

AFR

HIGH COURT OF CHHATTISGARH, BILASPURWA No. 145 of 2021

- Bhisham Lal Banchhor S/o Janak Ram Banchoor, Aged About 78 Years R/o. House No. 632, Mukta Nagar, Maharaja Chowk Durg, Tahsil And District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through - The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh
2. Collector / District Magistrate, Durg, District Durg Chhattisgarh
3. Superintendent Of Police, Durg, District Durg Chhattisgarh.
4. Rakesh Kumar Shrivastava, S/o Late Ramkrishna Lal Shrivastava, R/o. C/o. House No. 632, Mukta Nagar, Maharaja Chowk Durg, Tahsil And District Durg Chhattisgarh

---- Respondent

For Appellant	Mr. Praveen Dhurandhar, Advocate
For Respondent /State	Mr. Chandresh Shrivastava, Dy. AG

Proceedings through Video ConferencingDB.: Hon'ble Mr. Prashant Kumar Mishra, Ag. C.JHon'ble Mr. Parth Prateem Sahu, J.Order on Board by Prashant Kumar Mishra, Ag. C.J.17/6/2021

1. Heard.
2. The seminal issue brought before this Court by way of the

present writ appeal is whether a landlord, who also happens to be a senior citizen, can seek eviction of his tenant by resorting to the provisions contained in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Act, 2007").

3. The brief, undisputed facts, governing the issue, are that by Annexure P/2, dated 11.1.2020, the appellant/petitioner entered into a tenancy agreement with respondent No.4 letting out two shops to him for monthly rent of Rs.7000/- for a period of 11 months. When the tenant did not vacate the premises after the period of the agreement i.e. after 11 months, the appellant moved an application dated 22.1.2021 before the District Magistrate, Durg under Section 23 of the Act, 2007 seeking eviction of the tenant and arrears of rent. When the District Magistrate did not initiate any proceedings, a reminder was filed on 4.2.2021 and immediately thereafter, the writ petition was preferred before this Court. The learned Single Judge has dismissed the petition saying that the nature of relief claimed in the application submitted before the District Magistrate is not cognizable under the Act, 2007.
4. Referring to the law laid down by the Supreme Court in the matter of **Smt. S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and others, 2020 SCC OnLine SC 1023**, Mr. Praveen Dhuradhar, learned counsel for the appellant/petitioner submits that the proceedings under the Act, 2007 is maintainable even against third party. When a senior citizen is harassed by a person other than his family

members, then also, the provisions of the Act, 2007 would apply and the District Magistrate should have drawn the proceedings and passed an order of eviction against respondent No.4. Learned counsel for the appellant, for the present, seeks a direction to the District Magistrate to take up the application and pass necessary orders.

5. Even for making a direction to a particular authority to decide the proceedings under an Act, it is the duty of the High Court to examine *prima facie* as to whether the proceedings are maintainable or not.
6. The Act, 2007 was enacted for assisting the elderly members of the family. The '**Introduction**' to the Act, 2007 presented before the Parliament reads thus :

“Ageing has become a major social challenge because of decline in the joint family system. A large number of elderly persons, particularly widowed women are not being looked after their families. They are forced to spend their twilight years all alone and are exposed to emotional neglect and are not being provided financial support. To combat this social challenge there is a need to give more attention to the care and protection for the older persons. Though there is a provision in the Code of Criminal Procedure, 1973 under which parents can claim maintenance from their children but the procedure is time consuming and expensive. It is desired that simple, inexpensive and speedy provisions may be made to claim maintenance by the suffering parents. To cast an obligation on the persons who inherit the property of their aged relatives to maintain them and to make provisions for setting up oldage homes for providing maintenance to the

indigent older persons and to provide better medical facilities to the senior citizens and to make provisions for protection of their life and property the Maintenance and Welfare of Parents and Senior Citizens Bill was introduced in the Parliament. “

7. With the above introduction, the Act further speaks about the **'Statement of Objects and Reasons'** in the following manner :

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

- (a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;
- (b) providing better medical facilities to senior citizens;
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;
- (d) setting-up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives.”

8. It is, thus, clearly discernible that the Act, 2007 has been enacted to provide care and maintenance to the elderly, who are not properly looked after by their family due to withering of the joint family system. The primary object of the Act, 2007 is, therefore, to provide device mechanism for providing special relief in respect of maintenance from the relatives, who have inherited the property of their aged relatives.
9. Section 4 of the Act, 2007 makes provision for maintenance of parents and senior citizens. It says that 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. Sub-Sections (2) (3) and (4) of Section 4 speak about the obligation of the children to maintain their parents and the obligation of a relative of a senior citizen provided he is in possession of the property of such senior citizen or if he would inherit the property of such senior citizen.

This provision, therefore, does not provide for a relief against the third party, who is neither the children nor a relative, who has inherited or would inherit the property of a senior citizen.

10. In the case before us, the appellant/petitioner himself entered into a tenancy agreement with respondent No.4, who is neither his children nor a relative. Respondent No.4 is also not a third party in the sense the Hon'ble Supreme Court has referred in the matter of **S. Vanitha (Supra)** qua Section 23 of the Act, 2007.

11. Section 23 of the Act, 2007 provides that the transfer of property is to be void in certain circumstances. This provision is reproduced hereunder for ready reference:

"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."

12. The above quoted provisions of Section 23 deals with a situation where the senior citizen transfers the property by way of gift or otherwise with a condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and if such transferee refuses or fails to provide such amenities and physical needs, then, in such situation, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and can be declared void by the Tribunal at the option of the transferor. The right to receive maintenance out of the property, which is transferred by a senior citizen can be enforced against the transferee. This provision does not deal with a situation where a tenant is in possession of the property belonging to a senior citizen, firstly, because the tenancy is not a transfer of property, therefore, the tenant is not a transferee and the right to receive maintenance is not akin to the landlord/senior citizen's right to seek eviction or arrears of rent.

13. The right of a landlord to seek eviction is governed under the Chhattisgarh Rent Control Act, 2011 (in short "the Act, 2011"). Schedule 2 of the Act, 2011 provides for a landlord's rights available under the Act. The proviso to sub-clause (h) of clause 11 of the second schedule confers on the senior citizen a right to seek eviction after giving one month's notice to the tenant. This period of notice is 6 months for other class of tenants.
14. Thus, the beneficial provisions for senior citizen has also been made under the Act, 2011 and it is not a case where the right to seek eviction would drag on for indefinite period when the landlord happens to be a senior citizen. When a particular relief is allowed to a landlord under the Act, 2011, the same right and relief cannot be read into the provisions of the Act, 2007, which does not deal with the rights of a landlord qua his tenant only because the landlord happens to be a senior citizen.
15. If the interpretation put-forth by learned counsel for the appellant is accepted, then, in every agreement executed by a senior citizen, be it a business transaction or any other transaction, an application can be moved by a senior citizen before the District Magistrate under the Act, 2007, which is not the object and scope of the provisions under the Act.
16. The rights of a senior citizen against a third party is strictly controlled under the provisions of Section 23 of the Act, 2007 and once, such provision is not applicable to a transaction, which does not amount to transfer, a senior citizen landlord has to

seek eviction under the ordinary law.

17. There is no scope for interference with the order passed by the learned Single Judge.

18. The writ appeal has no substance, it deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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HEAD NOTE

A Senior Citizen/Landlord's application for eviction of his tenant is not maintainable under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The same can only be filed under the C.G. Rent Control Act, 2011.