

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2441 OF 2021

Shefali Sanjiv Patel & Anr.

... **Petitioners****Vs.**

Jyotiben Manubhai Patel & Anr.

... **Respondents**

Mr. Vivek Walavalkar with Viral Amin, Rajesh Dharap and Yash Oza i/b.
B. Amin & Co., for the Petitioners.

Mr. Simil Purohit with Rubin Vakil and Manish Doshi i/b. Vimadalal &
Co., for Respondent No.1.

Mr. C.D.Mali, AGP for the State.

CORAM : G.S. KULKARNI, J.

RESERVED ON : 11th October, 2021

PRONOUNCED ON : 14th October, 2021

ORDER:

1. Heard Mr. Vivek Walavalkar, learned counsel for the petitioners, Mr. Purohit, learned counsel for respondent no. 1 and Mr. Mali, learned AGP for the State.

2. This is a heart-rending proceeding, the genesis of which is a complaint filed by respondent no. 1 (for short “**the mother**”), aged 84 years, who had approached the Maintenance and Welfare of Parents and Senior Citizens Tribunal under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “**the Act**”) against petitioner no. 1 her daughter and petitioner no. 2 her son-in-law.

3. The complaint of the mother before the tribunal was of extreme harassment meted out to her, by the daughter and the son-in-law. The mother alleged a fraudulent act on the part of the petitioners namely of

extracting a Deed of Gift dated 19 November, 2014 from her, of the flat where the mother is presently residing, in which the mother and her late husband had a share in equal proportion, being Flat No. 162, Rewa Apartment. Bhulabhai Desai Road, Mahalaxmi, Mumbai – 400 026 (for short “the flat”). Admittedly, the flat is situated at a very prime location and certainly is a valuable property, which appears to be a main concern of the daughter and the son-in-law.

4. It is not in dispute that the flat in question was a self-acquired property of Manubhai C. Patel who jointly purchased the same along with the mother under an agreement dated 24 April, 1979 made between one Sharadchandra Shoorji Kothari on one part and Late Manubhai and the mother, being purchasers, on the other part. The flat has a built up area of 1057 sq.ft. which is situated on the 16th floor of the building. Thus, during the life time of late Manubhai, he was the owner of the flat in equal proportion with the mother. The mother has three children – two sons and Petitioner no. 1-daughter. The mother has no grievance whatsoever against both her sons, one of whom is based in USA. The other son is residing at Andheri-Mumbai. There is no dispute whatsoever between the sons and the mother.

5. It is the mother’s case before the tribunal that she and late Manubhai were concerned for their daughter-petitioner no. 1, who, according to her, was not happily placed. Hence, they permitted the daughter along with her husband to stay with them in the said flat.

However, after Manubhai passed away on 24 July, 2014, the scenario completely underwent a change for the mother, which was to the effect that the mother was subjected to severe torture and harassment by both the daughter and the son-in-law. Apart from physical and mental harassment they extracted the alleged gift deed from the mother, which was just within four months after the death of late Manubhai, whereunder the daughter purportedly gifted to herself 42% of the mother's undivided share out of the mother's 50% share in the said flat.

6. The mother having continuously suffered torture and harassment at the hands of the daughter and her husband ultimately filed a complaint dated 26 February, 2020 before the Tribunal. She filed a second complaint dated 9 January, 2021 as she was coerced to withdraw the first complaint by the daughter on 26 August 2020. She has narrated the incidence of the withdrawal of the first complaint, in her second complaint. The complaint(s) are replete with the nature of the torture meted out to the mother. A careful reading of the complaint would show the extreme harassment as suffered by the mother at the hands of the daughter. It is difficult to believe that this is any ingenuity of the advocates or the brothers as alleged by the daughter.

7. The mother was present in the Court when I heard this petition on 11 October 2021. I had a conversation with her so as to understand her plight. She practically broke down during her conversation. She stated

that she does not want the daughter and her son-in-law as also the granddaughter or anybody else to reside with her, as she has already suffered terribly at the hands of her daughter and son-in-law. She intends to stay alone saying that her late husband has left enough for her to survive happily with the help of a caretaker. When I made a specific query as to whether it was possible for her to accommodate the granddaughter, she is not at all inclined to do so. Her desire is that she should be completely relieved of the harassment which she is facing at the hands of the petitioners. She states that during her lifetime she has no intention to meet her daughter and the son-in-law along with granddaughter. She however, states that the sons may enquire about her but she should be left alone to reside in the premises for her remaining life.

