

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

CRIMINAL WRIT PETITION NO. 5831 OF 2018

Tushar Dnyanoba Shinde
Age 51 Yrs. Occup : - Service.
R/at Shruti Niwas, Hanuman Colony,
Tal – Haveli, Dist. Pune

...Petitioner

Versus

1. Smt. Indubai Dnyanoba Shinde
Age :-63 Yrs. Indian Inhabitant,
Through Smt. Namabai Sitaram Sabale
R/at S. No.70/2, Nilakant Apartment,
Room No.402, Bhimashankar Nagar,
Kivale, Post – Dehuroad, Tal. Haveli,
Dist. Pune.

2. The State of Maharashtra

...Respondents

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Mr. Shailesh D. Chavan, Advocate for the Petitioner.

Mr. Ajinkya J. Jaibhave, Advocate for Respondent No.1.

Mr. A. R. Patil, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 17th JUNE, 2022.

PER COURT:

1. The Petitioner is aggrieved by order dated 21st May, 2018 passed by the Additional District Magistrate, Pune in Appeal No.13 of 2017 and order dated 23rd October, 2017 passed by Sub-Divisional Magistrate, Haveli Sub-Division, Pune whereby the Petitioner was directed to handover the possession of S. No.

43A/9+11A/1B/1 admeasuring 2R along with construction to Respondent No.1.

2. The brief facts as reflected in this petition are as follows :

i) The Respondent No.1 is the mother of Petitioner. The Petitioner is retired from Indian Navy.

ii) The Respondent No.1 had preferred an application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, before the Sub-Divisional Magistrate in respect of Gat No.43A/9+11A/1B/1 2R Kivale for possessions of the said property along with the construction.

iii) The matter was then referred for settlement before the Additional Tahsildar, Pimpri Chinchwad, Pune. However, the settlement was not possible and the matter was referred to Sub-Divisional Magistrate for deciding the said application.

iv) The Petitioner filed reply and contended that the construction of the house was carried out by the Petitioner from his own savings and construction was done with the consent of his parents.

v) Vide order dated 23rd October, 2017 Sub-Divisional Magistrate allowed the application preferred by Respondent No.1 and directed the Petitioner to handover the possession of

the property with S.No.43A/9+11A/1B/1, Hectare 2, along with construction to Respondent No.1 within a period of one month. The said order was challenged by the Petitioner by preferring appeal before the Collector Pune under Section 16 of the aforesaid Act.

vi) Vide order dated 21st May, 2018, the appeal preferred by the Petitioner was rejected and order dated 23rd October, 2017 was confirmed.

3. learned Advocate for the Petitioner submitted that although the property stands in the name of Respondent No.1, the construction was carried out by the Petitioner from his own savings. The relationship between the Petitioner and his parents were cordial at the relevant time. He relied upon the bank statement in support of his submissions that the amount of Rs.1,50,000/-, Rs.1,00,000/- and Rs.2,10,000/- was parted to M/s. Manas Developers, who carried out the construction towards the construction of the house. The Petitioner also relied upon the photographs annexed to this petition which indicate that the presence of his parents performing Bhumipoojan before the construction was carried out. It is further submitted that the appellate authority in his order dated 21st May, 2018 has observed that the RCC construction was carried out by the Petitioner. There

is evidence to show that the Petitioner was instrumental in constructing the premises. He cannot be ousted from the said premises. The Petitioner is willing to accommodate the Respondent No.1 in the said premises. The Petitioner has also relied upon the agreement dated 29th September, 2007 allowing the Petitioner to develop the said property which according to him fortifies the submissions of the Petitioner that house was constructed by him. It is further submitted that the father of the petitioner is getting pension and after his death, Respondent No.1 is receiving the pension around Rs.18,000/-to Rs.20,000/-. In accordance with Section 4 & Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Respondent No.1 is not entitled for any relief.

4. Learned Advocate for respondent No.1 submitted that the Respondent No.1 is the mother of Petitioner. It is not disputed that she is the owner of the property in question. She has right to stay in the property. She is not willing to stay with the Petitioner on account of harassment meted out in the past. She cannot be forced to stay with the Petitioner. The agreement relied upon by the Petitioner is disputed. The bank statement referred to by the Petitioner is not a proof to determine that the construction was carried out by the Petitioner. The subject Act is enacted for the

benefit of senior citizens. The mother being the owner of premises has a right in property being owner cannot be asked to vacate the premises. This Court had made attempts to interview both the parties to ascertain whether any reconciliation is possible. However, the matter could not be settled. In the light of the object of the Act in question and the order passed by the authority, the petition preferred by the Petitioner may be rejected. There is no proof of record that the Respondent No.1 is receiving any pension as contended by the counsel for the Petitioner. Assuming that the Respondent No.1 is getting pension of her husband, she cannot be deprived of his right of his property being the owner of the property. He also submitted that Section 16 of the said Act, provides right to appeal to the senior citizen. As per Section 23 of transfer of property would be void in certain circumstances.

5. I have perused the documents on record. The Respondent No.1 is the owner of the subject property. She preferred an application before Sub-divisional Officer under the provisions of the aforesaid act and contended that property at Mouje Kivale, Taluka Haveli Pune viz. Gat No.43A a+11/A/1B/1, 2 R belongs to her. R.C.C. construction of 900 Sq.ft. has been carried out by her husband Dnyanoba Shinde from Pension amount received by him after his retirement from Indian Army. It was carried out in 2008.

