

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14388 OF 2023

SHARADA
RANGNATH
WAHULE

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Date: 2023.12.18
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1. Mrs. Vaishali Abhishek Mehta	]
Aged : 40 years, Indian Inhabitant	]
R/o:B/703, Siddhivinayak Garden CHS	]
Opp. To Sosa Classic Hotel, Ashokwan,	]
Dahisar (E), Mumbai-400068.	]
 2. Mr. Abhishek Rajendra Mehta	]
Aged : 38 years, Indian Inhabitant	]
R/o.B/703,Siddhivinayak Gardens CHS	]
Opp. To Sosa Classic Hotel, Ashokwan,	]
Dahisar (E), Mumbai-400068.	] Petitioners

V/s.

1. The Hon/ble Sub-Divisional Officer	]
(W.S.), Bandra, Mumbai	]
Having Office at Office of Collector,	]
Mumbai Suburban District,	]
Administrative Building, 9 th Floor,	]
Government Colony, Opp. Chetana	
College,	]
Bandra (East), Mumbai-400 051	]
 2. Smt. Varsha Rajendra Mehta	]
Aged : 61 years, Indian Inhabitant	]
R/o:B/703, Siddhivinayak Gardens	
CHS,	]
Opp. To Sosa Classic Hotel, Ashokwan,	]
Dahisar (E), Mumbai-400068.	]

3. Shri Rajendra Kantilal Mehta]
 Aged : 64 years, Indina Inhabitant
 R/o:B/703, Siddhivinayak Gardens
 CHS,]
 Opp. To Sosa Classic Hotel, Ashokwan,]
 Dahisar (E), Mumbai-400068.]

4. Dahisar Police Station]
 Through Senior Inspector]
 A wing, Swami Vivekanand Marg,
 Krishna Colony,]
 Dahisar (E), Mumbai-400068.] Respondents

Mr. Sunil R. More Ms. Rakhee V. Gadankush, Advocate for the
 Petitioners.

Mr. A.P. Vanarase, A.G.P for the State-Respondent Nos.1 and 4.

Mr. Sarthak Diwan, Advocate – *Amicus Curie* for the Respondent
 Nos.2 and 3.

Ms. Vaishali Abhishek Mehta, Petitioner No.1 present in person.

CORAM : RAJESH S. PATIL, J.

DATED : 13 DECEMBER 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by
 the consent of the parties.

2. This Writ Petition is filed under Article 227 of the
 Constitution of India by Petitioners who are daughter-in-law and
 son of Respondent Nos.2 and 3. The challenge in this Writ Petition
 is to the order dated 23 October 2023 passed under Section 5(1)
 of the Maintenance and Welfare of Parents and Senior Citizens Act,

2007 (for short “the Senior Citizens Act”).

FACTS

2.1. There is no dispute that Respondent Nos.2 and 3 are the owners of Flat No.B/703, Siddhivinayak Gardens Co-operative Housing Society, Opp to Sosa Classic Hotel, Ashokvan, Dahisar (East), Mumbai – 400 068. (for short ‘the subject flat’). The Petitioners are as of now staying in the subject flat, with Respondent Nos. 2 and 3, who are the mother and father of Petitioner No.2.

2.2. Petitioner No.1 and Petitioner No.2 got married with each other on 29 June 2020 in Mumbai. At the time of Marriage Petitioner No.1 was a widow, and she had a son aged 10 years from her previous marriage. Petitioner No.2 at the time of marriage was a divorcee. After marriage, Petitioner No. 2 and Petitioner No.1 along with her son started residing with Respondent No.2 and Respondent No.3 in the subject flat.

2.3. Shortly thereafter, as there were disputes and differences between Petitioners and Respondent Nos. 2 and 3, police complaints were filed by Petitioner No.1 against Respondent Nos. 2 and 3, which were registered as N.C.’s. It is the case of Petitioners, that Respondent Nos.2 and 3 intended to lease out two bed rooms to “Paying Guest” for earning monies and hence they attempted to evict the Petitioners from the subject flat.

