

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3323 OF 2019

Sheetal Devang Shah	)	
Age : 47 years, Occ : Fashion Designer	)	
& Teacher, currently not working	)	
Presently residing at Saprem, Plot No.20,	)	
3 rd Juhu Scheme, Vile Parle (West),	)	
Mumbai - 400 056	)	... Petitioner
Vs.		
1. Presiding Officer of the Maintenance and	)	
Welfare of Parents and Senior Citizens	)	
ADDRESS : 9 th Floor, Administrative	)	
Building, Bandra East, Mumbai - 400 051	)	
2. Nalini Mahendra Shah	)	
Age : 77 Years, Occupation: Widow	)	
Presently residing at Saprem, Plot No.20,	)	
3 rd Juhu Scheme, Vile Parle (West)	)	
Mumbai - 400 056	)	
3. Deleted	)	
4. Devang Mahendra Shah	)	
Age: 47 Years, Occupation: Businessman	)	
Presently residing at Saprem, Plot No.20,	)	
3 rd Juhu Scheme, Vile Parle (West),	)	
Mumbai - 400 056.	)	... Respondents

Ms. Yasmin Tavaría a/w. Mr. Anand Poojary, Ms. Nikita Pawar and Mr. Bhushan Kanchan i/b. S. I. Joshi & Company for the Petitioner.

Mrs. Jyoti Chavan, AGP for Respondent No.1-State.

Mr. Vivek Kantawala a/w. Mr. Amey Patil i/b. Vivek Kantawala & Co. for Respondent No.2.

Mr. P. R. Yadav for Respondent No.4.

Mr. Umesh Birari, Sub-Divisional Officer, Mumbai Western Suburbs.

**CORAM : S. S. SHINDE &
REVATI MOHITE DERE, JJ.**

Reserved on : APRIL 27, 2022

Pronounced on: MAY 6, 2022

JUDGMENT :

. This Bench has been specially constituted to hear the petitioner's aforesaid petition and other petitions, by the Hon'ble Chief Justice. Both the members of this Bench preside over their respective Benches and have to disturb their regular boards, to assemble only for these matters.

1.1. On 27th April 2022, we heard the learned counsel for the parties from 4:30 p.m. to 7:00 p.m. and closed the matter for orders.

1.2. This Writ Petition under Article 226 of the Constitution of India is filed by the petitioner thereby taking an exception to the order dated 16.08.2019 passed by respondent No.1 - Presiding Officer of the Maintenance and Welfare of Parents and Senior Citizens' Tribunal (for short 'Tribunal').

1.3. The only substantive prayer in the petition reads as under:-

ii. That this Hon'ble Court be pleased to call for the records and proceedings from the Respondent No.1 and after perusing the legality and propriety of the impugned order dated 16.08.2019 passed by the Respondent No.1, this Hon'ble Court be pleased to issue a Writ of Certiorari and/or any other appropriate Writ, order or direction under Article 226 of the Constitution of India and quash and set aside the impugned order dated 16.08.2019 passed by the Respondent No.1 at Exhibit-A;

2. During the pendency of this petition, the Division Bench of this Court (*Coram: S. C. Dharmadhikari and G. S. Patel, JJ.*), by order dated 18.09.2019, directed thus,

“5.(c) Since it is stated that the Petitioner may be dispossessed tomorrow and by using force, we direct that until further orders of this Court, the operative direction No.3 which directs the Petitioner to hand over vacant and peaceful possession of the premises to her in-laws be not acted upon or implemented.”

2.1. The aforesaid direction / interim order is in force till date.

3. Background facts leading to the filing of this petition are as under:-

3.1. Respondent No.1 / non-applicant has passed the order (impugned in the present petition) in the proceedings instituted by Smt. Nalini Mahendra Shah - respondent No.2 herein and her husband - Mahendra Shah. Since during the pendency of the present writ petition, husband of respondent No.2 died, with the permission of the Court, his name has been deleted from the array of the respondents. Respondent No.4 - Mr. Devang Shah is the husband of the petitioner as also the son of respondent No.2. Present petitioner - Ms. Sheetal Shah is the daughter-in-law of respondent No.2 and respondent No.3 (deleted).

4. For the sake of convenience, parties shall be referred to by their names and not by their status before the Tribunal or this Court.

