

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2631 OF 2021

Ritika Prashant Jasani ... Petitioner
Vs.
Anjana Niranjan Jasani and others ... Respondents

Mr. Kishor Maru for Petitioner.
Mr. Anoshak Daver a/w. Ms. Kausar Banatwala, Ms. Neuty Thakkar and
Ms. Tanishka Desai i/b. Mr. Tushar Goradia for Respondent No.1.
Ms. Anjana N. Jasani, Respondent in person.
Ms. Ritika Jasani, Petitioner in person.

**CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.**

**Reserved on : JULY 15, 2021
Pronounced on : AUGUST 13, 2021**

JUDGMENT AND ORDER : (Per Ujjal Bhuyan, J.)

Heard Mr. Kishor Maru, learned counsel for the petitioner and
Mr. Anoshak Daver, learned counsel for respondent No.1.

2. Both petitioner and respondent No.1 were also present in person during the hearing.

3. Challenge made in this writ petition is to the legality and validity of the order dated 15.12.2020 passed by the Deputy District Collector, Mumbai City acting as the Presiding Officer of the Tribunal for Maintenance and Welfare of Parents and Senior Citizens.

4. Respondent No.1 is the mother-in-law of the petitioner. Petitioner alongwith her husband Mr. Prashant Niranjan Jasani and minor daughter Samaira are residing in the flat bearing flat No.81A, Acropolis, 3 Little Gibbs Road, Malabar Hill, Mumbai (henceforth referred to as “the flat” hereinafter) along with respondent No.1. The said flat

originally belonged to Mr. Anandlal Jasani, who during his lifetime made nomination in respect of the said flat whereby twenty percent share of the flat was granted in favour of petitioner's husband Mr. Prashant Niranjan Jasani.

5. Mr. Anandlal Jasani died in the year 2007 whereafter his son Mr. Niranjan Anandlal Jasani, Mrs. Anjana Niranjan Jasani and Mr. Prashant Niranjan Jasani alongwith other legal heirs of the deceased Mr. Anandlal Jasani were entitled to equal rights and shares in the said flat.

6. Be it stated that Mr. Niranjan Anandlal Jasani is the father-in-law of the petitioner i.e. father of Mr. Prashant Jasani and husband of Anjana Niranjan Jasani i.e. respondent No.1.

7. Since her marriage with Mr. Prashant Jasani, petitioner has been residing in the said flat alongwith respondent No.1 and the late Niranjan Anandlal Jasani till his death. Be it stated that Mr. Niranjan Anandlal Jasani died intestate at Mumbai on 11.04.2016. Therefore, petitioner claims the said flat to be her matrimonial home as well as her shared household. Petitioner, her husband, daughter and respondent No.1 are residing in the said flat.

8. It is stated that petitioner and respondent No.1 earns income mainly from the following sources :-

1. Rent from the office premises at Arun Chamber, Tardeo for Rs.35,000/- per month;
2. From the interest accrued on the shares which would be about Rs.30,000/- per month;
3. Respondent No.1 is carrying on catering business on a limited scale earning therefrom Rs.10,000/- to Rs.15,000/- per month.

8.1. Petitioner has stated that her husband Prashant Niranjani Jasani is suffering from mental illness and depression because of which he requires regular treatment and counseling. He is not in a position to contribute to the earnings of the family.

8.2. Allegation of the petitioner is that respondent No.1 wants to sell the said flat and thereafter to retain the sale consideration to herself so as to enable her to lead an affluent lifestyle. Petitioner and her husband are opposed to selling of the flat. Petitioner states that the said flat is not self acquired property of respondent No.1; rather it is an ancestral property of the family of the petitioner's husband wherein petitioner's husband, petitioner and their minor daughter have equal right, title and interest.

8.3. Respondent No.1 with an oblique motive to oust the petitioner, her husband and minor daughter from the flat filed a complaint dated 26.04.2019 before the Tribunal for Maintenance and Welfare of Parents and Senior Citizens (briefly "the Tribunal" hereafter) for eviction of the petitioner and her husband Prashant Jasani from the flat so as to allow her to reside in the flat all by herself.

