

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7851 of 2022

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1. Ravi Shankar Son of Rajeshwar Prasad, Resident of G626 Preeti Rest House
Rajendra Nagar over Bridge, Permanent address 122, Rental Flat
Kankarbagh, P.S. Kankarbagh.
 2. Minu Kumari, W/o Ravi Shankar, Resident of G626 Preeti Rest House
Rajendra Nagar over Bridge, Permanent address 122, Rental Flat
Kankarbagh, P.S. Kankarbagh.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna.
3. Chairman cum Sub Divisional Officer, Patna Sadar.
4. The Senior Superintendent of Police, Patna.
5. The Deputy Superintendent of Police, Patna.
6. The Officer Incharge, Kankarbagh Police Station, Patna.
7. The Officer Incharge, Rajendra Nagar Police Station, Patna.
8. Rajeshwar Prasad Roy, Son of Sookhi Rai, Resident of 122 Rental Flat,
Kankarbagh, P.S. - Kankarbagh.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Syed Alamdar Hussain, Sr. Adv. Mr. Syed Asgher Najmi, Adv. Mr. Alok Kumar, Adv.
For the State	:	Mr. Dr. Anand Kumar, Adv. Mr. M.K. Tiwary, Adv.
For the Respondent No. 8	:	Mr. Bindhyachal Singh, Adv. Mr. Smriti Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 20-07-2023



The present writ petition has been filed for quashing the order dated 16.4.2022, passed by the Chairman, Tribunal-cum-Sub-Divisional Officer, Patna Sadar, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the Act, 2007), in Tribunal Case No. 55 of 2021, whereby and whereunder the petitioners have been directed to vacate the rest house in question within one month and hand over the keys to the private Respondent No. 8, apart from certain directions having been issued for protection of life and property of the senior citizen i.e. the private Respondent No. 8. The petitioners have further prayed to direct the Respondent authorities to provide safety to the petitioners and their daughter as also ensure that they are not ousted from the house in question.

2. The brief facts of the case according to the petitioners are that the petitioner no. 1 is the son of the private Respondent No. 8 and the petitioner no. 2 is the legally wedded wife of the petitioner no. 1 and daughter-in-law of the private Respondent No. 8. It has been stated that the marriage of the petitioners no. 1 and 2 was solemnized on 14.6.2018, according to the Hindu Rites and Customs, whereafter the petitioner no. 2 has been living in matrimonial house along with her husband and out of



the said wedlock, a daughter has been born. The petitioners have also stated that the private Respondent No. 8 filed a case under the provisions of the Act, 2007, before the learned Court of Sub-Divisional Officer, Patna Sadar, Patna, which was numbered as Tribunal Case No. 55 of 2021, however, the notice issued by the Tribunal, was issued on wrong address of the petitioner no. 2 and she was pressurized to accept the notice by sending arrest warrant, after institution of false criminal cases against the petitioners by the private Respondent No. 8. The petitioners are stated to have submitted their reply before the Chairman, Tribunal-cum-Sub-Divisional Officer, Patna Sadar, Patna i.e the Respondent No. 3, however, the same was not considered by him and instead he has passed the impugned order dated 16.4.2022, directing the petitioners to vacate the rest house in question.

3. The learned Senior Counsel for the petitioners has submitted that the private Respondent No. 8 stays in a separate residential flat, whereas the petitioners along with their three years old daughter are residing at Preeti Guest House, which has been purchased out of joint Hindu undivided funds, apart from the fact that the private Respondent No. 8 has number of other properties as well and the petitioners are being harassed only



because they have solemnized inter-caste marriage, resulting in the private Respondent No. 8 being deprived of dowry. It is submitted that neither the said aspect of the matter has been considered by the Respondent No. 3 nor the detailed written statement, filed by the petitioners, have been considered by him and instead, an illegal and perverse order dated 16.4.2022 has been passed by the Respondent No. 3. It is further submitted that the maintenance Tribunal is not an eviction tribunal, inasmuch as though the Punjab and Delhi Rules provide for an action plan in which there is provision for eviction, however, in the Bihar Rules, there is no provision of eviction, hence, the Respondent No. 3 could not have passed an order for eviction of the petitioners from the Preeti Guest House.

4. The learned Senior Counsel for the petitioners has further contented that the private Respondent No. 8 is not dependent on the income from the three rooms of the aforesaid Preeti Guest House, in which the petitioners are staying, inasmuch as he is still having substantial income from 20 other rooms, situated in the said Preeti Guest House, apart from 21 shops, situated on the ground floor of the said building. It is also contended that a domestic violence case is also pending consideration before the learned Court of ACJM-II, Patna, bearing D.V. No. 70 of 2022,



which has been filed on 27.4.2022 by the petitioner No. 2.

5. The learned Senior Counsel for the petitioners 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, to contend that Section 3 of the Act, 2007 cannot be deployed to override and nullify other protections in law, particularly that of a woman's right to a "shared household" under Section 17 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act, 2005"). The learned Senior Counsel for the petitioners has also relied on a judgment dated 14.10.2014, rendered by the Hon'ble High Court of Punjab and Haryana at Chandigarh, in L.P.A. No. 1588 of 2014, in the case of **Major Harmohinder Singh (Retd.) vs. State of Punjab & Others**, to submit that the provisions of the Act, 2007 and the Act, 2005 cannot be used for cross purposes, one annihilating the other. The learned Senior Counsel for the petitioners has next relied on a judgment dated 23.01.2020, rendered by the Hon'ble High Court of **Punjab and Haryana at Chandigarh in CWP No. 4744 of 2018 (Simrat Randhawa vs. State of Punjab and Others)**, to contend that the Act, 2007 does not provide for the draconian power of eviction from a property and eviction



can take place only in accordance with the procedure established by law. Reference has also been made to a judgment dated 26.7.2021, passed in CWP No. 13505 of 2021, rendered by the Hon'ble Punjab and Haryana High Court at Chandigarh, in the case of **Sudershan Kumar vs. State of Haryana and Others**, to contend that there is no provision under the Act, 2007, which entitles a Magistrate to pass an order of eviction, even on the application, filed by a senior citizen.

6. *Per contra*, the learned Senior Counsel for the Respondent No. 8 has referred to the counter affidavit, filed in the present case and has submitted that the petitioner no. 1 is working as Cluster Head in Fino Payment and is earning approximately Rs. 1,00,000/- per month while the petitioner no. 2 is a professional, who is working independently as an Advocate and is also earning good money. It is stated that the petitioners are trouble makers for both of their parents and they have been harassing the Respondent No. 8, who is an old person aged about 73 years, merely to fulfill their greed of property. It is further submitted that the private respondent no. 8 and his wife have been forced to live in a rented flat bearing Flat No. 122, situated at Lohianagar, Kankarbagh, Patna, earning meager amount of pension to the tune of Rs. 4789/- and are solely



dependent on the income from the rest house in question, which has been captured by the petitioners. It is further stated that the private Respondent no. 8 had established a rest house at Kankarbagh, Patna, from his self-earned income, on his self-acquired property, however, after the petitioner no. 2 had married the petitioner no. 1, she has started creating trouble and nuisance in the house along with the petitioner no. 1. It is also contended that the property in question i.e. Preeti Guest House, situated over Plot No. G-626, P.O.-Lohianagar, P.S.-Kankarbagh, District-Patna is a self-acquired property of the private Respondent No. 8, which was allotted by a perpetual lease deed dated 20.7.1992, by the Bihar State Housing Board, Patna, in favour of the private Respondent No. 8.

7. It is the further case of the private Respondent No. 8 that the petitioner no. 1 had requested the private respondent no. 8 to give a room to him for few days, whereafter, he would shift elsewhere and accordingly, entry was made in the register of the rest house and then the petitioner No. 1 was given a room, however, subsequently the petitioner no. 2 along with his child also moved in the rest house and started creating trouble with the motive of capturing the rest house in question and in fact they also did so. It is also submitted that the petitioners first



captured room no. 209 of the Preeti Guest House and later on, broke locks of two more rooms of the rest house and have been staying there illegally.

8. The learned Senior Counsel for the Respondent No. 8 has further submitted that the petitioner no. 2 has also been creating trouble at her parents' house and the mother of the petitioner no. 2, who was threatened and tortured by the petitioner no. 2 at the time, the Petitioner No. 2 was residing with her husband at her mother's house, has lodged an FIR bearing Bahadurpur P.S. Case No. 349 of 2019 against the petitioners. In fact, the private Respondent No. 8, being annoyed by the illegal and criminal act of the petitioners, has also lodged a complaint before the local Kankarbagh police station on 02.12.2021. It is also stated that the pervert nature of the petitioner no. 2 would also be apparent from the fact that she has filed various criminal cases against her mother, brother and other family members bearing Bahadurpur P.S. Case No. 121 of 2013 and Bahadurpur P.S. Case No. 350 of 2019.

9. The learned Senior Counsel for the Respondent No. 8 has further submitted that in very compelling circumstances, the private respondent no 8, was forced to approach the Respondent No. 3, by filing a complaint under the provisions of the Act,



2007, for evicting the petitioners from the property in question and for protecting his life and property, whereupon Tribunal Case No. 55 of 2021 was registered and notices were issued to the petitioners, however, initially, they had avoided appearance, but finally, they had appeared and contested the case before the Maintenance Tribunal, by filing their written statement, whereupon the Respondent No. 3 has passed a reasoned and a speaking order dated 16.4.2022 under the provisions of the Act, 2007, after examining all the documents on record and after due application of mind, whereby and whereunder, the petitioners have been directed to vacate the rest house within one month.

10. The learned Senior Counsel for the Respondent No. 8 has next contended that the petitioners have made contradictory statements in order to somehow defeat the claim of the private respondent no. 8, inasmuch as in the rejoinder affidavit, filed by the petitioners to the counter affidavit (running page no. 184 of the brief), it has been stated that the rest house in question comprises of 10 shops, whereas in the supplementary affidavit, filed by the petitioners, they have mentioned that the Preeti Rest House comprises of 18 shops.

11. The learned Senior Counsel for the Respondent No. 8 has



also contended that only after the private Respondent No. 8 had filed complaint under the provisions of the Act, 2007, before the learned Tribunal, a concocted Title Partition Suit No. 292 of 2021 has been filed by the petitioner No. 1 on 06.12.2021, making false and vexation claim, without appending any proof thereto, much less there being any pleading to the effect that the land on which the aforesaid Preeti Rest House has been constructed was purchased from ancestral funds. In fact, the petitioner no. 2 is not a party to the said title suit.

12. The learned Senior Counsel for the Respondent No. 8 has next submitted that a bogie has been created by the petitioners with regard to filing of a complaint under the provisions of the Protection of Woman from Domestic Violence Act, 2005 (hereafter referred to as “the Act, 2005”), inasmuch as on the date of passing of the impugned order dated 16.4.2022, no such Domestic violence case was in existence and this is the reason why the copy of the complaint has not been annexed to the present writ petition, however, circumspectly, it has been stated by the petitioners in the written submissions, filed before this Court that domestic violence case is pending before the learned Court of ACJM-II, Patna, bearing D.V. Case No. 70 of 2022, dated 27.4.2022, which clearly shows the deceitful intention of



the petitioners, which is to mislead this Court and create confusion by relying on a judgment, rendered by the Hon'ble Apex Court in the case of *S. Vanitha* (supra), whereas the fact is that there is no question of any sort of domestic violence, inasmuch as admittedly, the pleadings made by the petitioners in the present case would show that the petitioners are living together and leading a happy married life along with their child. Thus, it is submitted that the facts and circumstances of the present case are absolutely distinguishable from the judgment, rendered by the Hon'ble Apex Court in the case of *S. Vanitha* (supra).

13. The learned Senior Counsel for the Respondent No. 8 has also contended that the private respondent no. 8 and his wife are dependent on the income from the rest house for their livelihood, survival and maintenance and since right to property is a Constitutional right enshrined under Article 300A of the Constitution of India, they cannot be deprived of the property in question i.e. Preeti Guest House, situated over Plot No. G-626, P.O.-Lohianagar, P.S.-Kankarbagh, District-Patna, which was allotted by a perpetual lease deed dated 20.7.1992, by the Bihar State Housing Board, Patna, in favour of the private Respondent No. 8 and the same is a self-acquired property of the



Respondent No. 8, which is further evident from the fact that the Patna Municipal Corporation has been issuing tax receipts from year to year in favour of the Respondent No. 8, pertaining to the said property in question, hence, admittedly the same does not fall within the zone of family partition.

14. The learned Senior Counsel for the private Respondent No. 8 has submitted that the Respondent No. 8 and his wife have the right to live with peace and dignity and since the Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens and to ensure protection of life and property of senior citizens, the said right cannot be curtailed, hence, the impugned order dated 16.4.2022 has justifiably been passed by the learned Tribunal. It is also contended that the learned Tribunal has been constituted under Section 7 of the Act, 2007 and the prime objective of Section 22 and 32 of the Act, 2007, read with Chapter VI of the Bihar Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as ‘the Rules, 2012’) is the protection of life and property of senior citizens and for this purpose, the learned Tribunal has been empowered to take all necessary steps, hence, considering the fact that since the petitioners do not have any right to enter in the aforesaid Preeti



Guest House and they have entered forcibly without the consent of the private respondent no. 8, the impugned order dated 16.4.2022 cannot be said to be an order of eviction in its strict sense, inasmuch as the same only seeks to protect the life and property of the private respondent no. 8, by directing the unauthorized persons to vacate the premises in question, captured illegally. It is further submitted that the Rules, 2012, more particularly Rule, 22 thereof is similar to the Rules framed by the State of Maharashtra, hence, the present case is squarely covered by the judgment, rendered by the Hon'ble Bombay High Court in the case of ***Niraj Shivkumar Maholay & Anr. vs. The State of Maharashtra & Ors.***, rendered on 11.3.2020 in Criminal Writ Petition No. 5508 of 2018, paragraphs no. 6 to 13 whereof are reproduced herein below:-

“6 The learned counsel for the respondents has submitted that all that section 22 speaks about, is conferment of powers on sub-ordinate officers, in order to achieve the aims and objectives of the said Act. Section 22 reads as follows :

"22. Authorities who may be specified for implementing the provisions of this Act –

(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."