5. Nalini Shah and her husband Mahendra Shah filed the application No.SDO/SCNo.SDO/JNVMP/Desk-6/SR-38 of 2018 before the Tribunal constituted under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Briefly stated contentions of the

applicants therein viz., Nalini Shah and Mahendra Shah, were as under:-

- a. that, they are staying at Saprem, Plot No.20, 3rd Road, Juhu Scheme, Vile Parle (West), Mumbai - 400 056 (hereinafter referred to as the 'residential premises').
- b. Devang Shah is the only son of Nalini Shah and Mahendra Shah and Sheetal Shah is their daughter-in-law. They all are residing in the aforesaid residential premises.
- c. Nalini Shah is the housewife and her husband Mahendra Shah (deceased) was employed in the renowned business of diamond and diamond jewellery at Opera House. Mahendra Shah retired from the said business in the year 2016 and he had no other residential premises, save and except the residential premises at Saprem, Plot No.20, 3rd Road, Juhu Scheme, Vile Parle (West), Mumbai - 400 056.
- d. Devang Shah is the employee of Supergems India Private Limited and Sheetal Shah is working as a fashion designer. Both of them are receiving handsome salary.
- e. the aforesaid residential premises is in the name of Mahendra Shah and Nalini Shah.
- f. It was alleged that Sheetal Shah and Devang Shah are unable to look after Nalini Shah and Mahendra Shah and from last one year, they are not looking after necessities of life of Nalini Shah and Mahendra Shah. From January - February 2017 till the filing of the application, they were

harassed in the said residential premises though they are the owners of the said house. Sheetal Shah and Devang Shah, both, are torturing Nalini Shah and Mahendra Shah, physically as well as mentally.

- g. Nalini Shah is suffering from asthma, vergio, back pain and leg pain.

5.1. In the aforesaid background, facts and circumstances, the said application was filed by Nalini Shah and her husband Mahendra Shah.

6. From a perusal of the original record summoned from the office of respondent No.1 before whom the proceedings were instituted by Nalini Shah and Mahendra Shah, it appears that various criminal complaints have been filed by both of them before the police authorities thereby making serious allegations, particularly against Sheetal Shah. The tenor of the said allegations is that Sheetal Shah and her husband Devang Shah have made their life miserable and there is a continuous physical and mental torture / harassment to them in their old age and that too in their own house.

7. Respondent No.1, before whom the application was filed by Nalini Shah and Mahendra Shah, had issued show cause notice to Sheetal Shah and Devang Shah.

8. Pursuant to the said notice, Sheetal Shah filed her detailed reply with annexures contending therein, that she has also filed various

criminal complaints for physical and mental harassment by her mother-in-law and father-in-law i.e., Nalini Shah and Mahendra Shah respectively, to her and her two children. It appears that to the said complaints, Sheetal Shah had also annexed petition filed by her before the Family Court, the orders passed thereon and the other proceedings initiated by her, under the Protection of Women from Domestic Violence Act, 2005.

8.1. Sheetal Shah also stated in her reply that the application filed by Nalini Shah and Mahendra Shah suffered from suppression of important facts. She, therefore, prayed for rejection of the application at the threshold. It is stated that the residential premises in question is a joint household where Nalini Shah, Mahendra Shah, Devang Shah and her two precious children are residing. The said residential premises is the part of Navyug Co-operative Housing Society Limited. Mahendra Shah's father namely, P. G. Shah had procured the said residential premises and after his and his wife's death, the said residential premises are in the joint ownership of the remaining members. It is stated that Devang Shah has been paying rent towards the said residential premises. It is further stated that Mahendra Shah and Devang Shah are working together in the family business of Diamond Trading and Jewellery (Ridham and Co.), share trading and land estate and that they have concealed these facts.

8.2. It is alleged in the said reply that Mahendra Shah and Devang Shah have transacted in shares to the tunes of several crores and traded

in diamonds under the name of Sheetal Shah without her knowledge or approval. It is further alleged that Nalini Shah, Mahendra Shah and Devang Shah have committed grave economical crimes against her. There are further allegations made in the said reply against Nalini Shah, Mahendra Shah and Devang Shah.

8.3. There is a reference to the proceedings instituted by Sheetal Shah under the Protection of Women from Domestic Violence Act, 2005. It is alleged that in the said pending proceedings, her husband Devang Shah and his advocates have been forging her signatures. There are other allegations made against her husband - Devang Shah. Along with the written statement and various documents, the photographs showing the incidents occurred in and around the house and the injuries suffered by Sheetal Shah as also the medical certificates to that effect have been annexed. It is stated that at the relevant time, Nalini Shah and Mahendra Shah were residing permanently in Lonavala. However, the said fact has been suppressed by Nalini Shah and Mahendra Shah in their application filed before the Tribunal. It is stated that the residential premises is a HUF (Hindu Undivided Family) property, and that Nalini Shah and Mahendra Shah have permanently moved to Lonavala and Mahendra Shah, at the relevant time, moved the petition before the High Court that he be declared as co-owner of the residential premises in question, which proves beyond doubt that Mahendra Shah was not the co-owner of the said residential premises, till the date of filing of proceedings before the High Court, seeking such a declaration.