2.4. On 10 April 2023 Respondent Nos. 2 and 3 filed Application under Section 5 of the Senior Citizens Act before the Presiding Officer, Senior Citizens Maintenance Tribunal, Sub-Urban Mumbai

seeking therein to evict Petitioner Nos. 1 and 2 from the subject flat. On being served with the copy of Application Petitioners filed reply to the said Application of Respondent Nos. 2 and 3.

2.5. The Tribunal after hearing the parties and considering the documents on record by its order dated 23 October 2023 directed the Petitioners to vacate the subject flat within 30 days. The impugned order dated 23 October 2023 passed by the Tribunal has been challenged in the present Writ Petition by the Petitioners.

3. As Respondent Nos.2 and 3 were not represented by any Advocate in the present proceedings, this Court appointed Advocate Mr. Sarthak Diwan as *Amicus Curiae* to assist this Court in disposing of this matter.

SUBMISSIONS :

4. Mr. Sunil More appeared for the Petitioners and made his submissions on their behalf. He submitted that the impugned eviction order passed by the Presiding Officer of Senior Citizens Maintenance Tribunal, (for short 'Tribunal') is not maintainable, as the officer does not have a power to pass an Eviction Order. He admitted that the subject flat is owned by Respondent Nos.2 and 3.

5. Mr. More's second line of argument was Respondent No.2 though is a Senior Citizens as of date, however, on the date of the filing of the application, she was 59 years and 8 months old. Mr. More however, admitted that Respondent No.3, who is the father-in-law of Petitioner No.1 was 64 years of age on the date of the filing of the present application. Mr. More submitted that since Respondent No.2 was not a Senior Citizen on the date of the filing

of the application; the application should not have been entertained by the SDO, Bandra, Mumbai. Mr More, submitted that if evicted, the petitioners will have no place to stay, and they will become homeless.

6. Mr. Sarthak Diwan who appeared as *Amicus Curiae* showed me the copy of the complainant and also the cause title of the complaint, which shows that Respondent No.3 was a Senior Citizen on the date of the filing of the complaint before the Competent Authority. He further showed me signature of Respondent No.3 on the copy of the complaint along with the signature of Respondent No.2. Mr. Diwan also showed me the sale deed of the subject flat from which it can be derived that the subject flat is infact owned by Respondent Nos.2 and 3 jointly. Mr. Diwan also showed me the provisions of Section 5 and Section 23 of the Senior Citizens Act. Mr. Diwan submitted that since the complaint before the Competent Authority has been signed by two persons, out of which one person admittedly was a Senior Citizen, the complaint was maintainable before the Competent Authority. Mr. Diwan further submitted that the probable reason of filing the complaint jointly before the Competent Authority, as the names of Respondent Nos.2 and 3 being jointly in the sale deed. Mr. Diwan to buttress his submissions, relied upon the following judgments

i) ***Sheetal Devang Shah V/s Presiding Officer of the Maintenance and Welfare of Parents and Senior Citizens and Ors*** reported in ***2022 SCC OnLine Bom 1068***.

(ii) ***Shweta Shetty vs. State of Maharashtra and*** reported in

2022 (1) Mh.L.J. 279.

(iii) Suryakant Kisan Pawar Versus Deputy Collector, Mumbai and Presiding Officer Parents and Senior Citizens Subsistence Tribunal and Another reported (2022) AIR Bom R 359.

(iv) Namdeo s/o Babuji Bandge and another vs. State of Maharashtra and Others reported in 2022(4) Mh.L.J. 258.

ANALYSIS and CONCLUSION

7. I have heard counsel for both the sides and I have considered the documents on record.

8. The first issue in the present proceedings raised is about the maintainability of the Application under the Senior Citizens Act, before the Presiding Officer, Senior Citizens Maintenance Tribunal.