7. There is nothing on record even to remotely indicate that such powers were not conferred upon the Sub-Divisional Officer. In fact, the very object of this Act is to protect the life, liberty, dignity and property of senior citizens and parents who are in peril at the hands of their own children and grandchildren.

8. The learned counsel for the respondents has placed reliance upon the judgment of this Court in the case of Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and Ors ., (Writ Petition No.10611 of 2018) wherein this Court has observed as follows :-

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.

32. In my view, since under [Section 23](#) of the said Act, a senior citizen is entitled to apply for a declaration of gift or transfer of his/her property by any other means given subject to the condition that the transferee shall provide the basic amenities and basic physical needs to such senior citizen and such child or grand child refuses to provide such amenities and physical needs, such senior citizen can apply for declaration of such transaction to be void, such senior citizen can even apply for recovery of possession from her child or grandchild in the event of the child refusing to maintain such senior citizen and parents or does not comply with the obligations extending to the needs of senior citizen or such parents to enable such senior citizen or parents to lead a normal life. Such parents and senior citizen can certainly apply for recovery of vacant possession of the property & for a relief restraining such child or grandchild or his other family members who are claiming through such



child from entering upon the property of such senior citizen or parents. In my view, there is thus no merit in the submission of the learned counsel for the petitioner that the Tribunal could not have passed an order of eviction against the petitioner and his family members from the tenement owned by the respondent no.1 under the provisions of the said Act."

9. The contention of the petitioners is that the said property from where the petitioners are being evicted is not a self-acquired property but is an ancestral property and that the Petitioner No.1 has been living there with his wife since long and therefore, his possession cannot be disturbed. The object of the said Act of 2007 has to be achieved by all means as it is special statute to protect the interest of the parents and senior citizens to let them live in peace and with dignity.

10. Although the said property is ancestral property, the Court cannot be oblivious of the fact that the interest in the said property, would devolve upon the petitioners through the parents. As on today, the life, liberty, dignity and property of the respondents is of paramount importance.

11. It is also submitted by the learned counsel for the petitioners that as on today, the petitioners are residing in the share which is allotted to uncle of the Petitioner No.1 and not in the share of the said property wherein the respondents are residing. The



said property consists of ground + four floors and the petitioners are residing on the third floor whereas the respondents are residing on the ground floor.

12 It is also submitted that ever since the order of eviction is passed, the respondents are living peacefully and that the petitioners have not disturbed their possession in the said property. It can be inferred that, as of today, the petitioners and the respondents are not residing in a shared household or that they are residing under the same roof. No case is made out by the petitioners to set aside the findings and the order passed by the Sub-Divisional Officer. The other proceedings may take its own course.

13 In view of this, the petition being sans merit stands dismissed & disposed of accordingly. These observations are restricted to the petition under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and shall not be considered in any other proceedings between the parties.

15. The learned Senior Counsel for the private Respondent No.8 has next relied on a judgment dated 13.3.2020, rendered by the Hon'ble Delhi High Court in W.P.(C) NO. 2761 of 2020, in the case of *Sandeep Gulati vs. Divisional Commissioner & Others*.

16. I have heard the learned Senior counsel for the parties and perused the materials on record. In order to appreciate the issue



involved in the present case, it is necessary to analyze the relevant provisions of the Act, 2007 in the background of the constitutional mandate. The Statement of objects and reasons set out that the traditional norms and values of the Indian society, which lay stress on providing care for the elderly, is getting diluted due to withering of the joint family system and 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 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, thus the Act, 2007 has been enacted to provide for more effective provision for maintenance and welfare of parents and senior citizens, for ensuring their overall physical and mental well-being including providing simple, speedy and inexpensive mechanism for the protection of life and property of the older



persons. The relevant provisions of the Act, 2007, are being reproduced herein below:-

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

(e). "prescribed" means prescribed by rules made by the Stale 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.

8(1). In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2). 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.

(3). Subject to any rule that may be made in this behalf, the Tribunal may, for the, purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

9(1). If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at



such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2). The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

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).

27. No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.

32(1). 1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2). Without prejudice to the generality of the foregoing power, such rules may provide for –

(a). the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of Sect. 8;

(b). the power and procedure of the Tribunal for other purposes under subsection (2) of Sect. 8.

(c). the maximum maintenance allowance which may be ordered by the Tribunal under sub-section (2) of section 9;

(d). the scheme for management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section (2) of section 19;

(e). the powers and duties of the authorities for implementing the provisions of this Act. Under sub-section (1) of section 22;



(f). a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;

(g). any other matter which is to be, or may be, prescribed

(3). Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House, before that House.”

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 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. On a bare perusal of the aforesaid provisions of the Act,



2007 and the Rules, 2012, it is seen that the same has been enacted 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 guaranteed and recognized under the Constitution of India, emanating out of the following Articles:-

“Article 21. **Protection of life and personal liberty**—No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 39(A). **Equal justice and free legal aid**—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 41. **Right to work, to education and to public assistance in certain cases**—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 46. **Promotion of educational and economic**



interests of Scheduled Castes, Scheduled Tribes and other weaker sections- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

19. A bare perusal of the scheme of the Act, 2007, its aims and objects as also the provisions contained in the Rules, 2012 would show that the same has been enacted to provide for effective provisions for the Maintenance and Welfare of Parents and Senior Citizens guaranteed and recognized under the Constitution and for the matters connected therewith or incidental thereto. The Parliament has expressed itself through the Act, 2007, whereby the State Government has been empowered to prescribe a comprehensive action plan for providing Protection of Life and Property of Senior Citizens. Section 3 of the Act, 2007 gives the overriding effect over any other enactment /instrument. Chapter II of the Act, 2007 deals with the Maintenance of Parents and Senior Citizens. Section 4 of the Act, 2007 enables a senior citizen including a parent, who is unable to maintain himself from his own earnings or out of the property owned by him to make an application under Section 5 for his / her maintenance so that he / she can lead a



normal life. Chapter V of the Act, 2007 deals with protection of life and property of senior citizens. Section 23(1) of the Act, 2007 confers a power on the tribunal to declare transfer of property in certain circumstances as void. Section 23(2) of the Act, 2007 stipulates that a 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. Thus, the Act, 2007 has two separate objectives; (i). to institutionalize a mechanism for protection of life and property of senior citizens and secondly, to set up an appropriate mechanism for providing need basis maintenance to parents and senior citizens.

In fact, Chapter V of the Act, 2007 is titled as “**Protection of Life and Property of Senior Citizen**” and Section 22 thereof, provides for conferment of such powers and duties on a District Magistrate, as may be necessary to ensure that the provisions of the Act, 2007 are properly carried out and for the said purpose, the District Magistrate is empowered to specify the officer, subordinate to him, who shall exercise all or any of such powers, and perform all or any of the duties, so conferred



or imposed.

As far as the Bihar Rules, 2012 are concerned, Rule 21 thereof empowers the District Magistrate to perform the duties and exercise the powers mentioned in Sub-rule (2) and (3) of Rule 21 so as to ensure that the provisions of the Act are properly carried out in his district and one of the duties of the District Magistrate is to ensure that life and property of senior citizens of the District are protected and they are able to live with security and dignity. In fact, Rule 22 of the Rules, 2012 also provide for an action plan for the purposes of protection of life and property of senior citizens.

20. Now coming back to the present case, it is seen that the main thrust of the argument of the learned Senior Counsel for the petitioners is that the maintenance tribunal cannot be converted into an eviction tribunal, hence, the Respondent No. 3 could not have passed an order for eviction of the petitioners from the aforesaid Preeti Guest House. In this regard, it would suffice to state that the preamble of the Act, 2007 describes the said Act, 2007 to be 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. The statement of objects and reasons of the said Act also considers the need to give more attention to the care and protection of older persons and casts an obligation on the persons, who inherit the property of their aged relatives, to maintain such aged relatives. Section 3 of the Act, 2007 gives its overriding effect over any other enactment or instrument. Section 4 under Chapter II of the Act, 2007, titled as “Maintenance of Parents and Senior Citizens”, in Sub-Section 2 thereof, provides regarding the obligation of the children to maintain a senior citizen so that the senior citizen may lead a normal life and normal life would certainly include a right to living peacefully in ones own property and being not prevented from use thereof and recovering rent thereof. One of the object of the Act, 2007 is to provide simple, speedy and inexpensive remedy to the parents and senior citizens, who are in distress by a summary procedure, hence the provisions will have to be liberally construed as the preliminary object is to give social justice to parents and senior citizens more so since the Act, 2007 is a Social Welfare Legislation. In fact 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 person sought to be evicted, in the property itself, has been determined and he 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, thus, the statutory intent of the 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.

21. In the present case, admittedly, the petitioner no. 1, upon his request, was given one room in the aforesaid Preeti Guest House for few days, however, subsequently, instead of vacating the same, the petitioner no. 1 had also called his wife and child and grabbed two more rooms, however, without the consent of the private Respondent No. 8. It is also not in dispute that the said Preeti Guest House is a self-earned property of the private 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 dated 20.7.1992, by the Bihar State Housing Board, Patna and tax receipts are being issued in favor of the Respondent No. 8 by the Patna Municipal Corporation from time to time, hence, admittedly, the said property does not fall within the zone of



family partition. In fact, 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, 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. In my considered view, if the private Respondent No. 8, who is 73 years old and is a senior citizen, who 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 in view of the said Act, 2007 having 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 be only qua a claim thereafter, if the petitioners so choose to pursue the title suit, which they have filed, 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. This aspect of the matter is no longer res integra and in this connection, this Court would like to refer to two judgments, citation whereof along with their relevant paragraphs are being detailed herein below:-

“(i) The judgment, rendered by the learned Division Bench of the Punjab and Haryana High Court in the case of *Justice Shanti Sarup Dewan & Anr. vs. Union Territory, Chandigarh & Others*, reported in 2013 SCC Online P&H 20369, paragraphs no. 2, 3, 15, 27, 34, 35, 36, 37, 38, 39, 40 and 41 whereof are reproduced herein below:-

“(2). The appellant No.1 aged about 85 years is a retired Chief Justice of this Court while appellant



No.2 is his wife aged about 74 years. The appellants have three progenies, one son and two daughters. The appellants' elder son Suvir Dewan, aged about 49 years, a practicing Advocate of this Court, has been impleaded as respondent No. 7 herein. Suvir Dewan is married and has one daughter Shaina Dewan. The daughter of the appellant, namely, Joshita Budhraj is married to one Shri Sanjay Sen Budhraj having a daughter, namely, Nikita Budhraj. Their abode is Amritsar but they come to Chandigarh occasionally. Shri Sanjay Sen Budhraj is stated to be working in Punjab Council for Citrus and Agri. Juicing in Punjab and staying in a rented accommodation and Nikita Budhraj is staying with the appellants while pursuing her M.C.A. from Panjab University, Chandigarh. Third child of the appellants, namely, Sabina Grewal is married to Shri Harpreet Singh Grewal with a male child Udey Veer living in Auckland, New Zealand.

(3). The cause of the dispute, as it often happens, is a property being House No. 642, Sector 11-B, Chandigarh, measuring 500 Sq. Yards, stated to have been purchased by appellant No.1 vide a Conveyance Deed dated 29.03.1962 in his own name. The Occupation Certificate was subsequently issued on 14.02.1967 by the Estate Officer (Capital Project), Chandigarh. It is the case of appellant No.1 that in the year 1980 he withdrew ` 20,000/- from his G.P. Fund to make additions and alterations in that house and a fresh Occupation Certificate was thereafter issued on 11.09.1990.

(15). The writ petition was contested by respondent No.7. He has pleaded that he was born in the house in Chandigarh which is a joint Hindu Family property. The house in question is a Hindu Undivided Family (HUF) house. He is a coparcener along with his wife and daughter and is residing in



the same. The said respondent claims that they have a common kitchen on the ground floor which he had got renovated when his parents had gone to visit their younger daughter Sabina Grewal in Auckland. It has been admitted that daily expenses are borne by appellant No.1 but claims that he had offered the same but it is the appellant No.1 who refused to accept any money, though for all major expenses, the said respondent always pooled in the money.

(27). On hearing learned counsel for the parties, two crucial questions arise for consideration:-

(i) Whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act?

ii) Whether the writ petition could be maintained for the said purpose especially in the alleged absence of so called failure of Union Territory Administration in complying with its obligations under the said Act?

