

27.03.2023
Court No.13
Item No.15
AP

WPA 5605 of 2023

**Indubhshan Gayen @ Indu Bhushan Gayen
Vs.
The State of West Bengal and Ors.**

Mr. Mayukh Mukherjee
Mr. Shirsho Dasgupta

... For the petitioner.

Mr. Sk. Md. Galib

... For the State.

Mr. Niladri Sekhar Ghosh
Mr. Sourav Mondal

... For the Respondent No.6.

The Sonarpur Police has produced, before this Court, the respondent No.6/son of the petitioner.

This Court has already recorded the facts of the case in the order dated 22nd March, 2023. There are two charge sheets, filed against the son. A third complaint against the son is under investigation. Between 2018 and 2022, there have been several complaints filed by the father, recorded in the GD by the Sonarpur Police.

The petitioner submits that the private respondent/son continues to demand that the petitioner gifts his property to him and his children. He regularly threatens, intimidates, and assaults the petitioner. The grievance includes an attempt to murder the petitioner, as recorded in the order dated 22nd March, 2023. The son has also disconnected the power supply to the petitioner's portion of the house and interrupted his water supply.

The private respondent No.6/son has sought to parade his little children as human shields to generate sympathy before this Court. He submits that it is the father, who has disconnected the water supply to the premises. He pleads for the sake of his children.

Given the two charge-sheets registered by the police against the son, there is clear evidence of his misbehaviour. Admittedly the property where the parties reside belongs to the petitioner. The relations between the father and the son remain irrevocably strained. The private respondent No.6/son is at best a licensee of the said property.

The private respondent/son has not chosen or prayed for any leave to bring any additional or new or relevant facts before this Court. The facts of the case, therefore, remain otherwise undisputed.

The questions that fall for consideration before this court, are:-

a) Whether the son and his family members should be evicted for protecting the life and property of the senior citizen; and

b) Should the writ Court exercise jurisdiction to pass orders of eviction when there is an alternative remedy for the petitioner/father under **the Maintenance and Welfare of Parents and Senior Citizen Act, 2007** (Act of 2007).

This Court, in the facts and circumstances recorded hereinabove, finds that the private respondent

no.6/son is harassing the father and endangering his life. He is also coercing the father to gift the property to him.

The Hon'ble Supreme Court in the case of **S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and Others** reported in **2020 SCC OnLine SC 1023**, observed the following regarding the power of eviction:-

“20. 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-inlaw. 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 favor 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 on-going 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.”
(Emphasis added)

A Division bench of this Court in the case of **Ms. Sahidun Nisa v. The Lieutenant Governor & Ors**, reported in **2017 SCC OnLine Cal 16231** has considered the scheme of the Act of 2007 in the light of the power of eviction of children. It was observed that:

“15. Section 22(2) of the Act of 2007, which falls under Chapter V, even goes to the extent of providing for the State Government to prescribe a comprehensive action plan for providing protection of life and “property” of senior citizens. The scheme of the Act of 2007 which provides, inter alia, for protection of life and “property” of older persons, nowhere specifically excludes passing of an order of eviction/vacation by a competent Tribunal in respect of a property where an elderly parent or a senior citizen has a ‘right’ or ‘interest’, if the same is required to be passed for the purpose of protection of both life and “property” of the older person/s. As such, the statute is wide enough for the purpose of issuance of such an order, as was passed by the Maintenance Tribunal on 14 January, 2016, while correctly appreciating its scope.”

A Division Bench of the Bombay High Court in the case of **Ritika Prashant Jasani v. Anjana Niranjani Jasani** decided on **August 13, 2021** reported in **2021 SCC OnLine Bom 1802**, has held that when it is established that the senior citizen is the exclusive owner of the concerned property, it is his discretion whether to allow the son and his family members will live in the said property, and eviction of the latter will follow if the

latter becomes dangerous for the former. The relevant

Para is set out hereunder:

“20.1 Petitioner in Dattatrey Shivaji Mane (supra) was the son of respondent No.1 mother. The tenement in question belonged to respondent No.1 exclusively. In paragraph 13 of the said judgment, there is a clear finding of fact by learned Single Judge that respondent No.1 has exclusive rights in the tenement which was allowed to be occupied by the petitioner and his family members by respondent No.1. In fact in paragraph 14, it is clarified that petitioner could not point out any legal right to occupy the tenement owned by respondent No.1. The only submission made was that since petitioner was maintaining respondent No.1 for last several years, no order of eviction should be passed by the Tribunal against the petitioner. On the other hand, it was found that respondent No.1 had produced sufficient material showing that she was harassed by the petitioner and his family members for the last several years. Petitioner also did not dispute that complaints were filed by respondent No.1 alleging harassment by the petitioner. Proceeding on the basis that petitioner could not show any right of any nature whatsoever in the tenement of respondent No.1 under any provisions of law, learned Single Judge held that it is exclusively for respondent No.1, as a senior citizen, to decide whether she wants to permit the petitioner and his family members to stay with her or not. Since she had decided not to allow the petitioner and his family members to stay with her in the house owned by her, therefore, learned Single Judge held that Tribunal was fully justified in passing an order of eviction, not only against the petitioner but also against his other family members.”