9. Since Sheetal Shah has filed a very detailed reply to the said proceedings, we may refer to the said reply, the averments in the application and documents placed on record by the parties in the said proceedings instituted before the Tribunal as and when we deem it necessary.

10. Respondent No.1 - Tribunal allowed the aforesaid application filed by Nalini Shah and Mahendra Shah and directed Sheetal Shah and Devang Shah together to pay Rs.25,000/- (Rupees Twenty Five Thousand only) per month to Nalini Shah and Mahendra Shah for their maintenance, subsistence and medical expenses by depositing the said amount in the bank accounts of Nalini Shah and Mahendra Shah. Sheetal Shah and Devang Shah were directed to handover the possession of the entire residential premises to Nalini Shah and Mahendra Shah in a very peaceful manner within 15 days from the date of receipt of the order. Devang Shah and Sheetal Shah were directed to make separate arrangement for their accommodation elsewhere. It was further observed that if Devang Shah and Sheetal Shah failed to implement the order on their own, Nalini Shah and Mahendra Shah were at liberty to contact the police station immediately for execution of the order.

11. Being aggrieved by the said order, the present writ petition is filed.

12. Ms. Yasmin Tavarra, learned counsel appearing for Sheetal Shah submitted that Section 2(a) of the Maintenance and Welfare of Parents

and Senior Citizens Act, 2007 (hereinafter referred to as the 'Senior Citizens Act') defines the category of persons under the caption 'children' which would include son, daughter, grandson and granddaughter but does not include a minor. It is submitted that a bare perusal of the said provision would make it clear that Sheetal Shah, who is a daughter-in-law of Nalini Shah and Mahendra Shah, is not covered under the said definition, and therefore, she is not liable to pay maintenance to Nalini Shah. It is submitted that the proceedings instituted by Sheetal Shah are pending before the Family Court at Bandra, which are the substantive proceedings in which an order is passed, directing Devang Shah or his servants, agents or any other person on his behalf not to prevent Sheetal Shah to enter the matrimonial house, her stay in the bed-room in which she is residing and using the kitchen. Learned counsel invites our attention to the said order dated 03.09.2019 passed by the Family Court.

12.1. It is submitted that the order impugned in the petition was received by Sheetal Shah on 05.09.2019 though the said order was passed on 16.08.2019. Section 8 of the said Act sets out the procedure to be followed in case of enquiry. Sub-clause (2) clearly indicates that the Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses. It is submitted that though the Tribunal framed the issues, the findings recorded are without any evidence on record.

12.2. It was submitted that Nalini Shah was not having any right to move the Tribunal and that she was not having any right to evict Sheetal Shah from the residential premises. Divorce proceedings are still pending and Family Court has passed order on 03.09.2019 thereby directing Devang Shah not to prevent Sheetal Shah from entering the matrimonial house. She submitted that interim orders speak of the immense wealth of Devang Shah and his parents.

12.3. It is submitted that the Tribunal closed the matter for order on 16.04.2019. However, the order was passed in the month of August, 2019, after several months and after Mahendra Shah, father-in-law of Sheetal Shah had expired. It is submitted that the Division Bench of this Court (*Coram : S. C. Dharmadhikari and G. S. Patel, JJ.*) has stayed the order passed by the Tribunal.

12.4. It is further submitted that Nalini Shah and Mahendra Shah have submitted documents under oath before the Tribunal to the effect that the matrimonial residence i.e., the residential premises will be inherited by Devang Shah, after the death of Mahendra Shah.

12.5. It is submitted that the entire case papers filed by Nalini Shah and Mahendra Shah in the Tribunal, has been annexed to the petition. The property nomination letter duly accepting Devang Shah as a nominee is also annexed. The R.T.I. (Right to Information) copy of the same is also annexed to the additional compilation of documents. The same is signed by Nalini Shah under oath before the Tribunal, whereby,

it is stated that the Society had accepted the nomination declaration approving Devang Shah as a sole nominee of Mahendra Shah (since deceased) for the right, title and interest in the share certificate of Plot No.20 in Navyug Society. She submitted that the eviction orders against Sheetal Shah were rightfully stayed.

12.6. It is submitted that Devang Shah neither filed a reply before the Tribunal nor did he oppose the relief claimed by Nalini Shah and Mahendra Shah, and that Nalini Shah and Devang Shah are acting in collusion with a common intention of causing and ousting Sheetal Shah from her matrimonial house, despite the fact, that substantive proceedings i.e., divorce proceedings were pending before the Family Court at Bandra, in which Sheetal Shah had succeeded in getting interim orders against Nalini Shah and Devang Shah, thereby, preventing them from evicting Sheetal Shah from the matrimonial house. It is submitted that Nalini Shah and Mahendra Shah have a property in Lonavala and they were residing there permanently, before they arrived at the matrimonial house. She submitted that Devang Shah and his mother Nalini Shah have deputed bouncers, who are residing in the said residential premises and they have assaulted and abused Sheetal Shah and her sons making their lives, living hell.

