

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5167 OF 2023

1. Jyoti w/o Tushar Pawar,
Age – 37 years, Occ : Household,
R/o : Vikas Nagar, Old Kotha Road,
Nanded, Tq. & Dist. Nanded.
2. Ranjnabai w/o Shivaji Bhosale,
Age – 67 years, Occ : Household,
R/o : Shivranjan Nivas Ambekar Nagar,
Nanded Tq & Dist. Nanded. ..Petitioners

Versus

1. The District Collector
Nanded, Dist. Nanded.
2. The Sub Divisional Officer,
Nanded Dist. Nanded.
3. Tahasildar Nanded,
Dist. Nanded.
4. Mandal Officer,
Visnupuri Nanded Dist. Nanded.
5. Vijaykumar s/o Tulshiram Pawar,
Age – 67 years, Occ : Pensioner & Agri.,
Vikas Nagar, Old Kotha Road,
Nanded Tq & Dist. Nanded. ..Respondents

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Advocate for the Petitioners : Mr. S.P. Katneshwarkar i/b Mr. A.B.
Shinde & Mr. Y.K. Bobade

AGP for Respondent/State : Mrs. M.L. Sangit

Advocate for Respondent No.5 : Mr. V.D. Salunke i/b Mr. S.D. Kaldate

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CORAM : S.G. MEHARE, J.

DATED : MARCH 27, 2024

ORAL JUDGMENT :-

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

2. The respondent No. 5 is the father in law of the petitioner. He is a retired teacher. He had constructed house from his self earring. The petitioner No. 1 married his son on 16.12.2013. It is his contention that they were residing at different places of the service of her husband and visiting his house on occasionally and for festivals. He was residing peacefully with his wife in a disputed house. However, due to matrimonial discord between his son and daughter-in-law they started filing petitions against each other. The petitioner has parental home in the same town. On 27.02.2019, petitioner No.1 with her mother forcefully evicted a tenant from eastern side front room and entered into the said room. Her forceful entry disturbed the him. Petitioner No.1 did not file any proceedings more particularly under the Protection of Women From Domestic Violence Act, 2005 ('PWDV Act' for short). Since she forcefully entered into the two rooms of eastern side, it created unrest. She started abusing, threatening and harassing him physically and mentally. He tried to convince her many times. However, she was threatening to evict him from the rest of part of the house. Since it was his self acquired property, neither his son nor petitioner No.1 daughter-in-law had any right, interest or title in the suit premises.

3. With above allegations he had filed an application before the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Act of 2007'). Both parties were heard. The Maintenance Tribunal cum Sub Divisional Officer passed an order on 20.03.2023 directing the petitioners to vacate two rooms within seven days. She had impugned the said order before the Appellate Tribunal cum District Collector, Nanded. The Appellate Tribunal observed that only the senior citizens have a right to prefer the appeal and not others. Hence, she approached before this Court.

4. The daughter-in-law has a case that she was residing in the suit premises since her marriage. However, due to the matrimonial discord, it has been tried to evict her by a coercive method under the above act. She raised an objection on the tenability of the application. She has submitted that she could not be evicted under the provisions of above Act. However, the Maintenance Tribunal did not consider her submissions and passed the impugned order.

5. Learned counsel for the petitioners vehemently argued that the Hon'ble Supreme Court had laid down the law on this subject and the law involved in this case in the case of S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and Others, (2021) 15 SCC 730. He has referred to the definition of 'children' and argued that any order of eviction could not be passed against the daughter-in-

law. She also does not fall under the definition of 'relative' to obtain the eviction order under the Act of 2007. The thrust of his arguments were that the ambit and scope of this Act is restricted to the maintenance and welfare of parents and senior citizen. The respondent did not ask for the maintenance. He has barely asked for the eviction under the Act of 2007 which does not permit to evict the daughter-in-law.

