

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3753 of 2022

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1. Anil Prakash Son of Sri Lalit Lal Resident of Eastern Side of 2nd Floor, House no.-19, Montessori School Lane, Boring Road, P.S.-Sri Krishnapuri, Patna-800001.
 2. Sunita Sinha Wife of Anil Prakash Resident of Eastern Side of 2nd Floor, House no.-19, Montessori School Lane, Boring Road, P.S.-Sri Krishnapuri, Patna-800001.
 3. Prakash Abhishek Son of Anil Prakash Resident of Eastern Side of 2nd Floor, House no.-19, Montessori School Lane, Boring Road, P.S.-Sri Krishnapuri, Patna-800001.
 4. Arun Prakash Son of Sri Lalit Lal Resident of Ground Floor, House no.-19, Montessori School Lane, Boring Road, P.S.-Sri Krishnapuri, Patna-800001.
 5. Sangita Sinha Wife of Arun Prakash Resident of Ground Floor, House no.-19, Montessori School Lane, Boring Road, P.S.-Sri Krishnapuri, Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate Cum Presiding Officer, Appellate (Maintenance) Tribunal, Patna.
2. The Presiding Officer, Maintenance Tribunal Cum Sub Divisional Officer, Patna Sadar, District-Patna.
3. Smt. Nirmala Sinha Wife of Sri Lalit Lal, Resident of House no.-19, Montessori School Lane, Boring Road, P.S.-Sri Krishnapuri, Patna-800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shaishav Kumar, Adv. Mr. Rajiv Prashant, Adv.
For the State	:	Mr. Sajid Salim Khan, SC-25
For the Respondent No. 3	:	Mr. Pramod Rajpati, Adv.



Mr. Rupesh Kumar, Adv.
Smt. Durga Kumari, Adv.
Mr. Ravi Ranjan, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 31-07-2023

The present writ petition has been filed for quashing the order dated 22.1.2022, passed by the learned Court of Collector-cum-District Magistrate, Patna, in Senior Citizen (Mother-Father) Appeal Case No. 3 of 2020-21, whereby and whereunder the petitioners herein have been directed to vacate the self-acquired house of the Respondent No. 3 herein and her husband and hand over the vacant possession of the same to them. The petitioners have also challenged the order contained in memo no. 73 dated 23.2.2022, issued by the Sub-Divisional Officer, Patna Sadar, Patna, whereby and whereunder the Block Co-operative Extension Officer has been deputed as a Magistrate and directed to establish contact with the officer-in-charge, Krishnapuri Police Station and ensure compliance of the order, passed in Appeal Case No. 3 of 2020-21.

2. The brief facts of the case, according to the petitioners, are that the petitioner no. 1 is the elder son of the Respondent no. 3 while the petitioner no. 2 is daughter-in-law of the Respondent No. 3 and the petitioner no. 3 is own grandson of



the Respondent No. 3, whereas the petitioners no. 4 and 5 are also son and daughter-in-law of the Respondent No. 3. It is submitted that the third son of the Respondent No. 3, namely, Amar Prakash, wants to grab the entire joint family property including the share of his two brothers i.e. the petitioner no. 1 and the petitioner no. 4 and when they started demanding their share, the said Amar Prakash, circumspectly, got a case filed by her mother i.e. the Respondent No. 3 before the learned Tribunal-cum-Sub-Divisional Officer, Patna Sadar, under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act, 2007”), which was registered as Tribunal Case No. 72 of 2019 (Smt. Nirmala Sinha vs. Anil Prakash & Others). It is stated that the petitioner no. 1 and others have also filed a title suit bearing Title Partition Suit No. 179 of 2019 against their father, namely, Sri Lalit Lal (since dead), brother, Sri Amar Prakash and two sisters, namely, Smt. Aarti Prakash and Smt. Jyoti Prakash, for partition of the ancestral properties including the house in question, which is the subject matter of the present writ petition and the said suit is pending before the learned Court of Sub-Judge-XIV, Patna. In such view of the matter, the learned Chairman Tribunal-cum-Sub-Divisional Officer, Patna Sadar, by



an order dated 14.3.2020, had closed the proceedings of the aforesaid Tribunal Case No. 72 of 2019, holding that since partition suit is pending in between the parties, in which the house situated at Patna, is also a subject-matter of dispute, hence, in case, the applicant wants to evict her sons from the house in question, she can obtain relief from the competent Court, however, it was directed that the water supply be restored to the petitioners.

3. The Respondent No. 3 had then challenged the aforesaid order dated 14.3.2020, by filing an appeal bearing Appeal Case No. 3 of 2020-21, before the learned Court of Collector-cum-District Magistrate, Patna and upon being served with the notice, the Petitioners had appeared before the learned Court of Collector, Patna, but on account of the Covid-19 Pandemic, since the Tribunal was not functioning, the petitioners had not appeared on two dates and behind their back, an ex parte order dated 22.1.2022 has been passed by the learned Collector-cum-District Magistrate, Patna, in the aforesaid Appeal Case No. 3 of 2020-21, directing the petitioners to vacate the house in question, in which they are residing and hand over its possession to the Respondent No. 3 immediately.



4. The Ld. Counsel for the petitioners has submitted that Late Lalit Lal and Amar Prakash, husband and younger son of the respondent no. 3, after filing of the Title Partition Suit no. 179 of 2019, started playing tricks in connivance with others, by circulating frivolous videos of the petitioner no. 1 and 4, giving misleading statements on social media, disconnecting the water supply of that portion of the house in which petitioners were living, trying to disconnect their electrical supply, calling the police on a false allegation that the petitioners were harming them, calling anti-social elements to evict them from the said house, whereafter, the petitioners no. 1 and 4 were compelled to file a petition on 11-09-2019, under Order 39 Rule 1 and 2 R/w Section 151 of Code of Civil Procedure, in the pending Title Partition Suit no. 179 of 2019, for grant of ad-interim injunction against eviction from the said house. It is stated that thereafter, the said Late Lalit Lal and Amar Prakash had appeared in the aforesaid Title Partition Suit no. 179 of 2019 and had prayed that the case should be settled by compromise, which was agreed to by the present petitioners and the Learned Court of Sub-Judge XIV, vide order dated 09-01-2020 allowed the prayer, whereupon on 15-02-2020, both the parties put their respective signatures on the Mediation Cell Referral Form,



which was filed before the learned Trial Court and then the case was referred to the Mediation Cell / Lok Adalat for disposal on the basis of compromise.