(34). In the context of the aforesaid discussion about the provisions of the Act, now we proceed to analyze two crucial questions referred to aforesaid:-

Question No. (i):-

The stand of respondent No. 7 before the Court is not that there was any contribution given by him for acquisition of the plot at Chandigarh. It is also not his say that the property is an inherited property. The registered document of title is also in favour of only appellant No.1. Infact, out of his own earnings, appellant No.1 gifted the plot to respondent No. 7 as well as two other plots to his daughters. There is just a bald statement that the property at Chandigarh is joint Hindu family property. The failure, which has been attributed to Administration of Union Territory,



Chandigarh, is qua the provisions of [Section 32](#) read with [Section 22](#) of the said Act. There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of [Section 32](#) of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for implementation of the provisions of the said Act under sub section (1) of [Section 22](#) (clause (e) of sub section (2) of [Section 32](#)) & a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of [Section 32](#)). No such Rules have been notified. The grievance thus being made is that in the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under [section 22](#) (2) of the Act would not suffice. Infact sub section (1) of [Section 22](#) of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of the problem at hand, this is absent.

(35). What is the right of respondent No. 7 and his family members to insist on occupying a portion of the house of appellant No.1 especially when the sale-deed is registered in the name of appellant No.1 in his individual name? Merely stating that it is a joint Hindu family property would not suffice. In order to establish that the property belongs to joint family, it must be established that a joint family had a sufficient nucleus at the time of its acquisition. ([P. S.](#)



Sairam and another V. P.S. Rama Rao Pisey and others (2004) 11 SCC 320). Leave aside the corpus, it is not even alleged that the funds other than the individual funds of appellant No.1 were utilized to purchase the plot at Chandigarh. Respondent No. 7 could not have even alleged so as he actually received a self-acquired plot at Panchkula from appellant No.1 by way of gift while daughters of appellant No.1 received one plot each in Karnal. Other than the oblique motive to grab the property at Chandigarh and keep possession of the same against the wishes of the owner, there can be no other reason. Infact, it was quite clear during the course of arguments that not only respondent No. 7 wants to deprive the appellant No.1 to deal with his property as per his wishes but wanted to grab the whole property for himself denying the share of his sisters.

(36). In *Ganduri Koteswaramma and another Vs. Chakiri Yanadi and another* 2011(9) SCC 788 it has been held by the Supreme Court that in view of the amendment of Section 6 of the Hindu Succession Act, 1956, a daughter is entitled to share in the ancestral property and is a co-parcener as if she had been a son w.e.f. 09.09.2005. Daughter of a co-parcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The only exception carved out is that where the disposition or alienation has taken place before 20.12.2004 and where testamentary disposition of property has been made before the said date.

(37). It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This



would defeat the very purpose of the said Act which has an over-riding effect qua any other enactment in view of [Section 3](#) of the said Act. Infact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time-consuming civil proceedings may not be finished during the life time of appellant No.1. In fact, that is the very objective of respondent No. 7.

(38). Though it is not directly relevant but it is not even as if respondent no. 7 is without a roof over his head as he is a beneficiary of a gift from his father-appellant No.1 of a plot which was sold, smaller plot purchased and constructed upon and the house is lying vacant. What can be a greater travesty of justice in this situation where respondent No. 7 insists that he will not stay in his own house built by him lying vacant, but insists on staying with his parents who do not want him or his family to live with them. We don't have the slightest of hesitation in coming to a conclusion that all necessary directions can thus be made under the said Act to ensure that the appellants live peacefully in their house without being forced to accommodate respondent No. 7.

Question No. (ii)

(39). A lot of hue and cry has been raised on the



issue as to whether directions can be issued in writ proceedings under Articles 226/227 of the Constitution of India to enforce the provisions of the said Act. We have already noticed above that a proper mechanism for enforcement of the provisions of the said Act for protecting the property rights of the appellants under [Section 22](#) of the said Act has not been put in place by the Union Territory Administration and enforcement would be a big issue. How and through which machinery can a Special Cell ensure the eviction of respondent No. 7 from with false and vexation claim the property so that the appellants can live in peace in their house? Can we say that the Courts would be powerless both in equity and law to enforce such an order when primacy has been given to the provisions of the said Act over all other law. The answer to these questions should be in the negative. If the State fails to perform the functions envisaged under an Act, it would certainly give rise to a jurisdiction to be exercised under [Article 226](#) of the Constitution of India. (A.B.L. International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd. 2004 (3) S.C.C. 553 & Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd. AIR 2005 SC 3454).

(40). In the present case, there is, as noticed, a failure to provide mechanism and thus the protection of the property of the appellants envisaged under the salutary provisions of the said Act certainly can be enforced under [Article 226](#) of the Constitution of India. We have already noticed above that if there is a legal right to share the property at Chandigarh, which respondent No. 7 seeks to establish, for whatever it is worth, it is for respondent No. 7 to approach the Civil Court & not vice-versa. The right of exclusive possession of a self owned property by a registered document of title can well be enforced under the provisions of the said Act by issuing



appropriate directions in exercise of jurisdiction under [Article 226](#) of the Constitution of India. We have thus once again in no hesitation in coming to the conclusion that there is nothing which prohibits the writ jurisdiction to be exercised in such a case.

CONCLUSION

(41). Now we come to moulding of the appropriate relief to be granted under [Article 226](#) of the Constitution of India given the aforesaid legal position and the facts of the case. We have already observed that the Courts cannot be left helpless to assist the senior citizens whose rights are protected under the said Act because of obdurate and unreasonable stand of the son/respondent No. 7. We thus issue the following directions:-

- i) The Administration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under [Section 32\(1\)](#) of the said Act for the purposes mentioned under sub section (2) of [Section 32](#) more specifically clauses (e) and (f) so as to protect the life and property of senior citizens as envisaged under [Section 22](#) of the said Act. This should include a comprehensive action plan including enforcement mechanism and conferring relevant powers to the District Magistrate or officers subordinate to him as envisaged under sub section (1) of [Section 22](#) of the said Act. Such action may be taken within one month from today.
- ii) Respondent No. 7 and his family members are directed to vacate the property bearing House No. 642, Sector 11-B, Chandigarh to the extent it is occupied by them and the keys be handed over to appellant No.1 within a period



of 15 days from today.

iii) The Senior Superintendent of Police of Union Territory, Chandigarh/respondent No.3 is directed to ensure enforcement of the direction (ii) mentioned above.

iv) If respondent No. 7 wants to establish any legal right or share in the aforesaid house, he is free to file appropriate civil proceedings but without infringing the exclusive rights of the appellants in the interregnum period implying that there would be no interim injunction qua occupation by the civil court as that would be a violation of the provisions of the said Act.

The impugned order of the learned Single Judge dated 17.05.2013 is consequently set-aside to the aforesaid extent.

We part with the feelings of dismay at the attitude of respondent No. 7 despite all efforts by the Committee and the Court but with the hope that at some stage sanity would dawn and he would recognize the contribution made by his father including monetarily towards establishing him in an independent house gifted to him.

The appeal is accordingly allowed with costs quantified at ` 50,000/- in favour of the appellants & against respondent No. 7 to be paid within 15 days.

Note (MINE):-

[It may be noted that the aforesaid judgment, rendered in the case of Justice **Shanti Swarup Diwan** (supra) has not taken into account the Punjab Maintenance & Welfare of Parents & Senior Citizen Rules, 2012, inasmuch as the writ petition, leading to passing of the aforesaid judgment in its appeal i.e.



L.P.A. No. 1007 of 2013, appears to have been filed prior to coming into force of the said Rules, 2012, which were published in the official gazette only on 17.10.2012. In fact, the Punjab action plan had also come into being only in the year, 2014 i.e. after passing of the aforesaid judgment.]

(ii). The judgment, rendered by the learned 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, 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 and 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 paragraph 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.”

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 : (2019) 2 Bom CR 181. 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



a 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.

Note (MINE):-

[The learned Division Bench, in the aforesaid judgment, has categorically dealt with the argument of the writ petitioner to the effect that the Delhi High Court judgments are not applicable to the State of Maharashtra because Special Rules have been framed in Delhi which permit eviction, by holding that the said argument is self-defeating, inasmuch as 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 and the right to order a removal of a claimant exists in the statute itself.]

22. It would now be apt to refer to the law laid down 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 to the effect that the tribunal under the Senior Citizenship 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, and eviction would be an incident of the enforcement of the right to maintenance and protection.

23. At this juncture, it would be apposite to deal with the argument of the learned Senior Counsel for the petitioners to the effect that the Act, 2007 cannot be deployed to override and nullify other protections in law, particularly that of a woman's right to a shared household under Section 17 of the Act, 2007 and for the said proposition, he has relied on a judgment, rendered by the Hon'ble Apex Court in the case of *S. Vanitha* (supra). In this regard, it is seen that the petitioner no. 2 has filed a complaint under the provisions of the Act, 2005, only on 27.4.2022 i.e. not only after passing of the impugned order dated 16.4.2022, but also just before filing of the present writ petition on 24.5.2022, which shows the oblique motive of the petitioner no. 2 and moreover, admittedly, there is no pleading to show that there is any sort of complaint of domestic violence by the petitioner no. 2 qua the petitioner no. 1, inasmuch as the present writ petition has been filed jointly by the petitioners i.e



husband and wife. At this juncture, it would be relevant to refer to the definition of aggrieved person, domestic incident report, domestic relationship, respondent and shared household, as stipulated in the Act, 2005, hereinbelow:-

“2 (a). “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(e). “domestic incident report” means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) “domestic violence” has the same meaning as assigned to it in section 3;

(q). “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

(s). “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved



person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

3. Definition of domestic violence— For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,
—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or



otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic



violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.



(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”

24. The facts of the case, leading to passing of the judgment by the Hon’ble Apex Court in the case of **S. Vanitha** (supra) appear to be different from the facts of the present case, which would be apparent from the relevant paragraphs of the same, which are being reproduced herein below:-



“1. The present dispute arises out of an application filed by the second and third respondents against the appellant, who is their daughter-in-law. The second and third respondents are the parents of the fourth respondent, who is the estranged spouse of the appellant. The second and third respondents filed an application under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (“the Senior Citizens Act, 2007”), and inter alia, sought the appellant and her daughter's eviction from a residential house in North Bengaluru (“the suit premises”).

2. The Assistant Commissioner, and the Deputy Commissioner in appeal, allowed the application under the Senior Citizens Act, 2007 and directed the appellant to vacate the suit premises. Aggrieved by this order, the appellant unsuccessfully pursued a writ proceeding under Article 226 of the Constitution before a Single Judge, and in appeal before a Division Bench of the High Court of Karnataka. The Division Bench by its judgment dated 17-9-2019 held that the suit premises belonged to the mother-in-law (the second respondent) of the appellant and the remedy of the appellant for maintenance and shelter lies only against her estranged husband (the fourth respondent). The Division Bench upheld the order of the Deputy Commissioner, and directed the appellant to vacate the suit premises before 31-12-2019. Challenging the jurisdiction of the authorities to decree her eviction under the Senior Citizens Act, 2007, the appellant has moved this Court under Article 136 of the Constitution.

3. The appellant and the fourth respondent were married on 30-5-2002. Soon thereafter, a matrimonial dispute arose between the parties. The appellant alleges that she was harassed for dowry and even compelled to institute a suit for partition against her father in 2003 which she later withdrew, after her



spouse allegedly deserted her to be in a relationship with another woman. The subject-matter of the controversy is a residential house situated at Gangondonahalli, Dasanapura, Hobli, Bengaluru North Taluk. The land was purchased by the fourth respondent on 2-5-2002, a few months before the appellant married him. The appellant alleges that her father had financed a portion of this purchase.

4. On 5-10-2006, the fourth respondent sold the land to his father, the third respondent. The transaction of sale between the father and the son was for the same consideration of Rs 1.19 lakhs, as was paid by the fourth respondent for the original purchase of the property in 2002. By then, the appellant and the fourth respondent had a daughter. In 2009, the fourth respondent instituted a petition for divorce under Sections 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 before the Senior Civil Judge and Judicial Magistrate, First Class, Nelamangala (“the trial Judge”). The third respondent, following the purchase of the property and after constructing a house, gifted it to his spouse, the second respondent, on 19-7-2010. Soon thereafter, on 17-8-2010, the second respondent instituted a suit against the appellant before the JMFC, Nelamangala seeking a permanent injunction restraining the appellant from interfering with the possession of the suit property. The suit is pending. On 5-12-2013, the petition for divorce was allowed by the trial Judge and the marriage between the appellant and the fourth respondent was dissolved. On 19-3-2014, the appellant instituted a proceeding for maintenance. She also filed an appeal before the High Court of Karnataka against the dissolution of her marriage by the trial Judge. The proceedings for divorce and maintenance are also pending.

5. In 2015, the third and fourth respondents invoked the provisions of the Senior Citizens Act, 2007 by instituting an application before the Assistant



Commissioner, Bengaluru North Sub-Division. Their son (the fourth respondent) and the appellant were impleaded as respondents to the petition [Petition No. 31 of 2015.]. The reliefs sought were:

- (i) Eviction of the appellant from the suit premises where she was residing;
- (ii) A direction to the fourth respondent to pay an amount of Rs 15,000 to the parents by way of monthly maintenance; and
- (iii) A direction to the appellant and fourth respondent to pay an amount quantified at Rs 25,000 towards legal expenses.

6. The appellant filed an objection to the petition filed under the Senior Citizens Act, 2007, alleging it to be a malicious proceeding that was instituted with the sole intent to evict her from the suit premises. The appellant also claimed that the proceedings were collusive in nature and an attempt by the second and third respondents and her estranged spouse (the fourth respondent) to evict her from her matrimonial home. The appellant specifically raised an objection to the jurisdiction of the authorities to entertain the proceedings seeking her eviction from the premises. She submitted that while the Senior Citizens Act, 2007 provides for the maintenance of a senior citizen or a parent, there is no provision envisaging an order of eviction, and that the authorities had no jurisdiction to direct her removal from the premises.

