

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2035 OF 2020

1. Namdeo S/o. Babuji Bangde,
Age: 56 years, Occ: Private Job,
R/o. Plot no. 149, Unit-1,
House no. 1894/1, Opp: Shiv Krupa
Bhavan, Mouza: Hansapuri,
Milind Nagar, Nagpur.
2. Geeta w/o. Namdeo Bangde,
Age: 45 years, Occ: Household
R/o. Plot no. 149, Unit-1,
House no. 1894/1, Opp: Shiv Krupa
Bhavan, Mouza: Hansapuri,
Milind Nagar, Nagpur. **PETITIONERS**

...VERSUS...

1. State of Maharashtra, through
Sub-Divisional Officer and President,
Posted Officer Subsistence Tribunal,
Office at Tahsil Office, Civil Lines,
Nagpur.
2. Shri Babuji Bangde,
Age: 78 years, Occ: Pensioner.
3. Smt. Sushilabai w/o. Babuji Bangde,
Age: 65 years, Occ: Household

Both are the R/o. Plot no. 149, Unit-1,
House no. 1894/1, Opp: Shiv Krupa
Bhavan, Mouza: Hansapuri,
Milind Nagar, Nagpur.
4. State of Maharashtra, through
Assistant Superintendent (Home)
Additional District Magistrate,
Nagpur. **RESPONDENTS**

Mr. Lubesh Meshram, Advocate with Mr. Sourabh Singha,
Advocate for Petitioners.

Mr. N. R. Rode, AGP for Respondent 1/State.

Mr. P. S. Wathore, Advocate for Respondents 2 and 3.

CORAM: **ROHIT B. DEO, J.**

DATE: **4th APRIL, 2022.**

ORAL JUDGMENT:

The petitioners are the son and daughter-in-law respectively of respondents 2 and 3, and are assailing the order dated 21.01.2020 rendered by the Tribunal constituted under Section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act) whereby the petitioners are directed to vacate the self-acquired residential house of the respondents 2 and 3.

2. The thrust of the submissions advanced by the petitioners is that the Act does not envisage a remedy of eviction, and the Tribunal committed a jurisdictional error in virtually treating the application under Section 5 of the Act as a suit for eviction.

3. In rebuttal, the learned counsel for the parents of

petitioner 1, would submit that an order of eviction can be passed by the Tribunal to ensure the security and safety of the parents and senior citizens.

4. In order to appreciate the rival contentions, it would be necessary to note the contents of the application preferred under Section 5 of the Act and the response thereto of the petitioners.

5. Respondent 2, who was then aged 78 years and respondent 3, who was then aged 67 years, preferred an application dated 21.08.2018 contending that respondent 2 has constructed a residential house from self-earning in Hansapuri, Balabhaupeth, Nagpur, and that the petitioner 1 has illegally and forcibly taken possession of part of the said house and is conducting himself in a manner as would pose a serious threat to the safety and security of the respondents 2 and 3. Respondent 2 submitted that he was a heart patient and is required to undergo bypass surgery, which he is not in a position to undergo for lack of funds. Respondents 2 and 3 contended that if the petitioners vacate the portion illegally occupied, the said portion can be let out and the rental income would enable the respondents 2 and 3

to better maintain themselves. Significantly, respondents 2 and 3 accused their son and daughter-in-law – petitioners herein of physical assault, and further of preventing the well wishers and the other sons of the respondents 2 and 3 from entering the residential house. Respondents 2 and 3 alleged that the petitioners herein let loose their dog on the visitors to discourage them from visiting respondents 2 and 3, and have in the past assaulted Gopal, their other son. Respondents 2 and 3 further accused the petitioners of threatening to kill them. It is further alleged that the petitioners do not contribute any amount towards maintenance nor do the petitioners contribute towards the water and electricity charges or property tax.

6. The petitioners have not placed on record their written statement filed in response to the application under Section 5 of the Act. However, the stand of the petitioner as is discernible from the pleadings culled out in the order impugned is that, the respondents 2 and 3 permitted the petitioner 1 to occupy three rooms in the residential house, that the respondent 2 misused and misappropriated lacks of rupees by swindling the government, that respondent 2 is neither a heart patient nor is he required to undergo any surgery. The petitioners claimed that the

aged parents have lost their mental balance and are therefore, levelling false allegations.

7. The Tribunal found from the material on record that there is a real possibility of the safety and security of the aged petitioners being jeopardized, and therefore, directed eviction by the order impugned.

8. I note that there is no dispute that the petitioners are residing in the self-acquired property of respondents 2 and 3. While there is a general denial of the averments in the application preferred under Section 5 of the Act, the language used and the grave allegations levelled against the aged parents is, in my considered view, a reason to hold that the safety and security of the respondents 2 and 3 shall be in jeopardy unless the petitioners are evicted. In the conservative Indian society, a son is not expected to brand his aged father a 'swindler' or then allege that the aged parents have lost mental balance. The allegations that the aged parents have been physically assaulted, that the other son was also assaulted and that visitors are prevented from entering the residential house, are not specifically traversed. I have no doubt in my mind, that the emotional and physical well

being of the aged respondents 2 and 3 cannot be ensured unless the petitioners vacate the self-acquired residential house of respondent 2.

