

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 83 of 2021**

1. Shri Bhupendra Kumar Dhankar, S/o. Shri Rameshwar Dhankar, Aged About 52 Years.
2. Smt. Kiran Dhankar, W/o. Bhupendra Kumar Dhankar, Aged About 35 Years.
3. Smt. Dhaneshwari Dhankar, W/o. Late Shusil Kumar Dhankar, Aged About 54 Years.
4. Shailendra Kumar Dhankar, S/o. Late Shushil Kumar Dhankar, Aged About 34 Years.

All are R/o. R.D. Niwash, Surjeet Cycle Stores, Lakhenagar, Raipur, District Raipur, Chhattisgarh.

---- **Petitioners**

Versus

1. Shri Rameshwar Dhankar, S/o. Late Shri Ramnath Dhankar, Aged About 80 Years, R/o. Qt. No. 65/1873, Ward No. 65, Lakhenagar, Raipur, District Raipur Chhattisgarh.
2. Smt. Lagni Bai, W/o. Shri Rameshwar Dhankar, Aged About 78 Years, R/o. Qt. No. 65/1873, Ward No. 65, Lakhenagar, Raipur, District Raipur, Chhattisgarh.
3. The President, Maintenance Tribunal And Sub Divisional Officer, (Revenue) Raipur, District Raipur Chhattisgarh.
4. The Incharge Of Police Station- Purani Basti Raipur, District Raipur Chhattisgarh.

---- **Respondents**

For Petitioners	:	Mr. Pushpendra Kumar Patel with Mr. D. Kushwaha, Advocates
For Respondent No.1	:	Ms. Trishna Das & Ms. Sameeksha Gupta, Advocates on behalf of Mr. B.P.Sharma, Advocate
For State/Respondent No.3 & 4.	:	Mr. Ravi Bhagat, Dy. Govt. Advocate

W.P.(C) No. 1163 of 2021

1. Rameshwar Dhankar, S/o. Late Shri Ramnath Dhankar, Aged About 82 Years.

2. Smt. Lagni Bai Dhankar, W/o. Shri Rameshwar Dhankar, Aged About 81 Years.

Both R/o. House No. 65/1873, Ward No. 65, Lakhenagar, Raipur, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through Ministry Of Home Affairs, Naya Raipur, Chhattisgarh.
2. The Collector, District Raipur, Chhattisgarh.
3. Maintenance And Welfare Authority And Sub-Divisional Officer (Revenue), Raipur Chhattisgarh.
4. The Police Station, Purani Basti, District Raipur Chhattisgarh.
5. Bhupendra Kumar Dhankar, S/o. Rameshwar Dhankar, Aged About 37 Years.
6. Smt. Kiran Dhankar, W/o. Bhupendra Kumar Dhankar, Aged About 35 Years.
7. Smt. Dhaneshwari Dhankar, W/o. Late Shushil Kumar Dhankar, Aged About 38 Years.
8. Shailendra Kumar Dhankar, S/o. Late Shushil Kumar Dhankar, Aged About 37 Years.

No. 5 to 8 All R/o. R.D. Niwas, Beside Surjit Cycle Store, Lakhenagar, Raipur Chhattisgarh.

---- Respondents

For Petitioners	:	Ms. Trishna Das & Ms. Sameeksha Gupta, Advocates on behalf of Mr. B.P.Sharma, Advocate
For State/Respondents No.1 to 4.	:	Mr. Ravi Bhagat, Dy. Govt. Advocate
For Respondent No.5 to 8 :	:	Mr. Pushpendra Kumar Patel with Mr. D. Kushwaha, Advocates

W.P.(C) No. 3030 of 2021

1. Rameshwar Dhankar, S/o. Late Shri Ramnath Dhankar, Aged About 82 Years.
2. Smt. Lagni Bai Dhankar, W/o. Shri Rameshwar Dhankar, Aged About 81 Years.