8. This apart, when I had heard this matter quite extensively on the earlier occasion, it was discussed as to whether the issues could be amicably resolved, to which Mr. Vivek Walavalkar on instructions has expressed the petitioners' inability to do so. Hence, Mr. Vivek Walavalkar has insisted that the petition be heard.

9. Before adverting to the submissions of Mr. Vivek Walavalkar, it needs to be stated that the only focus of Mr. Vivek Walavalkar is on the provisions of Section 23 of the Act and the epicentre of his entire arguments is nothing but the flat. Mr. Vivek Walavalkar's submissions are as follows:

- (i) The gift deed could not have been revoked and cancelled by the tribunal because the conditions in Section 23 of the Act are not satisfied inasmuch as the mother has stated that she would maintain herself from her own funds. This is a jurisdictional issue for a tribunal to exercise powers under Section 23 of the Act.
- (ii) The parties had in fact resolved to settle the disputes which is reflected from a document dated 26 August, 2020 whereunder the mother had withdrawn her complaint dated 26 February 2020 filed before the tribunal.
- (iii) It is submitted that the daughter and the son-in-law never ill-treated the mother or caused her harassment, was also clear from 16 statements given by the residents of the building in their favour.
- (iv) No order of eviction can be passed under the Act when maintenance is not being claimed by the mother. Also, there are no rules framed under the Act permitting an eviction order to be passed.
- (iv) The daughter has independent share in the property, as 42% of the mother's share is transferred in her favour and in addition to that, she gets 12.5% share of the father.
- (v) The petitioners therefore cannot be removed from the flat on the allegations as made by the mother. In support of such contentions, Mr.Vivek Walavalkar has placed reliance on the decision of Full Bench of Kerala High Court in **Subramanian vs. District Collector & Ors.**¹, and a decision of the Single Judge of this Court in the case of **Rajana Rajkumar**

¹2020 SCC Online Ker. 4087

Makharia vs. Mayadevi Subhkaran Makharia & Ors.².

10. Mr. Purohit has submitted that the tribunal has rightly passed the impugned order. It is submitted that this is a case clearly falling under sub-section (1) of section 23 of the Act. His submission is that even the alleged gift deed itself recognizes the ingredients of sub-section (1) of section 23, namely, that the petitioner no. 1, who is a married daughter of the mother, who is residing in the flat to look after the mother/donor. He submits that the further recital is clearer, when the gift deed records that the same is in consideration of the natural love and affection which the donor/mother bears towards the donee/daughter. These recitals are to be noted which reads thus:

“(c) The Donee is the married daughter of the Donor who resides in the said flat and looks after the Donor.

.....

NOW THIS INDENTURE WITNESSETH that in consideration of the natural love and affection which the Donor bears towards the Donee, the Donor doth hereby”.

11. Mr. Purohit would contend that even if the gift deed is to be looked into, the intention of the parties thus would be required to be drawn from the document to be read as a whole. In support of his submission that the document is required to be read as a whole, he has placed reliance on the document of the Supreme Court in **B.K. Muniraju vs. State of Karnataka & Ors.³**. The recitals according to him are clear that there is an obligation on the daughter to look after the mother.

²2020 3 Mh. L.J. 587

³(2008) 4 SCC 451

12. Mr. Purohit has submitted that once from the alleged gift deed it was clear that there was an obligation on the daughter to look after the donor/mother and that the gift was on a consideration of natural love and affection, necessarily, when there was a breach and/or a dent to the substratum of these essentials, by virtue of the torture of the mother by the daughter, section 23 of the Act stood attracted and the tribunal had the jurisdiction to declare any such transfer to be void under sub-section (1) of section 23. In the alternative, it is Mr. Purohit's submission that even on the application of sub-section (2) of section 23, the right of the mother to receive maintenance out of her estate is recognised even when such estate or part thereof is transferred. The tribunal in that event would have jurisdiction to recognize a right conferred on a senior citizen to receive maintenance, which can be enforced against the transferee when the transferee had notice of such right. It is his submission that even in this situation, although the case falls under sub-section (1), there is no escape for the daughter to overlook the provisions of sub-section (2) of section 23 when it comes to recognizing the maintenance requirements of the mother.

