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HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 506 of 2020

Smt. Manisha Saloman, W/o Late Arnest Kumar Saloman, Aged About 45 Years, R/o. Quarter No. 5/H, Street No. 82, Sector-06, Bhilai Nagar, Tahsil and District- Durg (C.G.)

--- petitioner

Versus

Smt. Kalawati Saloman, W/o Late B.K. Saloman, Aged About 82 Years, R/o. Street No. 3 Pragati Nagar, Risali, Bhilai, Tahsil and District- Durg (C.G.)

--- Respondent

For petitioner : Mr. Praveen Dhurandhar, Advocate.

For Respondent : Mr. Rakesh Pandey, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21/01/2021

Heard.

1. A preliminary objection has been raised by the respondent side that the writ petition under Article 227 of the Constitution of India, filed by the petitioner, is not maintainable. The order under challenge in this petition, has been passed by the tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Act, 2007") and the same is not a Civil Court. Relying on the judgment of this Court dated **01.12.2015** passed in **WPC No. 2113 of 2015** between **Dr. Ram Sharan Lal Tripathi Vs. State of Chhattisgarh & others**,

it is submitted that this Court has held that the Board of Revenue is not a Civil Court, therefore, this petition is not maintainable.

2. Learned counsel for the petitioner opposes the submissions, preliminary objection and the submissions made in that respect. It is submitted that the **High Court of Calcutta** has decided the similar petition filed under Article 227 of the Constitution of India in **C.O. No. 3988 of 2017, Mita Panda & others Vs. Minati Chakrabarty & another** dated **09.01.2019**, in which, it was held that the tribunal instituted under the Act, 2007 functions as a quasi judicial body and to some extent, exercises the judicial power. The power of the tribunal under Section 23 of the Act, 2007 to declare the deed void, is comparable to the power of Civil Court. The similar power to grant maintenance, right to residence, can be equated with jurisdiction of the Civil Court under the different statutes namely the Hindu Adoptions and Maintenance Act, 1956, Hindu Marriage Act, 1955, Special Marriage Act, 1954, etc. Therefore, the supervisory jurisdiction under the Article 227 of the Constitution of India, can be exercised in such case. Relying on the judgment of this Court in **Uttar Kumar Bhoi Vs. Smt. Surekha Bhoi**, reported in **(2019) 3 CGLJ 80**, it is submitted that the similar question raised before this Court, has been decided under Article 227 of the Constitution of India, hence, the present petition is maintainable.
3. Considered on the submissions. In **Dr. Ram Sharan Lal Tripathi (Supra)**, the writ petition was preferred under Article 226 of the Constitution of India challenging the order of the Revenue Board

exercising the power of judicial review. The Coordinate Bench of this Court in **Dr. Ram Sharan Lal Tripathi (Supra)**, after detailed examination of the default pointed out by the Registry, that the petition should have been filed under Article 227 of the Constitution of India, it was held that the Board of Revenue is not a Civil Court, but an authority established under Chhattisgarh Land Revenue Code, 1959. Therefore, the writ petition under Article 227 of the Constitution of India, for issuance of writ of certiorari to annul the order passed by the Board of Revenue, is maintainable. The conclusion that was drawn in **Dr. Ram Sharan Lal Tripathi (Supra)**, was with respect to the Board of Revenue, exercising the powers under the Code 1959 as an authority, cannot be said to be squarely applicable to the tribunal constituted under the Act, 2007.

4. The Tribunal has been defined under Section 2 (j) of the Act, 2007, according to which, tribunal means the Maintenance Tribunal constituted under Section 7 of the Act, 2007. Section 7 of the Act, 2007 provides for constitution of maintenance tribunal by the State Government. Section 8(2) of the Act, 2007, provides that the tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and for compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed, and the Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. In

this manner, provisions of the Act, 2007 provides for constitution and empowerment of the tribunal, which is deemed to be Civil Court.