Both R/o. House No. 65/1873, Ward No.65, Lakhenagar, Raipur, Chhattisgarh.

---- **Petitioners**

Versus

1. State Of Chhattisgarh, Through Ministry Of Home Affairs, Naya Raipur, Chhattisgarh.
2. The Collector, District Raipur, Chhattisgarh.
3. Maintenance And Welfare Authority And Sub Divisional Officer (Revenue) Raipur, Chhattisgarh.
4. The Tehsildar, District Raipur, Chhattisgarh.
5. The Police Station Purani Basti, District Raipur, Chhattisgarh.
6. Bhupendra Kumar Dhankar, S/o. Rameshwar Dhankar, Aged About 37 Years.
7. Smt. Kiran Dhankar, W/o. Bhupendra Kumar Dhankar, Aged About 35 Years.
8. Smt. Dhaneshwari Dhankar, W/o. Late Shushil Kumar Dhankar, Aged About 38 Years.
9. Shailendra Kumar Dhankar, S/o. Late Shushil Kumar Dhankar, Aged About 37 Years.

No. 6 to 9 All R/o. R.D. Niwas, Beside Surjit Cycle Store, Lakhenagar, Raipur, Chhattisgarh.

---- **Respondents**

For Petitioners	:	Ms. Trishna Das & Ms. Sameeksha Gupta, Advocates on behalf of Mr. B.P.Sharma, Advocate
For State/Respondents No.1 to 5.	:	Mr. Ravi Bhagat, Dy. Govt. Advocate
For Respondent No.6 to 9 :	:	Mr. Pushpendra Kumar Patel with Mr. D. Kushwaha, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21.09.2021

1. All the petitions are being heard and decided together for the reason that the nucleus of the issue is order dated 29.01.2021 passed by the Tribunal under

the Maintenance & Welfare Of Parents & Senior Citizens Act, 2007 (*hereinafter referred to as "the Act, 2007"*).

2. One petition WP(227) No.83 of 2021 is preferred by the son, daughter-in-law and grandson to quash the order dated 29.01.2021 and the other petitions WPC No.1163 & 3030 of 2021 are preferred by the senior citizens with a relief to implement the order dated 29.01.2021 with the State aid.
3. Learned counsel for the son, daughter-in-law and grandson would submit that the respondents father & mother are already receiving certain rental income and therefore no requirement would be there to get the premises vacated and it is on the false pretext the petitions have been filed before the Tribunal under the Act, 2007 and the orders which are passed cannot be implemented.
4. Per contra, learned counsel for the respondents i.e. senior citizens would submit that despite the order passed by the Tribunal, the symbolic possession was handed over to the senior citizens and it was not physically vacated. Resulting into that the senior citizens are deprived to enjoy the fruits of the property; consequently, the senior citizens may be put into vacant possession with the aid of the State administrative so that they can enjoy the property without illegal deprivation.
5. Heard learned counsel appearing for the parties.
6. Perused the order dated 29.01.2021. The tenor of the order would show that the senior citizens owned the house bearing No.65/1873 at Lakhenagar, Chunabhatti, Raipur, which comprised over Khasra No.1102 admeasuring 2725 sq.ft. The son, daughter-in-law and grandson were residing in the said house along-with grandfather and grandmother. The averments were made in complaint that the senior citizens were subjected to misbehaviour and torture by son, daughter-in-law and grandson. Consequently, they were forced to leave their house to take shelter in the house of their daughter.

Consequently, under these background the petition was filed before the Tribunal to get the premises vacated so that they may realize the benefit out of the property.