13. Mr. Purohit would submit that either under the provisions of section 23 or the other provisions of the Act, the tribunal had the jurisdiction and the power to evict the daughter and her husband in the present facts. He, therefore, submits that it is totally untenable for the petitioners to contend that under the Act, the Tribunal had no power to

make any order of eviction. In support of his submissions, he has placed reliance on the decisions of the Supreme Court in “**S.Vanitha Vs. Dy. Commissioner, Bengaluru Urban District and Others**”⁴; **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane & Ors.**⁵; **Nayana Sudhir Shah & Ors. Vs. Sudhir Premji Shah & Ors.**⁶; **Ashish Vinod Dalal & Ors. vs. Vinod Ramanlal Dalal & Ors.**⁷;

14. Mr. Purohit would submit that the contentions as urged on behalf of the petitioners that the mother had withdrawn her complaint on 26 August, 2020 and therefore the matter ought to have been closed is completely untenable when tested on the record. He has pointed out materials to show that the mother was required to submit such withdrawal letter under coercion and fraud and on such backdrop, the mother had re-approached the tribunal on 9 January, 2021, pointing out in detail the nature of the mental torture and physical abuse as also cruel acts of deprivation of medicine, food and so many other basic necessities of life and livelihood. It is his submission that in fact when the second complaint was made, the daughter and her husband were completely aware about the background of the first complaint and that there was complete consistency in the case of the mother in regard to the various facts amounting to her torture. It is his submission that on such premise the second complaint was entertained after the daughter and her husband (the petitioners) were called upon to file a written

⁴ 2020 SCC OnLine SC 1023

⁵ 2018(6) Mh.L.J. 681

⁶ 2020(5) Mh.L.J. 605

⁷ 2021 SCC OnLine Bom 2976

statement, consequent to which, after granting full opportunity to the parties, the impugned judgment has been passed by the tribunal. Mr. Purohit has drawn my attention to the observations made by the tribunal in regard to the cruelty suffered by the mother at the hands of her own daughter and her husband. According to Mr. Purohit, the entire intention of the daughter and her husband is nothing but to grab the flat during the life time of the mother.

15. Mr. Purohit has submitted that the facts on record are writ large which would go to show that the daughter and the son-in-law have left no stone unturned inasmuch as they have collected 16 statements of outsiders to prove their good conduct towards the mother. He submits that however none of the statements concern the allegations which are made by the mother and which are necessarily in regard to the atrocious conduct and the inhuman treatment by the daughter and her husband towards the mother. He, therefore, submits that these statements were correctly disbelieved by the tribunal. It is submitted that the impugned order has been passed after the mother had herself appeared and verified the entire position in regard to her suffering.

16. In so far as the percentage of rights in the flat being claimed by the daughter on the basis of the gift deed, it is Mr. Purohit's submission that any percentage as set out in the gift deed cannot be of any relevance when it comes to exercise of powers under the Act to remove

son or daughter or any relative from the premises occupied by a senior citizen when the requirements of Section 23 as also Section 4 of the Act were attracted. He submits that in the event the daughter had any reason to believe that the gift deed created any substantive right of certain percentage, the only alternative available to the daughter was to prosecute her remedy before the appropriate Civil Court and seek declaration of such rights. It is submitted that it is not a case that by virtue of the percentage as set out in the gift deed it would create an unconditional right in the daughter, much less in the son-in-law to claim any possessory rights on the property. He submits that if such an interpretation as made by the petitioners is accepted, it would amount to rendering the provisions of the Act otiose. It is his submission that any right which the daughter may claim under the gift deed does not translate into any right to reside with the senior citizen. It is submitted that such contention is being raised for the first time before this Court, was never the contention before the Tribunal. It is his submission that the Tribunal has given elaborate reasons as to why the mother would require protection.

17. In rejoinder, Mr.Vivek Walavalkar has argued that none of the decisions as cited by Mr.Purohit are relevant in the facts of the present case. Mr.Vivek Walavalkar submits that his client is in settled possession and applying the principle that even a trespasser cannot be ousted without following due process of law, would become applicable in the

present facts. His contention referring to the decision of the Supreme Court in Vanitha's case (*supra*) is that Section 23 cannot be recognized to confer a power on the tribunal to remove/evict the daughter from the premises. Mr.Vivek Walavalkar has maintained his submission that the decision as relied by Mr.Purohit, do not reflect the correct position in law. His contention is that the decision of the Division Bench of the Kerala High Court would be relevant as there are no Rules framed in the State of Maharashtra under the Act which would confer a power of eviction on the tribunal.