8.4. Petitioner filed her objection dated 08.12.2020. She denied all the allegations levelled against her and her husband by respondent No.1. According to her, respondent No.1 has high expectations from life and she has always loved luxury. She has very rich friends and her daughters are also extremely rich. Respondent No.1 looks down upon the petitioner and her husband as they do not have high income and are not upto her standard. After the death of father-in-law, respondent No.1 wanted to sell the flat to sustain her luxurious lifestyle to which petitioner and her husband did not agree. Because of that respondent No.1 was annoyed for which she on her own moved out of the flat about two years ago but keeping two rooms locked. Petitioner stated that because of his illness, her husband used to take heavy dosage of

medicines which kept him drowsy for long hours. Respondent No.1 never offered any help to the petitioner in raising her daughter despite her son's (petitioner's husband's) ill health. Petitioner has asserted that her husband's grandfather Anandlal Jasani had nominated twenty percent share of the flat to her husband. She had strongly denied execution of any will by her father-in-law in favour of respondent No.1. Asserting that as the daughter-in-law she has all the right to live with dignity in her shared household, petitioner has denied meting out any ill-treatment to respondent No.1, not to speak of torture etc. She also stated that her family i.e., she, her husband and daughter have no other residence and that the flat is their only shelter.

9. Tribunal by order dated 15.12.2020 allowed the complaint of respondent No.1 and ordered petitioner and her husband to vacate and to hand over possession of the said flat to respondent No.1 within 60 days from the date of receipt of the said order failing which it was stated that they would be evicted from the flat by use of force. Tribunal however clarified that the said order was limited for the purpose of allowing respondent No.1 to take possession of the flat and to stay peacefully and happily therein; the said order should not be construed as allowing respondent No.1 to sell or transfer the same.

10. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

11. This Court by order dated 15.04.2021 passed an interim order to the effect that no coercive steps should be taken against the petitioner pursuant to the order dated 15.12.2020.

12. Learned counsel for the petitioner has referred to section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (briefly "the 2007 Act" hereinafter) and submits that under the said provision Tribunal can only award maintenance to a senior citizen

including a parent. To support his above contention he has referred to section 9 of the 2007 Act which deals with order for maintenance as well as definition of the word “maintenance” as provided in section 2(b). Without ordering for payment of maintenance, Tribunal could not have ordered petitioner and her husband to vacate the flat. Section 4 does not contemplate passing of order for eviction of son and daughter-in-law.

12.1. His second submission is that the impugned order is a non-speaking order. Tribunal had recorded the rival contentions and thereafter culled out certain observations based on the rival contentions. However, without any proper deliberation abrupt order for vacation / eviction was passed by the Tribunal.

12.2. Learned counsel for the petitioner submits that the flat in question is an ancestral property to which both husband of the petitioner and respondent No.1 have right and entitlement. Therefore, Tribunal could not have ordered summary eviction of the son and the daughter-in-law (petitioner) from the ancestral property.

12.3. Another submission of learned counsel for the petitioner is that she had specifically contended before the Tribunal that the flat in question is her “shared household” within the meaning of section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (briefly “the 2005 Act” hereinafter). This aspect was not considered by the Tribunal.

12.4. He therefore submits that the impugned order dated 15.12.2020 is wholly untenable in law as well as on facts and is as such liable to be set aside and quashed.

13. *Per contra*, learned counsel for respondent No.1 submits that respondent No.1 is a senior citizen and a parent. She is not only unable to maintain herself but is also subjected to intimidation and harassment

at the hands of petitioner and her husband. Petitioner had directly interfered with her catering business rendering her unable to maintain herself. He submits that from a reading of the 2007 Act as a whole it is quite clear that the Tribunal constituted thereunder has the jurisdiction to pass an order of vacation of premises by the children or relative; in this case son and daughter-in-law though curiously son has not assailed the impugned order of the Tribunal. He has placed reliance on a single bench decision of this court in *Dattatraya Shivaji Mane Vs. Lilabai Shivaji Mane*, **Writ Petition No.10611 of 2018** decided on **26.06.2018**, in support of his contention that Tribunal is empowered to pass an order of eviction under the provisions of the 2007 Act.

14. In his reply submissions, learned counsel for the petitioner submits that the dispute in this case is between daughter-in-law and mother-in-law. While the mother-in-law seeks eviction of the daughter-in-law from the flat on the strength of the 2007 Act, the daughter-in-law seeks to enforce her right to reside in the shared household on the strength of the 2005 Act. Provisions of both the acts are required to be reconciled and read harmoniously. In this connection he has placed reliance on a recent decision of the Supreme court in *Smt. S. Vanitha Vs. Deputy Commissioner, Bangalore Urban District*, **Civil Appeal No.3822 of 2020** decided on **15.12.2020**, since reported in **AIR 2021 SC 177**.

