

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

**WRIT PETITION (WP) NO.6367 OF 2022**

- 1) Sushila Wd/o Ramesh Hajare  
Aged about 73 years, occupation :  
household, presently residing on rent at  
the house of Shri. Manoj Kawthe,  
behind House of Raja Katratwar,  
Chamorshi Road Gadchiroli, Taluka  
and District : Gadchiroli.

.... Petitioner(s)

**// VERSUS //**

- 1) Presiding Officer of Maintenance and  
welfare of parents and Senior Citizens  
Tribunal/Sab Divisional Officer  
Gadchiroli. In front of Bus Stop  
Gadchiroli, Dhanora road Gadchiroli.  
Taluka and District Gadchiroli Pin:  
442605
- 2) Collector /District Magistrate Collector  
office, Gadchiroli.
- 3) Superintendent Of Police Gadchiroli.
- 4) Police Station Officer Police Station  
Gadchiroli.
- 5) Sachin Ramesh Hajare  
Aged about 46 years, occupation  
private R/o Ward No.17, Behind  
Chemist Bhavan Near Tower,  
Chamorshi road, Gadchiroli, Taluka  
and District : Gadchiroli.
- 6) Sau. Manisha w/o Sachin Hajare,

Aged about 40 years, occupation private R/o Ward no.17, Behind Chemist Bhavan Near Tower, Chamorshi road, Gadchiroli, Taluka and District : Gadchiroli.

**... Respondent(s)**

Shri V.N. Morande, Advocate for the Petitioner  
Ms H.N. Jaipurkar, AGP for the Respondent Nos.1 to 4/State  
Shri K.J. Topale, Advocate for the respondent Nos.5 and 6

**CORAM : ANIL S. KILOR, J.**  
**DATED : March 13, 2023**

**ORAL JUDGMENT :**

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In this writ petition, a challenge is raised to the order dated 01.10.2023 passed by the Sub Divisional Officer, Gadchiroli, who is the Competent Authority under the provision of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Act of 2007”), not allowing the prayers made by the petitioner for possession of house property and an agricultural land stand in the name of the petitioner.

4. The petitioner is 73 years old widow, who is the mother of respondent no.5 and mother-in-law of respondent No.6.

5. From record, it is apparent that during the lifetime of her husband, the husband and after his death, the petitioner made various complaints alleging harassment and torture by the respondent No.5 and his wife, respondent No.6.

6. In response to one of such complaints, the respondent No. 5 submitted his written apology and admitted that he has no right over the immovable properties stand in the name of the petitioner and further he undertook not to harass his mother.

7. Despite this, the respondent Nos.5 and 6 continued to harass the petitioner and kept her under house arrest. The respondent Nos.5 and 6 had driven out the petitioner from her own house.

8. From the allegations made by the petitioner, it appears that despite numerous complaints no action was taken by police. Hence, the proceeding under the Act of 2007 was filed, narrating the incidences of harassment at the hands of the respondent Nos.5

and 6 and praying for protection of her and for possession of house property as well as the agricultural land.

9. The respondent No.5 filed his reply claiming that the house property was transferred by the petitioner in the name of his brother's daughter (niece) and as such, the petitioner has no *locus standi* to file any proceeding under the Act of 2007.

10. The application was further opposed on the ground that the property was purchased in the name of petitioner by the father of the respondent No.5 and as such, being son, the respondent No.5 has share in the properties of the petitioner. It is also claimed that the respondent No. 5 has financially made contribution in the construction of the house in question.

11. The Competent Authority and SDO allowed the application, however, it appears that the prayer as regards granting possession of the house property and agricultural land was not considered and granted. Hence, this petition.

12. The learned counsel for the petitioner points out that the numerous complaints made by the petitioner and in one of such matters, a written apology was tendered by the respondent No.5 before the police, wherein he has admitted that he has no right over the properties stand in the name of the petitioner and further he undertook not to harass the petitioner.

13. It is therefore, submitted that the SDO ought to have granted possession of the house in question as well as the agricultural land to the petitioner but denied the same.