18. Having heard learned Counsel for the parties and having perused the record, it appears to be not in dispute that the flat in question was acquired by late Manubhai, jointly with his wife-the mother. Both of them had equal share in the said flat. The father passed away on 24 July 2014, leaving the mother to reside in the said flat. It also appears to be not in dispute that during the life time of the father, the daughter along with her husband were called upon to stay with the parents in the said flat. This was for the reason that the parents at such time were sympathetic for the daughter and her situation after her marriage. The daughter, thus, entered the premises purely as a gratuitous licensee and not under any independent right. The son-in-law by himself had no legal right to remain on the premises except for the gratuitous licence recognized in his favour along with his wife-the daughter. Things however, completely worsened after the father passed away on 24 July

2014. In almost about four months of his demise, the daughter and her husband-the petitioners, appear to have taken advantage of the mother's old age and her dependency and got executed the alleged gift deed dated 19 November 2014. The recital in the gift deed is significant in the context of the present proceedings which categorically records that the daughter (donee) is looking after the mother (donor) with a further recital that due to natural love and affection, the mother was transferring in her favour, her 42% undivided share out of the mother's 50% share being an area admeasuring approximately 41.26 sq.mts. (built up) in the flat.

19. Even if such a document of gift deed is considered to have any sanctity, it cannot be said that the daughter along with the son-in-law would have any indefeasible right to remain in possession to the exclusion of all others and more particularly, of the mother and two other brothers. It also cannot be recognized that the daughter can assert any right to foist herself on the mother and against her wishes by remaining on the premises in which she has no exclusive and absolute rights. The facts clearly demonstrate that it is the daughter's case that she had entered and has remained on the flat not after the execution of the gift deed but prior to it. Her possession was on the sympathy of the parents of her plight in the situation which was prevailing immediately after her marriage. At the relevant time, the parents never realized that the daughter would become such a serious cause of concern, inasmuch

as, she would harass and torture the mother after the father's death and that too for the property which is a prime property at Bhulabhai Desai Road, in South Mumbai. This more significantly when one of the sons is already settled in U.S.A and the other son is also settled in his own premises at Andheri in Mumbai. The daughter therefore, found herself to be in the most advantageous position to lay her hands on the flat which was being occupied by the old mother, and it is with this intention, it prima facie appears that the gift deed was immediately sought to be extracted from the mother within four months of the father passing away.

20. The initial complaint as also the subsequent complaint made before the tribunal is replete with instances of torture, harassment on every possible issue of day-to-day living and survival of the old mother. To refer to some instances, the old mother was denied medicine, medical treatment, food etc. Even her phone was thrown into the toilet. She was beaten in the stomach and her feet were injured. Thus, she was made to suffer unbearably.

21. Now in regard to the contention as urged by Mr. Vivek Walavalkar on behalf of the daughter and son-in-law, as noted above, the submissions revolve only around the applicability of Section 23 of the Act. In such context Mr. Vivek Walavalkar's contention that the requirements of Section 23 are not satisfied in the mother's application filed under the Act, prima facie, appear to be totally untenable. This is

on a clear reading of the alleged gift deed as rightly interpreted by the tribunal, that under the gift deed the daughter had clearly taken upon herself an obligation to maintain the mother. The gift deed also clearly indicates that the same was an outcome of natural love and affection. Thus, even if it is accepted that the gift deed was not executed fraudulently or under coercion, it would certainly satisfy the requirements of Section 23, that once an obligation to maintain the senior citizen as recognized in the gift deed has not been fulfilled and/or there is a dent and/or absolute collapse of natural love and affection of the daughter towards her mother, certainly Section 23 was attracted. In that event, the tribunal certainly had jurisdiction to entertain any grievance which would fall within the purview of Section 23.

22. This apart, prima facie, there is much substance in the contention as urged by Mr. Purohit on behalf of the mother referring to sub-section (2) of Section 23. This provision unequivocally states that a senior citizen has right to receive maintenance out of an estate and such estate or “part thereof” even if transferred and the right to receive maintenance would be enforced against the transferee, even when the transfer inter alia is gratuitous. The basic underlying object of Section 23 is the maintenance of a senior citizen from such property of the senior citizen as recognized by sub-section (1) and sub-section (2) of Section 23. Maintenance has been defined under Section 2(b) to include provision for food, clothing, residence and medical attendance and

treatment. Mr. Walavakar's contention in regard to non-applicability of Section 23, thus, is required to be outrightly rejected.