7. The Assistant Commissioner by an order dated 25-6-2015, held that the residential house was the self-acquired property of the third respondent which he subsequently gifted to the second respondent. The appellant was residing in the property, but was held to have no right or authority. The appellant's plea for maintenance could (in the view of the Assistant Commissioner) only be raised against the fourth respondent. Therefore, the Assistant Commissioner



allowed the petition by directing: (i) the fourth respondent to pay a monthly maintenance of Rs 10,000 to his parents; and (ii) the appellant to vacate the premises.

8. The appeal filed by the appellant under Section 28 of the Hindu Marriage Act, 1955 against the decree for dissolution of marriage, was allowed by a Division Bench of the Karnataka High Court on 14-1-2016. The High Court set aside the order of the trial court and remanded the proceedings to the jurisdictional Family Court, for passing fresh orders after hearing the parties. During the pendency of the appeal, the fourth respondent entered into a marriage with another woman. On remand, the proceedings for divorce and the application for maintenance are pending disposal.

9. On 29-2-2016, the Deputy Commissioner, acting as the appellate authority under the Senior Citizens Act, 2007, dismissed the appeal filed by the appellant as well as a companion appeal by the fourth respondent against the order of the Assistant Commissioner. The order requiring the appellant to vacate the suit premises was thereby confirmed.

10. The appellant challenged the order passed by the Deputy Commissioner in proceedings under Article 226 of the Constitution. The Single Judge of the Karnataka High Court, by a judgment dated 18-6-2019, held that the suit premises have been transferred by the third respondent to his wife, the second respondent by a registered gift deed dated 19-7-2010. The Single Judge noted the contention of the second and third respondents that following a matrimonial dispute, their son (the fourth respondent) had left the house after which the appellant had ousted them on 12-8-2010 and they are currently living in their “native place”. In light of the fact that the marriage between the appellant and fourth respondent had been



dissolved by the trial Judge, the Single Judge held that the appellant had no right over the suit premises and her claim for maintenance could only be asserted against the fourth respondent. Though, the appellant has specifically questioned the jurisdiction of the authorities under the Senior Citizens Act, 2007 to order her eviction, the Single Judge did not address the submission.

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 adverting 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.

35. In the present case, Section 36 of the PWDV Act, 2005, albeit not in the nature of a non obstante clause, has to be construed harmoniously with the non obstante clause in Section 3 of the Senior Citizens Act, 2007 that operates in a separate field.

38. 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 overriding 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 the Senior Citizens Act, 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to override 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 be 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 realised. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realisation.

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.

25. A bare perusal of paragraphs no. 25 and 39 of the aforesaid judgment, rendered in the case of *S. Vanitha* (supra) would show that first of all, there was strained relationship in between the husband and wife, the wife had complained of being subjected to act of domestic violence by the husband, divorce proceedings had been instituted, apart from institution of maintenance case and the husband was the original owner of the property in question, which he had purchased prior to marriage, however, had sold it after a few years by a registered



sale deed to his father, who in turn gifted the same to his spouse, after divorce proceedings were instituted by the wife, however, the present case is not a case which, by any stretch of imagination would fall within the purview of the Domestic Violence Act, 2005, inasmuch as neither there is strained relationship in between the petitioners nor there is any complaint of the petitioner no. 1 having subjected the petitioner no. 2 to any act of domestic violence nor the petitioner no. 1 had ever owned the property in question, either before marriage or after the marriage, hence, the property in question would not fall within the ambit of the definition of “shared household” as defined under Section 2(s) of the Act, 2005, thus, the facts and circumstances of the present case are clearly distinguishable. On similar analogy, the judgment, referred to by the learned Senior Counsel for the petitioners, rendered by the Hon’ble High Court of Punjab and Haryana at Chandigarh in the case of ***Major Harmohinder Singh*** (supra) is also distinguishable, inasmuch as the dispute in the said case was in between the appellant, a senior citizen and his divorced wife and sons, which would be apparent from the relevant paragraphs of the judgment dated 14.10.2014, rendered by the learned Division Bench of the Hon’ble Punjab and Haryana High Court in L.P.A. No. 1588 of



2014, which are reproduced hereinbelow:-

“The appellant, a senior citizen, has filed the present intra court appeal under Clause X of the Letters Patent against the order dated 12.08.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 24392 of 2013) filed by the appellant seeking direction to the State of Punjab (respondents No. 1 and 2) to implement the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as ‘the Act of 2007’) by creating authorities under Section 22 of the Act of 2007 for protection of life and property of the senior citizens, has been dismissed.

In the instant case, while noticing the peculiar facts and circumstances of the case as well as the fact that the State of Punjab has already framed the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012, notified on 17.10.2012 (hereinafter referred to as ‘the Rules of 2012’), the learned Single Judge has declined to issue any further direction, in exercise of the writ jurisdiction of this Court. It has been noticed by the learned Single Judge, which is an undisputed position, that the appellant wants eviction of his divorced wife (respondent No. 4) and sons (respondents No. 5 and 6), residing in the house owned by him. In this regard, a civil suit filed by the appellant seeking eviction of his divorced wife and sons is already pending in the court of Civil Judge at Mohali. In the said suit, the divorced wife and sons of the appellant have also filed counter claim, claiming their legitimate right to reside in the house. It has also been noticed by the learned Single Judge that the whole object of the appellant is to eject his divorced wife and sons from the house and for that purpose, he wants that the District Magistrate be empowered and a mechanism be created to evict them by following the summary procedure. But since



the aforesaid civil suit filed by the appellant is pending, the civil court will decide the respective rights of both the parties in the said suit. Without expressing any thing on merits, as a reminder, while referring to a decision of the Hon'ble Supreme Court in B.P. Achala Anand v. S. Appi Reddy, AIR 2005 SC 986, the learned Single Judge has observed that a wife includes divorced wife. It has been further observed that as per the decision of Hon'ble Supreme Court in Rajesh Burmann v. Mutul Chatterjee, AIR 2009 SC 651, a divorced wife is to be protected against her husband by providing for maintenance including a right to residence. While noticing all these facts, keeping in view the facts and circumstances of the instant case, the learned Single Judge has declined to issue the direction sought by the appellant.

In the facts and circumstances of the instant case, we are not in agreement with the aforesaid contention. We have gone through the Rules of 2012, framed by the Punjab Government, under sub-sections (1) and (2) of Section 32 of the Act of 2007. In our opinion, these Rules are comprehensive Rules, which deal with the object of the Act of 2007 and give sufficient mechanism to take care of the maintenance of senior citizens and protect their life and property. Not only a Tribunal has been constituted, but an Appellate Authority has been provided to hear grouses of the senior citizens with regard to their maintenance, including protection of their life and property. A complete mechanism in this regard has been provided. Under Rule 22 of the Rules of 2012, the District Magistrate has to ensure that life and property of senior citizens of the district are protected. The District Magistrate has ample power under the Cr.P.C., to protect a person, who is in possession of a property. If a person, who is in settled possession of a property, has been illegally dispossessed, the District Magistrate has ample power under the Cr.P.C., to



protect possession of such person. But the District Magistrate, in our opinion, cannot be empowered to evict a person, who is in possession of a property for a long time. Such person can be dispossessed by following due process of law. If the District Magistrate is permitted to summarily evict such person, it will cause great injustice to the person, who is in settled possession. He may be in possession under some right. In the present case, the appellant has already taken recourse to the civil court. His suit for eviction against his divorced wife and sons is pending. As noticed by the learned Single Judge, a divorced wife has a right of maintenance and right of residence. The divorced wife and sons of the appellants are seriously contesting the claim of the appellant before the civil court. The Ld. Single Judge has rightly observed that a divorced wife cannot be turned out of the house by the husband, because she has protection under the Protection of Women against Domestic Violence Act, 2005 (hereinafter referred to as 'the Act of 2005'). Therefore, the provisions of the Act of 2007 and the Act of 2005 cannot be used for cross purposes, one annihilating the other. Thus, we do not find any wrong in the observation made by the learned Single Judge that the decision of this court in Justice Shanti Sarup Dewan's case (supra) is a decision given in the peculiar circumstances, which do not exist in the present case. In our opinion, in the facts and circumstances of the instant case, the direction sought by the appellant has rightly been declined by the Ld. Single Judge. The appellant, at present, is pursuing his cause before the civil court. The proceedings of the civil suit pending between the parties should be expedited. We grant liberty to the appellant to move an appropriate application before the civil court praying for expedite disposal of his suit. If any such application is filed, we hope that civil court will take care of the same and shall decide the



said suit expeditiously, so that justice is done to both the parties.

In view of the above, we do not find any ground to interfere with the order passed by Ld. Single Judge.

No merit. Dismissed.”

26. This Court would now dwell upon the law laid down by various High Courts in a catena of Judgments by referring to them herein below:-

(i) Judgment dated 18.10.2012, passed by the Hon’ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 13954 of 2012 (Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania), paragraph nos. 7 to 18 whereof is reproduced herein below:-

“7. On examination of the record it appears that after the application was presented, the statements were recorded in accordance with the provisions contained under the Act. From the statement of original applicant i.e. present respondent recorded by the Authority it emerges that the original applicant is a retired Senior Citizen & receiving Rs.15,000/- towards pension. It also emerges from the record that the applicant has six children who are staying in different towns/cities and are engaged in their own separate business/service. The applicant does not receive any financial assistance or any help from his children. The original applicant also claimed and asserted that the opponent i.e. present petitioner is occupying one room of the house owned by the applicant i.e. present respondent and that though the petitioner stays with him in the same house but does not take any care of his father i.e. present respondent. It also emerges from



the record that the respondent had time and again asked the petitioner i.e. original opponent to vacate the premises occupied by the petitioner.

7.1. The statement of present petitioner i.e. original opponent was also recorded who, in his statement, admitted that the premises in question is in ownership of the applicant i.e. present respondent. The petitioner also claimed that for long time his brothers were also staying in the said premises and they all were staying in a joint family. However, with passage of time, other brothers moved out of the premises for reasons of their business/service.

8. On consideration of the impugned orders it emerges that the contentions which are sought to be raised by the learned counsel for the petitioner in present petition were not raised by the petitioner i.e. original opponent in his reply before the first adjudicating authority or even the Appellate Authority. Therefore, the petitioner cannot be allowed to raise fresh/new contention for first time in writ petition and any question of considering the said contention at this stage does not arise.

8.1. The orders in question can be examined in light of the material which was before the authority at the relevant time and in light of the objections which might have been raised before the authority and the material which was not on record before the authority and/or the contentions which were not raised, cannot be taken into account for and while examining order passed by first adjudicating authority.

9. In present case, the orders in question cannot be examined, much less faulted on the contentions which are now sought to be raised but were not raised before the first adjudicating authority.

9.1. The impugned orders cannot be faulted also on the ground that the contentions which were not even raised before the authorities have not been considered



by the authority.

10. In view of the fact that there are two concurrent orders against present petitioner, this Court is not inclined to entertain the petition.

10.1. Besides this, in view of the submissions made by learned counsel for petitioner that he is ready to vacate part of the premises in question and handover the possession to present respondent, the other aspects raised by the petitioner in present petition are not required to be examined further.

10.2. However since the Ld. counsel for the petitioner also claimed that the impugned orders are without any jurisdiction & the orders are non-speaking orders, the Court has examined other aspects as well.

11. On one hand, it is not in dispute in present case that the petitioner holds possession of part of the premises in question and he occupies the said part of the premises. On the other hand, it is not the case of the petitioner that he is tenant of the respondent and/or that he is paying rent to the respondent –father and/or that provisions contained under the Rent Act are applicable. The petitioner has not claimed right of, or protection as statutory tenant.

11.1. The respondent claimed before the authority that the petitioner is occupying and is in possession of his property. Therefore in light of the provision under Section 23 read with Sections 4, 2(b), 2(f) of the Act it cannot be said that the impugned orders are without jurisdiction, more particularly when the petitioner has not claimed that he is statutory tenant.

12. It emerges from the statement of objects and reasons that the Legislature has, by enacting the Act, addressed the need arising from the unfortunate plight which many elderly persons and senior citizens have to suffer on account of declining joint family system and rise of micro families as well as on account of



economic compulsion of the family where man and wife have to work full time.

12.1. The Legislature has noted that “.....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 lack of physical and financial support.....and there is need to give more attention to the care and protection of older persons.....”.

12.2. While explaining the object behind the enactment of the Act, the Legislature has clarified that, “the Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives.....” The Legislature has also emphasized in the statement of objects and reasons, that, “The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.....”

12.3. Therefore, the provisions under the Act, including the provisions under Section 23 of the Act have to be examined and interpreted in light of the object of the Act and so as to advance the object of the Act. The Act aims at providing protection, inter alia, to the life and property of elderly persons and also to provide for better medical facilities and to ensure physical and financial support.

12.4. The term “maintenance” is defined, under Section 2(b) and it includes provision for food, clothing, residence and medical attendance and treatment.

12.5. The Legislature has consciously defined the said term so that the said expression “maintenance” and/or the terms “medicine” or “medical facility” are not



understood or interpreted in narrow sense but are given wider scope. The term “maintenance” is defined so as to include not only food, clothing or residence or medicine but also medical treatment as well as attendance.

