

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

19 WRIT PETITION STAMP NO. 10584 OF 2020

SANTOSH JAGANNATH TODKAR
VERSUS
THE COLLECTOR, JALGAON AND ORS.

...
Mr.A.R.Kawade, Advocate for Petitioner.
Mrs. Vaishali Jadhav, A.G.P. for
State.

Mr. A.M.Gholap, Advocate for R – 4.

...
CORAM : V.L.ACHLIYA,J.

DATE : 19/05/2020

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PER COURT :

1. By this petition under Article 226 of Constitution of India, the petitioner has challenged the Order dated 03/03/2020 passed by respondent No. 2 in Reference No. 1/2020

2. By the impugned order, the petitioner has been directed to vacate the premises owned by respondent No. 4, the father of petitioner. Respondent No. 4, the father of petitioner who is claimed to be 86 years of age, moved respondent No. 2 under the provisions of the Maintenance and Welfare of Parents and Senior

Citizens Act, 2007 [hereinafter referred to as 'said Act'] seeking direction to order the petitioner to vacate the premises owned by respondent No. 4. It is contended that petitioner and his wife are continuously illtreating and harassing respondent No. 4. After conducting full-fledged hearing, respondent No. 2 has passed impugned order and directed the petitioner to vacate the premises owned by respondent No. 4. Being aggrieved the petitioner has preferred this petition.

3. In brief, it is the contention of petitioner that though there is remedy to file appeal available to petitioner, the appeal could not be filed before appellate authority due to operation of lock-down. It is submitted that on 08/05/2020 the police officer of concerned police station called and asked to vacate the premises. In view of extreme urgency and threat of dis-possession, the petitioner left with no other remedy but to approach this Court to seek interim protection. It is submitted that petitioner will file appeal as soon as the authority withdraw the lock-down and urged to extend protection till then.

4. Mr. Gholap, learned counsel for respondent No. 4 opposed the petition. By referring the order passed

by respondent No. 2, it is pointed out that petitioner is having his own house at Bhusawal. The impugned order was passed on 03/03/2020. The remedy to prefer appeal against the impugned order is provided u/s 16 of said Act. The petitioner had sufficient time to file appeal before the declaration of lock-down. It is submitted that respondent No. 4 is 86 years old and suffering from various ailments. The petitioner has made his life so miserable that he left with no other option except to approach the competent authority to order the eviction of petitioner. It is submitted that continuation of petitioner in the house would adversely affect the health and life of respondent No. 4. It is further submitted that petitioner can very well shift to his own house.

5. On due consideration of over all facts of the case and the submissions advanced, I am not inclined to entertain the petition for the sole reason the petitioner is provided with efficacious remedy by way of appeal u/s 16 of said Act to file appeal before District Magistrate. The impugned order was passed on 03/03/2020. The lock-down was declared much after passing of order. The petitioner had period of more than 20 days to file appeal from the date of passing of order. Filing of such petition under the

pretext that due to lock-down the appeal could not be preferred is nothing but an attempt to any-how continue to occupy the premises. Respondent No. 4 is the father of petitioner who required to approach the authority seeking eviction of petitioner. The respondent No. 4 is 86 years old person and suffering from various ailments. It is observed in the order passed by Tahsildar that the petitioner has purchased house near Saibaba temple on Bhusawal-Jamner road at Bhusawal and is likely to receive the possession within two months. The observations to this effect recorded in the order dated 03/03/2020. In that view the petitioner is having his own house and can shift to his house. For any reason the possession of house even if delayed, still the petitioner can make alternate arrangement. He can secure the premises on rent. The petitioner is working in Ordnance Factory and having sufficient means to secure the premises for his residence. On the pretext of lock-down, respondent No. 4 can not be made to suffer at the hands of petitioner. I am, therefore, inclined to dismiss the petition with liberty to petitioner to prefer appeal before the competent authority. In order to enable the petitioner to prefer appeal and to secure alternate accommodation, the respondent No. 4 is directed to defer the taking of possession for four weeks from the date of this order.

6. The petition disposed of in above terms.

[V. L. ACHLIYA]
JUDGE

KNP