23. The next contention of Mr. Walavakar that the Act itself does confer any jurisdiction with the tribunal to pass any order of eviction, is totally unfounded, considering the clear position in law. This Court on different occasions have interpreted the provisions of the Act. There are at least three decisions of this Court and a clear decision of the Supreme Court which recognize the power of the tribunal to pass an eviction order against son, daughter or any relative of the senior citizen who has failed to maintain the senior citizen, by remaining on the property of the senior citizen without any legal right to remain so. These decisions are required to be noted.

24. The learned Single Judge of this Court in **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane & Ors. (supra)**, while holding that the Act would confer jurisdiction on the tribunal to pass an eviction order against the sons , daughters and the relatives of the citizens as provided by such provisions has observed thus:

“24. In so far as the submission of the learned counsel for the petitioner that under Section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. (supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under Section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.

25. If the argument of the learned counsel for the petitioner is

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

26.

27. Delhi High Court in the case of Nasir Vs. Govt. of NCT of Delhi & Ors. (supra) while dealing with the matter under the provisions of the same Act and has held that once it is found that a senior citizen was the owner of the subject property, no error can be found with the directions issued by the Tribunal restraining the child of such senior citizen from interfering with the possession of the senior citizen who was the mother of the petitioner in that matter occupying the property and/or from recovering the rental income of the other property and further directing the son to maintain peace in the house and not to disturb his aged mother. It is held that in such situation, if it is said that the respondent mother ought to have been relegated by the Tribunal to the Civil Court, the same would have been in negation of the very purpose of setting up of such Tribunal. It is held that while interpreting the provisions, object of the Act has to be kept in mind which is to provide simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The provisions have to be liberally construed as the primary object is to give social justice to parents and senior citizens.

28.

29. Gujarat High Court in the case of Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania (supra) while dealing with a writ petition filed by the son of a senior citizen has construed Sections 4, 23 and various other provisions of the said Act. The son was occupying the property of his father who was admittedly a senior citizen. The said senior citizen needed to generate earning/income from the said part of the premises which were occupied by his son. Son was not maintaining the father. Gujarat High Court considered the objects and reasons of the said Act and held that son had not claimed any right of, or protection as statutory tenant or otherwise in respect of the said premises owned by the father. It is held that while explaining the object behind the enactment of the Act, the Legislature has clarified that, "the Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

30.

31. In my view, Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. The respondent no.1 mother cannot be restrained from recovering exclusive possession from her son or his other family

members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent no.1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.

32. In my view, since under Section 23 of the said Act, a senior citizen is entitled to apply for a declaration of gift or transfer of his/her property by any other means given subject to the condition that the transferee shall provide the basic amenities and basic physical needs to such senior citizen and such child or grand child refuses to provide such amenities and physical needs, such senior citizen can apply for declaration of such transaction to be void, such senior citizen can even apply for recovery of possession from her child or grand child in the event of the child refusing to maintain such senior citizen and parents or does not comply with the obligations extending to the needs of senior citizen or such parents to enable such senior citizen or parents to lead a normal life. Such parents and senior citizen can certainly apply for recovery of vacant possession of the property and for a relief restraining such child or grand child or his other family members who are claiming through such child from entering upon the property of such senior citizen or parents. In my view, there is thus no merit in the submission of the learned counsel for the petitioner that the Tribunal could not have passed an order of eviction against the petitioner and his family members from the tenement owned by the respondent no.1 under the provisions of the said Act."

(emphasis added)

25. In another decision of the learned Single Judge of this Court in **Nayana Sudhir Shah & Ors. Vs. Sudhir Premji Shah & Ors** (supra) the same view as in **Dattatrey Shivaji Mane** (supra) case has been reiterated.

The Court observed thus:

"25 It is thus clear that, the Tribunal has been empowered under Section 23 of the said Act to declare certain transactions as void. Considering the intention of the Legislature and laudable object of the said Act, Section 23 of the Act must receive expansive interpretation to hold that, while declaring a transfer of property to be void under Section 23 of the said Act, the power to order for return of property relating to the said transfer also flows from it.

As noted earlier, Section 3 of the said Act has overriding effect of the provisions of any other Acts, which were inconsistent with the provisions of the present Act. Section 4 of the said Act puts an obligation upon children and/or relative of the Senior Citizen to maintain him. The Application for maintenance under Section 4 can be made under Section 5 of the said Act. Section 5 gives

powers to the Tribunal to entertain and decide the proceedings under the said Act. The Tribunal has been empowered under Section 23 of the said Act to declare certain transactions as void.

... ..