12.7. Ms. Tavaría, learned counsel invites our attention to the compilation of documents to demonstrate that Nalini Shah and Mahendra Shah are / were residing in the house at Lonavala. The

photographs of the said house in Lonavala, which according to Sheetal Shah is approximately 4000 sq.ft., are placed on record along with the compilation. She also invites our attention to a copy of the ration card at Annexure-K and submits that the names of Sheetal Shah and her sons have been mentioned in the ration card. It is submitted that Devang Shah has transferred huge amount in the account of Nalini Shah.

12.8. Learned counsel invites our attention to the written submissions, which are placed on record and submits that the said residential premises wherein Sheetal Shah and her sons are residing, is a HUF property, and that Devang Shah is holding on to all the wealth, bequeathed to her two sons from the Will of late Mahendra Shah. She, therefore, prays that the petition deserves to be allowed.

13. Mr. Vivek Kantawala, learned counsel appearing for Nalini Shah invites our attention to the list of dates and events mentioned in the written submissions, which are placed on record and submits that there is continuous mental and physical harassment to Nalini Shah and Mahendra Shah (prior to his death) by Sheetal Shah and her husband Devang Shah, that Sheetal Shah and Devang Shah, in collusion started harassing Nalini Shah and her husband Mahendra Shah, from the year 2017-18, and that they have made the life of Nalini Shah miserable and have created a situation, wherein Nalini Shah cannot live peacefully in her own house.

13.1. It is submitted that the order of the Family Court was passed in the absence of Nalini Shah as the proceedings before the said Court were between the husband and wife i.e., Devang Shah and Sheetal Shah respectively, and therefore, the said order is not binding upon Nalini Shah. It is submitted that Sheetal Shah had suppressed the fact, that proceedings were pending against her, before the Senior Citizens Forum in the Family Court. She also remained absent on couple of dates of hearing before the said Forum though she was duly served. He submitted that a perusal of the impugned order passed by the Tribunal would show that the proceedings were properly served upon Sheetal Shah and Devang Shah, however, Devang Shah chose not to file a written statement, whilst, Sheetal Shah filed a detailed written statement. The impugned order under issue No.1 states that the law that has been promulgated is for the purpose of taking care of the senior citizens who cannot look after themselves. The impugned order further proceeds to record that Sheetal Shah has been unable to furnish any proof that the senior citizens are doing business. Hence, on the basis of preamble of the said Act, a finding is recorded against issue No.1, taking into consideration the age of the senior citizens and their inability to earn, is substantiated.

13.2. He submitted that with regard to issue No.2, the Tribunal has observed that atrocities that have been meted out to the senior citizens from February 2018 and various complaints made to the police authorities. Cross-complaints filed before the police authorities, establish

the disputes and the atrocities have been recognized by the Tribunal and have been reproduced in the impugned order under issue No.2. He submitted that the impugned order recognizes the relationship between Devang Shah and Sheetal Shah, and recognizes the demeanour of Sheetal Shah, at the time of arguments. Learned counsel submits that the Tribunal has also recognized that the plea of the senior citizens living in Lonavala, has not been substantiated with any proof and thus proceeded to give an affirmative finding against issue No.2.

13.3. Mr. Kantawala submitted that the Tribunal also recognized the powers vested in it under Section 23 of the said Act and considered the plea of Sheetal Shah who had “a claim in future time” on the property, which even assuming for the sake of argument would be a submission, then it is necessary to note that such right to Sheetal Shah only devolves to her husband Devang Shah, whose eviction also has been sought by Nalini Shah and Mahendra Shah.

13.4. He submitted that the preamble for the promulgation of the Senior Citizens Act, was on the basis that a noticeable trend was seen in the society where traditional norms and values of providing care for the elderly was given a go-by. In particular, widows were compelled to spend their sunset years all alone and were exposed to emotional and physical as well as financial neglect which caused the imbalance in the social sphere. Though there are other provisions available, the Bill, which proposed the Senior Citizens Act, was with an endeavour to cast

an obligation on persons who inherit property to maintain such aged senior citizens. The preamble of the said Act was also on the touchstone of proper medical facility and protection to the life and property of senior citizens. Hence, to achieve such objectives, the promulgation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought into force on and from 29.12.2007.

