

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

WRIT PETITION NO.1167 OF 2023

Harkishandas Madanlal Sharda

..... Petitioner

Vs.

1.State of Maharashtra

(Through Yerwada Police Station, Pune)

2. State of Maharashtra

(Through Tahsildar, Tahsil Haveli)

3. Rinku Baheti

..... Respondents

Mr. Satish Maneshinde a/w. Ms. Anandini Fernandes and Mr.
Anupam Shukla for the Petitioner.

Mr. S. S. Pednekar, APP for Respondent-State.

Ms. Pooja Thorat for Respondent No.3.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 21 APRIL 2023.

ORDER (Per Sharmila U. Deshmukh, J.)

1. By this petition, the petitioner seeks a direction to respondent Nos.1 and 2 to ensure the enforcement and compliance of the order dated 6/1/2023 passed by the Maintenance of Welfare of Parents and Senior Citizens Tribunal, Bhopal.

2. Record indicates that on 30/3/2023 this Court had

issued notice to the respondents returnable on 11/4/2023 and in addition to Court notice the petitioner was permitted to serve respondent No.3 by private notice. On 11/4/2023 this Court was informed by the learned counsel for the petitioner that respondent No.3 has been served by private notice. None appeared for respondent No.3 on 11/4/2023. Learned APP had submitted that the concerned officer has also visited the premises of respondent No.3 on two occasions, however respondent No.3 was not present and that the concerned officer will again visit the premises and will inform the respondent No.3 of the next date and the matter was adjourned on 17/4/2023.

3. On 17/4/2023 this court passed the following order:

"1. Vide order dated 30th March 2023, notice was issued to the respondents, making it returnable on 11th April 2023 at 1:00 p.m. The petitioner was permitted to serve the respondent No.3 – Rinku Baheti, by private notice and to file affidavit of service before the next date. It was also made clear in the said order that having regard to the limited relief sought in the petition, notice to indicate that an endeavour shall be made to dispose of the petition finally at the stage of the admission, even if none appears for the respondent No.3.

2. Learned counsel for the petitioner submits that pursuant to the said order dated 30th March 2023, he has served the respondent No.3, by way of private notice and has filed an affidavit of service to that effect in the

registry. None appeared for the respondent No.3 on 11th April 2023 despite private notice. Learned APP also stated that the concerned officer had visited the premises of the respondent No.3 on two occasions, however, the respondent No.3 was not present. Learned APP had further stated on instructions that the officer concerned will again visit the premises on 11th or 12th April 2023 and inform the respondent No.3, of the next date. Pursuant to the said statement made by the learned APP on instructions, the matter was adjourned to 17th April 2023 i.e. today. Even today, none appears for the respondent No.3.

3. Learned APP has today tendered a report of Mr. Jaydeep Gaikwad, Police Inspector (Crime), Yerwada Police Station. The said report is taken on record. In the said report, it is stated that the concerned officer had visited the premises, which is at Flat No. C-1, Ivy Glen Marigold Complex, Kalyani Nagar, Pune, for serving the notice on the respondent No.3, however, the door was found locked. It is further stated that he had visited the said flat on 3 to 4 occasions and since the respondent No.3 was not in the said premises, the notice was pasted on the door and photographs and panchanama of the same was done.

4. By this petition, the petitioner only seeks a direction to the respondent Nos. 1 to 2 to ensure the enforcement and compliance of the order dated 6th January 2023 passed by the Maintenance and Welfare of Parents and Senior Citizens Tribunal, Bhopal. A perusal of the order dated 6th January 2023 passed by the Sub-Divisional Officer, Tehsil – Kolar, District - Bhopal in Case No.838/B-121/2022-23 reveals that the said authority has directed the Non-Applicant i.e. Rinku Baheti, (respondent No.3) to vacate her unauthorised, unfair and illegal possession from the properties of the petitioner i.e. Flat 2-wp.1167.2023.doc No. C-1, Ivy Glen Marigold Complex, Kalyani Nagar, Pune (Maharashtra), and another property situated in Bhopal, within 15 days from the date of passing of the order,

failing which, the concerned Tehsildar/Station House Officer was directed to ensure compliance of the order.

5. Learned counsel for the petitioner states that despite the said order being challenged by the Non-Applicant i.e. the respondent No.3, before the High Court of Madhya Pradesh at Jabalpur, the High Court had not stayed the order dated 6th January 2023 and as such the Tehsildar/Station House Officer, was duty bound to ensure compliance of the said order.

6. Learned APP does not dispute the fact that till date the respondent No.3 has not brought to the notice of the concerned officer, any order passed by this Court, staying the order dated 6th January 2023, passed by the Maintenance and Welfare of Parents and Senior Citizens Tribunal, Bhopal and hence the concerned Officer is duty bound to comply with the said order dated 6th January 2023.

7. The petitioner is aged 84 years and is a Cancer patient and is presently in a hospital at Bhopal. Learned counsel for the petitioner states that the possession be handed over to Mr. Paresh Somani, the constituted attorney of the petitioner. He submits that the petitioner intends to return to Pune immediately, as his treatment initially and throughout was being done at a hospital in Pune.