9. A learned Single Judge of this Court has held in ***Shri Santosh Surendra Patil v. Shri Surendra Narasgopnda Patil & Ors. 2017 All MR (Cri) 4065*** that there is no illegality in evicting sons from the residential house to ensure the peace of the senior citizen. The submission of the learned counsel for the petitioner Mr. Lubesh Meshram that the proceedings under Section 5 of the Act cannot be converted into a suit for eviction, is not wrong as a proposition of law. However, if the senior citizens are harassed and have genuine reasons to perceive that their emotional and or physical well being and security is under threat, I do not see any reason to hold that the Tribunal has no power to direct eviction.

10. A learned Judge of the Delhi High Court has observed thus in ***Sunny Paul & Anr. v. State NCT of Delhi & Ors. 2017(3) ALL MR (JOURNAL) 4/***

B. WHETHER A CLAIM FOR EVICTION BEFORE THE MAINTENANCE TRIBUNAL IS MAINTAINABLE UNDER SECTION 23 OF ACT 2007 AND THAT TOO ON ALLEGATIONS OF

**FORCEFUL OUSTER AND IN THE ABSENCE OF
A CLAIM FOR MAINTENANCE?**

32. *The Act 2007 has two separate objectives. While the first objective is to institutionalise a mechanism for protection of life and property of senior citizens (Chapter V), the second objective is to set up an appropriate mechanism for providing need-based maintenance to parents and senior citizens (Chapter II).*

33. *The relevant portions of Sections 4, 5 and 23 of the Act, 2007 are reproduced hereinbelow:-*

“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.....

5. Application for maintenance.—(1) *An application for maintenance under section 4, may be made—.....*

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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.”

34. *Consequently, while Section 4 empowers the senior citizen to seek payment of maintenance, Section 23 empowers the senior*

citizen to seek a declaration in certain circumstances from the Maintenance Tribunal that the transfer of property is void.

35. *Rule 14(3) of the Rules, 2009 deals with grant of relief of maintenance under Section 4 of Chapter II and not with void transfers under Section 23 of Chapter V.*

36. *The Courts have repeatedly acknowledged the right of the senior citizens or parents to live peacefully and with dignity. In Promil Tomar (supra) the Punjab and Haryana High Court has held that peaceful living for the senior citizens in their property is the apparent objective of the Maintenance Act.*

37. *In the present case, though the allegation of the respondents No. 2 and 3 is of the trespass and forcible occupation of the property by the petitioners, yet even if it is presumed, as alleged by the petitioner No. 1, that he had been permitted to stay in the property, then also it would amount to transfer of the property in question. Needless to state, that even this permissive use amounts to transfer and that too on the condition that petitioner No.1-son would not harm them physically or mentally. In fact, in the Indian context, there would be a presumption that the transfer was subject to petitioner No.1-son providing all the basic necessities and looking after the physical needs of the senior citizens. Since the Maintenance Tribunal has found that the petitioner No.1-son has committed acts of physical assault and mental cruelty on the senior citizens, the pre-conditions mentioned in Section 23 stand satisfied.*

38. *There is nothing in the language or purported intent of Section 23 of the Act 2007 to indicate that the Tribunal has the power to declare a transfer of property void if and only if the senior citizen is seeking maintenance under the Act from the opposite party.*

39. *In Justice Shanti Sarup Dewan (supra), the Punjab & Haryana High Court passed an eviction order under the Act, 2007 where not only no maintenance had been sought by the senior citizen, but in fact the senior citizen had volunteered to pay Rs.10,000/- as monthly maintenance to his son.*

40. *Consequently, Section 4 and Section 23 are separate and distinct remedies and the claim for maintenance is not a condition precedent for passing an eviction order under Section 23 of the Act, 2007.*

11. A similar view is taken by the Punjab and Haryana High Court in ***Darshan Singh & Ors. v. State of Punjab & Ors.*** **2017(3) All MR (JOURNAL) 34.**

12. Mr. Lubesh Meshram, the learned counsel for the petitioner is pressing in service a decision of a learned Single Judge of the Calcutta High Court in ***Anand Kumar Agarwal & Anr. v. Ashok Kumar Agarwal*** **2019(3) ALL MR (JOURNAL) 37** to buttress the submission that the Tribunal has no power to order eviction. With due respect to the learned Judge of the Calcutta High Court, I am not persuaded to fall in line with the view taken, since the proposition is too broadly stated.

13. The scheme of the Act is elaborately considered by

the Supreme Court in *Dr. Ashwini Kumar v. Union of India & Ors.* **2019 ALL SCR 155**. The Supreme Court issued several directions to make the provisions of the Act more effective and to ensure that the constitutional goal which the beneficial legislation seeks to achieve is enthused with more vigor.

14. The legislative scheme of the Act is further considered by the Supreme Court in *Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors. Civil Appeal 3822/2020 (Arising out of SLP (C) No. 29760 of 2019)*. The Hon'ble Supreme Court after noting the view which has been taken by the several High Courts that the Tribunal does possess the power to order eviction of a child or a relative from the property of a senior citizen, observes that the Tribunal 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 and eviction would be an incidence of the enforcement of the right to maintenance and production. In *Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors.*, the Hon'ble Supreme Court did set aside the order of eviction, but then the order was set aside on the premise that the remedy of eviction can be granted only after adverting to the competing

claims of the dispute. In *Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors.*, the eviction was sought of the daughter-in-law from property initially purchased by her husband which was then transferred to his father. The daughter-in-law asserted that she had been living in the house as her matrimonial residence and that the premises constitute a “shared household” within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

15. In the present case, there is no competing dispute as such involved.

16. I have no hesitation in observing that order of eviction is absolutely necessary in order to ensure the physical and emotional health and safety of the parents.

17. The petition is dismissed.

JUDGE

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