-treatment meted out to him.

8. In absence of any jurisdictional error being committed by the Collector while passing the impugned order there is no reason to interfere in writ jurisdiction. The Writ Petition is accordingly dismissed. The petitioners are granted time of four weeks to comply with the order passed by the Collector on 14/05/2019. The parties shall bear their own costs.

JUDGE