

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7591 OF 2022

Priti Avichal Yermal

Age : major, Occu. : Household,

R/o. : Balaji Nagar, Maharana Pratap Chauk,

Hingoli Gate, Nanded,

Tq. & Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through District Collector, Parbhani.
Tq. & Dist. Parbhani.

2. The Sub Divisional Officer,
Parbhani Division, Parbhani,
Tq. & Dist. Parbhani.

3. Smt. Shobha Ramesh Yermal,
Age : major, Occu. : Household,
R/o. : Balaji Nagar, Maharana Pratap Chauk,
Hingoli Gate, Nanded,
At present, Indraprast, Trimurti Nagar, Parbhani,
Tq. & Dist. Parbhani.

.. Respondents

Mr. S. V. Bhopi, Advocate h/f Mr. Vaibhav L. Dhage, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondent Nos. 1 and 2.

Mr. R. S. Wani, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 27th June, 2023.

Date on which order pronounced : 25th July, 2023.

ORDER :-

. The present petition is filed by original respondent – widowed daughter in law of respondent No. 3. The petitioner is challenging the judgment and order passed by the learned Collector and Ex-officio President of the appellate authority under the Maintenance and Welfare of Parents and Senior Citizens Act (for short “Senior Citizens Act”). The learned Collector has rejected the appeal of the petitioner by confirming the order passed by the learned S.D.O., Parbhani dated 29.09.2021. The learned S.D.O. allowed the application filed by respondent No. 3 and it was directed not to take possession of property No. 1-21-537 and if the petitioner is in possession then, to vacate the said property.

2. The facts in short are that the respondent No. 3, a 74 years old lady filed an application under Section 9 of the Senior Citizens Act. It is the case that, both the parties are though residing separately, they are residing adjacent buildings. The petitioner use to assault her. She is not allowing the respondent No. 3 to live peacefully. There are two properties of 900 sq. ft. each. One property is in the name of respondent No. 3 whereas, another property is in the name of deceased son of respondent No. 3/husband of the present petitioner. It is alleged that, both the buildings are in possessions of this petitioner. It is

alleged that, though the respondent No. 3 gets Rs. 10,000/- towards pension, however, it is not sufficient whereas this petitioner is getting rent of Rs. 20,000/- from the properties. A prayer is therefore made either to give Rs. 20,000/- received as a rent by the petitioner or to give possession of one of the properties.

3. The petitioner opposed the application stating that, she has not committed any act of assault or there is no physical abuse at her hands. The learned S.D.O. and President, Maintenance Tribunal held that the respondent No. 3 is getting pension of Rs. 10,000/-. She has also a daughter and son in law who are supporting her. It came to conclusion that, the petitioner's claim on the possession of the property is not justifiable and opposed the order as stated above. The petitioner challenged this order before the Appellate Tribunal i.e. the learned Collector. The learned Collector confirmed the order by rejecting the appeal.

4. Learned advocate for the petitioner argued that, both the authorities have committed illegality by giving judgment in favour of respondent No. 3. It is argued that, the petitioner has right over the properties. By passing the orders, the authorities have practically denied her right to enjoy the properties being co-owner. No allegation against the petitioner is proved. The application was filed at the

instance of daughter of respondent No. 3. Though not a single instance is proved, both the authorities have held in favour of respondent No. 3. He submits that, there is no case made out that the petitioner has driven the respondent No. 3 out of the house.

5. Learned advocate for respondent No. 3 vehemently opposed the petition. There is also an affidavit in reply filed on record. By producing the photographs on record he submits that, both the properties are adjacent to each other. The petitioner is occupying only one property. The property No. 1-21-537 is a separate property of respondent No. 3. The petitioner has no concern with the said property. It is argued that, the petitioner is residing in different property adjacent to respondent No. 3 is residing. He submits that, though the orders are passed by both the Courts below, still the respondent No. 3 is not getting the fruits of the orders. After stay is granted by this Court, the petitioner is trying to prolong the matter. He relied upon the judgment of this Court in the case of Ashish Vinod Dalal and others Vs. Vinod Ramanlal Dalal and others reported in 2022 (1) Mh.L.J. 511.

6. This Court in the case of Ashish Vinod Dalal and others (supra) has held that, when the Tribunal has rightly recognized the rights of the parents, there is no need to cause interference by the High Court.

7. After examining both the judgments, this Court finds that, no case is made out to call for interference in the impugned order especially when the authority has rightly considered that, the respondent No. 3 is getting pension of Rs. 10,000/- per month and therefore, no monetary relief was granted. It is rightly considered that, when two properties are there, the petitioner is directed not to cause interference in the possession of respondent No. 3 and if she is in possession of the property then, to vacate the said building. The petition is therefore liable to be dismissed.

8. The order passed by the appellate authority confirming the order passed by the learned S.D.O. and President, Senior Citizens Maintenance Tribunal dated 29.09.2021 is maintained.

9. The writ petition stands disposed off accordingly. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.