14. In support of his contention, the learned counsel for the petitioner has relied upon the judgment of the Division Bench of this Court in the case of *Sheetal Devang Shah Vs. Presiding Officer and others*, dated 06.05.2022 passed in Writ petition No.3323 of 2019 and judgment of the Co-ordinate Bench of this Court in the case of *Abhimanyu Jayesh Jhaveri Vs. Nirmala Dharmadas Jhaveri & Anr.*<sup>1</sup>.

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1 2022(1) ALL MR 394

15. On the other hand, the learned counsel for the respondent Nos.5 and 6, strongly opposes the present petition on the ground that the petitioner has no *locus standi* to file proceedings under the Act of 2007, as the house property was transferred in the name of her granddaughter by the petitioner herself through gift deed.

16. It is submitted that on the ground of harassment, the possession of the property cannot be given under the provisions of the Act of 2007 and as such, the application itself is not maintainable.

17. It is lastly argued that since the respondent No.5 has contributed for the construction of house coupled with the fact that the house property was purchased by his father, he is having share in the property and therefore, no order of ejectment can be passed against the respondent No.5.

18. In support of his contention, the learned counsel for the respondent Nos.5 and 6 has placed reliance upon the judgment of the Gujarat High Court in the case of ***Rajeshkumar Bansraj Gandhi***

*and 1 another Vs. State of Gujrat & 3 others*<sup>2</sup> and the judgment of the Division Bench of this Court in the case of *Ritika Prashant Jasani Vs. Anjana Niranjan Jasani and others*<sup>3</sup>.

19. In the light of the rival contentions of the parties, I have perused the record and the impugned order.

20. The documents filed on record show that the house in question stands in the name of the petitioner. The gift deed filed on record executed by the petitioner in the name of her granddaughter (niece of the respondent no.5), needs to be considered in the light of the provisions of the Act of 2007. However, admittedly, niece of the respondent No.5 is not in possession of the house in question.

21. Moreover, the complaints made against the respondent Nos.5 and 6 by the petitioner since the year 2012, show continuous harassment and torture by the respondent Nos.5 and 6 to the petitioner, who is 73 years old widow.

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<sup>2</sup> 2016 AIR (Gujarat) 129

<sup>3</sup> 2022 (1) Mh.L.J. 406

22. The written apology tendered by the respondent no.5 dated 27.07.2015 is sufficient to show that he accepted the act of harassment and further he has accepted that he has no right over the properties stand in the name of the petitioner.

23. From the record, it is further evident that, despite the written apology and undertaking not to harass the petitioner, there is continuous harassment at the hands of respondent Nos.5 and 6. They even kept the petitioner under house arrested. It has also come on record that they had driven out the petitioner from her own house.

24. Thus, ample evidence is available on record in support of the case of the petitioner about harassment and tortured by the respondent Nos.5 and 6.

25. The Division Bench of this Court in the case of ***Sheetal Devang Shah*** (supra), has observed thus:

*“30. The Tribunal, ultimately concluded, that Sheetal Shah and Devang Shah are not taking proper care of Nalini Shah and Mahendra Shah, but are causing mental and physical*

*harassment to them. As already observed, the age of Nalini Shah and her husband Mahendra Shah was 77 and 79 years respectively, at the relevant time, when they preferred the application. It is brought on record by the parties, that during the pendency of the petition, Mahendra Shah died. At present, Nalini Shah, wife of Mahendra Shah, is aged about 82 years. On couple of dates of hearing before us, she attended Court proceedings sitting on a wheel chair, that itself shows, that she is certainly dependent upon Sheetal Shah and Devang Shah for physical and mental support.*

*31 & 32 ...*

*33. The Tribunal has directed Devang Shah and Sheetal Shah to handover the possession of entire residential premises i.e., Saprem, Plot No.20, 3rd Road, Juhu Scheme, Vile Parle (West), Mumbai - 400 056 to Nalini Shah and Mahendra Shah (since deceased) in a peaceful manner. In our opinion, said direction given by the Tribunal is legally and factually sustainable, in as much as, when the application was decided by the Tribunal, the subject property stood in the name of husband of Nalini Shah, namely, Mahendra Shah. Relying upon the various documents placed on record including criminal complaints and other materials, the Tribunal has correctly reached a conclusion, that there is a continuous mental as well as physical harassment to Nalini Shah and Mahendra Shah (since deceased).”*