15. Submissions made by learned counsel for the parties have received the due consideration of the court.

16. At the outset we may advert to the impugned order dated 15.12.2020. In the said order Tribunal has summed up the grievance of respondent No.1 (complainant) in the following manner:-

1. Respondent No.1 is a senior citizen staying in the flat since last 45 years;
2. Respondent No.1 is the mother-in-law of the petitioner and

mother of Prashant Niranjani Jasani;

3. Both respondent i.e., son and wife (petitioner) scared and tortured respondent No.1. Both compelled her to leave the flat whereafter she had to reside with her daughters;
4. Petitioner and her husband are residing in the flat;
5. Husband of respondent No.1 expired on 11.04.2016 and she is now a widow;
6. After the death of her husband, respondent No.1 has been subjected to more ill-treatment by her son and daughter-in-law;
7. Respondent No.1 is taking assistance of helpers to meet her day-to-day expenses. Son and daughter-in-law are not supporting her;
8. Husband of respondent No.1 had executed will of his property in favour of respondent No.1. The said will was subsequently probated according to which ownership rights of the flat were recorded in the name of respondent No.1. Register of the concerned society also discloses respondent No.1 as the owner of the flat;
9. Son of respondent No.1 is an alcoholic. He keeps arguing with her and often insults her. Both son and daughter-in-law have threatened respondent No.1 that unless she pays Rs.5 crores to them, they would keep torturing her and would also lodge a complaint before the police. They also interfere in her work, making it difficult for her to carry on her business from the flat;
10. However, respondent No.1 has admitted that her son and daughter-in-law got married on 16.11.2007 whereafter they started residing in the flat. They have a minor daughter by the name of *Samaira*;
11. Because of ill-treatment meted out to respondent No.1 by her son and daughter-in-law, she is suffering from several

ailments like high blood pressure and diabetes. She now depends upon her three daughters, namely, Amruta Bhargav, Rishita Gupta and Shalini Choksi.

16.1. On the other hand, Tribunal has summed up the objection of the petitioner and her husband in the following manner:-

1. Respondent No.1 does not like her daughter-in-law (petitioner) and this is reflected in her attitude towards the petitioner and her husband;
2. Since marriage, petitioner has been residing in the said flat as her matrimonial home where her minor daughter is also staying. All of them are leading a peaceful life;
3. Respondent No.1 has big expectations. Her daughters are rich, so also her friends. She, therefore, would like to live as a rich person. Petitioner's husband is not rich. Therefore, respondent No.1 does not treat him at par with her daughters and rich friends;
4. Respondent No.1 carries on catering business from home through which she earns about Rs.10,000.00 to 15,000.00 per month. After the death of petitioner's father-in-law, respondent No.1 has been planning to sell the office and the flat. However, she has not extended any help to her son i.e., husband of the petitioner;
5. Respondent No.1 wants that petitioner and her husband should give her permission to sell the flat. However, the flat was in the name of husband's grandfather. Some shares were given to petitioner's husband by grandfather;
6. Petitioner has denied about execution of any will by husband of respondent No.1;
7. The flat is registered jointly in the names of respondent No.1

and husband of the petitioner though respondent No.1 keeps on pressurizing the housing society to register the said flat only in her name;

8. Petitioner contended that she has a right to live in the flat. Grandfather had granted twenty percent share in the flat to the husband of the petitioner;
9. Respondent No.1 stays with her daughters because they are rich;
10. Petitioner has denied the allegation that she and her husband ill-treated respondent No.1 and had expelled respondent No.1 from her flat.

16.2. On the basis of the rival contentions, Tribunal culled out the following distinguishing features:-

1. Respondent No.1 is a senior citizen and petitioner is the daughter-in-law of respondent No.1;
2. Respondent No.1 has four legal heirs i.e., Mr. Prashant Jasani (her son and husband of petitioner), Mrs. Amruta Bhargav, Mrs. Rishita Gupta and Mrs. Shalini Choksi (daughters);
3. Husband of respondent No.1 had expired on 11.04.2016 and she is a widow;
4. According to respondent No.1 there is frequent quarrel between her and her daughter-in-law i.e., petitioner which causes mental trauma to her. Therefore, she goes away to stay with her daughters;
5. Documents on record reveal that the flat is in the name of Mrs. Anjana Niranjana Jasani (respondent No.1) and her son Mr. Prashant Niranjana Jasani. From nomination form No.14 it transpires that Mr. Niranjana Anandlal Jasani had sixty percent share, Mrs. Anjana Niranjana Jasani has twenty percent share and Mr. Prashant Niranjana Jasani has twenty

percent share in the flat.