13.5. Mr. Kantawala submitted that the said Act, is an Act with summary procedure. At various levels, there has been a contention raised as to would it be appropriate to carry out a summary procedure without leading evidence. The submissions on various quarters of leading evidence itself vitiates the purpose and objects of the said Act. The purpose and object of the said Act was not to make people who are in their 70's and 80's to lead evidence, to cross-examine or to be cross-examined and wait endlessly for years to come for finality of such proceedings. The purpose and object of the said Act was only to aid *“sunset years of senior citizens as otherwise if this procedure was to be followed then the Civil Courts were already equipped with such mechanizms.”* However, to give speedy disposal, the objective of the Act, was to carry out proceedings in a summary manner. Moreover, legal representation is not permitted before proceedings under the said Act, which in itself shows that mere pleading and appropriate averments as well as supporting documents and submissions are only necessary for the purposes of passing orders in a summary manner under the said Act. He submitted that the Tribunal is a creature of the statute, hence like the

DRT and CEGAT, the Tribunal is to only decide on issues in a summary manner. In support of these submissions, he relied upon the judgment of the Division Bench of this Court (*Coram: G. S. Patel and Madhav J. Jamdar, JJ.*) in the case of **Shweta Shetty Vs. State of Maharashtra** decided on 25.11.2021 in **Writ Petition (L) No.9374 of 2020**, and more particularly paragraph 18 thereof, relevant portion thereof reads thus,

“18. ... We do not believe that it is the statutory intent that the harassment towards Senior Citizens should continue while the Tribunal is flooded or inundated with some evidence or the other only to prolong or delay matters. The one thing that Senior Citizens do not have the benefit or luxury is of time. It is not on their side, and every days delay before a Tribunal like this hurts Senior Citizens exponentially more than the younger generation. ...”

13.6. He submitted that the judgment in **Shweta Shetty** (*supra*) also dealt with the issue as to whether an eviction is contemplated under the Senior Citizens Act? The said judgment also deals with an imaginary claim over a property and proceeds to confirm the views as were decided in the case of **Ashish Vinod Dalal & ors. Vz. Vinod Ramanlal Dalal & Ors.** decided in **Writ Petition No.2400 of 2021** by this Court on 15.09.2021. In essence, the Division Bench whilst taking the view which originated from a case in Delhi High Court in the case of **Sunny Paul vs. State of NCT of Delhi**, in paragraph 23 of the judgment passed by this Hon'ble Court, simplifies and substantiates as under;

- a. A Senior Citizen has a right to approach the Tribunal;
- b. A Senior Citizen has to only establish through pleadings

and appropriate documents that the Senior Citizen is a victim of harassment, exploitation, neglect, physiological disturbances, [physiological means and all possible facets to safeguard their physical and mental health as is recognized under Section 4 (sub section 2) and Section 4 (sub section 3)]. The concept of normal life under these provisions would have a deeper meaning which stems out from the fundamental right of livelihood which is guaranteed under Article 21 of the Constitution of India. The statement and objects reflects in the intention behind the legislation which also requires a suitable mechanism for protection of life and property of older persons and thus invocation of the Senior Citizens Act is the remedy for seeking a relief on the basis of which the statute provides.

14. To substantiate his submission that under Section 23 of the Act, a senior citizen can seek eviction, he relied upon the following judgments:-

- a] **Dattatreya Shivaji Mane Vs. Lilabai Shivaji Mane**, Writ petition (St.) No.10611 of 2018 decided on 18.07.2018;
- b] **S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and others**, Civil Appeal No.3822 of 2020 [arising out of SLP (C) No.29760 of 2019] decided on 15.12.2020;
- c] **Ashish Vinod Dalal and others Vs Vinod Ramanlal Dalal and others**, Writ petition No.2400 of 2021 decided on 15.09.2021;
- d] **Shafali Sanjiv Patel and another Vs. Jyotiben Manubhai Patel** and another, Writ petition No.2441 of 2021 decided on 14.10.2021;
- e] **Shweta Shetty** (*supra*).

15. Mr. Yadav, learned counsel appearing for Devang Shah has tendered across the Bar submissions on behalf of the petitioner, which is taken on record.

15.1. He submits that Sheetal Shah has filed the present Petition against the impugned order passed by the Tribunal on an application filed by Nalini Shah and Mahendra Shah under the said Act. Devang Shah is a formal party because there is no any prayer in the Petition against Devang Shah.

15.2. Learned counsel further submits that Devang Shah is the son of Nalini Shah and Mahendra Shah and the husband of Sheetal Shah. Devang Shah married Sheetal Shah in the year 1994 and during the first 24 years of marriage, there was no NC / complaint against each other, in any other Court of law or in any police station. Suddenly, in May 2018, Sheetal Shah lodged an FIR with the Juhu Police Station and subsequently, filed a Domestic Violence Case, in the Andheri Metropolitan Magistrate Court, which was subsequently transferred to the Family Court at Bandra, Mumbai. He submits that the family disputes started between Sheetal Shah and Devang Shah for reasons best known to Sheetal Shah only and that she had deliberately implicated his mother in false cases in various forums and started harassing him and his family.