8. Learned APP on instructions of Mr. Jaydeep Gaikwad, Police Inspector (Crime), Yerwada Police Station, states that he will take all steps to implement the order dated 6th January 2023 passed by the Maintenance and Welfare of Parents and Senior Citizens Tribunal, Bhopal, and the direction given by the said tribunal in clause - iii of para 9 of the said order. He further states that the compliance will be done within one week from today. Statements accepted.

9. At this stage, the learned counsel for the petitioner states that the entire breaking open of the lock of the said flat and the panchanama of the articles be videographed

and that the petitioner is ready to bear the expenses of the same, lest the respondent No.3 makes unfounded allegations against the petitioner.

10. Learned APP states that the police will videograph the breaking open of the lock of the house and draw a panchanama of the articles in the house, provided expenses are borne by the petitioner. Learned counsel for the petitioner states that the petitioner will bear the expenses. Learned APP further states that the police will take the said step of breaking open the lock of the flat, only if the respondent No.3 fails to handover peaceful possession of the said flat.

11. Learned APP states on instructions of the officer, who is present in Court that upon compliance of the order dated 6th January 2023, the possession of the said premises will be handed over to Mr.Paresh Somani, Constituted Attorney of the petitioner.

12. Stand over to 27th April 2023. To be listed at 2:30 p.m.

13. All concerned to act on the authenticated copy of this order."

4. On 20/4/2023, urgent circulation of the matter was sought by the learned counsel for Respondent No.3 and the matter was adjourned today. In the meantime, the learned APP was directed to inform the concerned police officer to not implement the order of Maintenance Tribunal dated 6/1/2023 till today.

5. Learned counsel appearing for respondent No.3

disputed the fact of the service of the notice of the present petition upon Respondent No.3 either by the concerned officer of the concerned police station or by the Petitioner through private notice. She would submit that the concerned officer had served her with a copy of another petition i.e. Criminal Writ Petition No.918/2023 and not a copy of the present writ petition. She would further submit that as she was not served with the copy of the present proceedings, she was unaware of the dates of hearing of the present Petition. She would further submit that she had received a courier from the learned counsel for Petitioner through Blue Dart on 7/4/2023 which also contained a copy of Criminal Writ Petition No.918/2023 and not the present Petition. She would therefore dispute that she has never been served with a copy of the present writ petition and that this court has been misled that the service has been properly effected upon the Respondent No 3.

6. Learned counsel appearing for the petitioner has pointed out the affidavit of service filed by the petitioner stating that the summons was duly sent to the address of respondent No.3 via RPAD on 6/4/2023 and also the respondent No.3 was served

with a copy of the present petition alongwith the orders passed by this Court in the present petition through private service by courier. He would submit that the grievance of non service of the present Petition is completely false.

7. Although we find no reason to believe that the learned counsel for the Petitioner would serve the wrong Petition upon the Respondent, we are not inclined to go into the dispute as regards the service of the writ petition upon respondent No.3. The fact remains that there was no stay of the order dated 6/1/2023 passed by the Maintenance Tribunal , Bhopal. Learned counsel for the petitioner has tendered a copy of the order in Writ Petition 1830/2023 initiated by respondent No.3 challenging the order dated 6/1/2023 passed by the Maintenance Tribunal. He would further submit that the Madhya Pradesh High Court has dismissed the petition on the ground of availability of alternate remedy.

8. Learned counsel for the petitioner has tendered a copy of Affidavit in reply of the Respondent No 3. The same is taken on record. We permitted the learned counsel for Respondent No 3 to

address us on the merits of the matter as her grievance was that she was not heard before the passing of the order dated 17th April, 2023 by this Court. She has raised an issue of maintainability of the Petition and would submit that a writ petition would not lie for executing the orders of the Maintenance Tribunal. She has taken this Court through the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Madhya Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. In support reliance is placed on the decision of the Apex Court in the case of *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others, 2020 SCC Online SC 1023*

9. After arguing for some time, when this Court was not inclined, the learned counsel for the petitioner requested for time of one week to adopt appropriate remedy and to obtain necessary orders of stay of the order dated 6/1/2023 of the Maintenance Tribunal. She would further submit that if she is unable to obtain necessary orders within a period of one week, necessary course of action as per law is available to implement the orders of the Maintenance Tribunal. The request of grant of one weeks time was

strongly opposed by the learned counsel for the Petitioner.

10. Considering that it is pleaded before us that the petitioner is 84 years old senior citizen, a cancer patient and as of today there is no order of stay of the implementation of the order of the Maintenance Tribunal, we are inclined to dispose of the Petition by granting respondent No.3 time till 26/4/2023 by 2.30 pm, to obtain necessary orders of stay from the competent forum. We refrain from making any observations on the submissions made by the learned counsel for Respondent No 3 to enable the Respondent No 3 to raise all submissions before the competent forum.

11. It is made clear that in event the respondent No.3 is unable to obtain necessary orders from the competent forum by 26/4/2023 by 2.30 pm, the statement of learned APP recorded in order dated 17/4/2023 that the concerned police officer will implement the order dated 6th January, 2023 of the Maintenance Tribunal as per direction contained in Clause iii of paragraph 9 of the order, will be executed.

12. Writ Petition stands disposed of in the above terms.
13. All parties to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.