6. He also referred to Section 23 of the Act of 2007 and vehemently argued that only in the case of transfer of property on the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and refusal or failure to provide such amenities by the transferee, the said transfer shall be deemed to have been made by fraud or coercion or under undue influence and in that circumstances. The Tribunal may declare such transfers void.

7. Referring to sub-section (2) of the said section, he argued that 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. He would submit that the respondent never had any case as such. Therefore also, he cannot seek the eviction.

8. To bolster his argument, he relied on the case of Randhir Singh Vs. District Magistrate Faizabad and Others, 2019 SCC Online ALL 7206, Ranjana Rajkumar Makharia Vs. Mayadevi

Subhkaran Makharia and Others, 2020 (3) Mh.L.J. 587 and lastly he relied on the judgment of the Bombay High Court in the case of Sanjivani Jayesh Seernani Vs. Kavita Shyam Seernani and Others, Writ Petition (Lodging) No.28282 of 2023 dated 18.03.2024. Referring to the above case laws, he would submit that the impugned order is apparently illegal and in violation of law and without jurisdiction.

9. Per contra, learned counsel for the respondent has vehemently argued that the Act of 2007 has two fold objects. First is the right to claim the maintenance and second is to reside freely without tension in his own house. Due to the acts of the petitioner/daughter-in-law, he was compelled to stay at 90 kms away from the suit premises. He has referred to the contents of the application and vehemently argued that such a forceful entry in the home disturbed the mental peace of the respondent. The respondent had no concern with his son and his disputes. The petitioner neither filed any say nor produced evidence. Therefore, the Tribunal has correctly accepted his pleadings. The burden was on the petitioner to prove under what capacity she was residing in the suit premises. S. Vanitha's case was under the PWDV Act. The case of Sanjivani was on the ancestral property. The petitioner with her mother forcefully entered into two rooms out of the suit premises. Now nobody is using that premises. It is left vacant. Her parents also reside in Nanded. To

create a pressure and force against the son, such a coercive method has been adopted.

10. He relied on the case of Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane, (2019) 1 ALL MR 700 and referred to para 25 of the said judgment and argued that the Bombay High Court has correctly viewed the purport and the object of the Act of 2007. If at such a fag end of the life the parents were asked to file a civil suit, they would never get the peace in their life and possession during their lifetime. If the powers under the Act of 2007 are not exercised, bearing in mind the object of the Act, the very purpose of the Act would frustrate. Thereafter, he relied on the judgment of the Bombay High Court in the case of Sheetal Devang Shah Vs. Presiding Officer of the Maintenance and Welfare of Parents and Senior Citizens, in Writ Petition No.3323 of 2019 dated 06.05.2022. Referring to the observations of the Hon'ble Division Bench of this Court, he has further argued that the Court held that the rights of the senior citizens were protected and the quashing of the order was affirmed. This fortifies his arguments that under the Act of 2007, the Maintenance Tribunal has power to pass the eviction order against the children including the daughter-in-law except the widowed daughter-in-law.

11. Further he relied on the case of Namdeo and Another Vs. State of Maharashtra and Others, (2022) 4 Mah LJ 258. Relying on this judgment, he vehemently argued that the ratio laid down in the

case of S. Vanitha (supra) has been taken into consideration and it was held that while section 4 empowers the senior citizen to seek payment of maintenance, section 23 empowers the senior citizen to seek a declaration in certain circumstances from the Maintenance Tribunal that the transfer of property is void. He would submit that the consistent view of the various High Courts is that the eviction order could be passed under the Act of 2007, if the comfort and peace of the senior citizens has been disturbed by the relative or children though no maintenance has been claimed. Lastly, he relied on the case of Savita Kalra Vs. District Magistrate, Gurugram and Others, CWP-567-2021 (O&M) of the High Court of Punjab and Haryana at Chandigarh dated 27.09.2022. He again argued that the view of the Hon'ble Supreme Court in the case of S. Vanitha (supra) has been taken into consideration and it has been observed that the Court finds that the emphasis of the said judgment is not to embolden the daughter-in-law to create any obnoxious situation for the senior citizen father-in-law and then to claim immunity from the operation of the provisions of the Act of 2007. The essence of the said judgment is with regard to the protection of the rights of the daughter-in-law, as available to her under the D.V. Act of 2005. Therefore, in the above said case, even the Apex Court has not passed an order determining the right of residence of the daughter-in-law in the house of the father-in-law; as such. Rather, the Apex Court has granted liberty to

