

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

WRIT PETITION NO. 69 OF 2023

Vaishali w/o Paresh Navale
Age : 38 years, Occu. : Household,
R/o. Om Sai Colony, Maldad Road,
Tq. Sangamner, District : Ahmednagar .. Petitioner

Versus

1. The President,
Senior Citizen Maintenance Tribunal/
Sub Divisional Officer,
Sangamner Division, Sangamner,
Tq. Sangamner, District : Ahmednagar
2. Bhimaji s/o Dagdu Khillari,
Age : 61 years, Occu. : Pensioner, Veterinary
Doctor & Agri.,
R/o. Om Sai Colony, Maldad Road,
Tq. Sangamner, District : Ahmednagar .. Respondents

Mr. S. S. Dixit, Advocate for the Petitioner.
Mr. K. N. Lokhande, AGP for Respondent No. 1.
Mr. V. Y. Bhide, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 21st JUNE, 2023.

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of the parties taken up for final disposal.

2. Heard learned advocates for the parties at length.

3. By way of this writ petition, a challenge is raised by the petitioner (who happens to be daughter of respondent No. 2) against respondent No. 2 challenging the order passed by the President, Senior Citizen Maintenance Tribunal dated 13.12.2022. The petitioner is directed to leave the premises i.e. House No. 460/216 from Sangamner under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act (for short "Senior Citizens Act").

4. The main contention of the petitioner is that, she had lodged FIR against her relatives for the offences punishable under Sections 143, 147, 325, 354, 354-A, 354-B, 323, 504, 506 r/w Section 34 of the Indian Penal Code wherein, even the respondent No. 2 is made accused. The said FIR was lodged on 18.12.2021. The respondent No. 2 thereafter filed an application on 06.07.2022. It is the submission of the petitioner that, in fact, the respondent No. 2 does not deserve any relief under the Act. It is further disputed that the property of the respondent No. 2 is self acquired property. It is the submissions of the petitioner that, it was necessary for the Tribunal to record specific finding in view of her written statement that the property is self acquired property. It is further contention of the petitioner that, no any sufficient discussion is made while allowing the application.

5. Learned advocate for the petitioner relies upon the judgment of this Court in the case of Ritika Prashant Jasani Vs. Anjana Niranjana Jasani and others reported in 2021 SCC Online Bom 1802. He submits that, in view of this judgment it was necessary to consider the title over the property. This Court has held in the said judgment that the relief under the Senior Citizens Act can be granted only after adverting to the competing claims in the dispute. It is further held that the order of eviction can be passed only on finding recorded that the property is the exclusive property of the parent/senior citizen.

6. As against this, learned advocate for respondent No. 2 submits that, such finding could have been gone into only if the petitioner claims any title over the property which is not done in this case. He relies upon the judgment of this Court in the case of Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane and others reported in 2019 (1) All MR 700.

7. Learned A.G.P. also opposes the petition stating that, the authority has rightly passed an order. The respondent No. 1 has also filed an affidavit opposing the petition.

8. On going through the arguments and the papers this Court finds that, the petitioner has never claimed any right over the property. Merely because she disputed the nature of the property of respondent is

not sufficient to make an enquiry about the nature of the property. It is not the case of the petitioner that, she has any right over the property. In such case, it would not be right to go into the aspect of the nature of the property. This Court finds that, the authority has still observed that the property belongs to respondent No. 2 and that is sufficient. From looking to other part of the order it is clearly seen that, the Court has dealt with the said issue as well and then has passed an order.

9. In view of this, this Court finds that, no case is made out to call for interference in the impugned order. In view of the above discussion, the writ petition stands dismissed.

10. Rule stands discharged.

11. At this stage, a request is made to continue the stay for a period of four (04) weeks from today.

12. Learned advocate for respondent No. 2 opposes the prayer for stay.

13. Since it is running against the respondents since it was granted, the same shall be continued for a period of four (04) weeks from today.

(KISHORE C. SANT, J.)

PS.B.