29 Learned Single Judge of this Court in the case of Dattatrey Shivaji Mane (Supra) while dealing with Sections 4 and 23 with other related provisions of the said Act, by referring to and relying upon the decision of Delhi High Court in the case of Nasir Vs. Government of NCT of Delhi & Others, reported in 2015 (153) DRJ 259 and the decision of Gujrat High Court in the case of Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania, reported in 2013 AIR (Guj.) 160, has held that, Section 4 of the said Act permits a senior citizen including parent who is unable to maintain himself from his earning or out of property owned by him and if such senior citizen is unable to lead a normal life, to apply for such relief not only against his children but also the grand children. That, the provisions of Section 4 of the said Act permit such application for eviction of child and grand-child if the condition set out in that provision read with other provisions are satisfied. While rejecting the submissions made by the learned counsel for the petitioner therein, it is held that, in view of the Court, there is no substance in the submission of the learned counsel for the Petitioner that, the Order of eviction cannot be passed by the Tribunal under Section 4 read with other provisions of the said Act.

While expressing agreement with the decision rendered by the Gujrat High Court in the case of Jayantram Vallabhdas Meswania (Supra) and Delhi High Court in the case of Sunny Paul & Anr. Vs. State NCT of Delhi & Ors., in WP (C) No.10463 of 2015 decided on 15th March, 2017, the learned Judge has reiterated that, the claim for eviction is maintainable under Section 4 read with various other provisions of the said Act by a senior citizen against his children and also the grand-children. It is further held that, the provisions of the said Act are to be liberally construed as the primary object is to give social justice to parents and senior citizens. It is further held that, the provisions of Section 23 of the said Act cannot be, and need not be, read in isolation or by divorcing the said provision from other provisions, particularly Section 4 read with Sections 2(b), 2(f), 2(g) & 2(h) of the said Act. The learned Judge has further held that, Section 4 of the said Act cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. After analyzing the said relevant provisions, the learned Judge has held that, Senior Citizen can apply for declaration of such transaction to be void and can even apply for recovery of possession from children or grand-children. It is assertively held that, a senior citizen can certainly apply for recovery of vacant possession of the property and for a relief restraining such child or grand-child or his other family members who are claiming through such child from entering upon the property of such senior citizen or parents.”

26. This Court in **Ashish Vinod Dalal & Ors. vs. Vinod Ramanlal Dalal & Ors (supra)**, interpreting the provisions of the Act which recognize protection

of the the physical and psychological needs of a senior citizen as factes touching the right to life and livelihood observed thus:

8. There is a more fundamental question which needs to be addressed, namely, whether the parents in the present facts were in any manner precluded from taking recourse to the provisions of Sections 4 and 5 of the Senior Citizens Act to enforce the needs of such senior citizens to lead a normal life. The answer to this question would certainly be in the negative. The provisions of the Senior Citizens Act are required to be construed to take within its ambit the maintenance of the senior citizens which certainly would include all facets of maintenance as provided for in Section 4 of the Senior Citizens Act, which would aid the senior citizens to lead a normal life. This certainly includes the senior citizens asserting rights in respect of 'property', the meaning of which, is spelt out by section 2(f) of the Act to mean property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and which would include rights or interest in such property.

9. As provided in sub-section (2) of Section 4, the obligation of the children or relative, as the case may be, to maintain a senior citizen, extends to the needs of such citizen so that senior citizen may lead a normal life, which would certainly take within its ambit a protection from any harassment and torture meted out by a son or relative by keeping himself on the premises of the senior citizens. The intention of the legislature to provide such protection to live a normal life to the parents is also reflected in the provisions of sub-section (3) of Section 4 which provides that the obligation of the children to maintain his or her parents extends to the need of such parents either father or mother or both, as the case may be so that such parents 'may live a normal life'. Maintenance is also defined in Section 2(b) to include provision for food, clothing, residence, medical attendance and treatment. Further Section 3 of the Senior Citizens Act gives an overriding effect to the provisions of the said Act notwithstanding anything inconsistent therewith contained in any enactment other than the said Act.

10. It is thus clear that the intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizens rights, which are fundamental to the their very survival and/or livelihood at their old age. Certainly the Court's approach cannot be a narrow and pedantic in applying the provisions of the Senior Citizens Act to the grievances of the senior citizens falling within the ambit of the said Act. A protection from harassment, exploitation, neglect, psychological disturbances, psychological needs, and all possible facets to safeguard their physical and mental health are required to be recognized when sub-section (2) and sub-section (3) of Section 4 clearly provide that the obligation of the children or relatives would be to cater to the needs of the senior citizens so that they 'live a normal life'. The words "normal life" as used in these provisions would possess a far deeper and wider concept, deriving its meaning and having a bearing on the fundamental rights of livelihood as guaranteed and enjoyed by senior citizens under

Article 21 of the Constitution. Certainly, this would include a right to prevent themselves from being harassed by children and by relatives. This is also clearly borne out by the preamble to the Senior Citizens Act which reads thus:-

“An act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.”

