

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 63 of 2023

BIDYA BHUSAN GUPTA & ANR.
VS.
KAMAL KESHWAR GUPTA

For the Petitioners	: Mr. Debarshi Dhar, Adv. Mr. Goutam Kumar Gupta, Adv.
For the Opposite Party	: Mr. Nabankur Paul, Adv. Mr. Abhishek Sarkar, Adv.
Hearing concluded on	: 30 th August, 2023
Judgement on	: 8 th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of the Constitution of India impeaches the order no. 7 dated 11th May, 2023 passed by learned Sub-Divisional Magistrate, Siliguri in Misc. Petition Case no. 10 of 2022 thereby directing Bidya Bhusan Gupta and Anita Gupta to evict and vacate the house of Kamal Keshwar Gupta, father of Bidya Bhusan Gupta within 30th June, 2023.
2. Fact of the case in short is that Kamal Keshwar Gupta of Senior Citizen who happens to be the father of Bidya Bhusan and father-in-law of Anita Gupta filed a petition under Section 4/21/22/23/24 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 before the Sub-Divisional Magistrate, Siliguri alleging, *inter alia*, that his elder

son Bidya Bhusan after his marriage in 2015 with Anita used to live with the petitioner but after one year of their marriage the son and daughter-in-law started creating problem even did not hesitate to abuse the petitioner and his wife. He refused to contribute any financial assistance however, the petitioner in the month of April, 2022 arranged a separate residential accommodation for his son Bidya and his daughter-in-law in a separate pacca self-contained residential accommodation. The business of the petitioner was initially under the control of the petitioner but subsequently the elder son was allowed to look into the business and run the shop but he did not share the profit. His son discarded the old electric line and without taking 'No Objection Certificate' from the petitioner got electric connection in his shop own name as the other shop which is Aluminum shop of the petitioner was earning profit. The petitioner requested the opposite party to attend a meeting to address the issues concerning the family and in the said meeting when the petitioner raised the issue of assessing of profit his elder son and daughter-in-law got infuriated and hurled abusive language. On 19th January, 2021 the petitioner engaged some labourer for repairing some portion of his buildings when the opposite party nos. 1 and 2 raised objection and started assaulting the petitioner's wife and younger son. The petitioner and his wife were admitted to the local hospital after being released from hospital the petitioner informed the matter to the jurisdictional police station. A meeting was called for at the residence for the purpose of settlement on 21st January, 2021 but the opposite party nos. 1 and 2 did not turn up. In the said proceeding

the Sub-Divisional Magistrate having considered the report of police as well as BL & LRO, Matigara passed the order impugned.

3. Heard Mr. Debarshi Dhar, learned Counsel for the petitioners and Mr. Nabankur Paul, learned Counsel for the opposite parties.
4. It is submitted by Mr. Dhar that the Sub-Divisional Magistrate has exercised his jurisdiction by directing the son and daughter-in-law, the opposite party. The parents of the petitioners were instigated by the younger son. The petitioner being the elder son never disowned his obligation towards the family members and his parents which the Sub-Divisional Magistrate failed to appreciate. The report of jurisdictional police officer and BL & LRO were taken into consideration without giving any opportunity to the petitioners to challenge the correctness of the report.
5. Refuting such contention Mr. Nabankur Paul, learned Counsel representing the opposite party submits that under the Maintenance and Welfare of Parents and Senior Citizen Act 2007 (hereinafter referred as the said Act) the Sub-Divisional Magistrate has the jurisdiction to pass an order of eviction of the unruly son who instead of maintaining his parents becomes a source of annoyance and torture. It is further submitted that the petitioner being the elder son and daughter-in-law of the opposite party was allowed to live in a self-contained construction with the premise owned by the opposite party. Being the elder son he was given the opportunity to return the Mobile Phone Shop but in turn the son and daughter-in-law, the petitioners before the Court refused to discharge their obligation towards the senior citizens. Therefore, it is

absolutely justified and it cannot be considered to be an erroneous exercise of jurisdiction.

6. To buttress his point Mr. Paul relies upon the judgement of the Hon'ble Division Bench of this Court in the case of ***Sahidum Nisa vs. Lieutenant Governor & Ors.*** reported in **2018 AIR (Cal) 82** wherein the Hon'ble Division Bench uphold the order of eviction passed by the Appellate Tribunal under the said Act of 2007 and another judgement passed by Hon'ble Single Bench of High Court of Judicature at Bombay in ***Dattatrey Shivaji Mane vs. Lilabai Shivaji Mane & Ors.*** reported in **(2018) Supreme (Bom) 864.**
7. In order to maintain the traditional values of Indian Society to take care for the elderly people this piece of legislation was enacted with the object to provide for appropriate mechanism to be set up to provide need based maintenance to the parents and senior citizen, better medical facilities to the senior citizens and for institutionalization of a stable mechanism for protection of life and property of older persons. The legislation considered it apt to notice despite the fact that there are other provisions of law to address the issues relating to the senior citizens in an expeditious manner.
8. Section 4 of the said Act is meant for maintenance of parents and senior citizens. Section 5 of the Act provides for application for maintenance, while Section 8 of the said Act speaks of summary procedure in case of enquiry, Section 9 is for order for maintenance, Section 11 is for enforcement of such order for maintenance. Section 20 of the Act emaciates medical support for senior citizens, while Section 23 of the Act says transfer of property to be considered as void in

certain circumstances. Nowhere in the Act there is any statutory provision for enforcing or for passing an order of eviction against the children who are unwilling to maintain their parents.

9. The judgement in *Sahidun Nisa (supra)* was pronounced considering the fact that Sk. Khalil aged about 80 years filed a petition of complaint against his son and daughter before the Tribunal on the allegation that they were torturing him and his wife a septuagenarian lady and were trying to dispossess them of their house and property.
10. In *Dattatrey Shivaji Mane (supra)* there was transfer of property by gift and Section 23 of the Act takes care of such situation.
11. The promulgation of the said Act of 2007 was preceded by Bill which was tabled before the Parliament with the following statement of objects and reasons :-

"STATEMENT OF OBJECTS AND REASONS

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are so forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons, Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provision 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 person.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and properties.

3. The Bill, therefore proposes to provide for :

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons:

(Emphasis supplied by us).

(d) setting-up of old age homes in every district.

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

12. Consequently, the Bill having been passed by both houses of Parliament received the assent of the President on 29th December, 2007 and entered the statute book as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

13. There is no allegation that the son and the daughter-in-law of the opposite party are trying to disturb the possession of the petitioner. Admittedly they are living separately in a self-contained construction of their father. The provision as laid down under Section 9, 11, 20 and 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 does not confer any power to direct the eviction of the petitioners. Therefore, in my humble opinion, the Sub-Divisional Magistrate committed jurisdictional error by passing the impugned order and as such the order is bad in law and it warrants interference. Consequently, the order impugned stands quashed.

14. However, there is no denial to the fact that the petitioners are occupying the property of the father and the status of the petitioners are of licensee. This order will not prevent the opposite party from seeking eviction of the petitioners before the Competent Civil Court in accordance with law. The revisional application is thus disposed of however, without cost.
15. Let a copy of this judgement be sent down to the learned Trial Court immediately.
16. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)