the daughter-in-law to avail her remedies under the D.V. Act of 2005 by granting her a time period of one year.

12. Both learned counsels are emphasizing the object of the Act of 2007. The Hon'ble Supreme Court in the case of S. Vanitha (supra) has analyzed the entire Act of 2007. The facts of that case were that S. Vanitha was the daughter-in-law. Her in-laws had filed the petition under the Act of 2007. Her husband had purchased the suit premises few months before her marriage. Her husband sold that premises to his father. Her husband instituted divorce petition in 2009. Her father-in-law gifted the suit premises to his wife. Thereafter, his wife instituted the suit against her daughter-in-law seeking injunction against her. The said suit was pending. She preferred the maintenance proceedings. Then in-laws invoked the provisions of the Act of 2007 by instituting an application. They sought the eviction of daughter-in-law from the suit premises where she was residing and direction to pay the maintenance against their son. Under these premises, the law was crystallized and analyzed. Two issues were framed by the Hon'ble Supreme Court which reads thus :

- (i) Whether the overriding effect for remedies sought by applicants under Section 3 of the 2007 Act, can be interpreted to preclude all other competing remedies and protections that are sought to be conferred by PWDV Act, 2005;

(ii) Whether recourse to summary procedure contemplated by the 2007 Act is available for purpose of facilitating strategies that are designed to defeat claim of the appellant in respect of a shared household.

13. The law has particularly been crystallized in respect to the right of the daughter-in-law in respect of a share of household. In this context, it has been held that Section 23(1) of the 2007 Act deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. If the conditions of the transfer are not fulfilled, at the option of the transferor, the transfer can be declared as void by the Tribunal constituted under the 2007 Act. Sub-section (2) of Section 23 in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. Sub-section (2) of Section 23 of the 2007 Act speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act. A parent or grand-

parent may make an application under Section 4(i) against one or more of their children. A childless senior citizen can make an application against a relative specified in Section 2(g). Section 4 recognises a corresponding obligation on the part of the children or relative to maintain a senior citizen, extending to such needs as would enable them to lead a normal life. In the case of a relative, the obligation is if they are in possession of the property of the senior citizen or would inherit property from them. The statement of objects and reasons of the Act of 2007 reads thus :

“An Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.

Statement of Objects and Reasons. - Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.”

14. In the case at hand, the father-in-law did not claim maintenance. His simple case is that his daughter-in-law with her mother coercively evicted the tenant and forcefully occupied two rooms of front eastern side and that made him discomfort as she was threatening him to dispossess. Due to her behaviour, he has to leave the suit premises and stay at his village far away at 90 kms from the suit premises. He is suffering from high blood pressure and high blood sugar. He has to frequently attend the hospital frequently for his health issues. The daughter-in-law never resided in the suit premises. She was continuously residing with her husband at his place of service. Therefore, to protect the interest of father-in-law, the quick, simply, inexpensive and speedy provisions is only under the Act of 2007.

15. The Act of 2007 has been divided into two parts, first part covers the maintenance of parents and senior citizens and second part under Chapter V covers the protection of life and property of senior citizen. The father-in-law wanted to protect his life and property from his daughter-in-law. Section 22 speaks of the Authorities who may be specified for implementing the provisions of this Act. Section 23 which has been harped upon by the respondent speaks of the transfer of property to be void in certain circumstances. This Court had discussed Section 23 of the said Act. Section 23 does

not speak for the eviction. However, the law has been developed by various case laws. Under different facts, different views are there.

