

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

44 CRIMINAL WRIT PETITION NO.1416 OF 2022

**OMPRAKASH GANGADHAR CHALIKWAR
VERSUS
PRASHANT OMPRAKASH CHALIKWAR**

Mr. Mrigesh D. Narwadkar, Advocate for the petitioner
Mr. S. S. Gangakhedkar, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 29th MARCH, 2023

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1. Heard. Taken up for final disposal with the consent of the parties.

2. The limited grievance of the petitioner is that the prayers of the petitioner are not allowed in its entirety by the authorities under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act')

3. The petitioner a citizen of 72 years age, has approached this court against his son. The petitioner had filed

application under the Act before the learned Tribunal Senior Citizen Tribunal / SDO, Nanded praying for various relief including that respondent be dispossessed from the property CC No. 1978 from Survey No. 51 Gokul Nagar, Nanded. Further prayer is made for Rs.20,000/- per months towards maintenance. Said is resisted by the respondent. The learned Tribunal by considering the pleadings and after hearing the parties was pleased to allow the application directing respondent to pay to the petitioner an amount of Rs.10,000/- towards maintenance. The respondent, therefore filed an appeal before the appellate authority i.e. the Collector, Nanded. The Collector, Nanded after hearing the parties was pleased to confirm the order passed by the Tribunal.

4. It is the case of the petitioner that before the tribunal he had also prayed for relief that respondent be evicted. When that relief was denied he has filed an appeal specifically challenged order to the extent of not passing eviction order. The learned Collector, considered that there is already a suit pending

before the Civil Court bearing Civil Suit No. 294/2020 wherein various disputes are being agitated before the civil court. The Collector, further recorded that house property was originally belonging to father of the petitioner namely Gangadhar. Said Gangadhar had given a consent letter in favour of the petitioner for use of the property for all the members of the family. It is held that on the said property the petitioner and respondent have equal right and the said property is not self acquired property of the petitioner. It is further held that no evidence is produced to show that the petitioner was physically harassed by the respondent and no case is made out to invoke the provision of sections 3 and 4 of the Act.

5. The petitioner has thus, come to this court by way of this petition. During the course of hearing the petitioner also submitted that though the Maintenance Tribunal, Nanded has directed the respondent to pay amount of Rs.10,000/- per month towards maintenance by its order dated 02-11-2019 still no amount is paid by the respondent. It is further submitted that

in fact when both the authorities concurrently had come to a conclusion that maintenance needs to be paid to the petitioner, it was incumbent upon the authorities to direct the eviction of respondent from the house property. Certainly order was passed by taking into consideration the instance accepting the case of the petitioner and therefore, tribunal had passed specific order directing the respondent not to mis-behave, insult or abuse the petitioner. This finding is not challenged by the respondent by filing the appeal. Even in the appeal, the order is maintained. However, relief of eviction is not granted only on the count that the property is a joint family property of all the members of the family and has come from the father of the petitioner.

6. The learned advocate for the respondent vehemently opposes the petition. It is submitted that a civil suit is already pending between the parties in the Civil Court wherein it is this petitioner who has filed the suit for recovery of possession of the property and same is pending in the court of Civil Judge, Senior Division, Nanded wherein the respondent was injuncted from

entering in the house property i.e. on the ground floor. The petitioner had challenged said order in the court. On concession of both the parties, the appellate court directed the trial court to dispose of the suit within six months on merits by giving opportunity to both the sides by maintaining status-quo as on the date. He submits that this order was passed in an appeal filed by the petitioner himself and he himself had consented to maintain status-quo. Now praying for eviction is clearly against this order passed by the civil court. The suit is subsequent to filing of the proceeding under said Act. Tribunal's order was passed even before filing of the civil suit even the appellate court's order is prior to passing of the order of the civil court and on this count he prays for rejection of this petition.

7. Though the learned advocate for the petitioner relies upon the judgments delivered by this court reported in 2022 (1) Mh. J. L. 279 in the case of Shweta Shetty Vs State of Maharashtra and others pointing out that relief of eviction can be granted by considering the judgment in the case of Ashish

Vinod Dalal and Ors Vs Vinod Ramlal Dalal and Ors. He further relied upon the judgment delivered by the Hon'ble Apex court reported in 2021 (5) Mh.L.J. 39 in the case of S. Vanitha Vs Deputy Commissioner, Bangaluru Urban District and others to submit that the order of eviction can be passed under such circumstances. This court finds that when this petition was filed for relief of seeking eviction the petitioner had accepted rather agreed before the civil court in Misc. Civil Appeal to maintain the status-quo as on the date of the order i.e. 24-11-2022. Though the relief under Special Act can be still granted when the parties are litigating under general law however, considering that when the petitioner was aware that his writ petition is pending before this court which is filed on 30-09-2022 still consented to maintain status-quo. Thus, in this case this court finds that it is not the question of special provisions would prevail upon the general law but is a question of conduct of the parties that needs to be seen. This court therefore finds that certainly the petitioner has not sufficiently demonstrated his urge for relief prayed in this petition. On the facts of the case

this court feels that no order is necessary in the writ petition.

8. In view of this, this court finds that let learned tribunal applied its mind afresh and for that matter is remanded back to the tribunal.

9. With this, the petition stands disposed off.

[KISHORE C. SANT, J.]

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