

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

Writ Petition No.7787/2019
Ashok Radke and Anr. Vs. Pravin Radke and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.V. Deshmukh, Advocate for the petitioners
The respondent No.1 in person.
Mrs. H.N. Prabhu, AGP for the respondents No.2 and 3.

CORAM : MANISH PITALE, J.

DATED : JANUARY 22, 2020

By this writ petition, the petitioners being senior citizens and parents of respondent No.1 have challenged orders passed by the Sub-Divisional Officer (respondent No.2) and District Magistrate (respondent No.3) under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. The petitioners had filed an application under Sections 4, 5 and 23 of the said Act before the Sub-Divisional Officer, who is a Tribunal constituted under the provisions of the said Act. It was claimed by the petitioners that the respondent No.1, being their son, was ill-treating and harassing them and by invoking various provisions of the said Act, they made a specific prayer that the respondent No.1 be evicted from the house in which the parties are residing.

3. On the said application, the Sub-Divisional Officer acting as Tribunal addressed a communication dated 06/12/2018, to the Police Commissioner of Amravati, requesting that appropriate action may be taken by the Police Commissioner. Pursuant to the said communication on 22/01/2019, a First Information Report (FIR) came to be registered against the respondent No.1 under Section 24 of the aforesaid Act and Section 506 of the Indian Penal Code.

4. The petitioners were not satisfied with the action taken by the Sub-Divisional officer on their application and they filed an appeal before the District Magistrate under Section 16 of the said Act. By the impugned order dated 19/09/2019, the District Magistrate, as the appellate authority, dismissed the appeal filed by the petitioners, confirming communication dated 06/12/2018, issued by the Sub-Divisional Officer and further held that the petitioners and the respondent No.1 could approach the Civil Court with regard to their rights in the property and their right for partition of the same. This Court issued notice in the present writ petition on 27/11/2019.

5. In response to the notice issued by this Court, the respondent No.1 appeared in person and he expressed his desire to address this Court in person without engaging any counsel. Consequently, the

learned counsel for the petitioners and the respondent No.1 were heard on the merits of the matter and the learned AGP appeared on behalf of the respondents No.2 to 4.

6. The learned counsel for the petitioners referred to the provisions of the aforesaid Act, particularly Sections 2(a), 2(b), 2(f), 2(g) and 2(h) read with Section 4 of the said Act. It was emphasized that as per law laid down by this Court, agreeing with a judgment of Delhi High Court, it was held that an order of eviction can also be passed by the Competent Authority under the provisions of the said Act particularly Section 4 thereof. Reliance was placed on the judgment of this Court in the case of **Dattatreya Shivaji Mane Vs. Lilabai Shivaji Mane and others, judgment and order dated 26/06/2018, passed in Writ Petition No.10611/2018**. The learned counsel invited attention of this Court to paragraphs No.24 and 25 of the said judgment, wherein this Court has specifically agreed with the view taken by Delhi High Court in the case of **Sunny Paul & Anr. Vs. State NCT of Delhi & Ors. in Writ Petition No.10463/2015 & CM Appeal No.42227/2016**, wherein it has been categorically held that the appointing authority under the provisions of the said Act can certainly pass an order directing eviction of relative or children, as the case may be, at the behest of parents or senior citizen. It was submitted on this basis that impugned communication sent by the

Sub-Divisional Officer and impugned order passed by the District Magistrate as Appellate Authority, were wholly unsustainable and, therefore, the same deserved to be set aside and the application filed by the petitioners was required to be remitted to the Sub-Divisional Officer for consideration afresh in terms of the law laid down by this Court.

7. In response, the respondent No.1 in person submitted that all the allegations made by the petitioners against him were absolutely false and further that the petitioners had enough resources at their command to take care of themselves. It was also submitted that the respondent No.1 would not be able to contest the matter outside of Amravati and it was emphasized that it was for the same reason that he had appeared in person and insisted upon disposal of the writ petition today itself.

8. A perusal of the judgment of this Court in the case of **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and others** (supra) shows that a categorical statement of law has been made in paragraphs No.24 and 25 thereof, which reads as follows :

“24. In so far the submission of the learned counsel for the petitioner that under Section of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors.

(supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under Section 4 of the said Act read with various other provisions of the said Act by a senior citizen against him children and also the grand children.

25. If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his / her property from the children or grand children during his / her lifetime. The said Act is enacted for the benefit and protection of senior citizen from his children or grand children. The principles of law laid down by the Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.”

9. The said position of law based on analysis of various provisions of the aforesaid Act demonstrates that the application filed on behalf of the petitioners specifically making allegations of harassment against the respondent No.1 and seeking his eviction was clearly maintainable before the Sub-Divisional Officer. It was for the said Officer, acting as the Tribunal under the said Act, to have verified genuineness of the claims made by the petitioners after hearing the respondent No.1 and permitting the parties to place on record relevant material to come to a conclusion as to whether the prayer for eviction made by the petitioners could be granted.

10. Instead, the Sub-Divisional Officer simply addressed a communication to the Commissioner of Police, Amravati, requesting the said office to take appropriate steps in the matter. This led to registration for the aforesaid FIR, which is an independent proceeding from the proceedings initiated by the petitioners under the said Act. On the appeal filed by the petitioners before the District Magistrate as appellate authority, in the impugned order, a grave error was committed by the District Magistrate by not only confirming the erroneous communication sent by the Sub-Divisional Officer but by further holding that the parties could knock the doors of the Civil Court by agitating their rights in the property and for their claim as regards partition thereof. The District Magistrate clearly misdirected himself in passing the impugned order. In fact, the nature of the impugned order demonstrates that the District Magistrate did not understand the true purport of the provisions of the said Act and the position of law as clearly laid down by this Court in the case of **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and others** (supra).

11. The Sub-Divisional Officer as well as the District Magistrate failed to appreciate that suitable direction for eviction sought by the petitioners was not only maintainable before the Sub-Divisional Officer as Tribunal under the said Act, but such a request deserved to be considered and decided on merits by

the Sub-Divisional Officer.

12. In view of above, the impugned communication issued by the Sub-Divisional Officer dated 06/12/2018, is quashed and set aside. Order dated 19/09/2019, passed by the District Magistrate is also quashed and set aside. The matter is remitted to the respondent No.2 - Sub-Divisional Officer to be decided afresh. The said officer is expected to grant proper opportunity of hearing and for placing on record relevant material by the petitioners as well as respondent No.1, before disposing of the said application filed by the petitioners under Section 4 of the aforesaid Act, seeking eviction of the respondent No.1 from the residential house.

13. The parties shall appear before the Sub-Divisional Officer, Amravati on **05th February 2020**. Upon appearance of the parties, the Sub-Divisional Officer shall decide the application filed by the petitioners as expeditiously and in any case within a period of eight weeks from 5th February 2020.

14. The writ petition is disposed of.

JUDGE