16. As far as eviction of daughter-in-law is concerned, the Hon'ble Supreme Court in the case of S. Vanitha (supra) has laid down the law that the claim cannot simply be obviated by evicting the daughter-in-law in exercise of the summary powers entrusted by the Senior Citizens Act 2007. However, the High Court at Nagpur Bench in the case of Namdeo (supra) referring to the observations of the Hon'ble Supreme Court in S. Vanitha's case has observed that the Hon'ble Supreme Court after noting the view which has been taken by the several High Courts that the Tribunal does possess the power to order eviction of a child or a relative from the property of a senior citizen, observes that the Tribunal may have the authority to order an eviction if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent and eviction would be an incidence of the enforcement of the right to maintenance and production. The Hon'ble Supreme Court did set aside the order of eviction, but then the order was set aside on the premise that the remedy of eviction can be granted only after advertent to the competing claims of the dispute. Based upon the facts of the said case which were against the son and daughter-in-law, it has been held that the eviction could be passed if eviction is absolutely necessary in

order to ensure the physical and emotional health and safety of the parents.

17. Similarly, in the case of Dattatrey (*supra*) after analyzing the legal provisions of the Act of 2007, it has been held that the said Act is enacted for the benefit and protection of senior citizen from his children or grand children. Once again, the Bombay High Court in the case of Sanjivani (*supra*), the case of S. Vanitha was discussed. It was a case filed by the mother-in-law against the daughter-in-law and son for eviction. In the said case, the ratio laid down in the case of Dattatrey (*supra*) has also been considered. It has been observed that the Apex Court thus held that in the event of composite dispute, it would be appropriate for the Tribunal to mold the relief and that Section 3 of the Senior Citizens Act cannot be deployed to override and nullify other protections in law, particularly that of woman's right to shared household under Section 17 of the D.V. Act. Similar were the facts of the case of S. Vanitha (*supra*).

18. Admittedly, the petitioner did not move an application under the PWDV Act for protection on the basis of her claim that she is residing in the suit premises since her marriage and has right to stay in shared household. In view of the facts which are similar to the case of S. Vanitha (*supra*), the Court is of the view that the ratio laid down in the case of S. Vanitha would squarely apply to the case in hand and similar order as passed in that case should be passed.

19. Examining the facts of this case, it appears that there is insufficient evidence to believe that the petitioners have forcefully entered the suit premises occupying two rooms as alleged. The matrimonial discord with her husband/son of the respondent is not denied. It is a matter of examination in detail whether the residence of the petitioner makes the life of the respondent discomfort, inconvenient and his safety is in danger. It also *prima facie* appears that petitioner no.1 has been restituted by her husband. He has filed divorce petition against her. Pursuant to the facts, the following order is passed :

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgments and orders of the Maintenance Tribunal passed in File No. 2022/Je.Na.Ni.Ka/Appeal/CR-3 dated 20.03.2023 and order of learned District Collector, Nanded in file No.2023/MaShaKa-1/Desk2/Pol-6/CR-67 dated 27.04.2023 stands quashed and set aside.
- (iii) The other legal remedies to protect the shelter under PWDV Act may be exercised by her, determining her right to stay in shared household as per her case.
- (iv) If she fails to prove that she has right to stay in the suit premises, the respondent would be at liberty to file appropriate remedy under the concerned law and Act of 2007.

(v) To take care of the comfort, health and safety of the senior citizens, the petitioner/daughter-in-law is restrained from creating any nuisance that may cause discomfort to his life.

(vi) Her mother and her relative should not stay with her in the suit premises till her rights to reside in the suit premises is determined by the competent Court of law.

(vii) No order as to costs.

(viii) Rule is made absolute in above terms.

(S.G. MEHARE, J.)