

brothers-in-law of the Petitioner. It is her case that all Respondents were residing in a building called “Joy Sapphire”, situated at Vile Parle (West), Mumbai-400 056. The building was said to be owned by the joint family of all Respondents. The Petitioner has been living with her husband, Respondent No.2, in one flat of the suit building. It is submitted that after redevelopment of the suit building, as per a family arrangement between all members of the family, vide Articles of Agreement dated 16 August 2010, Flat No.101 on first floor came to be allotted to Respondent No.5 (brother-in-law), whilst Flat No.201 came to be allotted to Respondent No.4 (another brother-in-law) and Flat No.301 came to be allotted to the Petitioner’s husband-Respondent No.2. The Petitioner has produced a copy of the Articles of Agreement duly registered with Sub-Registrar of Assurances. Whilst the parties were, respectively, in occupation of their flats, on 28 January 2019, Respondent No.1 (mother-in-law) filed an application under Section 5(1)(a) of the Act (Application No.12 of 2019). The application *inter alia* prayed for appointment of a protection officer for safety of the applicant’s life and properties and direction against Respondent No.2 and the Petitioner herein and their families to hand over peaceful possession of Flat No.301, third floor of Joy Sapphire. The application was made on the basis of allegations of cheating of Respondent No.1 by the other Respondents and also the failure of Respondent Nos.3, 4 and 5 to take care of, and maintain, Respondent No.1. The application also made various personal allegations against the Petitioner herein. It was submitted that the Petitioner herein, with malafide intention to siphon off the property in her name,

committed various acts of misdemeanor in respect of the family properties. Several allegations of inappropriate behavior on the part of the Petitioner *vis-a-vis* Respondent No.1 find place in the application. By his impugned order, Sub-Divisional Officer, sitting as a Senior Citizen Tribunal, directed the Petitioner as well as Respondent No.2 to vacate and hand over peaceful possession of the suit flat and arrange their own housing in future. This order has been challenged in the present petition on various grounds.

3 Broadly, it is submitted by the Petitioner that Respondent No.1 and her son, Respondent No.2 (husband of the Petitioner), have conspired against the Petitioner, seeking to throw her out of the suit flat, since the relationship between the Petitioner and her husband, Respondent No.2, has been strained. It is submitted that the suit flat is in the name of Respondent No.2 under a registered agreement and the Petitioner has been residing therein with Respondent No.2 as her matrimonial home. It is submitted that though far worse allegations have been made against the other Respondents (Respondent Nos.3, 4 and 5) and despite claiming in her application that Respondent No.2, the Petitioner's husband, was properly maintaining her, the latter has, in her application, sought eviction only of the Petitioner and Respondent No.2 from the suit flat. It is submitted that the order is wholly without jurisdiction.

4 Learned Counsel for the Petitioner submits that the Sub-Divisional Officer had no authority, either under Section 4 or under

Section 23 of the Act, to pass an order of eviction against the Petitioner herein. It is submitted that no case is made out under Section 4 of the Act in the present matter, namely, of want of maintenance of Respondent No.1 as a senior citizen or parent of Respondent No.2. It is submitted that there is also no case for declaring any transfer of property as void under Section 23 of the Act, since no property has been transferred by way of gift or otherwise subject to any condition of provision of basic amenities or basic physical needs to the transferor and so also, there has been no refusal or failure alleged on the part of the transferee to make such provision. Per contra, it is submitted by learned Counsel for Respondent No.1 that the tribunal, constituted under Section 7 of the Act, has ample powers to order eviction or delivery of possession of any immovable property to the applicant parent or senior citizen under Section 4 of the Act itself and one need not in every case have to resort to Section 23 for seeking such eviction or recovery of possession. Learned Counsel relies on the judgment of a learned Single Judge of our court in the case of **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane**¹. Learned Counsel also relies on Division Bench judgments of our court in cases of **Shrikant Devdas Naik Vs. The State of Maharashtra**², **Shamim Sayeed Khan Vs. Sayeed Rasheed Khan**³, and **Pritish Natvar Sanghvi Vs. Natvar Keshavlal Sanghvi**⁴, and two decisions of **Delhi High Court** in the case of **Sunny Paul Vs. State NCT of Delhi** (the decision of a learned Single Judge of Delhi High Court

1 W.P. No.10611 of 2018, decided on 26 June 2018

2 W.P.(L) No.3373 of 2019, decided on 16 December 2019

3 W.P. No.5830 of 2019, decided on 19 November 2019

4 W.P. 11735 of 2017, decided on 4 June 2018

delivered on 15 March 2017⁵ and confirmation of that decision by a Division Bench of that Court on 3 October 2018⁶).