5. The Ld. Counsel for the petitioners has further submitted that while on the one hand Late Lalit Lal and Amar Prakash had appeared in Partition Suit no.- 179 of 2019 and had got the case referred to the Mediation Cell / Lok Adalat for disposal on the basis of compromise but on the other hand had circumspectly got a case filed by the respondent no. 3, under the provisions of the Act, 2007, bearing Tribunal Case No. 72 of 2019, which was rejected by an order dated 14-03-2020, passed by the learned Chairman Tribunal-cum-Sub-Divisional Officer, Patna Sadar.

6. It is stated that Late Lalit Lal, husband of respondent no.- 3 had also filed a suit bearing Title Suit no. 440 of 2019 on 04-11-2019 under Section 9 of the Civil Procedure Code read with Section 6 of the Specific Relief Act, 1963, against Prakash Abhishek i.e. the petitioner no. 3, his wife Shalu Prakash and one another person, namely, Rohit Sinha, for their dispossession from the house in question on the ground that their occupation is fraudulent, which is still pending before the learned Court of Sub-Judge, 1st, Patna, wherein it has been admitted that the 2nd



Floor (eastern side portion) of the house in question has been given on monthly rent to the petitioner No. 1 and 2, while the western portion of the ground floor of the aforesaid house in question has been given on rent to the petitioners No. 4 and 5, as is apparent from paragraphs no. 6 to 14 and 20 of the plaint of the said Title Suit No. 440 of 2019, which are reproduced hereinbelow:-

“6. That the Plaintiff has given to his son Anil Prakash and his wife Sunita Sinha on monthly rent on the 2nd floor in eastern side. Anil Prakash and his wife assured to give monthly rent to plaintiff because Anil Prakash realizing house rent from the government of Bihar. Anil Prakash had dispossessed his son Prakash Abhishek (Defendant no.1) and Smt. Shalu Prakash (Defendant no.2) by father Anil Prakash. So Abhishek Prakash and his wife Shalu Prakash were living separately. 6.

7. That Arun Prakash was unemployed and he told his father (Plaintiffs) to start girls Hostel in ground floor in western side for this livelihood. Plaintiff gave permission to start girl Hostel in ground floor and Arun Prakash and his wife Smt. Sangita Sinha told the plaintiff that they shall give appropriate rent to the said premises.

8. That the plaintiff told his sons Anil Prakash and Arun Prakash and their wife that now retired from Service and plaintiff is suffering several diseases. Plaintiff has



necessity of money to expense in medicine and doctors to save his life. 9. That the plaintiff was realising monthly rent from 2nd floor in western part of the building fully described in Schedule No. 1 at the foot of the plaint.

10. That the said tenant vacated the said premises mentioned in Schedule No. 1 at the foot then the said premises of Schedule no. 1 was laying vacate.

11. That a man namely Rohit Sinha came to meet the plaintiff and told to let out the said premises on monthly rent for his personal use.

12. That the plaintiff told about the conditions let out on monthly rent to renter to Rohit Sinha. Rohit Sinha agreed to accept the conditions of land lord (Plaintiff).

13. That Rohit Sinha came on 31.7.2019 in the house of plaintiff and gave his Mobile No. 9128652248, Adhar No. 491554298694 and filled up Tenant's Record Firm and told that he will become on 5.8.2019 in night about 2 P.M. plaintiff and his youngest son told Rohit Sinha before coming with bag and baggage inform me. Rohit Sinha informed that he would come at about 1.30 P.M. Plaintiff's wife Smt. Nirmala Sinha opened the main door to come easily with bag and baggage. Rohit Sinha come with his good salary with labourer's by Truck. At about 1.45 p.m. to till morning Rohit Sinha was carrying his goods by Truck, entire goods were kept in premises described in Schedule no. 1 at the foot of the plaint.



Thereafter said tenant Rohit Sinha locked the door and told that he would come with family on 12.8.2019.

14. That on 12.8.2019, Plaintiff asked Rohit Sinha (Defendant no. 3) to deposit dues rent on the said Mobile No. 9128652248. Defendant no. 3 told the plaintiff through his mobile that he would come and to pay due rent till 20.8.2019.

20. That the plaintiff prays the following reliefs:-

(i). That after an adjudication, it be declared that the plaintiff has been dispossessed by defendants through fraudulent acts and without consent of the plaintiff.

(ii). That after declaring the dispossession of Plaintiff then judgment and decree be passed for recovery of possession from the defendants from the premises described in Schedule No. 1 at the foot of the plaint through process of court.

(iii). That mesne profit be got ascertained through Advocate Commissioner and a decree for the same since the date of dispossession of Schedule No. 1 land by the defendant till recovery of possession be passed in favour of the Plaintiff and against the defendants.

(iv) That the cost of the suit awarded to the plaintiff against the defendants.

(v) That any other relief or reliefs to which plaintiff



is entitled for to be granted.”

7. It is further stated that when the aforesaid Late Lalit Lal found that there was negligible progress in the aforesaid Appeal Case No. 3 of 2020-21, he filed an Eviction suit bearing Title Eviction Suit No. 47 of 2021 against the petitioners no. 1 and 4 under Order IV, Rule 1, R/w. Section 9 of the Code of Civil Procedure and Section 11 of the Bihar Building (Lease, Rent and Eviction) Control Act 1982 for evicting them from the house in question on the ground of default of rent and personal necessity. The said Title Eviction Suit No. 47 of 2021 is still pending before Learned Court of Munsif-III, Patna. Thus it is submitted that Late Lalit Lal, the alleged owner of the house in question, i.e. the one constructed over Plot No. 932, Khata No. 51, holding no. 616/47, Circle No. 247, Ward Number 23, Montessori School Lane, Gandhi Nagar, Boring Road, P.S-Sri Krishnapuri, Patna, which is a four storeyed permanent brick house, has accepted the tenancy of the petitioners no. 1 and 4, in the aforesaid Eviction Case No. 47 of 2021, as is apparent from the plaint of the said eviction case, relevant paragraphs whereof are being reproduced hereinbelow:-

2. That the defendants no. 1 and 2 are in occupation of two floor part of house (situated on ground floor and 2nd



floor) of above mentioned house which is mentioned in paragraph no -1 and schedule - 1 of suit property of plaintiff (hereinafter referred as part of house in question) since long back as he has taken the same on rent on monthly payment of Rs 10000/- by each defendants and electricity bill as per given by the electricity department.