12.6. Likewise, while defining the term “property” the Legislature has, under Section 2(f), provided that the term “property” means property of “any kind” and that the said term includes “rights or interests in such property”. Therefore, when any issue as regards “maintenance” of parents and/or senior citizen arises it must be construed keeping in focus the object of the Act and intention of the Legislature viz. it aims at providing better medical facilities (including attendance and treatment), protection of their life and property, to protect them from emotional neglect and lack of physical and financial support and to set-up proper mechanism to ensure that the said objects are achieved by simple, inexpensive and speedy system.

12.7. After assigning wider meaning and scope to the terms like “maintenance”, “parent”, “property”, the Act, through Section 4, provides, inter alia, that senior citizen or parent/parents who is unable to maintain himself from “his own earning” or is unable to maintain himself “out of the property owned by him” will be entitled to make an application under Section 5 against one or more of his children (who are not minor) or even against a relative (in case of child-less senior citizen). Section 4 of the Act further prescribes that the obligation of the children or the relative to maintain parent or senior citizen extends to needs of such citizen so that he may lead a normal life. Thus, the right to claim maintenance under the Act is not restricted against biological or adopted children/grandchildren but it is also extended, in specified cases, against relative/s as well. Moreover, the obligation is not restricted to provide bare minimum maintenance but the Act imposes obligation to



provide all “needs of such citizen so that they may live a normal life”, and to also provide food, clothings, residence, medical attendance and treatment. The expression “normal life” carries widest possible meaning & scope and implies at least similar standard and quality of life which he enjoyed earlier.

12.8. When a parent or a senior citizen is not able to maintain himself from his own earning or out of his property, he can make an application under Section 5 of the Act to claim maintenance. While, the term “property” is defined under the Act, the expression or the term “earning” is not defined under the Act. The term “property” includes not only movable, immovable, tangible or intangible property but also includes right or interest in such property.

12.9. Thus, while construing the provisions under the Act, more particularly the provisions under Section 5, Section 9, Section 10, Section 12, Section 20, Section 23 and Section 24, the said provisions are required to be construed and given effect so as to ensure that the children or relative provides maintenance to such senior citizen as contemplated by the Act.

12.10. Sub Section (4) of Section 4 also prescribes that any person who is in “possession” of the property of such senior citizen or any person who would inherit the property of such senior citizen shall maintain such senior citizen.

12.11. The key-word in the provision is “in possession of the property”. Hence, if children or relative who is/are “in possession” of property (as defined under Section 2(f) which includes rights or interests in such property) of a senior citizen or if the children or relative are going to inherit property (rights or interests in such property) then such children or relative are statutorily obliged to maintain the parent/senior citizen and provide for his/their food, clothing, residence, medical attendance and treatment



and their needs so that they can lead a normal life.

13. In present case, the petitioner - son of the respondent, is, undisputedly, “in possession” of property of the respondent.

14. It, however, appears that respondent’s children are not taking sufficient care and are not providing proper and sufficient maintenance for the respondent and that therefore so as to maintain himself the respondent needs sufficient earning/income whereby he can maintain himself and provide for his own food, clothing, medical attendance and treatment, etc. Therefore, the respondent asked the petitioner to handover the possession of the part of the premises (property) wherein the petitioner is staying with his wife. However, the petitioner declined to handover the possession of the part of the premises which is in his possession. In view of such conduct and action of the petitioner the respondent was compelled to file the application wherein the authority passed the impugned order. It appears that in his application the respondent requested the authority to take appropriate measures as per Section 23 so as to get the possession of the part of the premises. The petitioner opposed the application and has now challenged the impugned orders on the ground that the same are beyond the scope and purview of Section 23. Emphasis is placed on the expression “transfer of property” in the said provision. It is claimed that the respondent has not transferred the property in his favour and therefore the provision would not be applicable and could not have been invoked.

14.1. However, the petitioner conveniently overlooks the provision under Section 4 of the Act. Sub Section (1) of Section 23 provides, inter alia, that where a senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide basic amenities and



physical needs to the transferor then the transfer may be declared void if the transferee refuses or fails to provide such amenities. Sub Section (2) of Section 23 provides, inter alia, that where a senior citizen has right to receive maintenance out of an estate which is transferred, the right to receive maintenance may be enforced against the transferee provided that the transfer is not made for “consideration”.

14.2. As mentioned above, it is not in dispute that the petitioner is in possession and occupation of part of the property/premises.

14.3. It is also not in dispute that the petitioner is “in possession of property” without consideration.

14.4. It also does not appear to be in dispute that as an elder son of the respondent the petitioner also would inherit right/interest in the property.

15. The question which, therefore, arises is whether the term “transfer” in Section 23 of the Act should be construed so as to mean only actual transfer of ownership and title or the said expression should be construed, having regard to the object of the Act and the provisions under Section 2(b), 2(d), 2(f), 2(h) and Section 4, so as to also include possession of the property as well.

15.1. It is noticed earlier that Sub Section (4) of Section 4 provides, inter alia, that any person who would inherit the property (which includes right or interest in such property) and is “in possession of property” shall maintain such senior citizen which includes the needs of such senior citizen to lead normal life.

15.2. Having regard to the object of the Act and the intention of the legislature, there is no reason or justification or indication to restrict the meaning and scope of the term “transfer” so as to mean only “actual transfer of title and ownership” and to exclude



“possession of property” from the purview of Section 23 and/or from the term “transfer” employed in Section 23 of the Act.

15.3. There is no provision in the Act to suggest or to indicate that the said term carries very narrow, and literal meaning so as to mean only actual transfer of title and ownership and the concept of possession, which is recognized by the Act – particularly under Section 4 of the Act, has to be kept out.

15.4. On overall consideration and having regard to the provision under Sections 2(b), 2(d), 2(f), 4 and the object of the Act, the said term should receive wider meaning so as to include possession/occupation of property, as well. The said concept is already recognised, accepted and internalised by the Act vide Section 4 of the Act.

15.5. It is not in dispute that the property is in name of the respondent and he has the right to receive maintenance i.e. income/earning from the said property.

15.6. In view of the said provisions, the term “transfer of property” should receive wide and liberal construction so as to include an act of allowing possession and/or occupation of premises or part of the premises provided, of course, the possession is not allowed for consideration (including rent).

15.7. Sub Section (2) of Section 23 contemplates a situation where the transferor has right to receive maintenance from such property then such transferor can enforce the right to receive maintenance from the transferee.

15.8. For the purpose of the said provision the transferee would mean person who is allowed possession and/or occupation of the premises/property or part of the premises/property from which the transferor i.e. the owner of the premises/property can,



otherwise, receive income/earning i.e. maintenance.

15.9. The provisions under Section 23 of the Act cannot be, and need not be, read in isolation or by divorcing the said provision from other provisions, particularly Section 4 of the Act read with Section 2(b), 2(f), 2(g) & 2(h) of the Act.

16. It emerges from the record that the respondent needs the property to maintain himself since the petitioner, the respondent's son, does not seem to be taking sufficient and proper care of the respondent. It emerges that the respondent needs to generate earning/income (e.g. rent) from the said part of premises i.e. to receive maintenance from the said part of premises so as to maintain himself. He, therefore, asked the petitioner to handover the possession of the property in view of petitioner's failure or refusal to properly maintain him. However, the petitioner seems to have declined to handover the possession of the part of the property which compelled the respondent to prefer the application before the authority constituted under the Act. The competent authorities have, after considering the relevant facts, directed the petitioner to handover the possession of the part of the property/premises which is in his possession.

17. In view of the foregoing discussion and the scope and purview of the provisions under Section 23 read with Section 4 of the Act and having regard to the object of the Act, the impugned orders and the direction to handover the possession of the property to the respondent cannot be said to be without jurisdiction or beyond the scope of Section 23 read with Sections 4, 2(b), 2(d) and 2(f) of the Act. The impugned direction, therefore, cannot be faulted.

18. On overall consideration of the matter this Court is not inclined to accept and entertain the petition and to interfere with the order and in light of the stipulations by learned counsel for petitioner, the



Court does not consider it necessary to set aside the impugned orders.”

(ii) Judgment, rendered by the learned Single Judge of the Hon’ble High Court of Delhi at New Delhi in the case of Sunny Paul & Anr. vs. State NCT of Delhi & Ors., reported in 2017 SCC online Delhi 7451 (This Judgment has been upheld by the Ld. Division Bench of the Hon’ble High Court of Delhi at New Delhi in L.P.A. No. 205 of 2017, reported in 2018 SCC Online Del 11640), paragraphs no. 20, 28, 41, 51, 65, 67, 68 and 71 whereof are reproduced herein below:-

“20. Consequently, Mr. Saharya submitted that an order of eviction could not be passed under the Act, 2007 in the present case as the conditions precedent in Section 23 of the Act, 2007 were not satisfied. In support of his submission, he relied upon the judgment of the Punjab & Haryana High Court in *Harvinder Kaur Bawa v. The Appellate Tribunal, Panchkula*, CWP No. 17482/2015, decided on 17th October, 2016.

28. Ms. Manmeet Arora, learned amicus curiae submitted that the High Courts of Punjab and Haryana and Gujarat had specifically upheld the power of the Maintenance Tribunal to pass eviction orders in exercise of its jurisdiction under Section 23 of the Act, 2007. She fairly stated that a contrary view had been expressed by the High Court of Kerala in *C.K. Vasu v. The Circle Inspector of Police*, WP(C) 20850 of 2011, decided on 25th May, 2012 and by this Court in the case of *Sanjay Walia v. Sneha Walia* (supra). The learned Amicus Curiae referred to a large number of judgments dealing with various issues raised by the parties. The relevant portion of the judgments cited by her is reproduced herein below:—



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C. In *Harvinder Kaur Bawa* (supra), the High Court of Punjab and Haryana has held as under:—

“.....Section 32 of the Act empowers the State Government to make rules and in pursuance thereto, the States of Punjab and Haryana and Union Territory, Chandigarh have framed their respective Rules, namely, the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as the “Punjab Rules”), the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 ((hereinafter referred to as the “Haryana Rules”) and the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 ((hereinafter referred to as the “Chandigarh Rules”). The action plan has also been provided under Section 22(2) of the Act read with Rule 22 of the Punjab Rules, 24 of the Haryana Rules and Rule 20 of the Chandigarh Rules. Accordingly, the States of Punjab, Haryana and the Union Territory, Chandigarh have notified their respective action plan(s) in respect of maintenance, welfare and protection of life and property of the parents and senior citizens.

Since the property in question is in the State of Haryana, therefore, it would be apt to refer to the action plan of the State of Haryana. Section 22(2) of the Act categorically provides for the State Government to provide a comprehensive action plan for protection of life and property of the senior citizens. Thus, the action plan notified by the State of



Haryana is divided into two parts, in which duties/authorities have been assigned to both the District Administration headed by the Deputy Commissioner and the Police Administration headed by the Senior Superintendent of Police. The Deputy Commissioner/District Magistrate has been given powers for passing of an order of eviction from the property/residential building belonging to/occupied by the senior citizens/parents.....

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It would be pertinent to mention that there is no reference of any Tribunal in the procedure provided in the action plan notified in terms of Section 22(2) of the Act. The entire exercise has to be conducted by the District Magistrate on the basis of a report of the SDM. On the contrary, in order to decide an application filed under Section 23(1) of the Act, the order has to be passed by the Tribunal. Section 23(1) of the Act is reproduced 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.

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This provision, on dissection, lays down various parameters to be satisfied (i) the person who has filed the application must be a senior citizen; (ii) he or she must have transferred his property after commencement of the Act i.e. after 29.12.2007; (iii) the transfer of the property may be by way of gift or otherwise; (iv) the transfer shall be subject to the condition that a transferee shall provide the basic amenities and basic physical needs to the transferor; and (v) the transferee has to refuse or fail to provide such amenities or physical needs to the transferor.....

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Reverting back to the facts of this case, the application has been filed by the petitioner under Section 23(1) of the Act. In my considered opinion, the said application can only be filed in order to avoid a document by which title of the property has been transferred, without filing a suit for declaration in the Civil Court. All that has to be proved by the senior citizen/parent is that he/she had transferred the title of the property to the other party with a condition that the said party shall provide basic amenities and basic physical needs and has to prove that the said party has refused or failed to provide such amenities and physical needs. The parent/senior citizen is also required to prove that the said transfer of the property has been made after commencement of the Act, meaning thereby any transfer of the property



prior to the commencement of this Act cannot be avoided by filing an application under Section 23(1) of the Act. The Tribunal, as constituted under Section 7 of the Act, has to follow a summary procedure and may declare that the transfer by the senior citizen/parent in favour of the other party was either an act of fraud or coercion or undue influence.

Thus, in view of the aforesaid facts and circumstances, the application filed by the petitioner under Section 23(1) of the Act has rightly been dismissed as she was required to file an application under Section 22(2) of the Act much-less under the action plan in which an altogether different procedure is to be followed.

(emphasis supplied)

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F. In *Nasir* (supra), this Court has held as under:—

“4. The counsel for the petitioner argues that a Maintenance Tribunal constituted under the Senior Citizens Act supra is only entitled to pass an order of maintenance in favour of the senior citizens and is not entitled to issue any such directions as have been issued in the present case. Reliance in this regard is placed on the judgment of the Single Judge of this Court in Sanjay Walia v. Sneha Walia 204 (2013) DLT 618 to the extent laying down that the power and jurisdiction of the Maintenance Tribunal is restricted to grant of maintenance at the rate not exceeding Rs. 10,000/- per month and that the Tribunal has not been bestowed by the Legislature with the power to



direct handing over the possession of a property to the applicant before it, as had been done in that case.

