



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.5575 OF 2023

Mrs. Vandana M. Vishwakarma .. Petitioner.
v/s.
State of Maharashtra & Others .. Respondents.

Mr. Manindra Pandey with Ms. Aayushi Chauhan, for the Petitioner.
Ms. A. A. Purav, AGP for the Respondent-State.
Mr. Nehal Desale, for Respondent No.2 & 3.

**CORAM: SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA,JJ.
DATED : 5th OCTOBER, 2023.**

PC:-

Heard learned Counsel for the Petitioner, learned AGP for Respondent No.1 and the learned Counsel for Respondent Nos. 2 & 3.

2 By invoking extra ordinary jurisdiction of this Court under Articles 226 read with Article 227 of the Constitution of India, the Petitioner has questioned the legality and correctness or otherwise of the order dated 30th November, 2022 passed by the Competent Authority, appointed under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

3 By the impugned order, the Competent Authority has directed the Petitioner to vacate the house which she was sharing with Respondent Nos. 2 & 3. According to the learned Counsel for the Petitioner, there is a matrimonial dispute going on between Petitioner on the one hand and her

husband i.e. Respondent No.3 on other and that Respondent No.3, by performing an illegal marriage with another woman has virtually deserted the Petitioner and her minor daughters. He further submits that if the impugned order is implemented, the Petitioner will come on street and even her minor daughters would be left shelter-less. According to him, the impugned order is absolutely wrong and appears to have been passed under the influence of estranged husband of the Petitioner, who is trying to do his level best to see that the Petitioner is harassed further and compelled to leave the house. He also submits that the house in question, in fact, is a shared house-hold for the Petitioner and her two minor daughters and proceeding in this regard has also been initiated by the Petitioner before the concerned Court of Judicial Magistrate, which at present, is pending. He further submits that the learned Judicial Magistrate is not expediting the matter, thereby causing distress and harassment to the Petitioner.

4 Learned AGP as well as learned Counsel for Respondent Nos.2 & 3 submits that the impugned order records findings of facts, based upon evidence available on record and findings of facts, cannot be said to be impossible and, therefore, according to them, this Court has no jurisdiction to interfere with the impugned order.

5 So far as findings of facts are concerned, we find that there is a substance in the argument of the learned AGP for the State and also learned Counsel for Respondent Nos. 2 & 3. We do not see any perversity or manifest illegality in appreciation of the evidence available on record. Besides, it is an admitted fact that the Petitioner is not the owner of the

house. There are allegations made against her that she is harassing Respondent No.2 who is the owner of the house thereby making life of Respondent No.2 – Senior Citizen, miserable. How far, it is true, is a question of fact. But we must say that it has already been answered in the affirmative, in favour of the Respondent No.2 by the Competent Authority and this is done by the Competent Authority after assessing the evidence available on record. As said earlier, we do not find any perversity or manifest illegality in such assessment and evaluation of evidence made by the Competent Authority.

6 But, all said and done, there is also a question which is required to be answered affirmatively and it is about the house in question being a shared house-hold for the Petitioner and her two minor daughters or otherwise and that question would have to be decided appropriately by the concerned Court of Judicial Magistrate in the pending Domestic Violence Act proceeding. It appears that it has not been done by the Judicial Magistrate so far. In similar facts, in the case of ***Satish Chander Ahuja v/s. Sneha Ahuja (Civil Appeal No. 2483 of 2020)***, wherein apart from the issue of shared house-hold was also involved an issue about the ownership of the wife in respect of the house. In that case, the High Court had directed the Trial Court to decide the issue of ownership of the wife afresh and in accordance with law, which direction was upheld by the Apex Court. In the present case also, this Court in exercise of its extra ordinary jurisdiction, can issue a direction to the concerned Court of Judicial Magistrate to expedite the matter finally and decide the application filed by the Petitioner in accordance with law.

7 We are, therefore, not inclined to interfere with the impugned order. However, we direct the Trial Court to decide the application of the Petitioner filed under the provisions of Domestic Violence Act in accordance with law at the earliest and in any case, within a period of two months from the date of receipt of writ of this Court.

8 Till then and for a further period of two weeks, if the order of the Trial Court is adverse to the interest of the Petitioner, the Petitioner shall not be forcibly evicted from the house which is the subject matter of the impugned order on condition that, the Petitioner shall maintain peace and good behavior and shall not, by her conduct create any scope for Respondent Nos. 2 & 3 to make any fresh criminal complaint against her.

9 Writ Petition is disposed of.

(FIRDOSH P POONTWALLA,J.)

(SUNIL B. SHUKRE,J.)