

Ghuge

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

WRIT PETITION NO. 3276 OF 2022

Shivaji Sambhaji Jagtap and Ors. ... Petitioners
V/s.
Janabai Sambhaji Jagtap and Ors. ... Respondents

Mr. Mahesh V. Rawool for petitioners.

Mr.Vrushali U. Kabare for respondent No.1.

Mr. R.M. Pethe, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 12, 2022

P.C.:

1. The petitioner is challenging the judgment and order dated 12th August, 2022 passed by the Sub-Divisional Magistrate, Thane, under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 directing the petitioner to hand over possession of the property which was the subject matter of the application.

2. According to the petitioner, the respondent No.1 is the mother of petitioner No.1. The respondent No.1 is a senior citizen. The respondent No.1, therefore, filed an application before the designated authority under the provisions of the Maintenance and Welfare of Parents, Senior Citizens Act, 2007 under Sections 23(1) and 24 read with Rule 20 of Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rules, 2010. The respondent No.1 claimed exclusive ownership over the property in

dispute. According to respondent No.1, she had been forcibly dispossessed by the petitioner. According to her though the property in dispute is owned by her, she is forced to take shelter in the property owned by others.

3. The application was contested by the petitioners stating that the property in question is joint family property. According to the petitioners, initially the property was purchased by the father of the petitioners and in redevelopment scheme, the property in dispute has been allotted in favour of respondent No.1. According to the petitioners they are maintaining respondent No.1. There is no cause of action for filing the application as there are no specific pleadings regarding denial of maintenance by the petitioners.

4. The designate authority under the Act by judgment and order dated 31st December, 2019 allowed the application of respondent No.1 and directed petitioners to hand over possession of Flat No.1226, Ground Floor, Sukh Shanti, Bonkode, Kopar Khairane, Navi Mumbai. The said judgment and order is the subject matter of the present proceeding.

5. The learned advocate for the petitioner submitted that the property in dispute is the joint family property of the petitioners and respondent No.1 and, therefore, the application before the designated authority was not maintainable. He submitted that from 2001 to 2022 petitioner had been residing with her daughter voluntarily. He submitted that the petitioners are maintaining the respondent No.1.

6. *Per contra*, the learned advocate for respondent No.1

submitted that the allotment of property in redevelopment scheme confers ownership right on the respondent No.1 and, therefore, the application under Section 23(1) of the Act is maintainable. She invited my attention to the definition of maintenance. She submitted that it is due to harassment as pleaded in the application, the respondent No.1 was construed to file such application.

7. Having considered the submission on behalf of both the sides, I am of the opinion that the designated authority was right in passing order of eviction against the petitioner. The fact that the property in dispute has been allotted in favour of the respondent No.1 is not in dispute. According to the petitioner, the property in dispute before redevelopment was joint family property. Therefore, allotment in favour of respondent No.1 was for on behalf of joint family property. From the documents on record it appears that property in dispute was in the name of respondent No.1 before the implementation of the redevelopment scheme. According to the petitioners, father had purchased the property in dispute in the name of respondent No.1, hence subsequent allotment was in her favour.

8. Having considered the scheme of the Act, in my opinion, in summary proceedings the designated authority cannot conclusively decide title over the immovable property. It is for the Civil Court to decide ownership of the property. The conclusion drawn by the designated authority that the respondent No.1 is exclusive owner of the property is based on the earlier sale-deed.

9. The next submission made on behalf of the petitioners is that there are no pleadings that the petitioners are not maintaining the respondent. At this stage, it is profitable to refer to the definition of 'maintenance' as defined in Section 2(b) of the said which reads as under :

“2(b) “maintenance” includes provisions for food, clothing residence and medical attendance and treatment.”

On perusal of the definition, it is clear that the said definition is inclusive. The term 'maintenance' is defined in the Act includes provision for food, clothing, residence, medical attendance and treatment.

10. The case pleaded by the respondent No.1 is that in spite of she being owner of the property she is constrained to take shelter in the property not owned by her is sufficient to maintain her claim for eviction of the persons who are not owners of the property. Therefore, in my opinion, the order of eviction passed by designated authority does not suffer from illegality.

11. The next submissions made on behalf of the petitioners is that the respondent No.1 disposed of another room owned by the father by filing false affidavit. In my opinion, said contention is of no assistance in the present proceedings as the scope of present proceedings is to decide whether the applicant is the owner and the respondents have no rights of ownership.

12. The learned advocate for the petitioner relied on the judgment of the Apex Court in **Sudesh Chikara Vs. Ramti Devi and Anr** in Civil Appeal No.174 of 2021 decided on 6th December,

2022. On perusal of the facts in the said judgment, it is clear that the senior citizen had executed a release deed in favour of her daughter. There was no mention in the lease deed regarding promise by transferee to provide basic needs or amenities as promised. In that context, the Apex Court held that the conditions enumerated in paragraph No.12 of the said judgment are condition precedent before declaring the transfer as *void*. In the facts of the present case, it is common ground that there is no transfer of title by senior citizen in favour of family member and, therefore, the said judgment is of no help to the petitioner.

13. For the above reasons, I find that the impugned order is neither perverse nor results into miscarriage of justice.

14. It is made clear that the observations made in the present judgment are only for the purposes of adjudicating the rights of the parties arising out of the order passed by the designated authority and same would not preclude the petitioners from raising their grievance before appropriate forum to establish their title.

15. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)