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6. Section 9 of the Act, on which reliance was placed in the aforesaid judgment, is to be found in Chapter II of the said Act titled "Maintenance of Parents and Senior Citizens". Else, the Preamble of the Act describes the same as an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The statement of Objects and Reasons of the said Act is also to the effect that in the changing times, a number of elderly are not being looked after by their family and ageing has become a challenge and there is a need to give more attention to the care and protection of older persons and to cast an obligation on the persons who inherit the property of their aged relatives, to maintain such aged relatives. Section 3 of the Act gives it an overriding effect over any other enactment or instrument. Section 4 (in Chapter II) titled "Maintenance of Parents and Senior Citizens" in sub-section (2) thereof provides that the obligation of children to maintain a senior citizen extends to the needs of such citizen so that the senior citizen may lead a normal life. Normal life would certainly include a right to peacefully live in one's own property and being not prevented from use thereof and recovering W.P.(C) No. 9717/2015 Page 4 of 10 rent thereof, regarding which directions have been issued in the impugned order.



8. The judgment on which the counsel for the petitioner relies, has confined itself to an interpretation of Section 9 of the Act and did not have the occasion to consider the other provisions of the Act, particularly Chapter V. the same thus does not bind me in interpretation of provisions under Chapter V.

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11. Once it is found that it is the mother of the petitioner who is the owner of the subject property, no error can be found with the directions issued by the Maintenance Tribunal restraining the petitioner from interfering with his mother occupying the first floor of the property and/or from recovering the rental income of the other two floors of the property and further directing the petitioner to maintain peace in the house and not to disturb his aged mother. If in such a situation also, it is said that the respondent should have been relegated by the Maintenance Tribunal to the Civil Court, the same, in my view, would have been in negation of the very purpose of setting up of such Tribunals. While interpreting the provisions, the object of the Act has to be W.P. (C) No. 9717/2015 Page 6 of 10 kept in mind. The object is to provide simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The provisions have to be liberally construed as the primary object is to give social justice to parents and senior citizens. The Supreme Court in Board of Muslim Wakfs, Rajasthan v. Radha Kishan (1979) 2 SCC 468 held that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances



the remedy intended by the statute should be accepted.

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15. There is another reason which prevails with me. Though the State Governments under Section 22(1) & (2) of the Act are required to prescribe comprehensive action plan for providing protection of life and property of senior citizens but the Government of National Capital Territory of Delhi does not appear to have done so till now. It is found that Governments of certain other States have made Rules in exercise of the said power for protection of the property of the senior citizens. The Government having failed in its duty, this Court in exercise of powers under Article 226 of the Constitution of India, would not undo what the Maintenance Tribunal has done and which would have been beyond the pale of controversy, had the GNCTD framed the Rules, as was expected by it.”

(emphasis supplied)

G. In *Jayantram Vallbhdas Meswania v. Vallabhdas Govindram Meswania*, AIR 2013 Guj 160, it has been held as under:—

“14. The question which, therefore, arises is whether the term “transfer” in Section 23 of the Act should be construed so as to mean only actual transfer of ownership and title or the said expression should be construed, having regard to the object of the Act and the provisions under Sections 2(b), 2(d), 2(f), 2(h) and Section 4, so as to also include possession of the property as well.

14.1 It is noticed earlier that sub-section (4)



of Section 4 provides, inter alia, that any person who would inherit the property (which includes right or interest in such property) and is “in possession of property” shall maintain such senior citizen which includes the needs of such senior citizen to lead normal life.

14.2 Having regard to the object of the Act and the intention of the legislature, there is no reason or justification or indication to restrict the meaning and scope of the term “transfer” so as to mean only “actual transfer of title and ownership” and to exclude “possession of property” from the purview of Section 23 and/or from the term “transfer” employed in Section 23 of the Act.

14.3. There is no provision in the Act to suggest or to indicate that the said term carries very narrow, and literal meaning so as to mean only actual transfer of title and ownership and the concept of possession, which is recognized by the Act - particularly under Section 4 of the Act, has to be kept out.

14.4. On overall consideration and having regard to the provision under Sections 2(b), 2(d), 2(f), 4 and the object of the Act, the said term should receive wider meaning so as to include possession/occupation of property, as well. The said concept is already recognised, accepted and internalised by the Act vide Section 4 of the Act.

14.5 It is not in dispute that the property is in name of the respondent and he has the right to receive maintenance i.e. income/earning from the said property.

14.6 In view of the said provisions, the term “transfer of property” should receive wide



and liberal construction so as to include an act of allowing possession and/or occupation of premises or part of the premises provided, of course, the possession is not allowed for consideration (including rent).

14.7 Sub-Section (2) of Section 23 contemplates a situation where the transferor has right to receive maintenance from such property then such transferor can enforce the right to receive maintenance from the transferee.

14.8 For the purpose of the said provision the transferee would mean person who is allowed possession and/or occupation of the premises/property or part of the premises/property from which the transferor i.e. the; owner of the premises/property can, otherwise, receive income/earning i.e. maintenance.

14.9 The provisions under Section 23 of the Act cannot be, and need not be, read in isolation or by divorcing the said provision from other provisions, particularly Section 4 of the Act read with Sections 2(b), 2(f), 2(g) & 2(h) of the Act.

15. It emerges from the record that the respondent needs the property to maintain himself since the petitioner, the respondent's son, does not seem to be taking sufficient and proper care of the respondent. It emerges that the respondent needs to generate earning/income (e.g. rent) from the said part of premises i.e. to receive maintenance from the said part of premises so as to maintain himself. He, therefore, asked the petitioner' to handover the possession of the property in view of petitioner's failure or refusal to properly maintain him. However, the



petitioner seems to have declined to handover the possession of the part of the property which compelled the respondent to prefer the application before the authority constituted under the Act. The competent authorities have, after considering the relevant facts, directed the petitioner to handover the possession of the part of the property/premises which is in his possession.

16. In view of the foregoing discussion and the scope and purview of the provisions under Section 23 read with Section 4 of the Act and having regard to the object of the Act, the impugned orders and the direction to handover the possession of the property to the respondent cannot be said to be without jurisdiction or beyond the scope of Section 23 read with Sections 4, 2(b), 2(d) and 2(f) of the Act. The impugned direction, therefore, cannot be faulted.

17. On overall consideration of the matter this Court is not inclined to accept and entertain the petition and to interfere with the order and in light of the stipulations by learned counsel for petitioner, the Court does not consider it necessary to set aside the impugned orders.

18. Time as requested for by learned counsel for the petitioner is granted. It will be open to the petitioner to continue to be in occupation in part of the premises in question until 31.12.2012 and thereafter the petitioner shall vacate the premises in question and handover the possession to the respondent without any delay. With the aforesaid clarification and directions, the petition stands disposed of.”

(emphasis supplied)



H. In *Promil Tomar v. State of Haryana*, (2014) 175 (1) PLR 94, the Punjab and Haryana High Court has held as under:—

.....Learned counsel for the petitioners has argued that the Maintenance Tribunal, Panchkula, had no jurisdiction or power to interfere in the application under Section 23 of the Maintenance Act regarding the properties which were not received/inherited by the petitioners from respondent No. 5 in terms of Section 23 of the Maintenance Act. The Tribunal has no power, authority or jurisdiction to order eviction of petitioners from House No. 174, Sector 6, Panchkula, or to order execution as such jurisdiction vests only with Civil Court. Respondent No. 3 has entertained the execution application filed by respondent No. 5 and has wrongly issued warrants of possession through police for vacation of the portion of House No. 174, Sector 6, Panchkula. Bias has been alleged against respondent No. 4 who is member of the Maintenance Tribunal on the ground that he is also a witness to testamentary documents executed by respondent No. 5 i.e. Will as such he should have recluse himself from the hearing. The malafide has been alleged against respondent No. 5 by petitioner No. 1, his daughter-in-law, claiming that as she did not submit to the lust of respondent No. 5, she has been termed as a characterless lady.

The main contention of learned counsel for the petitioners is that the properties which are subject matter of the application under Section 23 of the Maintenance Act are absolutely out of the purview of the Maintenance Act and that the Maintenance



Tribunal had no jurisdiction to entertain the application filed by respondent No. 5. The application filed is based upon misconceived presumption that he had purchased the properties and latter transferred them in the name of petitioners or that the petitioners failed to serve him as such the application under Section 23 of the Maintenance Act was maintainable.

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In R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628, the Apex Court observed that a statute is to be construed to the intent of them that make it. This principle has been, with approval and consistently reiterated by the Supreme Court in many judgments. It is a settled principle of law as well as conventional way of interpreting a statute to seek the intention of the makers of law. The Courts interpret the law while keeping in mind the object of the statute and intent of the Legislature. A Court is required to look essentially to the words of the statute to discern reference aiding their effort as much as possible by the context. While interpreting Section 23 of the Maintenance Act, the objects and reasons which have been mentioned hereinbefore cannot be ignored. The object is to maintain the traditional norms and values of India Society which laid stress of providing care to the elderly. Considering the provisions of maintenance under other laws, time consuming and expensive, the endeavour of the legislation was to have simple, inexpensive and speedy provisions for maintenance of the parents. The Maintenance Act proposed to cast an



obligation on the person who inherit the property of their aged relatives, to maintain such aged relatives. The objective of the Maintenance Act was also to provide to set up appropriate mechanism to provide need-based maintenance to the parents, senior citizens and setting up of old age homes in every district. A peaceful living for the senior citizens in their property is the apparent objective of the Maintenance Act. The property in dispute had been transferred and purchased in the name of petitioners in December 2009 and June 2010 after the commencement of the Maintenance Act. It is claimed that it was purchased on solemn assurance of the petitioners that they will provide basic amenities and physical needs to respondent No. 5. It is claimed by respondent No. 5 that the petitioners had started torturing him in every possible manner as such the property is liable to be reverted back to him as such the facts fall within the purview of Section 23 of the Maintenance Act. Continuance of the petitioners in the house of respondent No. 5 is detrimental to the life and property of respondent No. 5. There are allegations that they have stolen valuable documents of respondent No. 5 and house hold goods belonging to him. The allegations have been levelled by petitioner No. 1 that on account of respondent No. 5 having not been able to satisfy his lust, she has been made a victim, is clearly indicative of the fact that the provisions of the Maintenance Act would enable respondent No. 5 to get transfer, by way of gift or otherwise, declared void. Once the transfer of the property to the petitioners is held void by the Tribunal on account of the



conduct of the petitioners for having failed to provide amenities and physical needs, the consequential benefit would be to restore respondent No. 5 in a position which would be in the shape of status quo ante i.e. a situation which existed prior to the transfer so far as title and possession is concerned.

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.....In context to the conduct of senior citizen, the scope of the different provisions of the Maintenance Act had not been taken into consideration. The observation of the Kerala High Court appear to be obiter dicta not laying down any absolute principle of law. A Division Bench of our High Court in Justice Shanti Sarup Dewan, Chief Justice (Retd.) v. Union Territory, Chandigarh, in an appeal filed by the petitioner, sought a direction to the State authorities to ensure the shifting of his son from his residential house. It was observed by the Division Bench that the Maintenance Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'. The Division Bench of this Court, with an objective to achieve the objectives of the Maintenance Act had exercised the powers under Article 226 of the Constitution of India to issue direction to vacate the house belonging to the senior citizen. In view of the observations of the said Division Bench judgment, an order of ejectment can be passed by the Tribunal in



favour of a senior citizen.

Respondent No. 5 in his application under Section 23 of the Maintenance Act had pleaded that petitioners No. 1 and 2 have been living with him on the first floor of the house at Panchkula since their marriage in the year 2009. Petitioner No. 2 being a drug addict was once arrested by Bhunter Police District Kullu on January 23, 2009 and he was convicted and confined by the Court.

Mr. Sanjeev Sharma, Sr. Advocate argued that the said property was never transferred by way of gift or by any other means in favour of the petitioners as such no transfer in their favour can be said to be void, suffering from the vice of fraud, coercion or undue influence.

I have carefully considered the said contention of learned counsel for the petitioners and I am of the opinion that Section 23(1) of the Maintenance Act provides that “where any senior citizen has transferred by way of gift or otherwise, his property, and the transferee refuses or fails to provide amenities and physical needs, the said transfer of the 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.” The transfer by a senior citizen in first part of Section 23(1) of the Maintenance Act could be a gift or otherwise. The property transferred by gift or otherwise would include the transfer of the possession of a property or part of it by a senior citizen. The word “otherwise” used under Section 23(1) of the Maintenance Act by the legislation would include transfer of ownership, transfer of possession by way of a



lease deed, mortgage, gift or sale deed. Even a transfer of possession to a licensee by a senior citizen will also fall under the ambit of Section 23(1) of the Maintenance Act. The word “otherwise” cannot be ignored for the objective of Section 23(1) of the Maintenance Act. In context to the objectives of the Act, “transfer” would mean that transfer of property by senior citizen need not be a gift only but it could be any transfer within the meaning of Transfer of Property Act or would even include transferring of any right of the nature of title or possession. Section 23(1) of the Maintenance Act further provides that if the transfer is subject to a condition that transferee shall provide basic amenities and basic physical needs to the transferor and transferee refused to do so, the transfer of property shall be deemed to have been made by fraud, coercion or undue influence and would be declared so by the Maintenance Tribunal on the option of transferor. A senior citizen who had transferred his right, title or interest to any other person by gift or otherwise (which would include transfer of possession by lease, mortgage or licence) would become void in the event of transferee refusing to provide amenities and physical needs. The said transfer in such circumstances would be termed as fraud and would be void.

