



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2216 OF 2023

Shantabai Alias Dhondubai Shamrao Savant

...Petitioner

Versus

Suman Laxman Sawant And Ors.

...Respondents

Adv. Pramod Kathane for the Petitioner.

Adv. Yuvraj Narvankar for Respondent Nos. 1 to 3.

Adv. Kadam Sakharam i/b Daulat Hinge for Respondent No. 4.

Coram : Sharmila U. Deshmukh, J.

Date : October 21, 2024.

P. C. :

1. By this petition, the challenge is to the order dated 18th April, 2022 passed by the Competent Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short "***Senior Citizens Act***"] and the order dated 24th November 2022 passed by the Appellate Authority.

2. Facts of the case are that on 13th December, 2021, an application came to be filed by the Petitioner against Respondent Nos.1 to 3 herein seeking the relief of eviction of Respondent Nos. 1 to 3 from the suit property which is plot No. A-17 admeasuring 2700 sq. ft., Rajshree Shahu Society, Pune Satara Road, Bibwewadi, Taluka: Shirol along with constructed structure thereon.

3. The application came to be resisted by Respondent Nos. 1 to 3.

The Competent Authority by order dated 18th April, 2022 partly allowed the application. The Authority noted that the Petitioner is resident of Pune at the address mentioned in the cause title and is presently residing at Jaysingpur. The Competent Authority noted that the subject property is situated in Pune District and in respect of the subject property civil suit has been filed and Writ Petition is pending adjudication in the High Court. The Competent Authority directed the Petitioner to approach the appropriate Court for relief in respect of the subject property and restrained the Respondent Nos. 1 to 3 from committing any act endangering the life of senior citizen or creating any dispute with the senior citizen.

4. Against the order of the Competent Authority, the Petitioner filed an Appeal under Section 16 of the Senior Citizens Act, which upheld the findings of Competent Authority and vide order dated 24th November, 2022 rejected the Appeal.

5. Heard Mr. Adv. Kathane, learned counsel for the Petitioner, Mr. Yuvraj Narvankar, learned counsel for Respondent Nos. 1 to 3, Mr. Kadam, learned counsel for Respondent No. 4 and Ms. M. P. Thakur, learned AGP for Respondent Nos. 5 & 6.

6. Learned counsel for the Petitioner would submit that in the application filed under Section 5 of the Senior Citizens Act, the Petitioner has made out a specific case of harassment caused by

Respondent Nos. 1 to 3. He submits that due to the financial as well as physical and mental harassment, application came to be filed seeking recovery of possession of the suit property by evicting Respondent Nos. 1 to 3 from the said property.

7. Upon query by this Court as regards the ownership of the subject property, Mr. Kathane would submit that the property was initially in the name of Petitioner's son Laxman, who is the husband of Respondent No.1- now deceased and thereafter by an application made to the Society, the share certificate was transferred in the name of Petitioner. He would therefore submit that the Petitioner is the owner of the property and has the right to seek eviction.

8. *Per contra*, learned counsel for the Respondent Nos. 1 to 3 would submit that share certificate was issued in the name of Respondent No.1's husband Laxman who expired on 19th October 2012. He would further submit that it is not disputed that Respondent Nos. 1 to 3 as well as the Petitioner are the legal heirs and the succession certificate had been duly obtained. As regards the construction of this structure, he points out the commencement certificate as well as the revised C.C. obtained in the name of husband of Respondent No.1. He would also point out the document at page Nos. 184, 185 and 187 showing that the maintenance has been paid by the husband of Respondent No.1. He submits that the whole

proceedings have been instituted at the instigation of the other son of the Petitioner which is evident from page No.116 of his affidavit-in-reply filed in which the previous application dated 18th September, 2019 which was filed by the Petitioner for transferring the plot in the name of his son was thereafter cancelled so that the present application under Senior Citizens Act could be filed by the Petitioner. He would submit that it is evident that attempts are made so that the property of Respondent No.1's husband can be transferred by the Petitioner to her elder son. He would further submit that the civil suit has been filed by the Petitioner seeking 1/3rd share in the retirement benefit as well as the insurance benefit of Respondent No.1's husband as also in respect of immovable property. He would submit that the provisions of Senior Citizens Act are inapplicable as no maintenance is sought and it is nobody's case that there has been a transfer of property required to be declared void for breach of the transfer conditions. He would therefore submit that the impugned order has rightly been passed.

9. Considered the submissions and perused the record.

10. As far as the maintainability of the Application for seeking relief of eviction under Section 5 of Senior Citizens Act is concerned, the Apex Court in case of ***S.Vanitha vs Deputy Commissioner*** (AIR SCC ONLINE 2020 SC 897) has held that eviction would be an incident of

enforcement of right of maintenance and protection. The Apex Court also held that this remedy can be granted only after adverting to competing claims in the Dispute.

11. In the present case, the Petitioner seeks eviction of the Respondent Nos.1 to 3, who are her daughter-in-law and grandchildren, from the subject property. The documents on record pointed out by Mr. Narvankar disclose that the ownership of subject property vested in Laxman i.e. the husband of Respondent No.1 as evident from the share certificate which was initially issued in the name of Respondent No.1's husband and the construction was carried out in name of the Respondent No 1's husband- Laxman. It is by way of an application to the Society that Laxman during his lifetime transferred the share certificate in the name of Petitioner. However no registered document for transfer of property or any gift deed or release deed has been produced on record to show the ownership of Petitioner. The question therefore would arise whether an application for transfer of share certificate simpliciter would amount to transfer of right, title and interest in favour of Petitioner. By reason of the initial ownership, a right in the property can be claimed by the Respondent Nos.1 to 3 being the legal heirs of Laxman. Similarly, the maintenance also appears to have been paid from the bank account of Laxman during his lifetime.

12. Mr. Narvankar is also right in pointing out the application by the Petitioner cancelling the earlier application which was made to the Society for transferring the subject plot along with the structure in favour of other son of the Petitioner. It is therefore apparent that the entire proceedings are at the instigation of the other son with a view to deprive the Respondent Nos.1 to 3 who are the legal heirs of deceased Laxman, who was the owner of subject property. Despite detailed affidavit-in-reply filed by the Respondent Nos 1 to 3, there is no rejoinder by the Petitioner to the reply Affidavit.

13. The right of Respondent Nos 1 to 3 in the subject premises cannot be obviated by resorting to the summary remedy provided under the Senior Citizens Act. There is civil proceedings pending between the parties which will determine the competing claims. The Competent Authority after considering the material on record, has rightly passed order restraining the Respondent Nos.1 to 3 from committing any act endangering the life of the senior citizen.

14. In exercise of powers under Article 227, I find no reason to interfere with the findings of the authorities rejecting the application seeking eviction of the Respondent Nos.1 to 3 in a summary inquiry under Senior Citizens Act. Resultantly, Petition fails and stands dismissed.

[Sharmila U. Deshmukh, J.]