15.3. It is submitted that Devang Shah is ready to vacate the premises as per the Tribunal's order alongwith Sheetal Shah. After passing of the order by the Tribunal, Sheetal Shah started harassing his mother Nalini Shah physically and mentally, therefore, various NCs are lodged by his mother against Sheetal Shah and he is a witness for that. It

is further submitted that Sheetal Shah has been deliberately damaging and destroying Devang Shah's parent's house, threatening Nalini Shah to the extent that since over 3 years Devang Shah and Nalini Shah are dependent on outside food and cannot even cook in the kitchen due to the harassment caused by Sheetal Shah.

15.4. It is submitted that, after passing of the order by the said Tribunal, Sheetal Shah became aggressive and has broken doors, windows and glasses of the property; switches and furniture items have been stolen by her and loose electric wires are hanging with risk of fire. It is further submitted that Sheetal Shah goes to the extent of getting and breaking eggs in the house, to hurt their sentiments as they are Jains by religion, and that they do not get or have eggs, being pure vegetarians. Continuously threats are being given by Sheetal Shah to Nalini Shah, with an intent to harass her and eventually grab her property.

15.5. It is submitted that Devang Shah is sandwiched between Sheetal Shah and Nalini Shah and Devang Shah is ready to vacate the house along with Sheetal Shah to bring some peace to his family and safeguard the life of his aged mother - Nalini Shah. He further submits that there is no way Nalini Shah can stay with Sheetal Shah in her own house and Devang Shah would not like to take any chance for any further crime to be committed by Sheetal Shah, who was violent on many occasions earlier. It is submitted that father of Devang Shah, late Mahendra Shah passed away on 08.08.2019 succumbing to harassment

by Sheetal Shah and therefore, Devang Shah does not want to lose his mother, with an undignified death in her own house.

15.6. It is submitted that Devang Shah is a law abiding citizen and he is ready to vacate the premises as per the Tribunal's order. He once again submits that there is no any substantive prayer made in the petition against Devang Shah.

16. We have heard learned counsel appearing for respective parties at length. With their able assistance, we have carefully perused the pleadings and the grounds taken in the petition along with the annexures, the order passed by the Tribunal, written submissions filed by the counsel for Sheetal Shah, Nalini Shah and Devang Shah, original record summoned from the office of respondent No.1 and the judgments cited across the Bar.

17. Though various contentions are raised by the parties, touching various proceedings pending before various Forums and also the criminal cases filed against each other, we deem it appropriate to confine the adjudication of the present petition keeping in view the substantive prayer therein and the issues dealt with and answered by the Tribunal.

18. Before we proceed to discuss the issues considered and answered by the Tribunal and the correctness of the impugned order passed by the Tribunal, it would be apt to make reference to the statement of objects

and reasons for bringing the said Act / legislation into force. The statement of objects and reasons stated in the preamble of the Act reads as under:-

“ 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.

Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:-

Statement of Objects and Reasons.- 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.”

19. In Section 2 (a), “children” is defined and includes son, daughter, grandson and grand-daughter but does not include a minor. Section 2(b) defines “maintenance” to include provisions for food, clothing, residence and medical attendance and treatment. Section 2(d) defines “parent” to mean father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen. Section 2(f) provides for definition of “property” to mean the property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property. Section (g) defines “relative” 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. Section 2(h) defines “senior citizen” to mean any person being a citizen of India, who has attained the age of sixty years or above; As per Section 2(j), “Tribunal” means the Maintenance Tribunal constituted under section 7 and under Section 2(k), “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.

20. The important section is Section 3, which reads as under:-

“3. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”

20.1. Section 3 would make it abundantly clear that the provisions of this Act shall have overriding effect on the provisions of any other Acts, which are inconsistent with the provisions of the said Act.

21. There is a provision under Section 4, which states about maintenance of parents and senior citizens, which reads as under:-

“4. Maintenance of parents and senior citizens.- (1) A senior citizen including 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—

- (i) parent or grand-parent, against one or more of his children not being a minor;
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) 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.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.”

22. In Section 5, there is a provision for filing the application for maintenance. The said application can be filed taking recourse to Section 4 of the said Act by a senior citizen or 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 motu*. In Section 6, jurisdiction and procedure has been mentioned. Section 8 provides for summary procedure in case of inquiry. For the purpose of such enquiry, sub-section (2) of section 8 states that “The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

23. Section 9 speaks about the order for maintenance. Section 16 provides for appeals. However, such appeal can be filed by any senior citizen, or a parent, as the case may be, aggrieved by an order of a Tribunal within sixty days from passing such order. Section 19 provides for establishment of oldage homes. Section 20 provides for medical support for senior citizens. Section 21 provides for measures for publicity, awareness, etc. for welfare of senior citizens. Section 22 provides for authorities, who may be specified for implementing the provisions of the Act. Section 23 provides for transfer of property to be void in certain circumstances.

