

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.659 OF 2021

ARCHANA SUNIL THAKUR
VERSUS
ASHOK RAJARAM THAKUR AND OTHERS

Mr.S.S.Bora h/f Mr.Shaikh Mohd.N.A., Advocate for the petitioner.
Mr.S.R.Dheple, Advocate for respondent No.1.
Mr.P.G.Borade, AGP for respondent No.3.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 24, 2022

PER COURT :

1. Heard the learned Advocate Mr.Bora for the petitioner and the learned Advocate Mr.Dheple for the respondents.

The petitioner is the daughter in law of respondent No.1, who had instituted proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (For short, Act of 2007) and was granted an order, by which the petitioner stands evicted of the shared household and this order is the subject matter of the writ petition.

2. Narration of facts in the petition would reveal, that the petitioner is residing in a house belonging to respondent No.1, registered vide

Property No.106 which stand in his name, where his son and daughter in law i.e. the present petitioner are residing. He filed an application under Section 4 and 5 of the Act of 2007 for obtaining possession of the said house.

This application came to be granted by the Sub Divisional Officer/the competent authority on 05/01/2021 and the petitioner alongwith her husband, who is the son of the applicant, are directed to remove themselves from the house property within a period of one month. As far as the other directions are concerned about paying maintenance by the respondent No.1/i.e. the son, it is not necessary to make any reference, since the petition is restricted to the right of the petitioner as a daughter in Law to reside in the shared household.

3. The Act of 2007, highlight the current scenario prevailing in the society and considering the circumstances, where due to withering of the joint family, a large number of elderly persons in the family are not being looked after by their family and resultantly, they are forced to spent their twilight years by themselves being are exposed to emotional neglect and to lack of physical and financial support, the Act was brought into force, making effective provisions for maintenance and

welfare of the parents and senior citizens guaranteed and re-cognized under the Constitution. The Act of 2007 contain a mechanism for providing need-based maintenance to the parents and senior citizens and to ensure better medical facilities to them. The Act, therefore, cater to the need of the senior citizens who despite owning the property and having their own children, are compelled to live life of a destitute and this situation was faced by the respondent No.1, who is the father in law of the petitioner. Since the house property was recorded in his name and he projected that he was with without any source of income, he approached the competent authority and sought the relief of eviction of his son and daughter in law from the house property owned by him and his application has been granted, by the impugned order.

4. The petitioner undisputedly is a daughter in law of the respondents and she face a dual problem on being evicted from the house; being that she is evicted from her shared household and also there is a discord between herself and her husband, which has resulted into institution of a petition for divorce by the husband vide HMP No.129/2020 seeking dissolution of a marriage. She has instituted proceedings under the Domestic Violence Act, 2005 (For short Act of

2005) seeking necessary orders u/s 12, 18, 19, 22 and 23 of the Act of 2005. The Domestic Violence Proceedings are pending before the learned Judicial Magistrate, First Class, Bhusawal where she specifically seek a relief exercising her right to reside in a shared household as contemplated u/s 17 of the Act of 2005, where every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

5. The impugned order being passed, directing her eviction from the shared household she poses extreme difficulty as she is ousted from the said house and even her relationship with her husband is already strained and on being evicted out of the shared household, she is stranded on the street.

6. The learned Advocate Mr.Bora, by taking me through the contents of the impugned order would submit that the said order is ex-parte order against her, though the husband that is the non applicant No.1 to the proceedings have appeared and presented his stand before the Authority. The impugned order record that despite opportunity

being afforded to the non applicant No.2, for submitting her reply, she failed to remain present and therefore the order was passed behind her back.

On the count that the order do not consider her stand, interference is sought for at the instance of this Court.

Apart, the learned Advocate has relied upon a decision of the Apex Court in case of **S.Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and others [AIR 2021 SC 177]**, wherein the Hon'ble Apex Court had an opportunity to deal with the two enactments and it's purport being the Act of 2007 and the Act of 2005 and when it deliberated upon the effect of one statute over the other, both the statutes being special statutes made in the interest of two distinct categories, one being the senior citizen and other being the category of woman, who require protection against domestic violence. According to Mr.Bora, the aforesaid judgment of the Hon'ble Apex Court has worked out the interface between the two statutes and the guiding factor flowing from the authoritative pronouncements of their Lordships is to the effect that the provisions and both the statutes will have to be harmoniously construed and merely because a senior citizen requires protection under the Act of 2007, a wife who is entitled for

shared household on the said pretext cannot be deprived of her rights conferred under the special enactment made for a woman who faced domestic violence, is the submission.

