

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3397 OF 2024

Sheetal Jadhav & Anr

... Petitioners

V/s.

Kamla Rama Kotian & Ors

... Respondents

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Mr. Surel Shah a/w Mr. Jayesh Joshi, for Petitioners.

Mr. Rajas Naik, for Respondent No.1.

Mr. V. R. Raje, AGP for State/Respondent No.32 to 4.

CORAM : AMIT BORKAR, J.**DATED : MARCH 20, 2024****PC.:**

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging an order passed by the Appellate Authority under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('the said Act' for short) thereby directing the petitioners to vacate the premises owned by the senior citizens.

2. Respondent No.1 is a senior citizen who filed an application before the Competent Authority under the provisions of the said Act for possession of Flat No.402 situate at A, Wing, in Shree Balaji SRA CHS Ltd., Vasudeo Balwant Phadke Marg, Mulund (East) Mumbai (East), Mumbai. A direction against respondent No.1 to provide maintenance of Rs.27,000/- was also prayed. She averred

that the premises is owned by her. She allowed the petitioners to stay in the premises owned by her out of love and affection. However, it is alleged that the petitioners started torturing respondent No.1 and refused to provide maintenance. She is suffering from diabetes and blood pressure due to which she requires continuous medical treatment. The incidences of harassment are stated / quoted in the application. The averments in the application are made under the oath.

3. The petitioners contested the application by filing reply. They denied the fact of harassment and submitted that the proceedings are initiated at the instance of someone else. Considering her age of 85 years, she will not be benefited by dispossessing the petitioners. They are taking care of respondent No.1 by providing maintenance to her.

4. The Competent Authority under the Act by an order dated 31 July 2023 directed petitioners to pay maintenance of Rs.3,000/- to respondent No.1. However, refused to pass an order of eviction on the ground that the petitioners have no other place to residence.

5. Aggrieved thereby, respondent No.1 filed an Appeal under Section 16 of the said Act. The Appellate Authority by the impugned order allowed the Appeal directing petitioners to hand over vacant possession of the suit premises to respondent. No.1 Aggrieved thereby, the petitioners have filed the present writ petition.

6. Learned Advocate for the petitioner submitted that the impugned order passed by the Appellate Authority is without

giving an opportunity of hearing to the petitioners. It is submitted that in the absence of application for condonation of delay, the Appellate Authority could not have condoned the delay of 30 days in filing the Appeal. He submitted that in the absence of categorical finding of harassment caused to the senior citizen, the Appellate Authority could not have passed an order of eviction.

7. Per contra, learned Advocate for respondent No.1 submitted that there is no serious dispute about ownership of respondent No.1. She has stated on oath in detail about the harassment caused by the petitioners. Relying on the judgment of the Division Bench of this Court in the case of **Shweta Shetty Vs State of Maharashtra & Ors**, reported in 2022 (1) Mh.L.J. 279, he submitted that the Authorities under the said Act have power of eviction of the relatives, in case where the senior citizen is exclusive owner of the premises in question, if such eviction is necessary and expedient to ensure maintenance and protection of the senior citizen or parent. The rival contentions filed for consideration.

8. In so far as, the contention raised by the petitioners that the Appellate Authority failed to give an opportunity of hearing to the petitioners is concerned, the Appellate Authority in paragraph 3 of its judgment has stated that the petitioners, in addition to the written submissions, made oral arguments. The said submissions in the impugned judgment are in relation to the happenings in the Court. It is well settled in view of the judgment of the Apex Court in the case of **State of Maharashtra Vs. Ramdash Shrinivas Nayak & Anr**, reported in 1982 (2) SCC 463, that the Superior Court

cannot adjudicate on the issues relating to happenings in the Subordinate Courts. The remedy of a person disputing such observations is to immediately approach the said Court or Authority while the matter is still fresh in the mind of learned Judge. In absence of conclusion from the same Authority, the categorical statement made in the impugned order needs to be accepted.

9. Moreover, assuming that the order is passed without giving an opportunity of hearing, the law in relation to compliance of breach of principles of natural justice has undergone as change in its approach. The requirement of the first Authority giving an opportunity of hearing to the aggrieved person cannot be disputed. However, if the ground is raised before the Superior Court regarding lack of opportunity of hearing by the Subordinate Authority / Court, the aggrieved person needs to show prejudice caused to him.

10. The Apex Court in a recent judgment, in the case of **State of Uttar Pradesh Vs Sudhir Kumar Singh & Ors.**, reported in 2021 (19) SCC 706 has been considered that the effect of violation of principles of natural justice observing that the natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused to the person. The procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed unless prejudice is shown by the litigant.

11. In the facts of the case, it is not in dispute that respondent No.1 is the exclusive owner of the premises in question. Moreover, respondent No.1 in her application has given details of harassment caused by the petitioners by making statement on oath. An inquiry under the provisions of the said Act is summary in nature. The orders passed by the Authorities under the Act are not by the persons who were judicially trained. Therefore, the quality of reasoning assigned in support of the order of an eviction cannot be equated with the judgment delivered by the Courts who are judicially trained to deliver the judgment. Therefore, the Superior Court needs to ensure that the compliance under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 by scrutinizing the impugned orders keeping in mind the orders are passed by untrained quasi-judicial officers. The Appellate Authority in paragraph 7.5 has referred to the principles laid down by this Court which regulate an eviction proceedings under the said Act and accepting the said principles applicable to the facts of the case, the Authority has recorded a finding that the applicant has made out a case for an eviction of petitioners. Considering the scheme of the Act, nature of an inquiry and the rights of the parties involved particularly absence of petitioners' right to occupy the premises, the order passed by the Authorities under the said Act need not be equated with the orders taking away substantive rights of the person who is complaining of breach of principles of natural justice.

12. The Division Bench of this Court in the case of **Shweta Shetty** (Supra) in paragraph 22 has quoted paragraphs 25 and 31 of the

judgment of this Court in the case of **Dattatrey Shivaji Mane Vs Lilabai Shivaji Mane**, reported in 2018 SCC OnLine Bom 2246 and has endorsed the views of the Single Judge, the quoted paragraphs 25 and 31 reads as under:

“25. If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his / her property from the children or grand children during his/her lifetime. The said Act is enacted for the benefit a and protection of senior citizen from his children or grand children. The principles of law laid down by the Delhi High Court in the case of ***Sunny Paul & Anr. Vs. State Nct of Delhi & Ors.*** (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.

31. In my view, Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. The respondent no.1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent no.1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but

are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.”

13. Therefore, in my opinion, the impugned order is substantially compliance with the parameters laid down by this Court in the case of **Shweta Shetty** (Supra). Hence, order does not suffer from legal infirmity.

14. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)