27. The Supreme Court in **“S.Vanitha Vs. Dy.Commissioner, Bengaluru Urban District and Others”**⁸ interpreting the provisions of Section 23 of the Act and recognizing the power of the tribunal to pass an eviction order under the Act, has observed thus:-

“19. Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now, Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...”. On the other hand, sub-

⁸ 2020 SCC OnLine SC 1023

Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will be provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfill the condition, two consequences follow : (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression ‘transfer’ would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include “rights or interests in such property”. The expression ‘transfer’ not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of section 23 speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.

20. The substance of sub-Section (2) of section 23, as submitted by the Second and Third respondents, is that the

Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a „right to receive maintenance out of an estate" and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. **The Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the 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.**"

(emphasis supplied)

28. There is another facet of Mr.Vivek Walavalkar's contention on the applicability of Section 23 which is on a micro analysis of the daughter's share in the flat. Such contention, prima facie, would be required to be considered in the light of two basic issues, firstly, even considering that the gift deed is legally executed and it is not executed by fraud and coercion, the basic requirement for which such a gift deed was executed by the mother as provided under the document itself, was the mother expecting in return the recognition of her rights to be maintained from such property, and that the gift on such consideration was purely on account of natural love and affection, which the mother presumed and anticipated from her daughter. This pre-supposes that subject to the fulfillment and compliance of such obligations by the daughter as clearly reflected in the gift deed, no right whatsoever outside these consideration existed in the daughter and the son-in-law to remain on the property of the mother who is a senior citizen who was protected under the Act. There can be no other legal right to assert any occupation

of the property by the daughter and son-in-law apart from such primary consideration of maintaining the mother and showering her love and affection at such old age, even the law would mandate compliance of such basic expectations.

29. In any event, in the facts of the present case, it sounds to complete logic and even assuming that the daughter had some undivided share created in her after her father's death who held 50% of the share in the property, such undivided share would not *ipso facto* entitle the daughter to claim occupancy, possession or foist herself on the mother against her wishes. This more particularly, when it is an established fact that the mother and the father were owners in equal proportion of the said flat. The daughter thus necessarily was required to stand on the same footing along with her two brothers who also have a share in the father's interest, in equal proportion along with mother. It is thus too farfetched for the daughter to assert and that too on a prima facie doubtful gift deed that she has a larger share in the said flat property, and on such basis, she has a legal right to remain on the flat. Such an assertion cannot be recognized in law.

30. It is well settled that if on the basis of any independent document as the alleged gift deed in the present case, if the daughter intends to assert her rights in a property which independently belongs to the parents in their own right, the daughter would be required to approach the appropriate Civil Court and seek a declaration in regard to whatever

rights she may assert on the basis of any such documents. She is not precluded from doing so and to establish her rights on the basis of such document. The impugned order would also not preclude her from asserting her rights before the Civil Court.

31. This apart, in the present case the entire tenor of the daughter's case smacks of a greed to grab the flat in exclusion of the brothers and for which she has subjected mother to torture. The mother personally appeared before the tribunal, the tribunal has recorded the ordeal of her torture as suffered by her at the hands of the petitioners. Further, it cannot be overlooked, as to what she has personally stated before this Court, in the present proceedings. She has narrated her horrendous plight of a living hell suffered by her in her own house as brought about by the petitioners. The mother has categorically informed the Court that she does not want her children to be with her and that she intends to stay alone. The last thing she wants is to be with her daughter and her family. She intends absolute peace in her remaining life, free from the torture of her daughter and the son-in-law. It thus cannot be countenanced that a senior citizen like the mother in these circumstances should be left to suffer in such manner. It is impossible to accept the daughter's case that the mother is doing this for any extraneous motives. In fact, there cannot be any such motives for an old lady of 82 years of age when the sons are well-placed and she being financially secured by her late husband.