24. The said Act has been enacted with a laudable object to provide for more effective provisions, for the maintenance and welfare of parents and senior citizens, as guaranteed and recognized under the Constitution and other Statutes. In the light of the aforementioned statement of objects and reasons, so also the provisions recorded hereinabove, we proceed to consider whether the Tribunal, while passing the impugned order, has framed appropriate issues and answered the same keeping in view the provisions of the Act and the Rules thereunder, so also the documents and materials placed on record.

25. The Tribunal framed the following four issues of enquiry, which are as under:-

- “1) Are the applicants capable of supporting themselves and meeting their basic needs ?
- 2) Is there any evidence that the respondent is not taking proper care of the applicant and is causing mental and physical harassment to the applicants?
- 3) Can the request made by the applicant be accepted?
- 4) What will be the orders?”

26. The Tribunal, after adverting to the contentions raised by the parties and documents placed on record, observed that at the relevant time, applicant No.1 - Nalini Shah was 77 years old and applicant No.2 - Mahendra Shah was 79 years old. It is also observed that the said applicants are not in a position to work. The Tribunal observed that though it is contended by Sheetal Shah, that Nalini Shah is having share trading business and also Mahendra Shah has business of diamond and

jewellery, Sheetal Shah has not submitted any evidence before the Tribunal to that effect. It is further observed, that even if the said contention of Sheetal Shah is accepted, in that case also, considering the age of Nalini Shah and Mahendra Shah, it cannot be said that they are capable of supporting themselves from their own earnings. It is also observed that the family members viz., Devang Shah and Sheetal Shah should treat Nalini Shah and Mahendra Shah with kindness, consideration and respect and that they should provide them basic necessities for a peaceful life. It is also observed that the kindness, consideration and respect cannot be bought with money. It is the responsibility of Devang Shah and Sheetal Shah being son and daughter-in-law of Nalini Shah and Mahendra Shah to pay attention to the daily needs of the applicants and to try their best to meet those needs. Nalini Shah and Mahendra Shah are dependent upon Devang Shah and Sheetal Shah for their daily necessities, mental support and care and accordingly, issue No.1 is answered in the affirmative.

27. Upon perusal of the original record of the proceedings instituted by Nalini Shah, we are in respectful agreement with the said observations made by the Tribunal while answering issue No.1 except to the extent that, it holds Sheetal Shah, (daughter-in-law of Nalini Shah) alongwith Devang Shah, liable to pay maintenance.

28. We have carefully perused the observations made by the Tribunal while answering issue No.2 i.e., whether there is any evidence that

Shetal Shah is not taking proper care of Nalini Shah and Mahendra Shah and is causing mental and physical harassment to them. We have no doubt in our mind, that the observations made and the findings recorded by the Tribunal, that Sheetal Shah and Devang Shah are not taking proper care of the applicants and causing mental and physical harassment to Nalini Shah and Mahendra Shah, are in consonance with the documents on record. We have also carefully perused the various complaints filed by Nalini Shah and Sheetal Shah, and we find that there is no peace and harmony in the house. There is unrest and also there is a mental and physical harassment to the old aged parents of Devang Shah. While exercising writ jurisdiction, it is not desirable to undertake exercise of disputed questions of fact, and more particularly, when we find that the observations / findings recorded by the Tribunal, while answering issue No.2, that Sheetal Shah and Devang Shah in the said application are causing mental and physical harassment to Nalini Shah and Mahendra Shah, are made keeping in view the material placed on record.

29. The Tribunal, while discussing issue No.3 i.e., “Can the request made by the applicant be accepted?”, has made reference to various documents placed on record by the parties and in particular documents in relation to the said residential premises wherein, the parties are residing, and has reached a conclusion, that the residential premises is in the name of Mahendra Shah, who has inherited the same, from his parents. The Tribunal has also considered the effect of giving such

property as a gift by Mahendra Shah to Devang Shah and after adverting to the provisions of Section 23 of the said Act, which provides for protection of life and property of senior citizens and as such, has correctly reached the conclusion, that the applicants' (Nalini and Mahendra Shah) request for exclusion of Devang Shah from the suit property can be granted. It would be relevant to reproduce hereinbelow the provisions of Section 23(1) of the said Act, which reads as under:-

“23. Transfer of property to be void in certain circumstances.-

(1) Where any senior citizen who, after the commencement of this 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.”