8.1 After going through the cause title of the complaint, it can be seen that at least the respondent no.3 was a senior citizen on the date of filing of complaint before the Competent Authority.

8.2 The sale deed of the subject flat shows that the flat was purchased by the respondent nos. 2 and 3 jointly. Therefore, even if the application filed under section 5(1), was preferred by only respondent no.3, even in that case, the complaint could have been maintainable. It seems that the probable reason for filing complaint jointly in the name of respondent nos. 2 and 3 is that the sale deed was in the name of the respondent nos. 2 and 3.

8.3 Taking into consideration that the sale deed was in the joint name of the respondent nos. 2 and 3 and the fact that the respondent no.3 has also filed the complaint before the Competent Authority and verified the complaint before the Competent

Authority. I am of the view that the said complaint was maintainable.

9. As regards the second issue of powers of officer to pass an eviction order is concerned, it will be necessary to consider the relevant section of the Senior Citizens Act.

Section 2 (b) reads as under :-

"maintenance" includes provision for food, clothing, residence and medical attendance and treatment,

Section 4 (2) reads as under :-

"2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life."

Section 4 (3) reads as under :-

"3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life."

Section 23 (2) reads as under :-

"2. Where any senior citizen has a right to receive maintenance out of an estate and such estate or part , thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right."

[Emphasis Supplied]

10. So also it will be necessary to consider the rules framed under the Senior Citizens Act.

10.1. Rule No. 20 (1) of Maintenance Welfare Senior Citizens Rule, 2010, reads as under :-

"20. Action plan for the protection of life and property of senior citizens. (1) The District Superintendent of Police, and in the case of cities having a Police Commissioner, such Police Commissioner shall take all necessary steps, subject to such guidelines as the State Government may issue from

time to time, for the protection of life and property of senior citizens.”

[Emphasis Supplied]

11. Respondent Nos.2 and 3 who are the parents of Petitioner No.2 have in their application filed under the Senior Citizens Act sought eviction of Petitioners from the subject flat. Petitioners have themselves raised ground that Respondent Nos. 2 and 3 intend to give a part of subject flat to “Paying Guest” in order to earn income. The definition of maintenance under the Act includes provisions of residence. Section 4 of the Act makes it obligations of children to maintain their parents, so that such parents may lead a normal life. So also such an obligations is on relative of senior citizens.

12. As per Section 23 (2) if the senior citizens has right to receive maintenance out of an estate, the right to receive maintenance can be enforced against the transferee. So also Rule 20 (1) allows the Police Commissioner to take all necessary steps for the protection of life and property of senior citizens. In the present case there is no dispute that the subject flat is owned by Respondent Nos. 2 and 3. There is no disputes that Respondent No.3 was a senior citizens on the date of filing of the application under the Senior Citizens Act. As of today even Respondent No.2 is a senior citizen.

13.1. As regards the issue about the powers of the Competent Authority under the Senior Citizens Act to pass an eviction order. Mr. Diwan has referred to 4 judgments on the said issue. The first judgment on the said issue is that of ***Sheetal Devang Shah V/s***

Presiding Officer of the Maintenance and Welfare of Parents and Senior Citizens and Ors¹. Paragraph Nos.59 and 64 of the said judgment reads as under:-

(59) The Tribunal, while discussing issue No.3 i.e., “Can the request made by the applicant be accepted?”, has made reference to various documents placed on record by the parties and in particular documents in relation to the said residential premises wherein, the parties are residing, and has reached a conclusion, that the residential premises is in the name of Mahendra Shah, who has inherited the same, from his parents. The Tribunal has also considered the effect of giving such property as a gift by Mahendra Shah to Devang Shah and after adverting to the provisions of Section 23 of the said Act, which provides for protection of life and property of senior citizens and as such, has correctly reached the conclusion, that the applicants’ (Nalini and Mahendra Shah) request for exclusion of Devang Shah from the suit property can be granted. It would be relevant to reproduce hereinbelow the provisions of Section 23(1) of the said Act, which reads as under:-

“23. Transfer of property to be void in certain circumstances.-(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.”