The aforesaid judgment has been followed by the Division Bench of the Bombay High Court in case of **Ritika Prashant Jasani Vs. Anjana Niranjan Jasani and others in WP No.2631/2021 decided on 13/08/2021** and according to the learned Advocate for the petitioner, the two authoritative pronouncement would lead this Court to remand the matter back to the Authority since the said aspect has not been considered by the Authority while passing the impugned order.

7. I have also heard the learned Advocate for the respondent, who has placed reliance upon the decision of this Court in **Shweta Shetty Vs. The State of Maharashtra and others in WP (L) No.9374/2020 dtd.25/11/2021**.

8. On perusal of the decision in case of S.Vanitha (supra) where the conspectus of the two enactments that is Act of 2007 and the Act of 2005 are discussed and analyzed in great detail. In the backdrop of women's right of residence, as a safeguard against domestic violence,

their Lordships have considered the definition of "shared household" as defined in Section 2(s) of the Act of 2005 and on consideration of the scheme underlining the Act of 2005, which vide Section 19 contemplate passing of a appropriate order by a Magistrate on an application being preferred under sub section 1 of Section 12 of the Act of 2005, the definition has been analyzed threadbare. It is held that the provisions contained in the Act of 2005 are in addition and not in derogation of provisions of any other Law for the time in force since it intend to ensure the remedies provided in the enactment and they are in addition to other remedies and not to displace them, when juxtaposed against the Act of 2007.

Recording that the Act of 2007 was promulgated with a view to provide a speedy and inexpensive remedy to the senior citizens and the Tribunals constituted under the Act are empowered to conduct the summary procedures for enquiry, by explicitly barring the jurisdiction of the Civil Courts. The interface between the two enactments is set out in paragraph No.22 of the said judgment in the following words :-

"22..... 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 PART E other special statutes, such as the PWDV Act 2005. Section 26²⁵ 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."

9. Further in paragraph No.23, with reference to the right of a woman to reside in a "shared household" within the meaning of Section 2(s) of the Act of 2005, it has been held that the fact that the specific proceedings under the Act of 2005 are not instituted, when the application under the Act of 2007 was filed, should not lead to a situation where enforcement of an order of eviction deprives a woman from pursuing her claim of entitlement under the law. By further recording the inability of a woman to access judicial remedies may, as this case exemplifies, we, of a consequence of destitution, ignorance of lack of resources, the right available under the Act of 2007 was held not sufficient to deprive a woman of a right of a shared household as contemplated under the Act of 2005.

10. In the wake of the aforesaid observations, it is necessary to consider the right available to the applicant i.e. the father in law before the authority as against the right of the daughter in law in the shared household and particularly when the fact is not in dispute that the daughter in law is residing, since her marriage, in the house belonging

to her father in law alongwith her husband but on account of certain discord with her husband, he has shifted himself, but the daughter in law continue to reside in a premises alongwith her two children. The attempt on the part of the father in law to institute the said proceedings is argued to be a collusive attempt on the part of her husband and father in law to evict her from the premises.

11. Perusal of the impugned order , however, would reveal that the right of the petitioner as a daughter in law under the Act of 2005 to continue to reside in a shared household has not at all been adverted to and this is for the reason that she was proceeded exparte and her stand has not at all come on record before the Tribunal.

In the wake of the above, since her right u/s 17 of the Act of 2005 deserve a consideration as against the right of the father in law under the Act of 2007, it is necessary that the proceedings are remanded back to respondent No.3 for its re-determination, by affording an opportunity to the petitioner to participate in the proceedings and also in the wake of consideration of her right against the right of the applicant before the Tribunal who claimed remedy u/s 4 and 5 of the Act of 2007.

Upon the proceedings being remanded to the Tribunal, the Tribunal shall consider the application in the wake of the decision of the Apex Court in the case of S.Vanitha (supra) as well as in the case of Ritika Jasani (supra), a decision delivered by the Division Bench of this Court. The Tribunal shall determine the right of the applicant viz-a-viz right of the present petitioner as a daughter in law by effectively adjudicating the proceedings by following the principles of natural justice and by affording opportunities to all those concerned to be heard in the proceedings.

Let the the respondent No.3 decide the proceeding within a period of 3 (three) months from today.

Needless to state that till the proceedings are determined, the petitioner shall be evicted from her shared household. Further as regards the amount of maintenance to be paid by the husband to the father in law that order do not warrant any interference and the direction shall be abided by.

(BHARATI H. DANGRE, J.)