

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 926 OF 2023

Archana Prashant Gawande and anr__ Vs. __ Mahadeo Fakirrao Sawke and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.A.Joshi, Advocate for petitioner
Ms. Isha D. Thakare. Advocate for respondent no.1
Ms. T.H.Khan, AGP for respondent nos. 2 & 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 15/03/2023

1] Heard Mr. Joshi, learned counsel for the petitioners, Ms. Thakare, learned counsel for the respondent no.1 and Ms. Khan, AGP for respondent nos. 2 and 3.

2] The petition challenges the order dated 9.3.2022 (pg.209), passed by the Sub Divisional Officer, Washim, who is the competent authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Act of 2007”), which directs the petitioners to vacate the first floor of the house constructed on plot no. 131, IUDP Colony, Washim, within a period of 30 days and so also the order dated 3.8.2022 passed the Appellate Authority in appeal, confirming the above order (pg.235).

3] It is contended by Mr. Joshi, learned counsel for the petitioners that though plot no. 131 was allotted by the Municipal Council, Washim, to the respondent no.1 on lease and the ground floor has been constructed by the respondent no.1, however, the first floor comprising of 8 rooms with toilet WC has been constructed by the petitioners out of their own funds with the consent of respondent no.1. He therefore submits that in so far as the petitioners are concerned, they are residing in their own premises and therefore are not liable for eviction. It is further contended that for deciding this plea, no opportunity has been granted by the competent authority as is required by the provisions of Section 6(4) of the Act of 2007, and therefore the impugned orders, according to him, cannot be sustained and are required to be quashed and set aside and the matter be remanded back to the competent authority for following the procedure as contemplated by Section 6(4) of the Act of 2007. He further on instructions makes a statement that till the time the proceedings are decided by the competent authority, or in appeal thereagainst, the petitioners will pay an amount of Rs. 25,000/- per month to the respondent no.1 without fail and shall

not interfere in any manner whatsoever with the possession of respondent no.1 of the ground floor and shall also not indulge into any act of harassment to the respondent no.1.

4] Ms. Thakare, learned counsel for respondent no.1 vehemently opposes the aforesaid submissions and contends that the plea which is raised by the petitioners having constructed the first floor with their own funds is a false plea and the construction of the first floor is in fact done by the respondent no.1. She also submits that the petitioners own their own individual properties at different places and were only permitted to reside temporarily on the first floor for the duration which was required for renovation of their properties and therefore have overstayed their welcome, apart from which harassment is being caused to the respondent no.1 who is also being deprived of use of the first floor.

5] Since a plea has been raised by the petitioners of having constructed the first floor on the land of plot no. 131, to demonstrate this plea documents at pages 55 to 208 are placed on record of the learned competent authority, it was necessary

for the competent authority to have followed the procedure as contemplated by section 6(4) of the Act of 2007, while deciding the complaint filed before him. This however, does not appear to have been done, as a result of which the opportunity as contemplated by section 6(4) of the Act of 2007 has been denied to the petitioners. The impugned orders do not reflect upon this position of the procedure under Section 6(4) of the Act of 2007 having been followed by the Competent Authority. That being the position, the impugned orders will have to be quashed and set aside and they are accordingly so done. The matter is remanded back to the Competent Authority for the purpose of following the due procedure as provided in Section 6(4) of the Act of 2007.

6] The parties shall appear before the Competent Authority/respondent No.3 on 20.3.2023 at 11.00 a.m. The Competent Authority/respondent No.3 shall thereafter proceed to decide the complaint of the respondent no.1 by following the due procedure as contemplated by Section 6(4) of the Act of 2007 and shall decide the complaint within a period of 30 days from 20.3.2023. The

petitioners shall not indulge into any delaying tactics before the Competent Authority/respondent No.3.

7] Till the duration of decision before the Competent Authority/respondent No.3 and even thereafter during the pendency of an appeal which may be filed, the petitioners shall pay an amount of Rs. 12,500/- to respondent no.1 on or before the 20th March, 2023 for the month of March 2023 and Rs. 25,000/- on or before the 5th day of each month till the time any appeal may be decided and so also shall not interfere in any manner whatsoever with the possession of respondent no.1 on the ground floor and shall also not indulge into any act of harassment to the respondent no.1.

8] The petition is therefore partly in the above terms. No costs.

JUDGE

Rvjalit