26. Similarly, the Co-ordinate Bench of this Court in the case of ***Abhimanyu Jayesh Jhaveri*** (supra), has observed thus:

*“15. In my opinion, this is a classic case where son Jayesh and grandson Abhimanyu have left no stone unturned to make life of the grandmother a living hell. She was thrown out of her own house by sustained physical and mental torture by Jayesh’s family. She was required to take shelter in her daughter Rashmi’s house. After she went to the daughter’s house, again Jayesh and Abhimanyu started harassing the grandmother which caused problems even to the family members of her daughter and ultimately, the grandmother was constrained to take recourse to the provisions of the Act. How much a senior citizen, that too who is at the age of 89, should be harassed for the greed for property ?*

*16. The object of the Act is to provide for more effective provisions for the welfare and maintenance of parents and senior citizens as guaranteed and recognized under the Constitution of India and matters connected therewith. Senior citizens at their advanced age in life become helpless, more particularly, when confronted with an obnoxious and unpleasant situation, where greedy and selfish children and relatives intend to exploit the senior citizens for material gains. Most vulnerable become those senior citizens, who have movable and immovable properties, earned by them by their hard work, only to suffer such nightmare and a calamity, being*

*foisted on them by such selfish and greedy members of the family. It would not be out of place to state that Courts have witnessed senior citizens knocking the doors of the Courts throughout the country, praying for reliefs under the Act. It is seen that when such senior citizens have property and when they become physically, psychologically and mentally weak and dependent and or they are in ill health, in such helpless position, the torture, harassment and depravement to them, from self-centered relatives and family members commences so as to grab their property. Justice G. S. Patel speaking for the Division Bench in **Sweta Shetti versus State of Maharashtra** WP (L) No.9374 of 2020 (Original Side), dated 25<sup>th</sup> November 2021, has echoed such concern in the following words :*

*“15. .... Indeed, it is our experience that in this city, and particularly or most especially amongst the wealthy of this city, senior citizens and elderly parents are being subjected to all kinds of harassment and deprivation in their twilight years. In case after case, we have complaints from senior citizens that their own sons and daughters are harassing them. In every case, the harassment is an attempt to somehow grab the senior citizen's property in his or her lifetime without thought spared to the mental or physical health wellbeing or happiness of these seniors. The present case is no different. Mr Shetty says Shweta demands 'her share'. What is her 'share' while he is alive? She has none. He may indeed give his flat and all wealth away inter vivos. That is his choice. She cannot prevent him from doing so. So long as he is alive, Shweta has no 'share' in his property.*

16. *We are of the considered view that this is not an isolated experience at all. It is, in fact, a widely noticed trend and it is to address this evil — we will not even call it mischief — that the 2007 Act was brought into force.”*

17. *Now coming to the facts of the present case, the grandmother who is in desperate need of a shelter i.e. her own house, and to be left free from torture, being caused to her by Jayesh and Abhimanyu, was justified in invoking the provisions of the Act. This is a clear case where the grandmother in the spirit as to what has been provided by Sub-section (3) of Section 4 of the Act, wishes to lead a normal life. Both Jayesh and Abhimanyu have not only failed to maintain the grandmother, but also have caused mental and physical harassment and depravement to her material needs to the extreme extent that she was thrown out of her own house, only with an intention to grab the said flat. It is not the case that Jayesh and Abhimanyu are persons without sufficient means. Jayesh has his own house which was purchased from his father's income as stated by the grandmother. Jayesh and Abhimanyu, who are financially well off and well placed, are torturing the grandmother with the greedy and acquisitive intention to grab the flat of the grandmother. In a similar situation, considering the provisions of Sections 4 and 5 of the Act in the case of **Ashish Vinod Dalal & Ors. versus Gaikwad RD Vinor Ramanlal Dalal & Ors.** 2021 SCC OnLine Bom 2976 : [2021(6) ALL MR 387], this Court had observed thus :*

“8. There is a more fundamental question which needs to be addressed, namely, whether the parents in the present facts were in any manner precluded from taking recourse to the provisions of Sections 4 and 5 of the Senior Citizens Act to enforce the needs of such senior citizens to lead a normal life. The answer to this question would certainly be in the negative. The provisions of the Senior Citizens Act are required to be construed to take within its ambit the maintenance of the senior citizens which certainly would include all facets of maintenance as provided for in Section 4 of the Senior Citizens Act, which would aid the senior citizens to lead a normal life. This certainly includes the senior citizens asserting rights in respect of ‘property’, the meaning of which, is spelt out by section 2(f) of the Act to mean property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and which would include rights or interest in such property.