3. That initially the said house in question mentioned in Schedule 1 was given on rent to the defendant for the period of one year only but as the plaintiff was living in the above said address with their family members, the plaintiff never asked the defendant to vacate the flat in question and the defendant continued to live in the same without any hindrance from the plaintiffs side.

8. That it is submitted that as per the own requirement the plaintiff immediately contacted and requested the defendant to vacate his house in question mentioned in Scheduled 1 of the plaint, because he has no other alternative option where he can live with his family but the defendant refused to do so.

9. That finally in the year 2018 the plaintiff requested the defendants to vacate the house in question mentioned in Schedule 1, as he was in his personal need and he also requested him to pay his arrear rent but the defendant failed to do so rather they threatened the plaintiff and his family members.

11. That it is submitted that the plaintiff finally having no other was forced to file the present against the



defendant as he has no other remedy available to him.

16. That the plaintiff seeks the following reliefs:-

(I) That the learned court be please to pass a decree for eviction of the property mentioned in schedule -1, of the suit by dispossessing the defendants and the, plaintiff be given delivery of possession of the said property.

(II) That during the pendency of the suit the order be passed against the defendant and in favour of the plaintiff for monthly rent of the property mentioned. in schedule 1 should be given to the plaintiff.

(III) The cost of the suit be awarded to the plaintiff against the defendant.

(IV) Any other relief be granted in favour of the plaintiff and against the defendant in the fact and circumstances of the case.”

It is thus contended that since the tenancy of the petitioners has been accepted by the afore-said Late Lalit Lal, i.e the father of the petitioners No. 1 and 4, the petitioners cannot be evicted without taking recourse to the due process of law, a remedy which has already been availed by the afore-said Late Lalit Lal by way of filing of an eviction suit.

8. The Ld. Counsel for the petitioners has next submitted



that the respondent no. 3, knowing the plenary powers of this Hon'ble Court under Article 226 of the Constitution of India, took a chance and challenged the order dated 14-03-2020, passed by Learned SDO, Patna in Tribunal Case no. 72 of 2019 by filing a writ petition bearing C.W.J.C. No. 3335 of 2021, however, the same was dismissed by an order dated 22-03-2022, passed by a co-ordinate Bench of this Hon'ble Court on the ground of the respondent No. 3 having already availed alternative remedy, during the interregnum period.

9. The Ld. Counsel for the petitioners has thus submitted that the respondent no.- 3, in connivance with her husband Late Lalit Lal and younger son Amar Prakash, only with a view to somehow evict the petitioners from the house in question, on false and fabricated grounds, has exploited and misused the provisions of the Act, 2007.

10. The Ld. Counsel for the petitioners has contended that the impugned order dated 22.01.2022, passed by the learned Court of Collector-cum-District Magistrate, Patna is an ex- parte order of eviction of the petitioners from their house, as such is bad in Law. It is also stated that there is no provision for eviction, in the Act, 2007, hence the Appellate Court has exceeded its



jurisdiction while passing the impugned Order dated 22.1.2022.

11. The learned counsel for the petitioners has next contended that the house in question situated at Patna is not a self-acquired property of the said Sri Lalit Lal, inasmuch as he is one of the four sons of late Mahadev Lal, who had numerous properties in the district of Rohtas and was in possession of large chunk of agricultural land and after his death, the property of the said late Mahadev Lal was divided amongst his four sons resulting in the afore-said Late Lalit Lal along with his children having got huge chunk of land and property, in terms of the compromise arrived at in between the parties in a title suit bearing Title Partition Suit No. 155 of 1965, however, the said Lalit Lal, without any information and consultation with his children, transferred and alienated certain properties, received by him from his late father and the amount received from sale of the said properties have been utilized in not only purchasing the property at Patna, situated at Gandhi Nagar, Patna Montessori School Lane, Sri Krishnapuri, Patna but also for construction of the house in question over the same. This aspect of the matter has been dealt with elaborately in the plaint of the afore-said Title Partition Suit No. 179 of 2019, which is pending adjudication, before the Learned Court of Sub-Judge, 1st, Patna, wherein the petitioners



no. 1 and 4 have prayed for passing of a preliminary decree of partition of the suit property and handing over of 1/6th share each to the petitioners No. 1 and 4 with regard to the properties mentioned in Schedule No. 1 to 5, including the house in question situated at Patna.

12. The learned counsel for the petitioners has thus submitted that since the tenancy of the petitioners is admitted and an Eviction Suit bearing Eviction Case No. 47 of 2021 is pending adjudication before the learned Court of Munsif-III, Patna, the petitioners cannot be evicted by resorting to the summary procedure provided for in the Act, 2007. It is stated that the said Sri Lalit Lal passed away on 01.09.2022, hence, now adjudication of the aforesaid Title Partition Suit No. 179 of 2019 has become all the more important and crucial. It is next submitted that admittedly the respondent no. 3, neither at the time of filing of the original complaint, under the Act, 2007, bearing Tribunal Case No. 72 of 2019, before the Chairman Tribunal-cum-Sub-Divisional Officer, Patna Sadar, nor at the time of filing of the appeal, bearing Appeal Case No. 3 of 2020-21, before the Ld. court of Collector-cum-District Magistrate, Patna, nor at the time of filing of the present writ petition was the owner of the house in question, hence, an order of eviction



of the petitioners could not have been passed on a petition filed by the respondent no. 3 under the Act, 2007, thus, the impugned order dated 22.1.2022, passed by the Ld. Collector-cum-District Magistrate, Patna, is arbitrary, perverse & contrary to law, hence is fit to be set aside.

13. Per contra, the learned counsel for the Respondent No. 3 has submitted that the house in question is a self-acquired property of the husband of the Respondent No. 3 and it is her constitutional right over such property under Article 300A of the Constitution of India and the Respondent No. 3 and her husband cannot be deprived of their property, save by the authority of law. It is also submitted that Section 3 of the Act, 2007 postulates that the provisions of the Act, 2007 shall have effect notwithstanding anything inconsistent therewith, contained in any enactment other than this Act, or any instrument having effect by any enactment other than this Act, meaning thereby that the other partition suits / eviction case, pending before the learned Civil Courts at Patna, would not have any bearing on the right of the Respondent No. 3 to seek protection of life and property under the Act, 2007. It is thus submitted that the provisions of the Act, 2007 will have an overriding effect and therefore, the impugned order dated 22.1.2022, passed by the



learned Court of Collector-cum-District Magistrate, Patna, is legal and valid.