(64) In that view of the matter, we are of the opinion that the view taken by the Tribunal, after averting to the material placed on record, is legally as well as factually sustainable. Therefore, we confirm the order passed by the Tribunal except the direction to Sheetal Shah to pay jointly with Devang Shah, maintenance of Rs. 25,000/- to Nalini Shah and Mahendra Shah. Therefore, the direction to Sheetal Shah to that extent is quashed and set aside. However, as already observed, the son of Nalini Shah

1 2022 SCC OnLine Bom 1068

namely, Devang Shah is obliged to pay the said maintenance amount to Nalini Shah.

13.2. The Second Judgment referred by Mr. Diwan is of Division Bench of this Court. ***Shweta Shetty vs. State of Maharashtra and Ors***² Paragraph Nos.11 and 22 reads as under:-

(11) The Division Bench decision of this Court of 13th August, 2021 in *Ritika Prashant Jasani vs. Anjana Niranjana Jasani and Others*, 2022(1) Mh.L.J. 406 = 2021 SCC OnLine Bom 1802 (of the Bench of which one of us, Jamdar J. was a member) reviewed the case law in question, including the decision of the Supreme Court in *S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and ors.*, 2021 (5) Mh.L.J. (S.C). 39 = AIR 2021 SCC 177. In *Jasani's* case, this Division Bench held in paragraphs 22 and 23:

“22. This Court is cognizant that the Senior Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under section 8. the jurisdiction of the Civil Courts has been explicitly barred under section 27 of the Senior Citizens Act, 2007. **However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act, 2007 under section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act, 2005. The PWDV Act, 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under section 2(b) of the Senior Citizens Act, 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act, 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil Court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case**

² 2022(1) Mh.L.J. 279

where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act, 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act, 2005 and Senior Citizens Act, 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under section 17 of the PWDV Act, 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act, 2007, she shall duty-bound to inform the Magistrate under the PWDV Act, 2005, as per sub-section (3) of section 26 of the PWDV Act, 2005. This course of action would ensure that the common intent of the Senior Citizens Act, 2007 and the PWDV Act, 2005- of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

23. Adverting to the factual situation at hand, on construing the provisions of sub-section (2) of section 23 of the Senior Citizen Act, 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her "shared household" within the meaning of section 2(s) of the PWDV Act, 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the Appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the Fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act, 2007. The fact that specific proceedings under the PWDV Act, 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a

situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act, 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and third respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005.”

54. At this stage, we may mention that in *Smt. S. Vanitha* (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure maintenance and protection of the senior citizen or parent. Eviction, in other words, would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute. (*Emphasis added*)

22. We return to Mr. Thorat’s first argument that the Act does not contemplate the removal of any person from immovable property. We believe this proposition to be incorrect, and so held to be even by *S Vanitha* and *Jasani*. Our attention is drawn to the decision of 26th June 2018 of a learned Single Judge of this Court (R.D. Dhanuka, J.) in *Dattatrey Shivaji Mane vs. Lilabai Shivaji Mane*, (2018) 6 Mh.L.J. 681 = 2018 SCC OnLine Bom 2246 = AIR 2018 Bom 229 = (2019) 2 Bom. C.R. 181. We note the submission that was made before the Court and which is reproduced in paragraph 14 22, 24, 25 and 31 of that decision :

“14. **Learned counsel for the petitioner could not any legal right of his client to occupy the tenement owned by the respondent No. 1 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or under any other provisions of law.** The submission of the petitioner is that since the petitioner has been allegedly maintaining the respondent

No.1 for last several years, no order of eviction could be passed by the tribunal under section 4 of the said Act or under any other provisions of the said Act. Per contra, the respondent No.1 has produced sufficient material on record before this Court and also the Tribunal showing that the respondent No. 1 has been harassed by the petitioner and his family members for last several years.