Property tax on the said property is levied by Pimpri Chichwad Corporation in her name. There are four children to them. The elder son (Petitioner) has dispossessed Respondent No.1 and her husband and occupying the said premises. The Respondent No.1 and her husband are residing on rental basis in another premises. Another son of Respondent No.1 is also residing separately in rental premises with his family. Respondent No.1 has requested the petitioner on several occasions that they should all stay together. However, he threatens them and told them that they have no right in the said property. She is aged around 62 years and her husband is aged 72 years. They are not keeping good health. It has become impossible for them to survive. All attempts to convince petitioner has failed and hence they are seeking relief under maintenance and Welfare of Parents and Senior Citizens Act, 2007. The said application was allowed vide order dated 23rd October, 2017. In the said order dated 23rd October, 2017 it is observed that the application was forwarded to conciliation officer on 27th March, 2017. Settlement could not be arrived. The property in question is purchased by Respondent No.1 by registered Deed. Requisite mutation entry is executed. Construction of 900 Sq.ft. has been carried out on the property. The original applicant has stated that property belongs to her. She has been dispossessed by her

(Petitioner). He is occupying the premises. She is residing in rental premises with husband. The petitioner threatens them. The contention of the petitioner is that he has constructed premises on said property out of his income. In his reply he has stated that he would never give up possession of premises. He also contended that property is purchased by him but not produced any evidence. It is further observed that Section 4 of the said Act provides for maintenance of parents and senior citizens by children. Section 23 of the said Act relates to transfer of property to be void in certain circumstances. Section 24 of the Act, relates to exposure and abandonment of senior citizens. It is clear from documents produced that subject property is owned by Indubai Dnyanoba Shinde. Dnyanoba Shinde and Indubai Shinde are senior citizens. It is the responsibility of son to look after his parents. The opponent (Petitioner) is alone occupying the property and applicant (Respondent No.1) is residing separately in rental premises. As per Section 23 the unauthorized transfer is void. It is clear that the property with construction is being transferred by deceit, undue influence and it is declared void. Possession of property be handed over to Indubai Shinde within one month.

6. The appellate authority has observed that, the appellant (Petitioner) is residing in subject premises and he has dispossessed

his parents. They are residing in rental premises since last 8 years. This unauthorized transfer is declared void in accordance with Section 23 of the Act. Instead of taking care of parents, they were unauthorizedly removed them from their own premises is an offence under Section 24 of the Act. Documents indicate that property is owned by Indubai Shinde. They appellate authority has also observed that appellant has carried out construction but as per provisions of the Act is is responsibility of the children to take care of parents. The property is owned by Indubai Shinde and Dnyanoba Shinde. The possession of property taken by appellant and its transfer is unauthorized and illegal. It is declared void. Hence, appeal is dismissed.

7. The Sub-divisional Magistrate vide order dated has arrived at conclusion that, the property is owned by Indubai Shinde and she had produced documentary evidence to support her claim. Indubai and her husband Dnyanoba are senior Citizens and it is responsibility of their children to look after their welfare. The opponent (Petitioner) is alone occupying the premises and the applicant (Respondent No.1) is residing in rental premises. Although, as per the provisions of above Act, welfare and love of parents is required to be taken, it is not done in the present case. The opponent is in unauthorized transfer of property which is void

in accordance with Section 23 of the Said Act. The findings of first authority are confirmed by appellate authority. No case is made out by petitioner to interfere in the impugned order.

8. The agreement relied by Petitioner is disputed by Respondent No.1 on the basis of documents, viz. agreement, photographs, bank statement etc. relied by Petitioner it is not possible to establish his claim in property. Although the property in question is owned by Respondent No.1 the petitioner has been alone occupying it.

9. Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reads as follows :-

“16 Appeals. —

(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal: Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal: Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of

the Appellate Tribunal shall be final: Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.”

Thus, the appeal is provided for any senior citizen or parent, as the case may be aggrieved by order of tribunal. The division Bench of High of Calcutta in the case of **Mamata Sarki V/s. State of West Bengal**¹ has held that, Right of appeal was not available to children and relatives. In any case, considering the factual aspects of this case, relief claim by petitioner cannot be granted.

10. The Act is enacted to provide for more effective provisions for Maintenance and Welfare of Parents and Senior Citizens guaranteed and recognized under the constitution and for matters connected therewith or incidental thereto.

11. Section 4 of the Act relates to Maintenance and Welfare of Parents and Senior Citizens. Section 23 relates to transfer of property to be void in certain circumstances. Section 24 provides imprisonment for a person having care of protection of Senior Citizen, leaves such senior citizen in any place with the intention of wholly abandoning such senior citizen.

¹ 2020 SCC Online Cal 721

12. In the light of factual matrix of this case, conclusions arrived by authorities allowing application of Respondent No.1, no relief can be granted to Petitioner. The Petition is devoid of merits.

13. Hence, I pass the following order:-

ORDER

- i. Criminal Writ Petition No.5831 of 2018 is dismissed.
- ii. The Petitioner is directed to handover the possession of the subject premises to Respondent No.1 within a period of eight weeks from the date of uploading this order.
- iii. The Police Protection be granted to Respondent No.1, while taking possession of the premises from Petitioner.

(PRAKASH D. NAIK, J.)