14. The learned counsel for the Respondent No. 3 has also submitted that the Tribunal / Appellate Tribunal constituted under the Act, 2007 has the jurisdiction to pass an eviction order, hence, the order dated 22.1.2022, passed by the learned Court of Collector-cum-District Magistrate, Patna, directing the petitioners to vacate the house in question, does not suffer from any legal infirmity. In this regard, the learned counsel for the Respondent No. 3 has relied on a judgment dated 13.3.2020, passed by the Hon'ble Delhi High Court in W.P.(C) No. 2761 of 2020 (*Sandeep Gulati vs. Divisional Commissioner & Others*). The learned counsel for the Respondent No. 3 has also relied on various judgments, rendered by the Hon'ble Punjab and Haryana High Court in the cases of *Manmohan Singh vs. U.T. Chandigarh & Others* (C.W.P. No. 1365 of 2015) and the one, rendered in the case of *Shamsher Singh vs. District Magistrate, U.T. Chandigarh & Others*. The Ld. counsel for the Respondent No. 3 has next relied on a judgment dated 3.10.2018, rendered by the Hon'ble Delhi High Court in the case of *Sunny Paul vs. State of NCT of Delhi & Ors.* (LPA No. 205 of 2017), apart from relying on a judgment dated 03.10.2018, rendered by the



Hon'ble Delhi High Court in the case of ***Darshna vs. Government of NCT of Delhi & Ors.*** (LPA No. 537 of 2018).

15. The learned counsel for the Respondent No. 3 has also submitted that the right to live with dignity, as enshrined under Article 21 of the Constitution of India, has been infringed, as far as the Respondent No. 3 is concerned, on account of presence of the petitioners in an unauthorized manner in the house in question. It is also submitted that the Act, 2007 is a special Act and provides for a mechanism for protection of the life and property of parents and senior citizens. It is submitted that the petitioners have frequently abused and assaulted the Respondent No. 3 and her husband, hence, it is all the more imperative that they are kept out of the house in question and therefore, the learned Collector-cum-District Magistrate, Patna, while exercising his right, derived under the provisions of the Act, 2007, has rightly passed the impugned order dated 22.1.2022. It is also submitted that the Hon'ble Apex Court has also approved the powers of the Tribunal to pass order of eviction. In this regard, the learned counsel for the Respondent No. 3 has relied on a judgment, rendered by the Hon'ble Apex Court in the case of ***S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District & Others***, reported in (2021) 15 SCC 730.



16. The learned counsel for the parties have been heard at length. At the outset, it would be relevant to reproduce the relevant provisions of the Act, 2007 hereinbelow:-

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

(d). "parent" means 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.

(e). "prescribed" means prescribed by rules made by the State Government under this Act.

(f). "property" means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.

(k). "welfare" means provision for food, health care, recreation centers and other amenities necessary for the senior citizens.

3. 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.

4(1). A senior citizen including parent who is unable to maintain himself from his own earning or 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 senior 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(1). The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any



of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2). The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

23(1). Where any senior citizen who, after the commencement of this Act, has 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.

(2). Where any senior citizen has a right to receive maintenance out of an estate and such estate or part, thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3). If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5(2).

17. The State of Bihar has enacted the Bihar Maintenance and



Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as “the Rules, 2012”), relevant provisions whereof are being reproduced herein below:-

“Rule 21- Duties and powers of the District Magistrate.-

(1) The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rule (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to:

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;

(ii) oversee and monitor the work of Maintenance Tribunals and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, & execution of Tribunals' orders;

(iii) oversee and monitor the working of old age homes in the district so as to ensure that they conform to the standards laid down in these rules, and any other guidelines and orders of the Government;

(iv) ensure regular and wide publicity of the provisions of the Act, and Central and State Governments' programmes for the welfare of senior citizens;

(v) encourage and coordinate with panchayats, municipalities, Nehru Yuva Kendras, educational institutions and especially their National Service Scheme Units, organizations, specialists, experts, activists, etc. working in the district so that their resources and efforts are effectively pooled for the welfare of senior citizens of the district;

(vi) ensure provision of timely assistance and relief to senior citizens in the event of natural calamities



and other emergencies;

(vii) ensure periodic sensitization of officers of various Departments and Local Bodies concerned with welfare of senior citizens, towards the needs of such citizens, and the duty of the officers towards the latter;

(viii) review the progress of investigation and trial of cases relating to senior citizens in the district, except in cities having a Police Commissioner;

(ix) ensure that adequate number of prescribed application forms for maintenance are available in offices of common contact for citizens like Panchayats, Block Development Offices, Tahsildar offices, District Social Welfare Offices, Collectorate, Police Stations etc;

(x) promote establishment of dedicated Help lines for senior citizens at district headquarters, to begin with; and

(xi) perform such other function as the Govt., may by order, assign to the District Magistrate in this behalf, from time to time.

(3) With a view to performing the duties mentioned in sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with the Act, these rules, and general guidelines of the Government, as may be necessary, to any concerned Government or statutory agency or body working in the district, and especially to the following:

(a) Officers of the Government in the Police, Health and Publicity Departments, and the Department dealing with welfare of senior citizens;

(b) Maintenance Tribunals and Conciliation Officers;

(c) Panchayats and Municipalities; and

(d) Educational institutions

Rule 22. Action plan for the protection of life and property of Senior Citizens.-



(1) The District Superintendent of Police and in the case of cities having a Police Commissioner, such Police Commissioner shall take all necessary steps, subject to such guidelines as the Government may issue from time to time for the protection of life and property of senior citizens.

(2) Without prejudice to the generality of sub-rule (1):

(i) each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (i.e. without there being any member in their household who is not a senior citizen);

(ii) a representative of the police station together as far as possible, with a social worker or volunteer, shall visit such senior citizens at regular intervals of at least once a month, and shall, in addition, visit them as quickly as possible on receipt of a request of assistance from them;

(iii) complaints/problems of senior citizens shall be promptly attended to, by the local Police;

(iv) one or more Volunteers' Committee(s) shall be formed for each Police Station which shall ensure regular contact between the senior citizens, especially those living by themselves, on the one hand, and the police and the district administration on the other;

(v) the District Superintendent of Police or, the Police Commissioner as the case may be, shall cause to be publicized widely in the media and through the Police Stations, at regular intervals, the steps being taken for the protection of life and property of senior citizens;

(vi) each Police Station shall maintain a separate Register containing all important particulars relating to offences committed against Senior Citizens as in Annexure IV;

(vii) the Register referred to in clause (vi) shall be



kept available for public inspection, and every officer inspecting a Police Station shall invariably review the status as entered in the Register;

(viii) the Police Station shall send a monthly report of such crimes to the District Superintendent of Police by the 10th of every month;

(ix) list of Do's and Don'ts to be followed by senior citizens, in the interest of their safety will be widely publicized;

(x) antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens;

(xi) community policing for the security of senior citizens will be undertaken in conjunction with citizens living in the neighborhood, Residents' Welfare Associations, Youth Volunteers, Non-Government Organizations, etc;

(xii) the District Superintendent of Police shall submit to the Director General of Police and to the District Magistrate, a monthly report by the 20th of every month, about the status of crimes against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month, as in Annexure V;

(xiii) the District Magistrate shall cause the report to be placed before the District level Committee constituted under rule 24;

(xiv) The Director General of Police shall cause the reports submitted under clause (xii) to be compiled, once a quarter, and shall submit them to the Govt. every quarter as well as every year for, inter-alia, being placed before the State Council of Senior Citizens constituted under rule 23.”