5 Before we consider the case law cited at the Bar and rule on the rights and liabilities of the parties under the Act in its light, we must note the relevant provisions of law, namely, Sections 4 and 23 of the Act, which are quoted below :

4 Maintenance of parents and senior citizens. —

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—

(i) parent or grand-parent, against one or more of his children not being a minor;

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

5 2017 4 AIR (Del) (R) 257

6 2018 253 DLT 410

23 Transfer of property to be void in certain circumstances. —

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

6 A plain reading of these provisions indicates that Section 4 is premised, firstly, on the inability of a senior citizen, including a parent, to maintain himself or herself from his or her earning or out of property owned by him or her. In such case, the citizen is entitled to make an application under Section 5 for maintenance in accordance with Section 4. The scheme of Sections 4 and 5 is premised, secondly, on an obligation of children or relatives, as the case may be, to maintain a senior citizen so as to cater to the latter's needs to lead a normal life. In case of a parent or grandparent, this obligation lies on one or more of children or grand-children, not being a minor,

whereas in case of a childless senior citizen, the obligation is on his or her relatives referred to in clause (g) of section 2. (Clause (g) of section 2 includes any legal heir of a childless senior citizen, who is not a minor and who is in possession of, or would inherit, his or her property after his or her death.) The foundation of this obligation on the part of a child or grand-child or relative, as the case may be, to maintain such senior citizen is the former's possession of a property of such senior citizen or likelihood of inheriting any such property. In case of a childless senior citizen, if there are more than one relatives, who are entitled to inherit his or her property, maintenance is payable by such relatives in the proportion in which they would inherit his or her property. There is nothing in Section 4, or indeed in Section 5, which merely contains machinery provisions for an application for maintenance under Section 4, to suggest that a senior citizen can recover property *per se* from any occupier, be it a child or relative of such senior citizen within the meaning clause (g) of section 2 of the Act. No doubt, maintenance of a senior citizen may itself in a given case imply his or her physical need to live in a house and to that extent, it may be possible for a senior citizen to either seek recovery of possession or prohibit someone from taking, or continuing to be in, possession of immovable property. What is beyond doubt is that such recovery or restraint can only be sought as a measure of maintenance and not otherwise. The judgments delivered by the learned Single Judge as well as Division Bench of our court and also by Delhi High Court, as is noted below, have to be understood in that light.

7 So far as Section 23 of the Act is concerned, it does not admit of any doubt that it provides for declaring transfers of property covered by it as void only in stated circumstances. Firstly, it envisages such transfer of property by way of gift or otherwise by a senior citizen. Secondly, it envisages that such transfer must be subject to a condition that the transferee shall provide basic amenities or basic physical needs of the transferor. The third condition is that such transferee must have refused or failed to provide such amenities or needs. It is only when all three conditions are met that an application lies to the senior citizen tribunal constituted under Section 7 to declare any transfer of property to be void under the deeming provision of section 23 on the ground that such transfer has been vitiated by fraud, coercion or undue influence and thus, rendered voidable at the option of the transferor. The declaration may then be followed by an appropriate order of recovery of possession from, or ousting of, the transferee.

8 Having, thus, noted and analyzed the legal provisions bearing on the controversy, let us immediately note that in the present matter, admittedly, there is no case under Section 23 of the Act. It is neither the case of Respondent No.1, who was the applicant before the tribunal, that she has transferred the suit property by way of gift or otherwise to Respondent No.2 or the Petitioner nor her case that any such transfer was subject to a condition that the transferee would provide basic amenities or basic physical needs of the transferor. It is also not her case that Respondent No.2 or the Petitioner, as such

transferee or transferees, have refused or failed to provide any amenities or physical needs of Respondent No.1 as the transferor. The reliefs sought in the application before the tribunal should, in that case, be capable of being sourced from the right to seek recourse to Section 4 of the Act, and, if not, would be liable to be refused.