16.3. After culling out the distinguishing features of the *lis*, Tribunal recorded its findings in the following manner:-

1. Petitioner and her husband should improve their behaviour. They should not quarrel with respondent No.1 or do such acts which may upset her;
2. Respondent No.1, a senior citizen, has the right to live a peaceful life in her own flat but she is upset because petitioner and her husband quarrel with her;
3. Petitioner and her husband are highly educated and young people. Hence, they should make their own arrangement for livelihood and stay. They already have one office / shop on rent from which they earn rental income of Rs.35,000.00 per month. They also earn Rs.30,000.00 per month from investments. Therefore, petitioner and her husband have reasonable income;
4. Respondent No.1 expressed her desire to sell the flat and to distribute the sale proceeds amongst the petitioner and her husband as per their shares to which they have raised objection.

16.4. Interestingly, Tribunal has held that the flat is an ancestral property and that both respondent No.1 and the petitioner along with her husband have joint rights. In so far sale of the flat is concerned, it is beyond the jurisdiction of the Tribunal.

16.5. Tribunal has opined that as per sections 4(2) and 4(3) of the 2007 Act, it is the obligation of the children or the relatives, as the case may be, to maintain a senior citizen to the extent of the needs of such senior citizen.

16.6. On the basis of such findings and relying upon sections 4, 5, 9, 13

and 23 of the 2007 Act, Tribunal ordered petitioner and her husband to vacate the flat and to handover possession thereof to respondent No.1 within 60 days to enable respondent No.1 to lead a normal and peaceful life. Tribunal has further ordered that if the petitioner and her husband fail to vacate the flat within 60 days, they would be evicted therefrom by using force. It has however been clarified that the impugned order is limited for the purpose of allowing respondent No.1 to take possession of the flat and to reside therein peacefully and happily. The impugned order is not for the purpose of sale or transfer of the flat for which parties may approach the competent authority for decision.

17. Having noticed and examined the various facets of the impugned order dated 15.12.2020 it would be apposite to deal with the relevant provisions of the 2007 Act.

17.1. The statement of objects and reasons for enactment of the 2007 Act is as under:-

“ 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.”

17.2 Preamble to the 2007 Act indicates that it is an act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the constitution and for matters connected therewith or incidental thereto.

17.3. Before adverting to the definitions as provided in section 2, we may note that as per section 3 provisions of the 2007 Act has overriding effect. It says that provisions of the 2007 Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the 2007 Act or in any instrument having effect by virtue of any enactment other than the 2007 Act.

17.4. Section 5 deals with application for maintenance. As per sub-section (1) an application for maintenance may be made by a senior citizen or by a parent, as the case may be; or if he is incapable, by any other person or organization authorized by him; or the Tribunal may take cognizance *suo-moto*. As per sub-section (3), on receipt of an application for maintenance under sub-section (1) the Tribunal after giving notice to the children or to the relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance. Under sub-section (2), Tribunal may order payment of interim maintenance during pendency of the

proceeding. Sub-section (8) provides that failure to pay maintenance as ordered by the Tribunal may lead to issuance of warrant and imprisonment.

17.5. Maintenance of parents and senior citizens is provided in section 4. As per sub-section (1) a senior citizen including a 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 parent or grand-parent, against one or more of his children not being a minor and in case of a childless senior citizen against such of his relative referred to in section 2(g). Sub-sections (2) and (3) of section 4 mandates that it is the obligation of the children or relative, as the case may be, to maintain a senior citizen or parent to the extent that the senior citizen or parent may lead a normal life.

17.6. Reverting to the definitions in section 2, we find that “maintenance” has been defined in section 2(b) to include provision for food, clothing, residence and medical attendance and treatment. Section 2(f) defines “property” to mean property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interest in such property. “Relative” has been defined in section 2(g) to mean any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. Under sub-section (h) of section 2 “senior citizen” has been defined to mean any person being a citizen of India who has attained the age of 60 years or above.

17.7. Tribunal is constituted under section 7 of the 2007 Act whereas jurisdiction and procedure are dealt with in section 6. Section 8 clarifies that summary procedure will be followed in case of inquiry. However, the Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing attendance of witnesses etc.; Tribunal shall be deemed to be a civil court for the purpose of

section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17.8. Section 9 deals with order for maintenance. As per sub-section (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 for maintenance of the senior citizen as the Tribunal may think fit and proper. In terms of sub-section (2), the maximum maintenance allowance which may be ordered by the Tribunal shall be such as may be prescribed by the State Government which shall however not exceed ten thousand rupees per month.