18. It is no longer res integra that the Tribunals constituted under the provisions of the Act, 2007 definitely have the



authority to order eviction, if the same is necessary and expedient to ensure maintenance and protection of the senior citizen or parent, as has also been held by the Hon'ble Apex Court in the case of ***S. Vanitha*** (supra). In fact, this Court also had the occasion to consider the said aspect of the matter in the case of ***Ravi Shankar & Anr. vs. The State of Bihar & Ors.*** and this Court, by a judgment dated 20.7.2023, passed in CWJC No. 7851 of 2022, has held that the Act, 2007 read with the Bihar Maintenance & Welfare of Parents and Senior Citizens Rules, 2012 definitely permits an application for eviction of children by senior citizens or parents, inasmuch as the said Act, 2007 is enacted for the benefit and protection of a senior citizen from his children or grandchildren. It would be apt to reproduce paragraphs no. 28 and 29 of the said judgment, rendered in the case of ***Ravi Shankar & Anr.*** (supra), hereinbelow:-

“28. Having regard to the foregoing discussion, considering the scope and purview of the provisions contained in the Act, 2007 as also in the Rules, 2012, as referred to hereinabove in the preceding paragraphs, having regard to the aims and objects of the Act, 2007, apart from considering the judgment, rendered by the Hon'ble Apex Court in the case of ***S. Vanitha*** (supra) and the judgments, rendered by the various High Courts, in the cases of ***Niraj Shivkumar Maholay & Anr.***



(supra), **Sandeep Gulati** (supra), **Justice Shanti Sarup Dewan & Anr.** (supra), **Shweta Shetty** (supra), **Jayantram Vallabhdas Meswania** (supra), **Sunny Paul** (supra), **Harvinder Kaur Bawa** (supra), **Nasir** (supra), **Promil Tomar** (supra), **Aarshya Gulati** (supra) and **Shadab Khairi & Anr.** (supra), this Court is of the considered view that the Act, 2007 and the Rules, 2012 have been enacted/ framed to provide simple, speedy and inexpensive mechanism for the protection of life and property of the older persons as also for maintenance and welfare of parents and senior citizens, who are in distress, by a summary procedure, thus the provisions contained in the Act, 2007 and Rules, 2012 are required to be liberally construed, since the primary object is to give social justice to parents and senior citizens, more so since the same are Social Welfare Legislation and further, the statutory intent of the Act, 2007 is to protect senior citizens and not to foist on them any imaginary claim over their property by such claimant, who has no such right to begin with, as such removal of such a person, with no right in the premises in question, will not be construed to be an eviction, inasmuch as to invoke any prohibition against eviction, it must be shown that some legally enforceable civil right of the person sought to be evicted, has been determined, in the property itself and he has been denied that right. However, this is not the position in the present case, inasmuch as admittedly, Preeti Guest House is a self-earned property of the Respondent No. 8, situated over Plot No. G-626, P.O.-Lohiyanagar, P.S.-Kankarbagh,



District-Patna, which was allotted to the private respondent no. 8, by a perpetual lease deed dt. 20.7.1992, by the Bihar State Housing Board, Patna and tax receipts are also being issued in his name by the Patna Municipal Corporation, Patna, from time to time.

29. In view of the scope and purview of the provisions contained in Section 4 and Section 22 of the Act, 2007 read with various other provisions of the said Act, 2007 as well as Rule 21 and Rule 22 of the Bihar Rules, 2012, this Court is of the considered opinion that the same definitely permits an application for eviction of children by senior citizens or parents, inasmuch as the said Act, 2007 is enacted for the benefit and protection of a senior citizen from his children or grandchildren. If the argument of the learned Senior Counsel for the petitioners is accepted then no senior citizen, who has been harassed and mentally tortured by his/her children, will be able to recover possession of his/her property from the children or grand children during his/her life time. Therefore, if the private Respondent No. 8, who is 73 years old, is a senior citizen and has been harassed to bits by the petitioners, is asked to file a civil suit for recovery of possession of the property in question from the petitioners, who are not maintaining him, but are creating nuisance, the whole purpose and object of the Act, 2007 would stand frustrated, especially since the said Act, 2007 has an overriding effect qua any other enactment, in view of Section 3 thereof. In fact, the Civil Court has been precluded from entertaining any



matter qua which jurisdiction is vested under the said Act, 2007 and especially bars granting any injunction, thus, the petitioners are required to move out of the premises in question to permit the Respondent No. 8 to live in peace and civil proceedings can only be qua a claim thereafter, if the petitioners so choose to pursue the title suit in question, which they have filed after initiation of maintenance proceedings by the private respondent No. 8, however, without any interim injunction. In any view of the matter, the title suit in question has been filed belatedly, as aforesaid, by the petitioners to thwart the legitimate and genuine right of the private respondent no. 8, wherein imaginary claims have been made over the property in question with bald allegations, hence, at the moment, the private respondent no. 8, being the owner of the property in question, as aforesaid, cannot be dispossessed in the garb of pendency of the civil suit. Consequently, this Court is of the firm view that under the provisions of the Act, 2007 and the Bihar Rules, 2012, the maintenance tribunal can issue an eviction order to ensure that senior citizen lives peacefully in his/her house without being forced to accommodate their children. In view of the foregoing discussion, the order dated 16.4.2022, passed by the Chairman Tribunal-cum-Sub-Divisional Officer, Patna Sadar, in Tribunal Case No. 55 of 2021 and the direction to vacate the rest house in question within one month and hand over the keys to the private respondent no. 8 cannot be said to be without jurisdiction or beyond the scope of the Act, 2007/ the Rules, 2012, much less



suffering from any illegality or infirmity, so as to warrant any interference by this Court.”