9 If one has regard to the application of Respondent No.1 before the tribunal, there is indeed no case that the applicant, as a senior citizen, is unable to maintain herself from her own earning or out of the property owned by her. The application does not proceed on the footing that it has been the obligation of Respondent No.2 as her son or the Petitioner as her daughter-in-law to maintain her so that she, as a senior citizen, may lead a normal life. The application is premised more on the alleged acts of cheating and harassment by the Petitioner and also by the other Respondents including Respondent Nos.3, 4 and 5, who are the other children of Respondent No.1, and not by Respondent No.2 (husband of the Petitioner herein). Curiously enough, though equally serious allegations have been made against the other Respondents (Respondent No.3, 4 and 5) as the Petitioner herein, the only relief claimed in the application has been against the Petitioner and Respondent No.2; the application restricts itself to only recovery of possession of the suit flat occupied by the Petitioner and Respondent No.2. Any such application for recovery of possession, except on the footing that such recovery is necessary as a measure of maintenance for the applicant senior citizen, is clearly not maintainable under Sections 4 or 5 of the Act.

10 In the case of **Dattatrey Shivaji Mane** (supra), decided by the learned Single Judge of our court, it was not in dispute that the particular senior citizen before the court in that case had the exclusive rights to the tenement. The Petitioner and his family members, as relatives, were allowed to occupy the tenement gratuitously by the senior citizen. There was no legal right on their part to occupy the tenement. The court noted that, in the facts of the case before it, the senior citizen was prevented from using her own house by the Petitioner and his family members. The allegation of the senior citizen in that case was that the Petitioner and his family members were preventing her even from using the toilet and were also closing her water tap. The court noted that, in the premises, the decision of the senior citizen not to allow the Petitioner and his family members to stay with her in the house owned by her was justified and the tribunal was, accordingly, within its rights to pass an order of eviction not only against the Petitioner, but against the other family members of the Petitioner. What the above narration indicates is that in keeping with the provisions of Section 4 of the Act, the suit flat in that case was required by the applicant senior citizen as a measure of her maintenance and in the facts of that case, such relief was granted to the concerned senior citizen.

11 The Division Bench cases of our court in **Shrikant Devdas Naik** (supra), **Shamim Sayeed Khan** (supra) and **Pritish Natvar Sanghvi** (supra) do not state the law otherwise. In all these cases, the applications were essentially for maintenance. The courts proceeded

on the footing that a senior citizen, including parent, who is unable to maintain himself or herself from his or her own earnings or out of property owned by him or her, is entitled to make an application and that the obligations of children or relatives to maintain a senior citizen or parent extended to the needs of such parent or citizen to lead a normal life.

12 In **Sunny Paul's** case (supra), eviction sought by the senior citizen was under Section 23 of the Act; it was contended that the child or relative was abusing the senior citizen; that there were physical assaults and mal-treatment of the senior citizen. A learned Single Judge of Delhi High Court, hearing the matter, held that in such a case, all that the senior citizen or parent had to prove was that he or she had transferred the title of the property to the other party after the commencement of the Act with a condition that the said party would provide basic amenities and basic physical needs of the transferor and that the latter had refused or failed to provide the same. The learned Judge held that the expression "transfer" does not mean to apply only to "actual transfer of title or ownership", but also includes "transfer of possession of the property". Whilst explaining this particular aspect, the learned Judge observed that Section 23 of the Act cannot be read in isolation from the other provisions, particularly, Section 4 of the Act read with Sections 2(b), (f), (g) and (h) of the Act. The learned Single judge noted that what emerged from the record of the case was that the senior citizen before him required the property to maintain himself, since his son, the

petitioner before the court, who had challenged the eviction order of the tribunal, did not seem to be taking sufficient and proper care of the senior citizen and possession of the property was sought in view of the latter's failure to properly maintain him. These observations do not either support the case of Respondent No.1 here that without having any case under Section 23, possession of immovable property can be recovered under Section 4 and that without reference to any need to occupy the property for maintaining the senior citizen.

13 The Division Bench of Delhi High Court, hearing an appeal from the order of the learned Single Judge, explained the matter in the following words :

“It is noted that in the impugned order, the learned Single Judge has also answered the question whether a claim for eviction before the Maintenance Tribunal is maintainable under Section 23 of Act of 2007 and that too on allegations of forcible ouster and in the absence of a claim for maintenance. The learned Single Judge concluded that Sections 4 and 23 are separate and distinct remedies. In other words, the claim for maintenance is not a condition precedent for passing an order of eviction under Section 23 of the Act of 2007.”

