

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.42210 OF 2018

Date: 08.03.2019

Between:

Mrs. V.Siva Lakshmi w/o. late V.L.Nageshwara Rao,
Aged about 59 years, occu: Household, r/o. Flat No.201,
Sri Nilayam, H.no.48/A, Addagutta, Kukatpally Housing
Board Colony, Kukatpally, Medchal-Malkajgiri district,
(temporarily residing at Nalagandla Locality, Hyderabad)

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary,
Home Department, Saifabad, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for petitioner, learned Government Pleader for Home for respondents 1, 3 to 5, learned Government Pleader for Revenue for 2nd respondent, and Sri B.Jithender learned counsel for respondents 6 and 7.

2. Petitioner claims to be the exclusive owner of Flat No.201, Sri Nilayam, Addagutta, Kukatpally Housing Board Colony, Kukatpally. Petitioner claims that she filed complaint on 31.10.2018 with the Station House Officer, Kukatpally Housing Board Police Station alleging that her son and daughter-in-law harassed her, threw her from her flat, indulged in criminal intimidation, and tried to kill her. She filed further complaint on 08.11.2018 levelling same allegations. She also complained that she was forcibly thrown out of her flat and requested the Police to give Police protection to put her back in possession and to book a criminal case against her son and daughter-in-law as requested earlier. Alleging that in spite of her complaints, no action is taken and that she was not put back in possession of her flat with Police protection, she lodged complaint with the Commissioner of Police, Cyberabad Metropolitan Police on 12.11.2018 requesting the Commissioner to direct the Station House Officer of Kukatpalli Housing Board Police Station to book a criminal case against her son and daughter-in-law, to punish them and to give Police protection to go back to her flat. On the same day, she also filed complaint with the District Collector to grant protection to life and property as per Chapter-V of the Maintenance and Welfare of parents and senior Citizens Act, 2007 (for short, 'Act, 2007').

3. In this Writ Petition, petitioner prays, 1) to declare the action of respondent-Police in not registering two separate crimes based on the complaints lodged by the petitioner on 31.10.2018 and 08.11.2018; and 2) to grant Police protection under the Act, 2007 to put her in possession of the flat.

4. With reference to the crime reported by the petitioner on 31.10.2018, learned Government Pleader informed the Court that on 24.11.2018 Crime No.1037 of 2018 was registered in Kukatpally Housing Board Police Station, and investigation is in progress. In the counter-affidavit filed on behalf of respondents 6 and 7, they admitted the fact of registering of crime. In view of the said statements, first limb of the grievance of petitioner is stood answered.

5. According to respondents 6 & 7, properties in issue are joint family properties. Land was purchased by the father of 6th respondent, but registered in the name of his mother, and during his life time, his father developed the plot into apartment building, wherein six flats have fallen to the share of the family; out of which two flats were sold and four flats remained with the family; joint family consists of petitioner and her two sons.

6. Whether petitioner is the sole owner of the flat, whether it is a joint family property, and whether there is no manner of right vested in 6th respondent on the flat, are matters which are civil in nature, and the parties have to work out their remedies and Court is not expressing any opinion on the same.

7. The only issue for consideration is whether petitioner is entitled to protection under the Act, 2007 and the Rules made

there under to put her back in possession of the concerned flat with Police protection.

8. On the claim of petitioner to grant protection to her and to put her back in possession of the flat, objection raised by the learned counsel appearing for respondents 6 and 7 and learned Government Pleader in unison is as petitioner is not senior citizen, the provisions of the Act, 2007 are not applicable and, therefore, petitioner is not entitled to claim the benefit under Rule 21 (1) & (2) (v) of the T.S. Maintenance of Parents and Senior Citizens Rules 2011 (for short, 'Rules 2011').

9. According to learned counsel for petitioner, the Act is a comprehensive enactment granting protection to parents as well as senior citizens and irrespective of the age, parent can claim protection under the Act, and the Rules thereon against her children and, therefore, Rule 21 of the Rules, 2011 is also applicable to a parent even if the parent is not aged 60 years. In support of his submission, learned counsel placed reliance on the following decisions:

i) **M.P.Tej Babu vs. The State of Telangana, rep.by its Prl.Secretary, Department of Women, Children, Disabled and Senior Citizens (DW), Secretariat & others¹;**

ii) Bombay High Court's Order in **Mr. Dattatrey Shivaji Mane vs. Mrs. Lilabai Shivaji Mane and others (Writ Petition No.10611 of 2018, dated 26.06.2018);**

iii) Delhi High Court's Order in **Sunny Paul and another vs. State NCT of Delhi and others (W.P.(C) No.10463 of 2015 and CM Appl. No.43227 of 2016 dated 15.03.2017).**

¹ 2016 3 ALD 150

10. The breaking of joint family system and formation of nucleus families resulted in lack of support mechanism to elder members of the family. There are innumerable instances of elders in the family being subjected to harassment, intimidation, knocking away their properties, and making them orphans. Disturbed by the treatment meted out to parents and senior citizens as an after effect of crumbling joint family system, Indian Parliament enacted 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007'. This is a comprehensive enactment with reference to Maintenance and Welfare of Parents and Senior Citizens.