9. As provided in sub-section (2) of Section 4, 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, which would certainly take within its ambit a protection from any harassment and torture meted out by a son or relative by keeping himself on the premises of the senior citizens. The intention of the legislature to provide such protection to live a normal life to the parents is also reflected in the provisions of sub-section (3) of Section 4 which provides that the obligation of the children to maintain his or her parents extends to the need of such parents either father or mother or both, as the case may be so that such parents ‘may live a normal life’. Maintenance is also defined in Section 2(b) to include provision for food, clothing, residence, medical attendance and treatment. Further Section 3 of the Senior Citizens Act gives an overriding effect to the provisions of the said Act notwithstanding anything inconsistent therewith contained in any enactment other than the said Act.

10. *It is thus clear that the intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizens rights, which are fundamental to their very survival and/or livelihood at their old age. Certainly the Court's approach cannot be narrow and pedantic in applying the provisions of the Senior Citizens Act to the grievances of the senior citizens falling within the ambit of the said Act. A protection from harassment, exploitation, neglect, psychological disturbances, psychological needs, and all possible facets to safeguard their physical and mental health are required to be recognized when sub-section (2) and sub-section (3) of Section 4 clearly provide that the obligation of the children or relatives would be to cater to the needs of the senior citizens so that they 'live a normal life'. 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. Certainly, this would include a right to prevent themselves from being harassed by children and by relatives. This is also clearly borne out by the preamble to the Senior Citizens Act which reads thus:- "An act 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."*

27. Thus, considering the object of the Act of 2007 as discussed by the Division Bench and the Co-ordinate Bench of this Court in the above referred judgments and the relief granted in the similar situation, I am of the opinion that, denial of relief sought by the

petitioner in the case, for possession of the house property as well as agricultural property by the SDO, is erroneous.

28. The SDO has not recorded a single reason as to why such relief was denied to the petitioner, despite it was specifically prayed for.

29. As far as the gift deed is concerned, it is the case of the respondent No.5 himself that under coercion and undue influence, the brother of the respondent no.5 has got the gift deed executed in favour of his daughter's name and therefore, these pleadings are sufficient to hold that *prima facie* such transfer is *void* and it will not make the petitioner disentitled to claim the possession over the house property as well as agricultural land.

30. As far as the judgment of the Gujrat High Court cited by the learned counsel for the respondent Nos.5 and 6 is concerned, the same is not binding on this Court, though it has persuasive value. However, I am not agreeable with the view taken by the Gujrat High Court.

31. There is no dispute about the law laid down by the Division Bench of this Court in the case of *Ritika Prashant Jasani* (supra), however, on facts, it is distinguishable from the present case and accordingly, the same is of no help to the respondent Nos.5 and 6. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The Order dated 01.10.2021 passed by the SDO, Gadchiroli, is hereby modified.
- (iii) The respondent Nos.5 and 6 are directed to hand over possession of the house property in question as well as agricultural land within three weeks from today, failing which the SDO, Gadchiroli is directed to take necessary steps as per the provisions of the Act of 2007 to hand over possession of the house property as well as agricultural land and submit report to this Court.

At this stage, the learned counsel for the respondent Nos.5 and 6 is praying for stay to the effect and operation of this judgment and order for eight weeks.

The said request is opposed by the learned counsel for the petitioner.

Considering the conduct of the respondent Nos.5 and 6 and their behavior with the petitioner, I am not inclined to accept the prayer made by the learned counsel for the respondent Nos.5 and 6. Accordingly, it is rejected.

Rule accordingly. No costs.

**[ANIL S. KILOR, J.]**