32. It is also clear that the daughter and son-in-law felt assured that the flat in question could be easily grabbed by them by torturing the mother. The very fact that the daughter can go to an extent of collecting statements of her good behaviour towards her mother from the neighbours is something unfathomable in the normal circumstances. It is also surprising that a daughter would require certificates of her good behaviour towards her mother from third parties and rank outsiders. This is certainly crossing all limits of reasonable behaviour a daughter can be expected to have towards her mother. However, sinister ingenuity has certainly damaged the daughter's case. All these circumstances speak volumes about the real intentions of the daughter and the son-in-law. Thus, prima facie, none of the contentions of the Mr.Vivek Walavalkar would have any substance.

33. In regard to Mr. Vivek Walawalkar's contention that the mother had, in fact, withdrawn her first complaint on 26 August 2020, cannot be accepted, as it is not the initial complaint dated 26 February 2020 which was considered by the tribunal, but the subsequent complaint dated 9 January 2021 in which in regard to the alleged withdrawal of her earlier complaint by the mother on 24 August 2020, the mother has made the following statements explaining in what circumstances, she was required to submit the withdrawal letter dated 26 August 2020.

“ In this corona my daughter and son in law together both made my life poisonous, all the time say bad things and put me down, will not give you food and will not take you to the doctor, they scare me. I am scared at time like this, they don't give me food and don't take me to the doctor and if I get corona and will not take

me to the hospital, what will I do in the hospital. In this fear, I on 26/08/2020 on this date, I with my daughter and son in law together a truce letter I signed. At that time three people guarantee me that they will not trouble you and for food and medicine they took the responsibility and if they trouble me at that time Hitesh Gilder, Mrs. Banatwala and my granddaughter will stand on my side and will take my responsibility.

After all this I do not trust what these people will do to me that is why I am scared even now. Too much. My son Timir and Neela ben Shah I have told them if they harass me again then I will again take them to court. 24/08/20 before writing the letter, shefali refused to give me food, on my leg she pinched me and scratched me with nails and slapped me many times and she left without giving me any food. Then sanjiv also lifted his hand and said if there was someone else instead of you I would have hit a lot. At that time shefali was standing and laughing and after shefali hitting the gave lot of bad words like donkey, lucchi, lowlife. Before that 23-24 June at night 10 o'clock to 12:30 shouting and giving bad words and started hitting me and shut the windows and doors. And because of corona I did not telephone the police. All my well wishers told me to call the police but I was afraid and that is why I don't want to call the police. My building chairman advised me to tell the police but my fear does not go so that is why I don't call the police. Jyoti M. Patel"

34. It is a matter of record that the subsequent complaint dated 9 January 2021 was the one which was considered by the tribunal and on which the impugned order is passed. Thus, in my opinion, the petitioner's contention that the mother was pursuing the complaint dated 26 February 2020 which was withdrawn, is totally untenable.

35. Mr.Vivek Walawalkar's contention relying on the decision of the Kerala High Court to contend that the tribunal would not have jurisdiction in the absence of any Rules framed under the Act to pass an order of eviction, cannot be accepted considering the substantive provisions of the Act and the successive decisions rendered by this Court interpreting these provisions as noted above. Considering the law as laid down by the Supreme Court in **S.Vanitha's case** (supra) which was rendered on 15 December 2020, Mr.Vivek Walawalkar's reliance on the

decision of the learned Single Judge of this Court in **Rajana Rajkumar Makharia vs. Mayadevi Subhkaran Makharia & Ors.**⁹, decided on 24 February 2020, is not well founded.

36. In any event, Mr.Vivek Walavalkar in focusing only on Section 23 of the Act has completely lost sight of the mother's complaint satisfying the requirements of Section 4 of the Act which would also confer jurisdiction on the tribunal to order eviction, in the facts circumstances.

37. Before parting, it needs to be observed that the observations which are made in this order are prima facie and which are confined to the present proceedings and these observations shall not come in the way of the daughter, if she intends to file a civil suit seeking any declaratin of her share in the flat in question on the basis of the Gift Deed dated 19 November 2014.

38. In the above discussion leads to a conclusion that no case has been made out by the petitioners for grant of any interim relief. Hence, the following order:-

ORDER

- (I) Rule. Respondents waive service.
- (II) Prayers for interim reliefs stand rejected.
- (III) In compliance of the impugned order dated 26 February 2021 passed by the tribunal, the petitioners are directed to remove themselves

⁹ 2020 3 Mh. L.J. 587

from the premises along with their daughter within a period of ten days from today.

(IV) In the meantime, till the premises are vacated, the petitioners shall not cause any harassment whatsoever to the old mother and shall peacefully remove themselves from the premises.

(G.S. KULKARNI, J.)