The Division Bench, after considering this aspect, on its own, noted as follows :

“Section 23(1) under Chapter V confers a power of the Tribunal to declare transfer of property in certain

circumstances as void. Section 23(2) inter-alia stipulates that a senior citizen has a right to receive maintenance out of an estate and if such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right. There is nothing in Section 23, which presupposes an application for maintenance as a prerequisite for seeking a relief under it. The scope of Section 23 is to declare the transfer of property by a senior citizen with an intent that the transferee shall provide the basic amenities and physical needs to the transferor and if such transferee refuses or fails to provide such amenities and physical needs, in such a eventuality, the transfer of property can be declared void by the Tribunal. A senior citizen may be contended if the transfer of property effected is treated as void so as to enable him to maintain himself from the estate, for which a senior citizen may not seek maintenance. So the plea of the learned counsel for the appellant that in the absence of a claim for maintenance by respondent Nos.2 and 3, a petition under Section 23 shall not be maintainable, is without any merit.”

14 In the present case, the tribunal appears to be blissfully unaware of this position of law. In fact, the very basic issue, on which relief under Sections 4 and 5 must in all cases be premised, namely, whether the applicant senior citizen was dependent on the respondent, a child, grand-child or relative for her maintenance or basic needs or amenities of life and which was or were denied by the respondent, has been held in the negative by the tribunal. The order

of eviction or recovery of possession has been sought thus without reference to the applicant's needs as a senior citizen to use the property as part of her maintenance. This, as I have explained above, obviously cannot be done. On the second issue, namely, whether the Respondents were harassing the applicant mentally or physically, the tribunal has not found anything against Respondent No.2, the Petitioner's husband. So far as Respondent Nos.3, 4 and 5 are concerned, the court has similarly not found any act of mental or physical harassment on their part. The only acts of physical or mental harassment that are found are against the Petitioner herein. That, I am afraid, is neither here nor there. As a pre-condition for any order to be passed under Section 4 of the Act, if a senior citizen is a parent, the order must find that one of or more of his or her children, not being a minor, has or have breached the obligation to maintain him or her, so that the senior citizen is not able to lead a normal life. That her daughter-in-law has been harassing her, or even, for that matter, not maintaining her, is no ground for seeking an order under Section 4. It is only in case of a childless senior citizen that the other relatives, who are referred to in clause (g) of Section 2, are obligated to maintain the senior citizen, so that he or she may lead a normal life. A daughter-in-law may well come within the expression "relative" in clause (g) of Section 2; but no order can be sought against her for that reason by a senior citizen who has a child or grand-child, who is not a minor.

15 Learned Counsel for Respondent No.1 refers to para 7 of the

application. In para 7, it has been alleged by Respondent No.1 that she had allowed the Petitioner and Respondent No.2 to reside in the suit flat gratuitously and that she was expecting good care, love and treatment in her old age from her son and his family. These are, at best, vague allegations so far as ingredients of Section 23 are concerned. Besides, this case has been squarely contested by the Petitioner. In her written statement, she has pointed out that the sole basis of the claim of Respondent No.1 to the ownership of the suit flat was a development agreement, whereunder the flats in Joy Sapphire, including the suit flat, have been allotted to the Respondents as joint owners. The tribunal has not found in its impugned order that Respondent No.1 was the sole owner of the suit flat or that it was allotted by her to the Petitioner and Respondent No.2 gratuitously for residence, leaving aside the question as to whether or not there was any condition of maintenance attached to such allotment. In any event, it has not been disputed by learned Counsel for Respondent No.1 that her only case here is under Section 4 and not under Section 23 of the Act.

16 For the reasons discussed above, the whole basis and jurisdictional assumption of the tribunal in the present case, are clearly erroneous and untenable. The impugned order, accordingly, cannot be sustained and deserves to be quashed and set aside.

17 Accordingly, **Rule** is made absolute and the petition is allowed by quashing and setting aside the impugned order of the senior citizen

tribunal dated 15 November 2019 and dismissing the application of Respondent No.1 made under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Application No.12 of 2019).

17 In view of the disposal of the petition in the above terms, the Interim Application does not survive and is disposed of.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed by
Rajesh V.
Chittewan
Date: 2020.03.17
12:51:16 +0530