22. **The provision of section 4 of the said Act permits such application for eviction of child and grand child if the condition set out in that provision read with other provisions are satisfied. In my view, there is thus no substance in the submission of the learned counsel for the petitioner that the order of eviction cannot be passed by the Tribunal under section 4 of the said Act read with other provisions of the said Act.**

24. Insofar as the submission of the learned counsel for the petitioner that under section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of *Sunny Paul and anr. vs. State NCT of Delhi and ors.* (supra) has considered the said issue at great length and has **held that the claim for eviction is maintainable under section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.**

25. If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his/her property from the children or grand children during his/her lifetime. The said Act is enacted for the benefit a and protection of senior citizen from his children or grand children. The principles of law laid down by the Delhi High Court in the case of *Sunny Paul and anr. vs. State NCT of Delhi and ors.* (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.

31. In my view, section 4 cannot be read in isolation but has to be read with section 23 and also sections 2(b), 2(d) and 2(f) of the said Act. The respondent No. 1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent No.1 mother who is 73 years old and

is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated. ”

[Emphasis supplied]

13.3 The Third Judgment referred of a Single Judge of this Court reported in case ***Suryakant Kisan Pawar Versus Deputy Collector, Mumbai and Presiding Officer Parents and Senior Citizens Subsistence Tribunal and Another***³ Paragraph Nos. 18, 19, 20, and 31 read as under:-

18. The question in the aforesaid circumstances is as to whether the mother was justified in invoking the provisions of the Senior Citizens Act to safeguard her rights as a senior citizen as ordained under Section 4, Section 5 read with Section 23 of the Act, so as to be entitled for an order to be passed by the tribunal, to evict the petitioner. In my opinion, the mother was justifiably entitled to the relief as granted by the tribunal. The following discussion would aid such conclusion

19. The Senior Citizens Act as seen from its preamble is a legislation to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto. It is also evident from the statement of objects and reasons that the intention behind the Senior Citizens Act is to provide for institutionalization of a suitable mechanism for protection of life and property of older persons. In the light of such object and intention, the legislature has framed Section 4, 5 and 23 of the Senior Citizens Act. Section 4 provides for maintenance of parents and senior citizens. Section 5 provides for remedy for an application for maintenance to be filed under Section 4 inter alia by a senior citizen or a parent as also by any other person or organization authorised by him, or the tribunal may take suo motu cognizance. Section 23 provides for transfer of property to be void in certain circumstances.

20. In my opinion, the present case clearly

³ (2022) AIR Bom R 359

attracts the said provisions. The mother was entitled to invoke the provisions of Section 4 to make an application under Section 5 when she was unable to maintain herself from her property and when her right to lead “her normal life” was being deprived by the petitioner, as recognized by sub-sections (2) and (3) of Section 4. In this context, it would be useful to refer to the decision of this Court in *Ashish Vinod Dalal v. Vinod Ramanlal Dalal* (supra). In such decision, this Court considered the scope and ambit of the provisions of sections 4 and 5 of the Senior Citizens Act to hold that the intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizen’s rights, which are fundamental to their very survival and/or livelihood at their old age. It was observed that in dealing with the grievances of the senior citizens falling under Section 4, the Court’s approach cannot be narrow and pedantic in applying the provisions of the Senior Citizens Act. It was held that a protection from harassment, exploitation, neglect, psychological disturbances, psychological needs, and all possible facets to safeguard the senior citizen’s physical and mental health are required to be recognized under sub-section (2) and sub-section (3) of section 4 as it categorically provided that the obligation of the children or relatives was to cater to the needs of the senior citizens, so that they ‘live a normal life’. It was held that the words “normal life” as used in these provisions would possess a far deeper and wider concept, deriving its meaning and having a bearing on the fundamental rights of livelihood as guaranteed and enjoyed by senior citizens under Article 21 of the Constitution.

