

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.479 OF 2023

VICTOR B. ANDRADE

... Petitioner

Versus

THE STATE OF GOA THR
CHIEF SECRETARY AND 5 ORS.

... Respondents

Ms Fawia Menezes Mesquita, Advocate *for the Petitioner.*

Mr D. Pangam, Advocate General, with Mr Geetesh Shetye, Additional
Government Advocate *for Respondent Nos.1 to 3 - State.*

Mr S. Karpe, Central Government Standing Counsel *for Respondent
No.6.*

Respondent Nos.4 and 5 present in person.

**CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 6th September 2023

P.C.:

1. Heard Ms Fawia Mesquita for the Petitioner. Mr D. Pangam, learned Advocate General, appears along with Mr Geetesh Shetye, learned Additional Government Advocate, for Respondent Nos.1, 2 and 3. Respondent Nos.4 and 5 are present in person, and Mr Karpe, learned Standing Counsel, appears for Respondent No.6.
2. Though the main relief in this petition was to declare Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

(said Act) as *ultra vires* and unconstitutional, the Petitioner and Respondent Nos.4 and 5 now agree that not only this petition but the petition filed by the Petitioner before the Maintenance Tribunal i.e. Maintenance Claim Petition No.9/2022 can be disposed of by the following agreed order.

3. The issue of *vires* of Section 17 of the said Act is not gone into, and the same is kept open for determination in an appropriate case.

4. The Petitioner states that he is presently receiving a maintenance amount of ₹10,000/- from his son Vincent and ₹5,000/- each from his sons Hector and Adolf. Since Vincent, Hector and Adolf are parties before the Maintenance Tribunal, it is only appropriate that they continue paying this maintenance to the Petitioner.

5. In addition to the above amount, Respondent No.4, i.e. Peter Cyril Andrade, will also pay the Petitioner maintenance amount of ₹5,000/- each month. Ms Mesquita states that she will share the bank details of the Petitioner with Respondent No.4, and Respondent No.4 agrees that on or before the last date of every month, he will deposit an amount of ₹5,000/- in the Petitioner's bank account. The first such deposit will be made within 7 days from today.

6. The Petitioner accepts that by a sale deed dated 02.08.2011, the Petitioner has sold the subject Patric building to Vincent Andrade, i.e. one of his sons. The Petitioner admits that he is staying in Flat No.2, and Respondent Nos.4 and 5 are staying in Flat No.1. The Petitioner says that Flat Nos.3 and 4 on the first floor are presently vacant. Respondent No.4 states that whenever Vincent, Hector or Adolf come to Goa, they stay in the said flats.

7. Respondent No.4 states that he has been paying garbage collection charges, water charges and even electricity charges in respect of Flat No.1, which he is occupying. Though Ms Mesquita disputed this position, Respondent Nos.4 and 5 are directed to pay these amounts regularly without passing on such liability to the Petitioner. Respondents Nos.4 and 5 maintain that they have always been paying these amounts and will continue to pay these amounts.

8. Respondent Nos.4 and 5 claim that they have not been harassing the Petitioner and they have no intention of harassing the Petitioner. Respondent No.4 points out that it is the Petitioner who has filed the maximum number of complaints, though Ms. Mesquita disputes this position.

9. In any case, we feel that the Petitioner and Respondent Nos.4 and 5 should live in peace considering their relationship. In fact, Respondent Nos.4 and 5 should help the Petitioner, and the Petitioner must also consider whether bygones can be bygones and gracefully accept any help that is given by Respondent Nos.4 and 5.

10. Insofar as the petitioner's claim for eviction of Respondents no.4 and 5 from Flat No.1 is concerned, the parties are free to take recourse to civil proceedings before the Civil Court. If such proceedings are filed, they should be decided in accordance with law and on their own merits.

11. The Petitioner and Respondent Nos.4 and 5 agree that the proceedings before the Maintenance Tribunal i.e. Claim Petition No.9/2022 can now be disposed of. Accordingly, we declare that Maintenance Claim Application No.9/2022 before the Maintenance

Tribunal stands disposed of based upon the above agreed order.

12. The Petitioner and/or Respondent Nos.4 and 5 must place an authenticated copy of this order before the Maintenance Tribunal, so that the Maintenance Tribunal can pass formal orders disposing of Maintenance Claim Application No.9/2022.

13. However, it is clarified that should the maintenance needs of the Petitioner increase or if there is any fresh cause of action, nothing in this agreed order, will preclude the institution of fresh proceedings in respect of such fresh cause of action.

14. With the above agreed order, this petition is disposed of without any order for costs.

15. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.