(emphasis supplied)

I. In *Justice Shanti Sarup Dewan, Chief Justice (Retired) v. Union Territory, Chandigarh*, LPA No. 1007/2013, the Punjab and Haryana High Court has held as under:—



6. In view of the strained relationships inter-se the parties, the appellants filed a Civil Writ Petition under Articles 226/227 of the Constitution of India seeking directions against respondents No. 1 to 6 to create a special cell to deal with the complaints of senior citizens and parents who are traumatized by their children. Respondents No. 1 to 6 are Union Territory, Chandigarh, Home Secretary and police officers. The appellants also seek a direction to ensure shifting of respondent No. 7 from their house at Chandigarh to his own house at Panchkula and vide an interim measure seek adequate police protection.

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10. The grievance of the appellants is that his daughters are not allowed to peacefully stay or enter the house making it difficult and humiliating experience with the appellants to interact with their daughters and their family. It is to prevent such incidents that the appellants are seeking protection under the "Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred to as the said Act). The appellants have made it clear that they do not want any maintenance from their son i.e. respondent No. 7. It is stated that the appellants have no other efficacious remedy on account of failure of respondents No. 1 to 6 to make appropriate arrangements under the said Act for protection of the persons like the appellants.

11. The learned Single Judge, however, opined that the issue as regards eviction of respondent No. 7 from the premises in question cannot be gone into by the Court in



exercise of writ jurisdiction as it would necessarily entail the determination of the nature of the property i.e. as to whether the same is self acquired or ancestral, the determination of rights inter-se the petitioners and respondent No. 7 in respect thereof etc. This would require formulation of triable issues which are left to be adjudicated at the hands of the Civil Court. The said act being a comprehensive legislation, provisions of the same could be invoked. However, a direction was issued to the Senior Superintendent of Police to visit the appellants at their residence within 24 hours from the communication of the order and interact with them and take stock of the situation.

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15. The writ petition was contested by respondent No. 7. He has pleaded that he was born in the house in Chandigarh which is a joint Hindu Family property. The house in question is a Hindu Undivided Family (HUF) house. He is a coparcener along with his wife and daughter and is residing in the same. The said respondent claims that they have a common kitchen on the ground floor which he had got renovated when his parents had gone to visit their younger daughter Sabina Grewal in Auckland. It has been admitted that daily expenses are borne by appellant No. 1 but claims that he had offered the same but it is the appellant No. 1 who refused to accept any money, though for all major expenses, the said respondent always pooled in the money.

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22. It would thus be seen that despite having gifted a house to his son, agreeing to revoke



his Will, and thus leaving the immovable property to devolve in accordance with law and even agreeing to pay Rs. 10,000/- per month to respondent No. 7 to cover the expenses for commuting for a period of two years, the appellant No. 1 is still being denied the right to exclusively enjoy his house with his wife even with such strained relationships with his son.

23. The appeal was listed before this Bench on 20.08.2013 and it was prima-facie noticed that we may not be able to determine the civil rights of the parties. However, qua house we further noticed that the stand of the appellants is that it was their individual property while on the other hand respondent No. 7 claims it to be HUF property. In view of the fact that there were two daughters of the appellants, even if the property for the sake of arguments is assumed to be HUF property, as per the current law, the share of respondent No. 7 would at best be 20%. Despite this, respondent No. 7 is occupying the complete first floor and part of the ground floor of the house. We thus put to learned counsel for respondent No. 7 that we were prima-facie inclined to relegate the parties to the civil suit with a direction in the present proceedings confining the occupation of respondent No. 7 to only 20% house of the property and remaining will have to be vacated by him forthwith. On this, learned counsel for respondent No. 7 sought time to obtain requisite instructions.

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27. On hearing learned counsel for the parties, two crucial questions arise for



consideration:—

i) Whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act?

ii) Whether the writ petition could be maintained for the said purpose especially in the alleged absence of so called failure of Union Territory Administration in complying with its obligations under the said Act?

28. SCHEME OF THE ACT

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.



29. Section 2 contains the definitions and clause (f) defines 'property' as under:—

“(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.”

The aforesaid would thus show the definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read alongwith Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

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34. In the context of the aforesaid discussion about the provisions of the Act, now we proceed to analyze two crucial questions referred to aforesaid:—

Question No. (i):—

The stand of respondent No. 7 before the Court is not that there was any contribution given by him for acquisition of the plot at Chandigarh. It is also not his say that the property is an inherited property. The registered document of title is also in favour of only appellant No. 1. Infact, out of his own earnings, appellant No. 1 gifted the plot to respondent No. 7 as well as two other plots to his daughters. There is just a bald statement



that the property at Chandigarh is joint Hindu family property. The failure, which has been attributed to Administration of Union Territory, Chandigarh, is qua the provisions of Section 32 read with Section 22 of the said Act. There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of Section 32 of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for implementation of the provisions of the said Act under sub section (1) of Section 22 (clause (e) of sub section (2) of Section 32) and a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of Section 32). No such Rules have been notified. The grievance thus being made is that in the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under section 22(2) of the Act would not suffice. Infact sub section (1) of Section 22 of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of the problem at hand, this is absent.

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37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No. 1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an overriding effect qua any other enactment in view of Section 3 of the said Act. Infact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No. 1. Infact, that is the very objective of respondent No. 7.

38. Though it is not directly relevant but it is not even as if respondent no. 7 is without a roof over his head as he is a beneficiary of a gift from his father-appellant No. 1 of a plot which was sold, smaller plot purchased and constructed upon and the house is lying vacant. What can be a greater travesty of justice in this situation where respondent No. 7 insists that he will not stay in his own house



built by him lying vacant, but insists on staying with his parents who do not want him or his family to live with them. We don't have the slightest of hesitation in coming to a conclusion that all necessary directions can thus be made under the said Act to ensure that the appellants live peacefully in their house without being forced to accommodate respondent No. 7.

Question No. (ii)

39. A lot of hue and cry has been raised on the issue as to whether directions can be issued in writ proceedings under Articles 226/227 of the Constitution of India to enforce the provisions of the said Act. We have already noticed above that a proper mechanism for enforcement of the provisions of the said Act for protecting the property rights of the appellants under Section 22 of the said Act has not been put in place by the Union Territory Administration and enforcement would be a big issue. How and through which machinery can a Special Cell ensure the eviction of respondent No. 7 from the property so that the appellants can live in peace in their house? Can we say that the Courts would be powerless both in equity and law to enforce such an order when primacy has been given to the provisions of the said Act over all other law. The answer to these questions should be in the negative. If the State fails to perform the functions envisaged under an Act, it would certainly give rise to a jurisdiction to be exercised under Article 226 of the Constitution of India. (A.B.L. International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004) 3 SCC 553 and Mrs. Sanjana M. Wig v. Hindustan Petro Corporation Ltd. (2005) 8



SCC 242 : AIR 2005 SC 3454).

40. In the present case, there is, as noticed, a failure to provide mechanism and thus the protection of the property of the appellants envisaged under the salutary provisions of the said Act certainly can be enforced under Article 226 of the Constitution of India. We have already noticed above that if there is a legal right to share the property at Chandigarh, which respondent No. 7 seeks to establish, for whatever it is worth, it is for respondent No. 7 to approach the Civil Court and not vice-versa. The right of exclusive possession of a self-owned property by a registered document of title can well be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 of the Constitution of India. We have thus once again in no hesitation in coming to the conclusion that there is nothing which prohibits the writ jurisdiction to be exercised in such a case.

CONCLUSION

41. Now we come to moulding of the appropriate relief to be granted under Article 226 of the Constitution of India given the aforesaid legal position and the facts of the case. We have already observed that the Courts cannot be left helpless to assist the senior citizens whose rights are protected under the said Act because of obdurate and unreasonable stand of the son/respondent No. 7. We thus issue the following directions:—

- i) The Administration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under*



Section 32(1) of the said Act for the purposes mentioned under sub section (2) of Section 32 more specifically clauses (e) and (f) so as to protect the life and property of senior citizens as envisaged under Section 22 of the said Act. This should include a comprehensive action plan including enforcement mechanism and conferring relevant powers to the District Magistrate or officers subordinate to him as envisaged under sub section (1) of Section 22 of the said Act. Such action may be taken within one month from today.

ii) Respondent No. 7 and his family members are directed to vacate the property bearing House No. 642, Sector 11-B, Chandigarh to the extent it is occupied by them and the keys be handed over to appellant No. 1 within a period of 15 days from today.

iii) The Senior Superintendent of Police of Union Territory, Chandigarh/ respondent No. 3 is directed to ensure enforcement of the direction (ii) mentioned above.

iv) If respondent No. 7 wants to establish any legal right or share in the aforesaid house, he is free to file appropriate civil proceedings but without infringing the exclusive rights of the appellants in the interregnum period implying that there would be no interim injunction qua occupation by the civil court as that would be a violation of the provisions of the said Act.

The impugned order of the learned Single Judge dated 17.05.2013 is consequently set-aside to the aforesaid extent.



We part with the feelings of dismay at the attitude of respondent No. 7 despite all efforts by the Committee and the Court but with the hope that at some stage sanity would dawn and he would recognize the contribution made by his father including monetarily towards establishing him in an independent house gifted to him.

The appeal is accordingly allowed with costs quantified at Rs. 50,000/- in favour of the appellants and against respondent No. 7 to be paid within 15 days.

(emphasis supplied)

COURT'S REASONING

A. IN VIEW OF THE LIMITED NOTICE ISSUED BY THIS COURT ON 5TH NOVEMBER, 2015, THE PETITIONER NO. 1 IS ESTOPPED FROM ARGUING THE PRESENT WRIT PETITION ON MERITS

41. The petitioners have themselves admitted in the writ petition that the respondents 2 and 3 are tenants in the property. The owner of the property (BCTA) has also filed an application on record stating that it had permitted the respondent No. 3 to occupy the property as a term of his employment. BCTA has also admitted that petitioners are occupying the property in their capacity as sons of respondents No. 2 and 3. Accordingly, the respondents No. 2 and 3's superior right to the property stands established and the petitioners do not have any independent right in the property other than through their parents.

51. Consequently, directions to remove the children from the property is necessary in certain cases like the present to ensure a normal life of the senior citizens.

E. WHETHER IN THE ABSENCE OF A



COMPREHENSIVE ACTION PLAN FOR
PROTECTING THE LIFE AND PROPERTY OF
SENIOR CITIZENS UNDER SECTION 22 OF THE
ACT, 2007 THE MAINTENANCE TRIBUNAL HAS
THE JURISDICTION TO ORDER EVICTION?

65. This Court is of the opinion that the judgments relied upon by the learned counsel for petitioner No. 1 are confined to interpretation of Section 9 of the Act, 2007 and do not consider other provisions of the Act, specially those contained in Chapter V. This Court is in agreement with the view expressed by a Coordinate Bench of this Court in the case of Nasir (supra) that the provisions of Act, 2007 have to be liberally construed as one of the primary objects of the Act is to protect the life and property of senior citizens.

67. Consequently, this Court is of the opinion that under Section 23 of the Act, 2007, the Maintenance Tribunal can issue an eviction order to ensure that senior citizens live peacefully in their house without being forced to accommodate a son who physically assaults and mentally harasses them or threatens to dispossess them. It is pertinent to mention that the respondents No. 2 and 3 allegations that petitioner No. 1 is an alcoholic whose services had been terminated by Delhi Police on the ground of misconduct and against whom a number of police complaints are pending had not been denied during the course of hearing.

68. This Court is also of the opinion that since the Act, 2007 confers on the Maintenance Tribunal the express power to declare a transfer of property void at the option of the transferor under Section 23, it has to be presumed that the intent of the Legislature is to empower the Maintenance Tribunal to pass effective and meaningful orders including all consequential directions to give effect to the said order. In Union of



India v. Paras Laminates (P) Ltd., (1990) 4 SCC 453, the Supreme Court has held as under:—

“8. There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution”.”

(emphasis supplied)

71. Consequently, the Maintenance Tribunal has the jurisdiction to not only pass an eviction order but also to issue directions to give effect to the same under Section 23 of the Act 2007.”

(iii) Judgment, rendered by the learned Division Bench



of the Hon'ble High Delhi Court in the case of Aarshya Gulati vs. Government of NCT of Delhi & Others, reported in 2019 SCC Online Del 8801, paragraphs no. 63, 68 and 69 whereof are reproduced herein below:-

“**63.** So, the objective of the Act being, to provide inexpensive and speedy procedure for the protection of life and property of the senior citizens from the children/legal heirs, who are expected to maintain parents/senior citizens by providing the basic amenities and physical needs but refuse or fail to maintain/provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a ground for parents/senior citizens to seek eviction of children/legal heir from the property, which is the only way for them to seek protection of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their children/legal heirs. Further, a senior citizen cannot knock the door of civil Court to fight a legal battle to obtain the possession of the property as the jurisdiction of the Civil Court is barred under Section 27 of the Act. In this regard, we may refer to the judgment of the Punjab and Haryana High Court in the case of *Justice Shanti Sarup Dewan, Chief Justice (Retd.)* (supra).