11. This Act is divided into seven chapters. Chapter-II deals with maintenance of parents and senior citizens. As per Section 4 of the Act, a senior citizen including parent, who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to make an application under Section 5, if parent or grand-parent, against one or more of his children not being a minor and in case a childless senior citizen, against such of his relative as referred to in Section 2 (g). The obligation of the children/relative, as the case may be, extends to the needs of such citizen to lead a normal life. Section 7 contemplates Constitution of Maintenance Tribunal. The other provisions in this chapter deal with order to grant maintenance, alteration in allowance, enforcement of order of maintenance, deposit of maintenance, award of interest and constitution of Appellate Tribunal. Chapter-III deals with establishment of old-age homes. Chapter-IV deals with provisions for medical care of senior citizen. Chapter-V deals with protection of life and property of senior citizen. In this chapter, Section 21 deals with measures for publicity, awareness, etc., for welfare of senior citizen. According to Section 23, transfer

of property to be void in certain circumstances. This chapter is silent on protection of property in occupation by a senior citizen and restoration of possession in case of dispossession. In exercise of power vested in the State Government under Section 32 (1) & (2) of the Act, 2017, Rules 2011 were notified. The relevant Rule for consideration is Rule 21.

12. To appreciate the respective contentions, it is necessary to consider the scope of definition of 'parent' [Section 2(d)], and 'senior citizen' [Section 2(h)], and the Rule 21(1) and 2(v) of the Rules, 2011. They read as under:

“Section 2(d) : ‘parent’ means father or mother whether biological, adoptive or step father or step mother, as the case may be, **whether or not the father or the mother is a senior citizen.**

Section 2(h) : ‘senior citizen’ means any person being a citizen of India, who has **attained the age of sixty years or above and includes parent whether or not a senior citizen.**

Rule 21: Action plan for the Protection of Life and Property of Senior Citizens:-

(1) The District Superintendent of Police, and in the case of cities having a Police Commissioner, such Police Commissioner shall take all necessary steps, subject to such guidelines as the State Government may issue from time to time, for the protection of life and property of senior citizens.

(2) Without prejudice to the generality of sub-rule (1),

(i) to (iv) xxxxx

(v): complaints/problems of senior citizens shall be promptly attended to, by the local Police. ”

13. Rule 21 is part of chapter-VI of the Rules. This chapter deals with protection of life and property of senior citizens.

According to sub-rule (1) of Rule 21, the District Superintendent of Police/Police Commissioner, as the case may be, should take necessary steps for protection of life and property of the senior citizens. According to sub-rule (2) (v), complaints/ problems of senior citizens should be promptly attended to by the local Police.

14. Brief parade of relevant provisions noted above, it is apparent that primary object of the Act is to protect from deprivation, particularly senior citizens, and in general the parents. Parent need not complete 60 years to claim maintenance from his/her children, and protection of property under chapter-V. Section 23 of the Act goes to the extent of power to annul the transfer of property, if while transferring the property condition was imposed by the senior citizen to provide basic amenities and basic physical needs, but such amenities/physical needs are not provided. Similarly senior citizen/parent has a right to receive maintenance out of an estate if such estate or part thereof is transferred. A cumulative reading of definition of 'parent' and 'senior citizen' as defined in clauses (d) and (h) of Section 2, it is apparent that irrespective of age, a parent is a senior citizen and is entitled to various protections provided by the Act.

15. Having regard to the scheme of the Act and definitions noted above, I see merit in the contention of learned counsel for petitioner that even though petitioner has not crossed sixty years, as parent she is entitled to the protection under the Act in all respects including protection to the property, restoration of possession and granting police protection.

16. Learned counsel for respondents 6 & 7 is fair in stating that they would take care of the petitioner. It is also specifically averred

in their counter-affidavit. The said stand is appreciated. It is hoped and expected that there would not be any resistance from them to put petitioner in possession of subject property.

17. The written instructions furnished to the learned Government Pleader would disclose that though crime was registered on the complaint filed by petitioner, the second limb of her petition was not considered. In terms of the provisions of the Act, and the Rules, as analyzed above, Police have to grant the protection sought by petitioner.

18. Writ Petition is allowed. The 5th respondent is directed to act on the representations/complaints filed by the petitioner with reference to Police protection to restore possession of the petitioner on the subject property within three weeks from the date of receipt of copy of this order. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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