30. The Tribunal, ultimately concluded, that Sheetal Shah and Devang Shah are not taking proper care of Nalini Shah and Mahendra Shah, but are causing mental and physical harassment to them. As already observed, the age of Nalini Shah and her husband Mahendra Shah was 77 and 79 years respectively, at the relevant time, when they preferred the application. It is brought on record by the parties, that during the pendency of the petition, Mahendra Shah died. At present, Nalini Shah, wife of Mahendra Shah, is aged about 82 years. On couple of dates of hearing before us, she attended Court proceedings sitting on a wheel chair, that itself shows, that she is certainly dependent upon Sheetal

Shah and Devang Shah for physical and mental support.

31. After answering the issues framed, the Tribunal accepted the case of Nalini Shah and Mahendra Shah and directed Devang Shah and Sheetal Shah together to pay Rs.25,000/- (Rupees Twenty Five Thousand only) per month to Nalini Shah and Mahendra Shah for their maintenance, subsistence and medical expenses, by depositing the said amount, in the bank accounts of Nalini Shah and Mahendra Shah.

32. We have reservations about such direction to Sheetal Shah to pay maintenance amount to Nalini Shah. As already observed, in Section 2(a), 'children' include son, daughter, grandson and grand-daughter and there is no reference to the daughter-in-law. Be that as it may, upon perusal of the original record, we do not find a single document showing the earnings of Sheetal Shah. In that view of the matter, the Impugned Order, to the extent that it directs Sheetal Shah to pay Rs.25,000/- alongwith her husband Devang Shah to Nalini Shah and Mahendra Shah, cannot be legally sustained. However, so far direction given to Devang Shah to pay the said maintenance amount to Nalini Shah, the same is legally sustainable.

33. The Tribunal has directed Devang Shah and Sheetal Shah to handover the possession of entire residential premises i.e., Saprem, Plot No.20, 3rd Road, Juhu Scheme, Vile Parle (West), Mumbai - 400 056 to Nalini Shah and Mahendra Shah (since deceased) in a peaceful manner.

In our opinion, said direction given by the Tribunal is legally and factually sustainable, in as much as, when the application was decided by the Tribunal, the subject property stood in the name of husband of Nalini Shah, namely, Mahendra Shah. Relying upon the various documents placed on record including criminal complaints and other materials, the Tribunal has correctly reached a conclusion, that there is a continuous mental as well as physical harassment to Nalini Shah and Mahendra Shah (since deceased).

34. In that view of the matter, we are of the opinion that the view taken by the Tribunal, after adverting to the material placed on record, is legally as well as factually sustainable. Therefore, we confirm the order passed by the Tribunal except the direction to Sheetal Shah to pay jointly with Devang Shah, maintenance of Rs.25,000/- to Nalini Shah and Mahendra Shah. Therefore, the direction to Sheetal Shah to that extent is quashed and set aside. However, as already observed, the son of Nalini Shah namely, Devang Shah is obliged to pay the said maintenance amount to Nalini Shah.

35. The Tribunal in clause (3) of the operative order has observed that, within 15 days from the date of receipt of the order, Sheetal Shah and Devang Shah shall handover the entire possession of the residential premises in question, to Nalini Shah and Mahendra Shah (deceased) in a peaceful manner and at the same time, observed that Sheetal Shah and Devang Shah, should make separate arrangements for their own

accommodation elsewhere. Keeping in view the said direction, we are of the opinion that Devang Shah, being the husband of Sheetal Shah is obliged to provide separate accommodation to Sheetal Shah and her sons elsewhere.

36. With the above observations, we dismiss the writ petition.

37. Rule is discharged accordingly.

38. Since the interim relief is operating till date, we deem it appropriate to grant further six weeks' time to the petitioner, to act in compliance with the directions contained in clause (3) of the operative part of Tribunal's order i.e. Sheetal Shah and Devang Shah should hand over the entire possession of the residential premises in question, to Nalini Shah in a peaceful manner. In the said clause (3), the Tribunal has also directed Sheetal Shah and Devang Shah to make separate arrangements for their own accommodation elsewhere. As already observed in para 35 hereinabove, Devang Shah (respondent No.4), being husband of Sheetal Shah and thus guardian of two sons is legally obliged to provide them accommodation befitting his status, income and assets.

39. The observations made hereinabove, are restricted to adjudication of the present proceedings and will have no bearing on the proceedings pending between the parties and the orders passed therein, by the appropriate courts of competent jurisdiction or forum provided under the Statute.

40. All concerned parties to act upon ordinary copy of this order duly authenticate by court Sheristadar.

(REVATI MOHITE DERE, J.)

(S. S. SHINDE, J.)

Minal Parab