31. In so far as reliance on behalf of the petitioner on the decision of the Division Bench of this Court in *Ritika Prashant Jasani* (supra) is concerned, it would not assist the petitioner in any manner in as much as in the said case the property was an ancestral property and an issue of a shared household under the Domestic Violence Act was raised. The legal position as arising from the said decision is considered by this Court in *Ashish Vinod Dalal’s case* (supra), wherein referring to the decision of the Division Bench in *Ritika Prashant Jasani* (supra), the Court made the following observations:-

“15. Lastly, the contention as urged on behalf of the petitioners relying on the decision in *Ritika Prashant Jasani*’s case needs to be outrightly rejected, inasmuch as, the question which fell for consideration

of the Court in such case was as to whether the tribunal under the Senior Citizens Act could evict a person from the tenement in which he has ownership rights. In the said case the property / flat in question was the ancestral property having joint rights and it is in such context the right to reside in a shared household under the D.V. Act was examined by the Court. In the present case admittedly the property / flat in question is not an ancestral property on which the petitioner no. 1 can lay any claim. It was the property of the father (respondent no. 1) who had gifted it to his daughters within his own legal rights. Moreover, paragraph 23 of the decision in Ritika Prashant Jasani's case goes completely contrary to the contention as urged on behalf of the petitioners, wherein the Division Bench has observed thus:

"23. At this stage, we may mention that in *Smt. S. Vanitha* (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure maintenance and protection of the senior citizen or parent. Eviction, in other words, would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute. "

[Emphasis supplied]

13.4. The last Judgment referred by Mr. Diwan is that of ***Namdeo s/o Babuji Bandge and another vs. State of Maharashtra and Others***⁴ Paragraph Nos.5, 15, and 16 read as under:-

5. Respondent 2, who was then aged 78 years and respondent 3, who was then aged 67 years, preferred an application dated 21-8-2018 contending that respondent 2 has constructed a residential house from self-earning in Hansapuri, Balabhaupeth, Nagpur, and that the petitioner 1 has illegally and forcibly taken possession of part of the said house and is conducting himself in a manner as would pose a serious threat to the safety and security of the respondents 2 and 3. Respondent 2 submitted that he was a heart patient and is required to undergo bypass surgery, which he is not in a position to undergo for lack of funds. Respondents 2 and 3 contended that if the petitioners vacate the portion illegally occupied, the said portion can be let out and the

⁴ [2022(4) Mh.L.J.] 258

rental income would enable the respondents 2 and 3 to better maintain themselves. Significantly, respondents 2 and 3 accused their son and daughter-in-law – petitioners herein of physical assault and further of preventing the well wishers and the other sons of the respondents 2 and 3 from entering the residential house. Respondents 2 and 3 alleged that the petitioners herein let loose their dog on the visitors to discourage them from visiting respondents 2 and 3, and have in the past assaulted Gopal, their other son. Respondents 2 and 3 further accused and petitioners of threatening to kill them. It is further alleged that the petitioners do not contribute towards the water and electricity charges or property tax.

15. In the present case, there is no competing dispute as such involved.

16. I have no hesitation in observing that order of eviction is absolutely necessary in order to ensure the physical and emotional health and safety of the parents.

[Emphasis supplied]

14. In view of the law laid down by the Supreme Court and by this Court, I am of the opinion that under the sections of the Senior Citizens Act, as discussed above, the Presiding Officer has enough powers to pass order of eviction against the Petitioners. Hence, I have no hesitation to hold that there are no merits in the present writ petition. Hence, the present Writ Petition is dismissed.

15. Mr. More on instructions of his client seeks stay to the execution of this order. The said request of Advocate More was opposed by Advocate Sarthak Diwan. The request of Petitioner stand rejected.

16. Before, I conclude, I would like to thank, Advocate Sarthak Diwan, who in a short notice dug out the authorities on the subject and by his submissions ably assisted this Court, in deciding this matter.

(RAJESH S. PATIL, J.)