17.9. Section 15 deals with constitution of Appellate Tribunal. Sub-section (1) says that State Government may by notification in the official gazette constitute one Appellate Tribunal for each district to hear appeal against the order of the Tribunal. Section 16 provides for filing of appeals.

17.10. As per section 23 transfer of property to be void in certain circumstances. Sub-section (1) says that where any senior citizen who after commencement of the 2007 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. Sub-section (2) deals with a scenario where any senior citizen has a right to receive maintenance out of an estate and when 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.

18. In so far the present case is concerned, petitioner has contended that the flat in question is a shared household and that she has a right to reside in the shared household. "Shared household" as defined in section 2(s) of the 2005 Act means the following :-

"(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or 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 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."

19. Relying on a recent judgment of the Supreme Court in *Satish Chandra Ahuja Vs. Sneha Ahuja*, **Civil Appeal No.3483 of 2020** decided on **October, 15, 2020** since reported in **(2021) 1 SCC 414**, Supreme Court in the case of **Smt. S. Vanitha** (*supra*) has held that definition of shared household in section 2(s) of the 2005 Act is an exhaustive one. Thereafter, the definition of the expression "shared household" has been analyzed by the Supreme Court in the following manner:-

"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 [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.”

19.1. Supreme Court has further observed that after noticing the ambit of the definition of ‘shared household’ and the object and purpose of the 2005 Act, Justice Ashok Bhushan in **Satish Chandra Ahuja** (*supra*) 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.”

19.2. Supreme Court noted that the expression “respondent” has been defined in section 2 (q) of the 2005 Act 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:”

19.3. Noticing the above definition and the provisions of section 2(s), Supreme Court in **Satish Chandra Ahuja** (*supra*) 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.

* * * * *

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.”

19.4. Thereafter, Supreme Court in **Smt. S. Vanitha** (*supra*) harmonized the competing reliefs under the 2005 Act and the 2007 Act, both being special legislations. It has been held that provisions of section 3 of the 2007 Act giving it overriding force and effect would not by itself be conclusive of an intent to deprive a woman who claims a right in a shared household. After analyzing provisions of the two acts Supreme Court took the view that provisions of the 2005 Act have to be construed harmoniously with the 2007 Act operating in a separate field. Both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. 2005 Act was intended to deal with the problems of domestic violence which is widely prevalent. After referring to the statement of objects and reasons of the 2005 Act, Supreme Court observed that allowing the 2007 Act to have an overriding force and effect in all situations irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the 2005 Act would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation i.e. the 2007 Act. It was held as under :-

“The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory

interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

19.5. Thereafter, Supreme Court held that the overriding effect for remedies sought by the applicants under the 2007 Act cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the 2005 Act. Opining that an aggrieved person within the meaning of section 2(a) of the 2005 Act on the one hand and parents and senior citizens under the 2007 Act on the other hand are both vulnerable members of the society, their rights would have to be harmonized having regard to the intent of the 2005 Act and the 2007 Act. It was held as under :-

“22. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties

claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005-of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

19.6. Following the above Supreme Court in **Smt. S. Vanitha** (*supra*) came to the conclusion that claim of the appellant that the premises constitute a shared household within the meaning of the 2005 Act would have to be determined by the appropriate forum. The claim cannot be simply obviated by evicting the appellant in exercise of the summary powers entrusted by the 2007 Act.

20. In **Dattatrey Shivaji Mane** (*supra*), it is true that a single bench of this Court has taken the view that Tribunal was fully justified in passing an order of eviction against the petitioner and his other family members by rejecting the submission of the petitioner that an order of eviction cannot be passed by the Tribunal under section 4 of the 2007 Act read with other provisions of the said 2007 Act. While arriving at such a conclusion, learned Single Judge relied upon the decisions of the Delhi High Court in *Sunny Paul Vs. State* delivered on **15.03.2017** in **Writ Petition (C) No.10463 of 2015** and again in the case of *Nasir Vs. State*, **2015 (153) DRJ 259**.