5. Article 227 of the Constitution of India provides for the supervisory jurisdiction of the High Court over all other courts and tribunals within its territory. There is no dispute that the order under challenge in this petition, has been passed by the Maintenance Tribunal. Hence, there is no question to be decided, whether the tribunal is Civil Court or not.
6. It has been observed in **Mita Panda (Supra)**, that the tribunal instituted under the Act, 2007, are covered by the supervisory jurisdiction under Article 227 of the Constitution of India. Hence, I do not find any substance in the preliminary objection raised by the respondent side.
7. In view of the above, the preliminary objection raised by the respondent, is overruled.
8. Heard the petition on merits.
9. This writ petition has been brought under Article 227 of the Constitution of India, challenging the order dated 31.10.2020 passed by Collector/ Appellate Tribunal, Durg, District- Durg (C.G.) in Misc. Appeal Case No. 09/B-121/Year 2019-20, dismissing the appeal filed by the petitioner and upholding the order of Sub-Divisional Officer (Revenue), Durg, District- Durg (C.G.) dated 26.05.2020 passed in Revenue Case No. 01A-74/2019-20, allowing the application of the respondent filed

under the Act, 2007, directing eviction of the petitioner from the house of the respondent.

10. It is submitted by learned counsel for the petitioner that the petitioner is widowed daughter-in-law of the respondent, who is living with her minor children in the house under question. It is not disputed that the house in question was purchased by Late B.K. Saloman, who was husband of the respondent, who expired on 05.12.2018. Subsequent to which, the house was transferred in the name of the respondent on 24.04.2019. Subsequent to the death of husband of the petitioner, the petitioner has received compassionate appointment in Government Polytechnic College. The petitioner and her late husband were jointly residing with the respondent since long.
11. It is submitted that the petitioner has right of joint residence in the shared household in capacity of her being daughter-in-law of the respondent. The Supreme Court has held in **Civil Appeal No.3822 of 2020, Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District & others**, which was similar matter wherein, daughter-in-law was directed to vacate the house belonging to her mother-in-law. Reference was made to Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (for short 'PWDV Act, 2005'), which, defines shared household. It was observed that a woman has right to live in matrimonial house, whether or not she has any title or right in the shared household. The order of eviction was set

aside and the appellant was granted relief. It is submitted that this is also a similar case.

12. The respondent has admitted in her statement before Sub-Divisional Officer (Revenue), Durg, District- Durg that the petitioner is her daughter-in-law and she along with her three minor children, are living in the house in question. The petitioners and others have filed a civil suit, which is registered as Case No. 107-B/2019 before the Court of 8th Civil Judge Class-II, Durg, against the respondent and others praying for relief of declaration of title on the house in question and other reliefs, it was after filing of this civil suit, the respondent has initiated the proceeding under the Act, 2007, by filing application dated 26.07.2019, on which the impugned order has been passed.
13. The petitioner has made claim of title over the house in question and has right of residence in the shared household, hence, the impugned order and the order of Sub-Divisional Officer (Revenue), both are not sustainable, therefore, prayer has been made to quash both the orders.
14. Learned counsel for the respondent opposes the submissions made from petitioner side and submits that the respondent is owner of the suit house, which was self acquired property of her husband and the title on the same has devolved upon the respondent after the death of her husband. The petitioner is forcibly residing in the house against the will of the respondent

and she has evicted the respondent from her own house. The respondent has right to reside in the house in question. The respondent is old woman, who is widow and also has burden of her mentally retarded son. Because of this eviction, she has to take shelter in other place. The case laws cited by the petitioner side, are not applicable. The impugned orders are not assailable, therefore, it is prayed that this petition may be dismissed.

15. I have heard the learned counsel for the parties and perused the documents placed on record.
16. Statement of objects and reasons of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 mentions that the 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.
17. In the present case, the respondent is the mother-in-law of the petitioner. The respondent filed an application under Section 5 read with Section 22 of the Act, 2007 making a statement that she was the owner and possessor of the disputed house. The petitioner in this case is her widowed daughter-in-law who is not taking care for the maintenance of the respondent. This petitioner has forcibly taken possession of the disputed house and evicted the respondent because of which, she was compelled to take shelter elsewhere. A prayer was made for order of maintenance and for order of eviction of the petitioner.