7. The son & daughter-in-law defending the charges contended that house in question is an ancestral house. It is further contended that the father and mother were basically enticed by their daughter and son-in-law and false report have been made before the police against them. After hearing, the Maintenance Tribunal gave a finding that the senior citizens were subjected to torture and unruly behaviour by son, daughter-in-law and grandson and they were forced to leave the premises owned by them. The Tribunal ordered to handover vacant possession of house to the senior citizen with an observation that in case vacant possession is given to them they would get financial support by renting it out which may improve the standard of living.
8. In order to appreciate the spirit and correctness of the order dated 29.01.2021, the reasons and object of the Act, 2007 would be of much significance as to why and under what circumstances the Act was introduced, which is reproduced herein below:

“INTRODUCTION

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.

STATEMENTS OF OBJECTS AND REASONS

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 old-age 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 institutionalization of a suitable mechanism for protection of life and property of older persons;

(d) setting up of old-age homes in every district.

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

9. The documents attached with these petitions i.e. copy of the sale deed shows that the land in question wherein the house was constructed is a diverted land situated at Lakhenagar, Ward No.65, which was purchased by the father i.e. Rameshwar, Son of Ramnath Dhankar by a registered sale deed in the year 1977. Another additional part of the land was also purchased by Rameshwar in the year 1972, therefore, the submission of the son and daughter-in-law that it is an ancestral house *prima facie* is negated.
10. The finding recorded by the Tribunal holds that the senior citizens are not subjected to good behaviour and are not being looked after by the son, daughter-in-law and grandson. The finding is also recorded on the issue that

whether the son and daughter-in-law are liable to be ejected and it has been held in affirmative.

Section 23 of the Act, 2007 which has an overriding effect with non-obstante clause gives the senior citizen to enjoy the property to his will according to his own freedom. The finding which is arrived at by the Tribunal raises a serious allegation that the father and mother who are aged about 82 and 81 years are subjected to mental and physical torture and because of such torture meted out they were forced to abandon the house wherein they were earlier living.

11. In case of ***Sanny Paul & Anr. v. State NCT of Delhi & Ors*** in ***WPC No.10463/2015*** decided on 15.03.2017, the Delhi High Court held that the Maintenance Tribunal constituted under the Act, 2007 has jurisdiction to pass the eviction order. Similar ratio of law was decided by the Punjab & Hariyana High Court reported in ***2013 LawSuit (P&H) 4541*** wherein it was held that the Tribunal has jurisdiction to issue an order of eviction. Likewise this Court in WPC No.3320 of 2017 has held that the Tribunal has power to issue the order of eviction. Therefore, the submission of the son and daughter-in-law that the order of the Tribunal is bad in law cannot be accepted.
12. Furthermore, the documents attached with the petition would show that the father and mother who are aged about 82 and 81 years who holds an order of eviction, the fruits of such eviction are still shelved which is contrary to the general expectation of a senior citizen. When order as per the object of the Act 2007 has passed, the same cannot be allowed to make it perforated to grant the eventual relief to the senior citizens against centrality of the Act. The submission of the respondent senior citizens also gets edge from the documents which are placed on record to show that several reports were made to the police authorities against the atrocities caused but at end the

possession is not granted though the symbolic possession was granted. Grant of possession, the way it has been executed do not satisfy the object and spirit of the order. Mere allowing a person in whose favour the order exists, to put a lock & key at main door will not serve the purpose instead it would be an ill conceived exercise. In reality the order of eviction needs to be executed. Under the circumstances, the T.I. Police Station- Purani Basti i.e. respondent No.4 is directed to get the order of the Maintenance Tribunal executed by putting father and mother into the peaceful vacant possession of the premises for which the order exists. In respect of the goods, the respondents shall be obliged to take back the same on a particular date and if the son, daughter-in-law and grandson do not cooperate it would be at their own peril. The S.H.O. Purani Basti shall execute the order within a period of 15 days and the respondents and the petitioners shall appear at subject house on 28th September, 2021 at 1 P.M.

13. In view of the above, WP(227) No.83 of 2021 is dismissed and WPC No.1163 & 3030 of 2021 are allowed.

Sd/-
Goutam Bhaduri
Judge

Aks