

AD-2
Ct No.01
Jalpaiguri
18.09.2023
SP

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 69 of 2023

**BULBULI SARKAR AND ORS
VS
PUTUL SARKAR**

Ms. Suman Snehanabis (Mandal)
Mr. Salok Sah

.....for the petitioners

Mr. Arnab Saha

.....for the O.P.

1. Learned counsel for the petitioners argues that the SDO (Sub Divisional Officer) acted *de hors* the law in directing eviction of the petitioners without initiating any enquiry under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is contended that under the contemplation of the statute, an eviction suit simpliciter cannot be filed in the garb of a proceeding under the said Act. Moreover, no opportunity of full-fledged adduction of evidence or inquiry was undertaken by the SDO at all.
2. Learned counsel for the opposite party cites *Sushanta Kumar Mukhopadhyay versus The State of West Bengal and Ors.*, a coordinate Bench judgment of this

Court, where the Court *inter alia* relied on *S. Vanitha's case* and observed that existence of an alternative remedy is not an absolute bar even to grant eviction under Article 226 of the Constitution of India. Learned counsel also places reliance on *S. Vanitha versus The Deputy Commissioner, Bengaluru Urban District and Ors.* reported at *AIR 2021 SC 177*. In the said judgment, it is argued, the Supreme Court categorically observed that under the 2007 Act, an eviction order can also be passed.

3. It is next argued by the opposite party that the present revisionist petitioners sought to rely on a Will which was never probated and, as such, rightly not taken into consideration by the first forum.
4. It is argued that the opposite parties are bed-ridden and it is very difficult for the opposite parties to maintain themselves, in view of their advanced age and ailing medical condition.
5. It is submitted that due to the harassment caused by the revisionist petitioners, the opposite parties are not being able to reside at the premises in question, of which the opposite parties are the exclusive owners. Learned counsel further argues that in view of the Sub Divisional Officer having invoked the relevant provisions of the statute, it cannot be said

that there was any jurisdictional error on the part of the said forum.

6. It is sought to be highlighted by learned counsel for the opposite parties that the opposite parties are under constant medical supervision and as such, there was ample power vested in the Sub-Divisional Officer to exercise the jurisdiction under 2007 Act.
7. The scope and operation of the 2007 Act is required to be considered at the outset to properly adjudicate the issue at hand. The crux of the jurisdiction of the authority under the 2007 Act is enumerated under Sections 4 and 5 of the same. Section 4 provides that a senior citizen, including parent, who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5, in case of a childless senior citizen against such of his relative referred to in Clause (g) of Section 2 of the Act. The obligation of the children or relatives as the case may be to maintain a senior citizen extends to the needs of such citizen so that the senior citizen may lead a normal life. Sub-section (4) of Section 4 provides that 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.

8. Section 5 contemplates an application for maintenance in terms of Section 4. Sub Section (3) thereof provides that on receipt of an application for maintenance and after giving notice of the application to the relative (in the present case) and after giving the parties an opportunity of being heard, the Tribunal may hold an enquiry for determining the amount of maintenance.
9. Section 6 of the Act stipulates the jurisdiction and procedure. Sub-section (2) thereof provides that on receipt of an application the Tribunal shall issue a process for procuring the presence of children or relative against whom the application is filed. Sub-section (3) contemplates the securing of attendance of the relative and Sub-section (4) provides that all evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made.
10. The contemplation of the statute, thus, clearly involves a process of detailed inquiry and adduction of evidence, if need be, enforcing the attendance of

witnesses and compelling the discovery and production of documents under Section 8 of the Act.

11. Only after exhausting such procedure of inquiry, an order of maintenance can be passed under Section 9 of the Act. Section 11 of the Act provides for enforcement of an order of maintenance.

12. In so far as *S. Vanitha's* case is concerned, the Supreme Court, in the said judgment, had ultimately set aside the order of the Division Bench of the High Court of Karnataka which had affirmed the order of eviction against the appellant, who was the daughter-in-law in the said case. It was observed that the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizen's Act, 2007.

13. Hence, the ratio laid down in *S. Vanitha's* case was quite contrary to the one being sought to be propounded here by the opposite party. In the said case, the crux of the ratio was that the provisions of the 2007 Act cannot be used as a simple expedient of ousting a daughter-in-law, who has a right of residence in a shared household. The present case

does not correlate, in any manner, with the facts of the said case.

