

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10494 OF 2023**

Rinku Mahendra Parihar @
(Kum. Rinku Chimanlal Parmar)

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr. Umesh Vaishya i/b Mr. Avinash D. Kango, for the
Petitioner.

Mr. P. P. Pujari, AGP, for the Respondent Nos.1 & 2-State.

Mr. Sagar Joshi, for Respondent Nos.3 & 4 and newly added
Respondent No.5.

**CORAM : MADHAV J. JAMDAR, J.
DATED : SEPTEMBER 13, 2023**

P.C.:

1. Certain observations made in the order dated 4th
September 2023 are deleted. Accordingly, the fresh order dated
4th September 2023 be uploaded.

2. Heard Mr. Vaishya, learned counsel appearing for the
Petitioner, Mr. Pujari, learned AGP appearing for the Respondent
Nos.1 & 2-State and Mr. Joshi, learned counsel appearing for
Respondent Nos.3, 4 and newly added Respondent No.5.

3. Leave to amend to add Mr. Dinesh Chimanlal Parmar as
party, Respondent No.5 to the Writ Petition. Amendment be
carried out forthwith. Re-verification is dispensed with.

4. The newly added Respondent No.5 filed undertaking dated 13th September 2023 in this Court specifically undertaking that he will execute necessary documents releasing his rights in the Flat No.210, “B” Wing, Shamplaza Co-operative Housing Society, Y. K. Nagar Annex, Virar (W), Dist.-Palghar within a period of 15 days from today.

5. The impugned order in the present Writ Petition is the order dated 7th August 2023 passed by the Sub-Divisional Officer @ Senior Citizens Welfare Tribunal, Kalyan (“for short the **“Tribunal”**). By the impugned order, the Application filed by the Respondent Nos.3 and 4 under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has been allowed by directing the Petitioner to vacate the flat bearing Flat at 2nd Floor, Trimurti Apartment, Bazarpeth Road, Opp. Subhash Maindan, Kalyan (West), Tal. Kalyan, Dist. Thane within a period of 15 days.

6. It is the contention of the Petitioner who is the daughter of Respondent Nos.3 and 4 that, she has a 16 years old child and the said child is a special child, requiring special assistance. It is the further contention of the Petitioner that she has come to stay with her parents in the said flat at Kalyan in or about March 2023 as the Respondent Nos.3 and 4 have requested her to stay along with them. It is the contention of the Petitioner that, although she

was staying in the flat at Virar which has been given to her by her parents, however, the same is in the name of the Petitioner and her brother-Dinesh Chimanlal Parmar i.e. Respondent No.5.

7. The factual position on record shows that there was no contact between the Petitioner and her parents for about more than 13 years. In February 2023, fire took place in the flat at Virar in which the Petitioner was staying and, therefore, parents called her to stay in their flat at Kalyan. However, the factual position on record clearly shows that serious allegations are made against the Petitioner by the parents and various complaints are filed with the Police authorities. It is the contention of the Respondent Nos.3 & 4 i.e. the parents that the daughter is assaulting them everyday and complaints are filed on number of occasions. Therefore, there is no illegality or perversity in the impugned order passed by the learned Tribunal. Accordingly, no interference in the impugned order is warranted under Article 227 of the Constitution of India.

8. However, to balance the equities, the following order is passed :-

- i) The challenge to the impugned order dated 7th August 2023 passed by the Sub-Divisional Officer @ Senior Citizens Welfare Tribunal, Kalyan is rejected. As the challenge to the impugned order is rejected, the Petitioner to vacate the said flat bearing Flat at 2nd

Floor, Trimurti Apartment, Bazarpeth Road, Opp. Subhash Maindan, Kalyan (West), Tal. Kalyan, Dist. Thane forthwith.

- ii) The newly added Respondent No.5 to execute the necessary release deed and other documents releasing his share in the said Flat No.210, "B" Wing, Shamplaza Co-operative Housing Society, Y. K. Nagar Annex, Virar (W), Dist.-Palghar within a period of 15 days from today.
- iii) The Respondent Nos.3 and 4 to pay to the Petitioner an amount of Rs.2,50,000/- within a period of three days from today.

9. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

10. However, to ensure the compliance of this order, stand over to **29th September 2023** [fairly 'high on board'].

[MADHAV J. JAMDAR, J.]