19. Now coming back to the present case, it is seen that several cases and counter cases have been filed by both the parties as also by the husband of the Respondent No. 3 and her third son, namely, Sri Amar Prakash. The husband of the Respondent No. 3 has filed a title suit bearing Title Suit No. 440 of 2019, wherein he has admitted the tenancy of the petitioners no. 1, 2, 4 and 5. In fact, the records would bear it out that the husband of the Respondent No. 3 has also filed an eviction suit bearing Eviction Case No. 47 of 2021, which is pending adjudication before the learned Court of Munsif-III, Patna, wherein the tenancy of the petitioners no. 1, 2, 4 and 5 has been admitted. In fact, the petitioners no. 1 and 4 have also filed Title Partition Suit No. 179 of 2019, which is pending adjudication before the learned Court of Sub-Judge-Ist, Patna, wherein they have prayed for passing of a preliminary decree of partition of the suit property and handing over 1/6th share each to the petitioners no. 1 and 4, with regard to the properties mentioned in Schedule No. 1 to 5 including the house in question situated at Patna. In the said Title Partition Suit No. 179 of 2019, it has been alleged by the petitioners no. 1 and 4 that the house in question is not a self-acquired property of the husband of the



Respondent No. 3. In any view of the matter, this Court finds that the Respondent No. 3 has herself admitted in para no. 29 (vi) of I.A. No. 2 of 2022, filed in the present case for vacating the stay order dated 10.03.2022 that the house in question is not her property but the self-acquired property of her husband. In fact, this fact has also been admitted by the Respondent No. 3 in para no. 52 of the said I.A. No. 2 of 2022 & para no. 3(1)(vi) of the supplementary counter affidavit, filed in the present case by the Respondent no. 3. Thus, the question, which would arise, is as to whether the Ld. Court of Collector-cum-District Magistrate, Patna, could have entertained a petition, filed by a person who is not the owner of the property in question, for the purposes of eviction of the children and further as to whether he could have passed an order of eviction of the children from a property, at the instance of a person who is admittedly not the owner of the property in question.

20. This Court is of the considered view that though it is true that the statutory intent of Act, 2007 is to protect senior citizens and not to foist on them any imaginary claim over their own property, where the claimant has no such right to begin with, however, it has to be seen whether a person having legally enforceable civil right in the property in question can be evicted



by taking recourse to the provisions contained in the Act, 2007. Admittedly, in the present case, the husband of the Respondent No. 3 has admitted the tenancy of the petitioners no. 1, 2, 4 and 5, as is apparent from the relevant portion of the complaints of Title Suit No. 440 of 2019 (filed by the husband of the Respondent No. 3) and Eviction Case No. 47 of 2021 (filed by the husband of the Respondent No. 3), which has been reproduced hereinabove in the preceding paragraphs, thus, in such a situation, when the due process of law, for evicting the petitioners, has already been taken recourse to by the husband of the Respondent No. 3, two things are distinct, firstly that the petitioners have, prima facie, got legally enforceable civil right in the property in question, as such they can only be evicted by taking recourse to the due process of law, which has already been availed by the husband of the Respondent no. 3, thus, exercising powers under the provisions of the Act, 2007, to evict the petitioners, would amount to infringement of their Constitutional right under Article 300-A of the Constitution of India and secondly remedy of eviction under the Act, 2007, can be resorted to only after adverting to the competing claims in the dispute. In this regard, it would be relevant to reproduce paragraphs no. 25, 39 and 40 of the judgment, rendered by the



Hon'ble Apex Court in the case of *S. Vanitha* (supra),
hereinbelow:-

“**25.** The substance of sub-section (2) of Section 23, as submitted by the second and third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. **The Tribunal under the Senior Citizens Act, 2007 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. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertng to the competing claims in the dispute.** It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of



their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in turn, executed a gift deed in favour of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father, fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the ongoing matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.

(Underlining mine)

39. Adverting to the factual situation at hand, on construing the provisions of sub-section (2) of Section 23 of the Senior Citizens Act, 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her “shared household” within the meaning of



Section 2(s) of the PWDV Act, 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the second and third respondents instituted an application under the Senior Citizens Act, 2007. The fact that specific proceedings under the PWDV Act, 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizens Act, 2007 was not available for the purpose of facilitating



strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (second and third respondents) or that her estranged spouse (fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005.

40. For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act, 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act, 2007. The second and third respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act, 2007 for alteration of the maintenance allowance, before the appropriate forum.”

21. With regard to the aforesaid aspect of the matter, this Court would also refer to a judgment, rendered by the Ld. Division Bench of the Hon’ble Bombay High Court in the case of *Shweta Shetty vs. State of Maharashtra & Others*, reported in 2021 SCC Online Bom 4575, paragraphs no. 2, 4, 11, 12, 13,



16, 18, 22, 23, 24 and 25 whereof are reproduced herein below:-

“(2). The Writ Petition challenges an order dated 27th November, 2020 passed by the Welfare Tribunal and Deputy Collector (G.A.) Mumbai City on a complaint made to that Tribunal by the 2nd respondent (“Mr. M.R. Shetty” or “Mr. Shetty”). He is the father of four daughters, the petitioner and respondents Nos. 3, 4 & 5. A copy of the complaint is annexed. In this, Mr. Shetty says that he does not want his daughter, the petitioner, Shweta to remain, occupy or reside in Flat No. 2 A, Giriraj CHSL, 11 Altamont Road, Mumbai 400 026.

4. The complaint of Mr. Shetty, who is today about 94 years old, is that although he is a widower with several age-related health ailments of varying degrees of severity, he is being continuously harassed and mistreated by Shweta. She was in Germany for some time. She came to India in 2015 and moved into the flat unannounced. Although she was to stay for a short period, she never left. Mr. Shetty was 87 years old when she came into the flat. He has been hospitalised several times. He was in no state of physical or mental health to confront Shweta and perhaps even thought that she might help in his old age. But, he says, his expectations were dashed. Shweta has contributed nothing to the house. Indeed, he goes on to say that she has been rude, aggressive and that her conduct has deteriorated and worsened over time. The specific allegation in paragraph 10 of this complaint is that she began to badger Mr. Shetty “for her share of the property” and said that she



would leave the flat only after she was given “her share”. He then details from paragraph 11 onwards, her conduct, which he says poses a danger to his safety. He goes on to say that he is so intimidated that he has had to lock himself into his room. Mr. Shetty has been dependent on two domestic help for his medication and day to day needs. The two ladies have been with him for the last 26 years. Shweta has been quarrelling with both of them and has made allegations against them. She has caused physical distress to them and damaged the household as well. In paragraph 14 of the Complaint, Mr. Shetty details an incident of 19th March, 2019. There are further instances that are narrated in the following paragraphs. Finally, in para 19, Mr. Shetty says that this harassment at the hands of Shweta continues, that his demands that she vacate have not been accepted, that she continues to demand “her share” in the flat and therefore he seeks a relief from the Tribunal “to evict” Shweta.