14. The coordinate Bench judgment of *Sushanta Kumar Mukhopadhyay*, in paragraph 10 thereof, quoted a judgment rendered in *Indubhushan Gayen Vs. The State of West Bengal*, in WPA No.5605 of 2023.

15. In paragraph 10 of *Sushanta Kumar Mukhopadhyay (supra)*, the learned Single Judge, while quoting *Indubhushan Gayen (supra)*, in turn observed that in *Indubhushan Gayen (supra)*, Para 20 of *S. Vanitha's* case was quoted. However, a perusal of *S. Vanitha's* case does not correspond with the paragraph no. 20, which was quoted in paragraph 10 of the coordinate Bench judgment of *Sushanta Kumar Mukhopadhyay (supra)* to be a part of *S. Vanitha's* case.

16. *S. Vanitha's* case was entirely in a different context. Be that as it may, even if we take into consideration the quotation of *Indubhushan Gayen's* case in the coordinate Bench judgment of *Sushanta Kumar Mukhopadhyay (supra)*, we find that it was observed that the substance of sub-section (2) of Section 23 of the 2007 Act is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant

who is their daughter-in-law. In such context, it was held that the Tribunal under the Senior Citizen's Act 2007 may have the authority to an order of 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 of maintenance and protection.

17. Even if the said finding found place in *S. Vanitha's* case, the same would be beside the point, inasmuch as the scope of granting eviction under the 2007 Act did not fall for consideration before the Supreme Court in the said judgment at all.

18. Even if we take the said observation on face value, eviction can be granted only if it is necessary and expedient to ensure maintenance and protection of a senior citizen as an incident of the enforcement of the right to maintenance and protection. Even a cursory perusal of the petition made by the opposite party before the first forum shows that there is no iota of maintenance claimed by the opposite party from the petitioner. What the opposite party has claimed is merely an order of eviction on the ground that the opposite party is the owner of the property.

19. Over and above eviction, the opposite party had claimed litigation costs of Rs.10,000/-, which is not maintenance within the purview of the 2007 Act. Hence, in the absence of any prayer or claim or entitlement of maintenance under the 2007 Act, it did not lie within the jurisdiction of the Sub-Divisional Officer under the 2007 Act, even to contemplate the grant of a standalone relief of eviction.
20. The opposite party has claimed that she and the petitioners are both in occupation of the property. She has claimed eviction of the petitioners and not a mere protection of her own possession or restoration of her own possession. In fact, there is no allegation that the opposite party has been ousted from the property.
21. Whatever may be the circumstances of the opposite party, if the opposite party is of the opinion that she is the absolute owner of the property, it is for the opposite party to file a regular eviction suit before a proper Civil Court in a properly constituted proceeding.
22. In the present case, the revisionist petitioners have also claimed title although on the basis of a Will which apparently has not been probated. Be that as it may, since the title of the parties is disputed the appropriate forum before the opposite party is to

ventilate her grievances before a competent Civil Court. However, there is no scope of grant of any relief under the 2007 Act. In any event, the Sub-Divisional Officer granted the relief without any proper inquiry, which was also not sanctioned by the 2007 Act.

23. In view of the above discussions, the Sub-Divisional Officer/Magistrate acted palpably without jurisdiction in entertaining the application of the opposite party and granting eviction against the petitioners. Hence, CO No.69 of 2023 is allowed on contest, thereby setting aside the impugned order dated June 15, 2023 passed by the Sub-Divisional Magistrate, Sadar, Cooch Behar under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in connection with Case No. MWPSA No. 20 of 2022.

24. All action taken pursuant to the impugned order stands reversed. Parties are to take action accordingly.

25. It is made clear that the merits of the contentions between the parties on their respective alleged titles have not been gone into by this Court. It will be open to the opposite party to institute a properly constituted suit before a competent Civil Court for the

reliefs as claimed before the Sub-Divisional Magistrate.

26. The petitioners will also be at liberty to approach the civil court to ventilate their right, title and interest in respect of the disputed property.

27. No order as to costs.

28. Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)