This petition has been contested by the respondent. The Maintenance Tribunal i.e. the Court of Sub-Divisional Officer, Bhilai Nagar, Durg passed an order dated 26.5.2020, in which there is no order for grant of maintenance. However, there is order passed for eviction of the petitioner from the disputed house. The appeal filed before the Collector and the Appellate Authority, Durg has been dismissed by the impugned order.

18. The question before this Court is whether a Maintenance Tribunal is empowered and has jurisdiction to pass an eviction order. The Maintenance Tribunal can pass orders in exercise of the powers vested in it under Sections 9, 10 and 11 of the Act, 2007 which are as follows:

'9. Order for maintenance .-(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

10. Alteration in allowance .-(1) On proof of misrepresentation or mistake of fact or a change in the circumstances of any person, receiving a monthly allowance under section 5, for the maintenance ordered under that section to pay a monthly allowance for the

maintenance, the Tribunal may make such alteration, as it thinks fit, in the allowance for the maintenance.

(2) Where it appears to the Tribunal that, in consequence of any decision of a competent Civil Court, any order made under section 9 should be cancelled or varied, it shall cancel the order or, as the case may be, vary the same accordingly.

11. Enforcement of order of maintenance .-(1) A copy of the order of maintenance and including the order regarding expenses of proceedings, as the case may be, shall be given without payment of any fee to the senior citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by any Tribunal in any place where the person against whom it is made, such Tribunal on being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

(2) A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be executed in the manner prescribed for the execution of such order by that Code.'

19. On perusal of the provisions under Sections 9, 10 and 11 of the Act, 2007, it is found that the Maintenance Tribunal has no such power to pass any order of eviction from any disputed house. In the case of **Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District & others** (supra), the Supreme Court has made observations in paragraph 15 which is as under:

'15. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7) is of a summary nature as provided in Section 8(1) and with all the

powers of a Civil Court, as provided in Section 8(2). Under Sub-section (1) of Section 9, where a senior citizen is not able to maintain himself or herself and the children or relatives, as the case may be, neglect or refuse to maintain them, the Tribunal is empowered to order them to make a monthly allowance at such monthly rate for the maintenance of the senior citizen, as the Tribunal may deem fit. The amount of the monthly allowance can be altered *inter alia* upon a change in circumstances, under Section 10.'

20. Further, a women's right of residence has been discussed in the judgment in the case of **Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District & others** (supra) in paragraph 19 is as follows:

'19. The definition of 'shared household' in Section 2(s) of the PWDV Act 2005 is exhaustive. This has also recently been held to be so, by a judgment of a three judge bench of this Court, delivered by Justice Ashok Bhushan, in Satish Chandra Ahuja vs Sneha Ahuja in Civil Appeal No. 2483 of 2020 decided on 15th October, 2020 [Satish Chandra].

The definition of the expression 'shared household' in [Section 2\(s\)](#) of the PWDV Act of 2005 is in two parts: in the means part of the definition the expression 'shared household' means

- (i) A household where the person aggrieved lives in a domestic relationship either singly or along with the respondent or;
- (ii) At any stage has lived in a domestic relationship either singly or along with the respondent.

This is followed by an inclusive element, so as to cover such a household (i) whether owned or tenanted either jointly by the aggrieved person and the respondent or (ii) owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title or equity. This has also been given an inclusive or extended meaning, which extends to a household which may belong to the joint family of which a respondent is a member, irrespective of whether the respondent or the aggrieved person have any right, title or interest in the shared household. The last part of the inclusive definition is intended to extend the meaning of a shared household to a situation where the household in fact belongs to a joint family, of which the respondent is a member. The legislature has made it clear that though neither the respondent, nor the aggrieved person in such case may have a right, title or interest in the shared household it would irrespective fall within the ambit of the definition.