68. In the case in hand, it is seen that the Parliament has expressed itself through the Act, the objective of which has already been narrated above. It is seen from the objective of the Act and from Section 22 whereby



the State Government has been empowered to prescribe “a comprehensive action plan for providing protection of life and property of Senior Citizens” This being so, the protection of life and property basically pertains to law and order, which is a State subject. Therefore, the obligation to prepare Action Plan has been put on the State Government. So, it follows that a policy has been determined by the Parliament for the protection of life and property of the Senior Citizen by the District Magistrate on the basis of Action Plan/Rules framed by the State Government. The action plan to be prescribed is the one, which is speedy and to be implemented by the District Magistrate, that is by an authority other than Civil Court, as the jurisdiction of Civil Courts is barred. So, the confirmation of such a power, even on an administrative authority, is justified. While exercising the powers bestowed under the Act/action plan/rules, the District Magistrate/Deputy Commissioner ceases to be an administrative authority as understood in normal parlance (even though there is no bar). He performs quasi-judicial functions as different from administrative functions. Further, the rules framed by the Government of NCT of Delhi, indicate the parameters on which the District Magistrate/Deputy Commissioner shall act, which includes, on an application by Senior Citizen/ Parent(s) for eviction of his/her son, daughter or legal heir from his/her property (as defined under Section 2(f) of the Act of 2007), the District Magistrate, after



getting the title of the property verified through SDM, and on consideration of the provisions of the Act of 2007, and forming an opinion that the son, daughter or legal heir are ill-treating him/her by occupying their property, after following the principles of natural justice, by giving hearing to all persons concerned, pass an order of eviction.

69. The eviction is from the property of the Senior Citizen/parent which is, movable or immovable, ancestral or self-acquired, tangible or intangible property which the Senior Citizen owns or has a right or interest.”

(iv) Judgment, rendered by the learned Division Bench of the Hon’ble Delhi High Court in the case of Shadab Khairi & Anr. vs. The State & Ors., reported in 2018 SCC Online Del 7626, paragraphs no. 2, 3, 7, 16, 20, 21, 22 and 23 whereof are reproduced herein below:-

“**2.** The issue that has arisen for consideration in the present appeal, is “whether the Maintenance Tribunal has the jurisdiction to pass an order of eviction?”

3. Both the Maintenance Tribunal as well as the learned Single Judge of this Court have returned a finding that in cases of parental abuse, an order of eviction can be passed by the Maintenance Tribunal in terms of the provisions of the Act.

7. Be that as it may, for the effective adjudication of the present appeal, it would be necessary to elucidate the following facts:



a. Mohammad Aftab Khairi, respondent No. 3, is the 68 year old father of the appellants. It has been admitted before us that the said respondent is the owner and resident of the properties bearing No. 3616-3617, Katra Deena Beg, Lal Kuan, Delhi-110006 (hereinafter referred to as 'the subject property'), which is stated to be contiguous. Respondent No. 3 was blessed with three sons, namely, Shahab Khairi (who is not a party to the present proceeding), Shadab Khairi, the appellant No. 1 and Shahnawaz Khairi, the appellant No. 2 herein.

b. Admittedly, respondent No. 3 runs the business of a printing press, in the name and style of 'Khairi Printing Press', on the ground floor of the subject property and occupies the first floor thereof along with his ailing wife, namely, Shahina Khairi.

c. The three sons of respondent No. 3, including appellant No. 1 and appellant No. 2 occupy the second and third floor of the subject property, respectively.

d. Respondent No. 3 instituted a petition under the Act alleging that despite having spent considerable amount on renovating the subject property and providing separate residential accommodation to his sons, the latter resiled from their undertaking to pay him a monthly sum of Rs. 20,000/- collectively, towards his maintenance and for the day-to-day requirements of Shahina Khairi, who needs constant medical attention owing to her prolonged illness.

e. To add insult to injury, the daughters-in-law of the elderly couple have instituted criminal complaints against respondent No. 3 *inter alia* alleging attempts by the latter to outrage the modesty of the former.

16. In *Sachin v. Jhabbu Lal*, whilst disposing off RSA No. 136/2016 and CM No. 19123/2016, another Single Judge of this Court succinctly observed as



follows:—

“Where the house is self-acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life.”

20. We do not agree. At the outset, we had elaborated on how beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare State. The object for which the Act as well as the subject Rules, extracted hereinabove, were brought into force, namely, for the welfare of parents and senior citizens and for protection of their life and property, leave no manner of doubt that the Maintenance Tribunal constituted under the Act has the power and jurisdiction to render the order of eviction.

21. The issue framed hereinbefore is, therefore, decided against the appellants. Before parting, it would be incumbent for us to observe that the appellants have failed to show any rights to continue to occupy the subject property against the wishes of respondent No. 3, especially when the latter has complained of ill-treatment and harassment at the hands of the former.

22. Further, whilst exercising extraordinary



jurisdiction under Article 226 and 227 of the Constitution of India, the courts of equity can both refuse or grant relief in furtherance of public interest on considerations of justice, equity and good conscience.

23. In view of the foregoing discussion, we are of the considered view that the appeal is bereft any of merit and the same is accordingly dismissed.”

(v). Judgment, rendered by the Ld. Division Bench of the Hon’ble Delhi High Court in the case of Sunny Paul vs. State of NCT of Delhi & Ors., reported in 2018 SCC Online Del 11640, paragraphs no. 1, 2, 6, 14, 18, 19, 20, 23, 32 and 34 whereof are reproduced herein below:-

“1. The challenge in this appeal by the appellant is to the order dated March 15, 2017 passed by the learned Single Judge in W.P.(C) No. 10463/2015 whereby the learned Single Judge has upheld the order dated October 01, 2015 passed by the Maintenance Tribunal constituted under The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (for short ‘Act of 2007’) whereby the appellant and his brother were directed to vacate H. No. 19A, Raj Niwas Marg, Civil Lines, Delhi-110054. Suffice it to state that only one of the petitioners (before the learned Single Judge) namely Sunny Paul has filed the present appeal.

2. The facts as noted from the record are that the appellant and his brother Victor Dass are the two sons of the respondent Nos. 2 and 3 namely Leelawati and



William Dass. Respondent Nos. 2 and 3 had filed a petition under the Act of 2007 alleging that both of them have been physically assaulted, maltreated and harassed by their sons. It is their case that the appellant is an alcoholic, whose services have been terminated by the Delhi Police on the ground of misconduct and who had been convicted in a fraud case and against whom number of police complaints are pending in different police stations. It is further averred that they have already disowned and disinherited the appellant and his brother by way of publication in newspaper. It is noted, the Tribunal had issued the following directions:—

- 1. That the respondents (a) Sunny Paul (b) Victor Dass along with their respective family members shall vacate the entire rooms, store, toilets, open space of House No. 19A, Raj Niwas Marg, Civil Lines, Delhi-54 to the extent that is under their unauthorised and illegal occupation within 10 days of the receipt of the order.*
- 2. That all household goods, LCD, Almirah, Clothes etc. belonging to petitioners shall be handed over back by the respondents to the petitioners.*
- 3. That the S.H.O., P.S. Civil Lines is directed to ensure enforcement/compliance of the directions (1) & (2) mentioned above, and also ensure that life and property of the petitioners is secured and no harassment is caused to them by the respondents and their family. Beat Staff be deputed for regular visits to the Senior Citizen petitioners, in order to safeguard the life and property of the Senior Citizen petitioners. Compliance report be sent to the tribunal within 15 days of the order.*



6. He further submitted that in the Act of 2007, no provision has been made for Tribunal's jurisdiction or Powers for the purpose of adjudicating and deciding upon matters of Civil nature, except for maintenance under Chapter II and transfer of Property in certain circumstances and that too for the limited purpose of declaring such transfer void. Section 3 stipulates that the “provisions of this Act” shall have overriding effect “notwithstanding anything inconsistent therewith contained in any enactment other than this Act’. In the absence of such a provision regarding jurisdiction and powers of the Tribunal in respect of the subject matter under discussion, the question of “anything inconsistent therewith” in any other enactment, and the question of its overriding effect, do not arise for any further discussion. According to him, under section 27, jurisdiction of civil court is barred in respect of matters to which any provision of the Act applies. In the Act, there is no provision and the Tribunal has no jurisdiction or power for purposes of adjudication and deciding upon right, title, interest or status of the parties in respect of the property; to declare the appellant a trespasser; order him to vacate the property and/or direct police officers to evict him; and that too, not according to procedure established by law. The Tribunal was itself uncertain about its jurisdiction and powers to entertain and dispose of a matter of civil nature; but, this aspect of the case has been glossed over, not at all discussed, nor any



finding has been recorded in the final order.

14. The learned Single Judge is right in relying upon the judgments in the case of *Promil Tomar* (supra) and *Justice Shanti Sarup Dewan, Chief Justice (Retired)* (supra) by holding as under:—

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.”

18. In *Hindustan Lever Ltd. v. Ashok Vishnu Kate* (1995) 6 SCC 326, it was held that words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced.

19. On a similar proposition, the Supreme Court in *State of Bihar v. Anil Kumar* (2017) 14 SCC 304 has by relying upon *National Insurance Co. Ltd. v. Laxmi Narain Dhut* (2007) 3 SCC 700 held as under:—

“68. A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often



raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See District Mining Officer v. Tata Iron & Steel Co. (2001) 7 SCC 358 : JT 2001 (6) SC 183). It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual & purposive interpretation leaving textual interpretation aside.



(emphasis supplied)

69. It was also opined:

More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that,

“legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose”.

20. The learned Single Judge has also relied upon the judgments of the Punjab & Haryana High Court and Gujarat High Court in the case of *Justice Shanti Sarup Dewan, Chief Justice (Retired)* (supra) and *Jayantram Vallabhdas Meswania* (supra).

23. We agree with the conclusion arrived at by the High Courts in the aforesaid judgments. At the cost of repetition, we may state here that having regard to the object of the Act (i) the term “*transfer*” shall include actual transfer of title or ownership; the act of allowing possession of property/allowing stay in the property or in part of property from which the Senior Citizen/Parents can earn income to maintain themselves and (ii) similarly the term “*transferee*” shall mean the children/legal heir in whose favour the



property, is transferred or is in possession of or are staying in the property or part of the property (but without consideration).

32. In *Lalappa Lingappa v. Laxmi Vishnu Textiles Mills Ltd.* (supra), the reliance placed by the learned counsel on paras 13 and 14 of the judgment wherein it was held that in construing a social welfare legislation, the Court should adopt a beneficent rule of construction. If a section is capable of two constructions, that construction should be preferred which fulfills the policy of the Act and is more beneficial to the persons in whose interest, the Act has been passed. The said proposition of law is squarely applicable to the issue in hand, as noted by us in the aforesaid paragraphs. This judgment would not help the case of the appellant.

34. In view of the discussion above, we do not see any merit in the appeal. The same is dismissed. No costs.”

27. It would not be fair to the petitioners in case the judgment relied upon by them, rendered by the Hon’ble High Court of Punjab and Harayan at Chandigarh in the case of *Simrat Randhawa* (supra), is not dealt with. The said judgment, rendered by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh deals with the validity of the Punjab Action Plan, 2014 and has held Clauses 1 to 3 thereof, as ultra



virus the provisions of the Act, 2007 and the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 and has consequently, struck down the same as unconstitutional by holding that the said Punjab Action Plan, 2014, has arbitrarily introduced a concept foreign to the scheme as mentioned in the Act, 2007 i.e. eviction or ejectment, which is arbitrary, unreasonable, oppressive harsh and unconstitutional and contrary to the doctrine to the rule of law and suppression of powers, which is the basic feature of the Constitution of India and thus, violates Article 14 and Article 300A of the Constitution of India. It may be noted here that the said view taken by the learned Single Judge of the Hon'ble High Court of Punjab and Haryana at Chandigarh is not only contrary to the Division Bench judgments of the same High Court but also contrary to the Division Bench judgment of the other High Courts, as referred to hereinabove in the preceding paragraphs and more importantly contrary to the law laid down by the Hon'ble Apex Court in paragraph no. 25 of the judgment, rendered in the case of *S. Vanitha* (supra), hence, the judgment, rendered in the case of *Simrat Randhawa* (supra), is Per incuriam, thus not a binding precedent. In any view of the matter, even otherwise, the decision of the High Court of Punjab



and Haryana at Chandigarh is not binding upon this Court.

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.

30. As regards the only other issue canvassed on behalf of the petitioners, concerning the right of the petitioner no. 2 to “shared household”, under the provisions of the Act, 2005, the same has already been dealt with at length in Paragraph No. 25 hereinabove, from which it is apparent that firstly the facts and circumstances of the present case and that of the judgment, rendered in the case of *S. Vanitha* (supra), are absolutely different, hence, the present case is not covered by the said judgment and secondly, the present case is not a case, which, by any stretch of imagination, would fall within the purview of the Domestic Violence Act, 2005, inasmuch as neither there is strained relationship in between the petitioners nor there is any complaint of the petitioner no. 1 having subjected the petitioner no. 2 to any act of domestic violence nor the petitioner no. 1 had ever owned the property in question, either before marriage or after the marriage, consequently, the property in question would not fall within the ambit of the definition of “shared household” as defined under Section 2(s) of the Act, 2005.

31. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not



find any infirmity or illegality in the order dated 16.4.2022, passed by the learned Tribunal-Cum-Sub-Divisional Officer, Patna Sadar, Patna in Tribunal Case No. 55 of 2021, so as to warrant any interference, hence, the present writ petition stands dismissed, being devoid of any merit.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	10.10.2022
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