11. The Division Bench decision of this Court of 13th August, 2021 in *Ritika Prashant Jasani v. Anjana Niranjana Jasani*, (2022) 1 Mah LJ 406 : 2021 SCC OnLine Bom 1802 (of the Bench of which one of us, Jamdar J. was a member) reviewed the case law in question, including the decision of the Supreme Court in *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District*, (2021) 5 Mah LJ 39 (S.C.) : 2020 SCC OnLine SC 1023 : AIR 2021 SC 177. In *Jasani's case*, this Division Bench held in paragraphs 22 and 23:

“22. This Court is cognizant that the Senior



Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under section 8. The jurisdiction of the Civil Courts has been explicitly barred under section 27 of the Senior Citizens Act, 2007. 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 section 2(b) of the Senior Citizens Act, 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act, 2005. Section 26 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.

23. Adverting to the factual situation at hand, on construing the provisions of sub-section (2) of section 23 of the Senior Citizen Act, 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her "shared household" within the meaning of section 2(s) of the PWDV Act, 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the Appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the Fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed



proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act, 2007. The fact that specific proceedings under the PWDV Act, 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act, 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and third respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005.”

12. In *Jasani*, therefore, the claim of the appellant was that the house was a ‘shared household’, i.e. that she had a legally definable right in the property itself. That is not the case before us at all, where Shweta accepts that she has *no* right in the flat in question. **The mere use of the word ‘eviction’ is not by itself determinative. To constitute eviction, or to invoke any prohibition against**



eviction, it must be shown that some legally enforceable civil right of the appellant in the property itself has been determined and that the appellant has been denied that right. Removal of a person with no right in the premises is not eviction so as to attract any such prohibition. After all, as *Jasani* notes, the statutory intent is to protect senior citizens. It is not to foist on senior citizens an imaginary claim over their own property where the claimant has no such right to begin with. The statutory intent is not to limit the rights of senior citizens, but exactly the reverse.

(Underlining mine)

13. There is also a recent decision of learned Single Judge of this Court (G.S. Kulkarni, J.) in *Ashish Vinod Dalai v. Vinod Ramanlal Dalai*, (2022) 1 Mah LJ 511 : 2021 SCC OnLine Bom 2976 which observes in paragraphs 14 and 15:

“14. Before parting and having noticed that this is a case where the old parents are suffering at the hands of petitioner No. 1 the only son and petitioner No. 2 - daughter-in-law, it appears that there is certainly some element of truth in the popular saying that “Daughters are daughters forever and sons are sons till they are married” albeit there would surely be exemplary exceptions. Be that as it may, the present case is a sad story of desperate parents who intend to be in peace at such advanced stage in life. Whether such bare minimum expectations and requirement should also be deprived to them by an affluent son, is a thought which the petitioners need to ponder on. Petitioner No. 1 appears to be totally blinded in discharging



his obligations to cater to his old and needy parents and on the contrary has dragged them into litigation. The vehemence with which arguments were advanced by the learned Counsel for the petitioners also bears testimony to the approach of the petitioners. It is painful to conceive that whatever are the relations between the son and the parents, should the son disown his old aged parents for material gains? This has become more clear from what Mr. Khandeparkar has said, that recently father was required to be hospitalized. In the entire vehemence of the submissions advanced on the flat, not a whisper was uttered on behalf of the petitioners on any attention the petitioners would like to provide to the father's medical need. I am certainly wrong in presuming such expectations from petitioner Nos. 1 and 2 considering their relations with the parents.

15. Lastly, the contention as urged on behalf of the petitioners relying on the decision in *Ritika Prashant Jasani's case* needs to be out rightly rejected, inasmuch as, the question which fell for consideration of the Court in such case was as to whether the tribunal under the Senior Citizens Act could evict a person from the tenement in which he has ownership rights. In the said case the property/flat in question was the ancestral property having joint rights and it is in such context the right to reside in a shared household under the D.V. Act was examined by the Court. In the present case admittedly the property/flat in question is not an ancestral property on which the petitioner No. 1 can lay any claim. It was the property of the father (respondent No. 1) who had gifted it to his daughters within his own legal rights. Moreover, paragraph 23 of the decision in *Ritika Prashant Jetsam's case* goes completely contrary to the contention as urged on behalf of the petitioners,



wherein the Division Bench has observed thus:

“23. At this stage, we may mention that in *Smt. S. Vanitha* (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure maintenance and protection of the senior citizen or parent. Eviction, in other words, would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute.” (*Emphasis added*)

16. We are of the considered view that this is not an isolated experience at all. It is, in fact, a widely noticed trend and it is to address this evil — we will not even call it mischief — that the 2007 Act was brought into force. The statement of objects and reasons says this:

“1. 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 Criminal Procedure Code, 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 old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizen 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 institutionalization of a suitable mechanism for protection of life and property of older persons;
- (d) setting-up of old age homes in every district.

4. The Bill seeks to achieve the above objectives.”

18. He points out that under section 8 of the 2007 Act, this is a summary procedure but, he submits, Shweta should have been allowed to lead evidence. Somewhat puzzled by this, we inquired of him what evidence she could possibly lead and in support of what contention, once she accepted that she had no legal or legally enforceable right or title to any part of the flat? We found no cogent answer to our query. We do not believe that it is the statutory intent that the harassment to a senior citizen 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 of is time. It is not on their side, and every day's delay before



a Tribunal like this hurts senior citizens exponentially more than the younger generation. We do not think it is possible to accept a broad proposition of the breadth that Mr. Thorat canvasses. It might have been different had Shweta been able to canvass some legal right to the flat, whether as a shared household, a right to maintenance of a married woman or an ownership right derived from ancestral property. She lays claim to none of these. What evidence she could possibly lead and on what aspect of the matter remained unclear to the end. Simply saying evidence is of no use at all.