The meaning which has been attributed above to the plain language of the definition is in consonance with the judgment of the three judge Bench in **Satish Chandra** where it has been explained as follows:

“55...the definition can be divided in two parts, first, which follows the word “means” and second which follows the word “includes”. The second part which follows “includes” can be further sub-divided in two parts. The first part reads “shared household means a household where the person aggrieved has lived or at any stage has lived in a domestic relationship either singly or along with the respondent”. Thus, first condition to be fulfilled for a shared household is that person aggrieved lives or at any stage has lived in a domestic relationship. The second part

subdivided in two parts is- (a) includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent and owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and (b) includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. In the above definition, two expressions, namely, “aggrieved person” and “respondent” have occurred. From the above definition, following is clear:-

- (i) it is not requirement of law that aggrieved person may either own the premises jointly or singly or by tenanting it jointly or singly; (ii) the household may belong to a joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; and (iii) the shared household may either be owned or tenanted by the respondent singly or jointly.”

After noticing the ambit of the definition of 'shared household' and the object and purpose of the [PWDV Act](#) of 2005, Justice Ashok Bhushan noted:

“[Section 2\(s\)](#) read with [Sections 17](#) and [19](#) of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.”

The expression 'respondent' has been defined in [section 2](#) (q) of the [PWDV Act](#) of 2005 in the following terms:

“(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.”

Noticing the above definition and the provisions of [section 2\(s\)](#), the Court in **Satish Chandra** held:

“64...The definition of shared household as noticed in [Section 2\(s\)](#) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of “respondent” under the Act. The respondent in a proceeding under [Domestic Violence Act](#) can be any relative of the husband. In [the] event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in [Section 2\(s\)](#) are satisfied and the said house will become a shared household.”

The Bench concluded that:

“84...The definition of shared household given in [Section 2\(s\)](#) cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.’

21. It was further observed in this judgment that Section 36 of the PWDV Act, 2005 stipulates that the provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. The Act, 2007 is certainly a later Act and Section 3 of the Act, 2007 provides for overriding effect but the same would not deprive a women who claims a

right in a shared household as under PWDV Act, 2005. It was further observed in paragraph 21 that both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The right of a woman has been recognized in a shared household whether or not she has any title or right in the shared household, therefore, by allowing the overriding effect of the provision in the Act, 2007 would defeat the object and purpose of the PWDV Act, 2005. The conflict between the two enactments has been settled by drawing conclusion that the remedy under the PWDV Act, 2005 shall be available to the person aggrieved.

22. In this case, the respondent is the aggrieved person under Section 2(a) of the PWDV Act, 2005. There is a domestic relationship existing between the respondent and the petitioner within the meaning of Section 2(f) of the Act, 2005. Similarly, the allegation made by the respondent regarding her eviction from the disputed house appears to be covered under Section 3 of the PWDV Act, 2005.
23. Submission has been made from the petitioner's side that the petitioner has a right of residence in the shared household under the provisions of Act, 2005. The situation at present is that the respondent is the title holder of the disputed house. The domestic relation of the petitioner and the respondent is not denied. Although, there is no claim or application made by the petitioner for residence in a shared household as the facts presented show that the petitioner is the person who is in possession of the disputed house and enjoying the residence in

the same and it is the respondent who has been evicted and has to claim her right of residence.

24. The Act, 2007 nowhere provides that a relief of eviction from a house can be ordered by the Maintenance Tribunal. This relief of eviction is certainly within the jurisdiction of any Civil Court. Even the PWDV Act, 2005 has no provision to pass any such order of eviction in such terms, but a residence order can be passed under Section 19 of the Act, 2005. Section 19 of the Act, 2005 is more exhaustive which is reproduced as follows:

Residence orders.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.'

25. The present matter is clearly not a proceeding under the provisions of PWDV Act, 2005 but an effort has been made to explain that the respondent may have remedy by pursuing her grievance under the provisions of PWDV Act, 2005. The order of eviction has been passed by the Maintenance Tribunal i.e. the Court of Sub-Divisional Officer, Bhilai Nagar, Durg and the which has been upheld by the Appellate Authority are illegal and without the authority of law as there is no such power present in the Act 2007 to be exercised by the Maintenance Tribunal for passing such orders. Hence, I am of this view that the order impugned is unsustainable.
26. Accordingly, the petition is allowed. The impugned order and the order of Sub-Divisional Officer, Bhilai Nagar, Durg are quashed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge