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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1087 OF 2023

Sofiya Imtiaz Bachu & Ors ...Petitioners
Versus
Deputy District Collector, Mumbai City & Anr ...Respondents

Mr Aditya Chitale, *with Prathmesh Bhosle i/b MNSQ Legal, for the*
Petitioners.

Mrs Uma Palsuledesai, AGP, *for Respondent No.1-State.*

Ms Archana P Gaikwad, *for Respondent No.2.*

CORAM: G.S. Patel &
Neela Gokhale, JJ.

DATED: 13th April 2023

PC:-

1. The Petitioners are respectively the daughter-in-law, grandchildren and son of Respondent No.2. They challenge an order dated 11th August 2022 of the Senior Citizens Tribunal (Deputy District Collector, Mumbai City) (“**Tribunal**”) passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the corresponding Rules of 2010. The 2nd Respondent was the Applicant before the Tribunal. The 4th Petitioner was the sole Respondent. The one page application before the Tribunal at Exhibit ‘H’ was that since 2010 the Petitioners were all residing elsewhere. The 1st Petitioner and the 4th Petitioner were

married in 2004 and this is not disputed because the 1st Petitioner herself accepts this in a written complaint that she subsequently made to the police authorities.

2. The available documents on record show that on 14th September 2010, the 2nd Respondent made arrangements for the 4th Petitioner and his family to be given Flat No. B/7, Sana Apartments, Almas Colony, Kausa Mumbra, District: Thane. The 4th Petitioner and the 1st Petitioner executed a Declaration-cum-Undertaking on 15th May 2010, for that purpose. That 14th September statement states that since the 4th Petitioner is a driver by profession and the residence at Thane was inconvenient, he had decided to hand over the key of the flat to the 2nd Respondent. It then goes on to say that the 2nd Respondent gave the 4th Petitioner a sum of Rs. 1.5 Lakhs as a full and final share in the 2nd Respondent's property/estate. The 4th Petitioner thus relinquished any interest in the property of his parents.

3. The 2nd Respondent's deceased wife Shamim Mustakim had a hut in an area that went into slum redevelopment. In the course of that slum redevelopment, a rehab flat came to be allotted to her. The 2nd respondent's wife had a kidney disease. She was on dialysis. She passed away. The complaint was that about 15 days or a fortnight after the allotment the 4th Petitioner and his family namely, Petitioner Nos.1 to 3, forcibly entered or barged into the rehab flat and took up residence there. They began harassing the 2nd Respondent. There were fights and physical assaults and mental trauma. The complaint says that the 2nd Respondent was being

threatened. He was being looked after by his daughters and there were threats to his daughters as well. This was the nature of the complaint before the Tribunal.

4. The impugned order indicates a careful consideration of the rival claims.

5. There is little point in contending that there is no allegation against the Petitioners Nos. 1 to 3. They are the family members of the 4th Petitioner. So far as the 1st Petitioner is concerned, we note that she is by no means an innocent bystander nor is she proactively protecting the 2nd Respondent. Indeed, at Exhibit 'E' at page 40, we find that there is a lengthy complaint that the 1st Petitioner has made in her own name to the Senior Police Inspector of the Tardeo Police Station. Even a cursory look at that complaint indicates that the entire struggle is about the property, namely, the rehab flat. But that complaint also says that the 1st Petitioner and her children are living elsewhere (with the 1st Petitioner's mother). The complaint quite conveniently entirely leaves out any mention of the 1st Petitioner's husband the 4th Petitioner, his earning, his means and what he does for a living.

6. The impugned order considers the rival submissions and deals with the rival contentions sequentially. Reasons are separately given and there is a finding returned that Room No.717 on the 7th floor of the SRA building was allotted in the name of the 2nd Respondent's wife. Estate disputes were not decided quite correctly by the Tribunal and parties were left to adopt appropriate

proceedings in that regard. Taking an overall view of the matter, the Tribunal said that both parties should arrive at some amicable solution but in the meantime the application of the 2nd Respondent and the Senior Citizen was allowed. The 4th Petitioner and his family were required to vacate the rehab Room No.717 within 60 days. He was also directed not to harass, abuse and assault the 2nd Respondent and both sides were put to notice that they should not file complaints against each other. The directions for an amicable resolution, citing certain decisions of this Court was reiterated.

7. The impugned order is, in our view, unexceptionable. It is not disproportionate in what it orders or seeks to do. It correctly balances the competing equities. The argument that this was a shared household cannot be accepted for more than one reason. There is nothing brought on record to establish, as is now sought to be contended, that the Petitioners have all along resided there. There is nothing annexed to this Petition to show this. A mere statement is made across the bar and Section 17 of the Protection of Women from Domestic Violence Act, 2005 is invoked in that regard as if to suggest that there is some sort of permanent right that vests in Petitioner No.1 as also Petitioners Nos.2 to 4. It is unclear to us whether the 4th Petitioner, the son of the 2nd Respondent, is now seeking to piggy-back on some right being put up by the 1st Petitioner. That could be incongruous because at the same time, an assertion is made that there is no case or allegation against the 1st Petitioner.

8. There is no procedural infirmity that is pointed out to us in the impugned order.

9. Resultantly, we see no merit in the Writ Petition. It is rejected. All previous interim orders are vacated. The order is to be implemented without delay. The Petitioners are to remove themselves from the SRA Building, 'A' Wing, Room No.717, 7th floor, Worli, Mumbai within a period of 20 days from today. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)