On the question of alternative remedy available to the petitioner under the Act of 2007, a Constitution bench of the Supreme Court in **Calcutta Discount Co. Ltd. v. Income-Tax Officer, Companies District I Calcutta and Anr. AIR 372, 1961 SCR (2) 241**, observed the following:

“27.The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.”

Following the said decision, the Hon'ble Supreme Court in **Assistant Collector Of Central Vs. Jainson Hosiery Industries** reported in **1979 AIR 1889, 1980 SCR (1) 134**, observed the following:

"1.....It is correct to say that the High Court must have regard to the well established principles for the exercise of its writ jurisdiction and unless it is satisfied that the normal statutory remedy is likely to be too dilatory or difficult to give reasonably quick relief, it should be loath to act under Article 226...."

It would not be out of place to quote what the Hon'ble Supreme Court, in **Whirlpool Corporation Vs. Registrar Of Trade Marks, Mumbai & Ors** reported in **(1988) 8 SCC 1**, considered:

"16. Rashid Ahmad vs. Municipal Board, kairana, AIR 1960 SC 163, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S.Rashid & Son Vs. The Income Tax Investigation Commissioner AIR 1954 SC 207 which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

18. This proposition was considered by a Constitution Bench of this Court in A.V.Venkateswaran, Collector of Customs. Bombay vs Ramchand Sobhraj Wadhvani & Anr. AIR 1961 SC 1506 and was affirmed and followed in the following words:

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must

govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".

This court, in the case of **Ramapada Basak & Anr Vs. The State of West Bengal and Ors** decided on **23rd July 2021 in W.P.A. 10835 of 2021**, held the following on the question of alternative remedy:

“On the question of alternative remedy, this Court is conscious of the principles laid down by the Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trademark** reported in **(1998) 8 SCC 1** and upheld recently in the year 2021 in the case of **Radha Krishan Industries Vs. State of Himachal Pradesh and Ors.** reported in **2021 SCC Online SC 334.**

However, the right of senior citizen to exclusively reside in his own house must be viewed from the prism of Article 21 of the Constitution of India. To compel a senior citizen to approach either a civil court (the jurisdiction of which is any way barred under Section 27 of the 2007 Act) or take recourse to a special Statute like the 2007 Act would in most cases be extremely onerous and painful for a person in the sunset days of life. This Court is, therefore, of the view that the principle of alternative remedy cannot be strictly applied to Senior Citizens and a Writ Court must come to the aid of a Senior Citizen in a given case.”

Therefore, the High Court can exercise jurisdiction to grant relief to a senior citizen under Article 226, despite the existence of an alternate remedy under the Act of 2007. Such jurisdiction should be exercised when the alternative remedy would cause unnecessary delay and harassment. The Writ Court should not be handicapped in granting relief in a given set of facts whereof the life of a citizen and in this case a senior citizen is at stake.

Rule 7(7)/(a) of The West Bengal Maintenance and Welfare of Parents and Senior Citizens Rules 2008 makes the police duty bound to protect the life and property of the senior citizens. The said rule reads as under:

“7(7)/(a) In case of exercising the powers as provided in the Act for this purpose, the tribunal may ask the police Officer of the respective Police Station within its jurisdiction, to ensure the protection of the person and property of the applicant.”

Unlike rules framed by other States, the West Bengal Rules of 2008 do not clearly empower the tribunal to order eviction of children. Although the expression “duty bound to protect the life and property” in Rule 7(7)(a) must be interpreted to confer such power. The tribunal however cannot be expected to give such interpretation. There is therefore substantial doubt as to whether the Tribunal has or will exercise jurisdiction to evict the private respondent/son and his family.

A conjoint reading of **Rules 7(3)/(a), 7(4), 7(5), of The West Bengal Maintenance and Welfare of Parents and Senior Citizens Rules 2008**, that the Maintenance Tribunal may take a long time to decide an application, filed by a senior citizen. The statutory period for disposal of an application by the Tribunal is 90 days, as provided in **section 5(4)** of the Act. **Rule 7(1)** does not mandate the maintenance tribunal to sit regularly. The tribunal may sit at least once in a month, or for such number of times considering the requirement and

urgency of the business of the tribunals. There are a large number of applications pending.

Therefore, keeping in mind the age of the senior citizen and the lengthy time required by the tribunal to decide his/her plea and the discretionary power of the tribunal to sit regularly or not, this Court is of the view, the petitioner/senior citizen should not be relegated to the tribunal, especially when not only his property but also his life is in danger.

For the reasons indicated above, a period of one month is granted to the private respondent No.6/son to leave the premises and look for an alternative accommodation. On the lapse of thirty days from today, the Sonarpur Police shall evict and/or escort the private respondent No.6/son and his family members outside the said premises.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

Compliance report dated 27th March, 2023 filed by the Inspector-in-Charge, Sonarpur Police Station, Baruipur Police District is taken on record.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