22. We return to Mr. Thorat's first argument that the Act does not contemplate the removal of any person from immovable property. We believe this proposition to be incorrect, and so held to be even by *S Vanitha* and *Jasani*. Our attention is drawn to the decision of 26th June, 2018 of a learned Single Judge of this Court (R.D. Dlianuka, J.) in *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane*, 2018 SCC OnLine Bom 2246 : AIR 2018 Bom 229. We note the submission that was made before the Court and which is reproduced in paragraph 14 and the finding that was returned on this in paragraphs 22, 24, 25 and 31 of that decision:

“14. Learned counsel for the petitioner could not point out any legal right of his client to occupy the tenement owned by the respondent No. 1 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or under any other provisions of law. The submission of the petitioner is that since the petitioner has been allegedly maintaining the respondent No. 1 for last



several years, no order of eviction could be passed by the tribunal under section 4 of the said Act or under any other provisions of the said Act. Per contra, the respondent No. 1 has produced sufficient material on record before this Court and also the Tribunal showing that the respondent No. 1 has been harassed by the petitioner and his family members for last several years.

22. The provision of section 4 of the said Act permits such application for eviction of child and grand child if the condition set out in that provision read with other provisions are satisfied. In my view, there is thus no substance in the submission of the learned counsel for the petitioner that the order of eviction cannot be passed by the Tribunal under section 4 of the said Act read with other provisions of the said Act.

24. Insofar as the submission of the learned counsel for the petitioner that under section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of *Sunny Paul v. State NCT of Delhi* (supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.

25. If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his/her property from the children or grandchildren during his/her lifetime. The said Act is enacted for the benefit and protection of senior citizen from his children or grandchildren. The



principles of law laid down by the Delhi High Court in the case of *Sunny Paul v. State NCT of Delhi* (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.

31. In my view, section 4 cannot be read in isolation but has to be read with section 23 and also sections 2(b), 2(d) and 2(f) of the said Act. The respondent No. 1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent No. 1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.”

23. We entirely endorse the views of the learned Single Judge and accept them as our own. We are also fully in agreement with the views of the Division Bench of the Delhi High Court in *Sunny Paul v. State of NCT of Delhi*, 2018 SCC OnLine Del 11640 : (2018) 253 DLT 410 (DB) a most careful and elaborate judgment that includes what appears to us to be a comprehensive overview of the jurisprudence. That decision dismissed an appeal from an order of a learned single Judge upholding the decision of the tribunal. Mr. Thorat's efforts to contend that this result was only because there are special rules in Delhi that permit eviction does not commend itself to us at all. The Rules cannot,



axiomatically, confer a power that does not extend in the statute itself. At best, the Rules may provide a procedure or may clarify, but cannot confer a substantive legal right beyond that which the Act contemplates. Therefore, the argument defeats itself: if the Delhi rules provide for eviction of a person with no right in the property to protect the interests and welfare of a senior citizen, this necessarily means that the right to order a removal of a claimant exists in the statute itself.

24. We are not inclined to interfere with the impugned order.

25. We reject the Writ Petition.

22. Therefore, the legal position, as is existing, as per the Judgment rendered by the Hon'ble Apex Court in the case of *S. Vanitha* (supra) is that the Tribunal under the Act, 2007 may have the authority to order an eviction, which may be an incident of the enforcement of the right to maintenance and protection, however, the said remedy can be granted only after advertent to the competing claims in the dispute. It is equally a well-settled legal position, as is manifest from the aforesaid judgment, rendered by the Hon'ble Bombay High Court in the case of *Shweta Shetty* (supra), that if the children have some legally enforceable civil right in the property in question, their eviction, by taking recourse to the provisions of the Act, 2007,



may be difficult and the parents / senior citizens would have to take recourse to the due process of law for eviction of such children. All these aspects of the matter have not been considered by the learned Court of Collector-cum-District Magistrate, Patna, while passing the impugned order dated 22.01.2022.

23. Yet another aspect of the matter is that the order dated 22.01.2022 appears to be an ex parte order, as is apparent from a bare reading of the same and in fact, the petitioners had also not been able to file any written statement / reply to the appeal, filed by the Respondent No. 3, hence, this Court feels that it would be proper that the appeal is heard afresh by the learned Court of Collector-cum-District Magistrate, Patna, so that the aforesaid aspects of the matter can be considered and a just and legal decision can be arrived at.

24. Now coming to the submissions made by the learned counsel for the Respondents No. 3 regarding the issue pertaining to the power of the maintenance Tribunal to order eviction, this Court has already held, in the preceding paragraphs, that the said issue is no longer res integra, inasmuch as though the maintenance Tribunals definitely have the power to evict



children, occupying the premises illegally, however, the same can be done only after adverting to the competing claims in the dispute. This aspect of the matter has already been dealt with at length in the preceding paragraphs. At this juncture, it would be relevant to mention here that the learned counsel for the Respondent No. 3 has not refuted the factual aspect of the matter, which has been narrated hereinabove in the preceding paragraphs, as also the tenancy of the petitioners no. 1, 2, 4 and 5, which has been pleaded and admitted in the title suit and eviction case, filed by the husband of the Respondent No. 3.

25. Having regard to the facts and circumstances of the case, this Court finds that several vital aspects of the matter, as detailed hereinabove in the preceding paragraphs, have not been considered by the learned Court of Collector-cum-District Magistrate, Patna, while passing the impugned order dated 22.01.2022 in Appeal Case No. 3 of 2021-22, hence, for the reasons mentioned hereinabove, this Court finds that the impugned order dated 22.01.2022 is neither just nor legal, hence stands vitiated in the eyes of law, thus, this Court deems it fit and proper to quash the impugned order dated 22.01.2022 and remand the matter back to the learned Court of Collector-cum-District Magistrate, Patna, for fresh adjudication, after hearing



the parties. In order to protect the interest of the private Respondent No. 3, this Court deems it fit and proper to direct the petitioners to file their objections / written statement in the aforesaid Appeal Case No. 3 of 2021-22 on or before 18th of August, 2023, whereafter, the learned Court of Collector-cum-District Magistrate, Patna, shall hear the parties on 25.8.2023 at 10:30 am. and thereafter, pass an order afresh in the aforesaid Appeal No. 3 of 2021-22 within a fortnight i.e. on or before 10th of September, 2023. It is needless to state that in case of default by any of the parties to adhere to the aforesaid timeline, the Ld. Collector-cum-District Magistrate, Patna shall proceed ex-parte.

26. The writ petition stands disposed off, with the aforesaid observations and directions.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	19.10.2022
Uploading Date	31.07.2023
Transmission Date	NA