20.1. Petitioner in **Dattatrey Shivaji Mane** (*supra*) was the son of respondent No.1 mother. The tenement in question belonged to respondent No.1 exclusively. In paragraph 13 of the said judgment, there is a clear finding of fact by learned Single Judge that respondent No.1

has exclusive rights in the tenement which was allowed to be occupied by the petitioner and his family members by respondent No.1. In fact in paragraph 14, it is clarified that petitioner could not point out any legal right to occupy the tenement owned by respondent No.1. The only submission made was that since petitioner was maintaining respondent No.1 for last several years, no order of eviction should be passed by the Tribunal against the petitioner. On the other hand, it was found that respondent No.1 had produced sufficient material showing that she was harassed by the petitioner and his family members for the last several years. Petitioner also did not dispute that complaints were filed by respondent No.1 alleging harassment by the petitioner. Proceeding on the basis that petitioner could not show any right of any nature whatsoever in the tenement of respondent No.1 under any provisions of law, learned Single Judge held that it is exclusively for respondent No.1, as a senior citizen, to decide whether she wants to permit the petitioner and his family members to stay with her or not. Since she had decided not to allow the petitioner and his family members to stay with her in the house owned by her, therefore, learned Single Judge held that Tribunal was fully justified in passing an order of eviction, not only against the petitioner but also against his other family members.

21. Reverting back to the facts of the present case we find that Tribunal had arrived at the finding that the flat in question is an ancestral property with both husband of petitioner and respondent No.1 having joint rights over the same. From the documents on record, Tribunal came to the conclusion that the flat was in the name of respondent No.1 and husband of the petitioner; deceased husband of respondent No.1 had sixty percent share whereas respondent No.1 and husband of the petitioner have twenty percent share each in the flat.

22. Question for consideration is whether the Tribunal under the 2007 Act can order eviction of a person from a tenement in which he has ownership right to the extent of twenty percent? This is in addition to the

question which arises as to whether having regard to the mandate of section 4 of the 2007 Act read with other provisions of the said 2007 Act, Tribunal can direct or order eviction of children or relative at the first instance itself or at a later stage to enforce an order of maintenance passed at the first instance? Further, the question of petitioner's right to reside in her shared household under the 2005 Act may also require consideration by the Tribunal.

23. At this stage, we may mention that in **Smt. S. Vanitha** (*supra*), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure maintenance and protection of the senior citizen or parent. Eviction, in other words, would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute.

24. Though learned Single Judge in **Dattatrey Shivaji Mane** (*supra*) has taken the view that the Tribunal can order eviction under the 2007 Act, as noticed above, such order was in the context of the tenement being the exclusive property of the parent / senior citizen which is not so in the present case. Therefore, without expressing any opinion at this stage on the questions formulated by this Court above, it is essential for the Tribunal to first arrive at a conclusion, though summarily, as to whether the flat in question is an ancestral property or exclusively owned by respondent No.1.

25. We further find that though the Tribunal had recorded that in the hearing respondent No.1 had stated that frequent quarrels used to take place between respondent No.1 and the petitioner and her husband for which reason she used to reside with her daughters, there is no finding by the Tribunal to that effect or that petitioner and her husband did not maintain respondent No.1. Tribunal merely said that it had formed an opinion that petitioner and her husband should improve their behaviour

and that they should not quarrel with respondent No.1. But that is not enough. In terms of section 9 of the 2007 Act, Tribunal must be satisfied that the parent has suffered neglect at the hands of the children or relatives or that they have refused to maintain the parent.

26. As we have already noticed, under sub-section (3) of section 5 of the 2007 Act, the Tribunal is mandated upon receipt of an application for maintenance to provide an opportunity of hearing to both the parties and to hold an enquiry for determining amount of maintenance. Though the procedure contemplated under the 2007 Act is summary in nature nonetheless Tribunal is required to find out as to whether the flat in question belongs exclusively to respondent No.1 or it is an ancestral property where petitioner has also a right to ownership and / or residence through her husband. Tribunal is also required to deal with the contention of the petitioner that the flat in question is her shared household wherefrom she cannot be evicted. As the Supreme Court has pointed out in **Smt. S. Vanitha** (*supra*), both parents / senior citizens and the daughter-in-law are vulnerable groups in the Indian context and for protection of their rights the 2005 Act and the 2007 Act have been enacted. It is in the backdrop of the above that the claims of the contesting parties would have to be decided which unfortunately does not appear to be the case in the instant proceeding.

27. Accordingly and for the reasons set out above, we set aside and quash the order dated 15.12.2020 passed by the Tribunal and remand the matter back to the Tribunal for a fresh decision in accordance with law after hearing the parties and having regard to the discussions made above. Let such decision on remand be taken within a period of two months from the date of receipt of a copy of this judgment.

28. Writ petition is accordingly allowed to the above extent. No costs.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)