

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13033 OF 2023**

1. Abdul Shafi Abdul Razzak Shaikh

2. Rahat Abdul Shafiq Shaikh

Both residing at Room No. 680, Plot No.7,

Bharat Nagar, Bandra(E),

Mumbai – 400 051.

... Petitioners

vs.

1. The State of Maharashtra

2. The President and Competent Authority

Constituted under the Senior Citizens Act

Western Sub-urban, Bandra, Mumbai.

3. Smt. Abeda Abdul Razzak Shaikh

Residing at Room No. 680, Plot No. 7,

Bharat Nagar, Bandra(E),

Mumbai – 400 051.

4. Shaikh Abdul Rauf Abdul Razzak Shaikh

Residing at Room No. 683, Plot No.7,

Bharat Nagar, Bandra(E), Mumbai – 400

051.

5. Shaikh Rafique Abdul Razzak Shaikh

6. Momina Rafique Shaikh

Respondent No. 5 and 6 are residing at

Room No. 680, Plot No. 7, Bharat Nagar, ... Respondents
Bandra(E), Mumbai – 400 051.

Mr. Amey C. Sawant for Petitioners.

Mr. Namitkumar S. Pansare for Respondent No.3.

Mrs. M.S. Bane, AGP for the State.

CORAM : GAURI GODSE, J.

DATED : 21st FEBRUARY, 2024

P.C. :-

1. On 14th February 2024, the petition was heard and since, I was not inclined to entertain the petition, learned advocate for the petitioner had taken time to take instructions whether the petitioners want time to vacate.

2. Today, the petitioner is present and on instructions of petitioner, learned advocate submits that the petitioner intends to press the petition on merits and he does not want time to vacate the premises.

3. This petition takes an exception to the order passed by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('said Act'). Respondent no.3 is the mother of the petitioner who is aged 75 years of age, and had filed an application under the said Act, seeking reliefs against the petitioner and her

other children. By the impugned order, the petitioner as well as respondent nos. 4 to 6 are directed to vacate room no. 680, situated at plot no. 7 at Bharat Nagar, Bandra-Kurla Complex, Mumbai and hand over vacate and peaceful possession to respondent no.3. By the said order the tribunal has also restrained petitioner and respondent nos. 4 to 6 from harassing respondent no.3 mentally and physically.

4. Learned counsel for the petitioners submits that respondent no.3 had prayed for possession of rooms i.e. room no. 679 and 680. He submits that, since, only room no. 680 stands in the name of respondent no.3, the tribunal has passed an order only in respect of room no. 680. He submitted that room no. 679 which stands in the name of the petitioner is already let out to the licensee and hence, if the impugned order is implemented, hardships will be faced by the petitioner and his family. He submitted that room no. 680 consists of ground+1 storey and hence, the petitioner be permitted to use the upper storey of room No. 680 and he will vacate the ground floor of room no. 680. He further submits that considering age of respondent no.3, she will not be in a position to use the upper storey and hence, impugned order be modified only to the extent of ground floor structure of the room no. 680.

5. Learned counsel for respondent no.3 submitted that the application under the said Act was filed with various allegations against the petitioner and other respondents as they were harassing respondent no.3. He submits that modification of the order as submitted by the petitioner will not help the petitioner to occupy her premises peacefully at this age. He submits that considering the conduct of the petitioner and other respondents, respondent no.3 was constrained to file the application under the said Act. He therefore, submits that there is no substance in the argument made on behalf of the petitioners.

6. I have considered the submission made by both the parties. Perused the record. It is not in dispute that room no. 680 stands in the name of the respondent no.3. The Tribunal in the impugned order has considered the response of the petitioners as well as other respondents while considering the prayers of respondent no.3. The Tribunal has verified the documents regarding both the rooms i.e. room no. 679 and 680 and after taking into consideration the requirement of respondent no.3 and contentions raised by her in her application has granted relief only regarding room no. 680. Thus, perusal of the reasons recorded by the Tribunal indicates that the Tribunal has considered and examined all the submissions minutely

and by adopting a balanced approach has passed an order only regarding room no. 680. The impugned order enables the respondent no.3 to occupy the room which stands in her name and live there peacefully. By considering the allegations made by respondent no.3, the tribunal has passed the impugned order.

7. After perusing the allegations made by respondent no.3 in her application as well as the response filed by the petitioner and other respondents, I do not see any ground to interfere in the well reasoned order passed by the tribunal. There is no case made out to interfere in the writ jurisdiction by exercising power under Article 227 of the Constitution of India.

8. Petition is devoid of any merits. For the reasons stated above, petition is dismissed.

9. It is clarified that there was never any interim relief granted in the petition. Hence, respondent no.3 is at liberty to get the impugned order executed at the earliest.

(GAURI GODSE, J.)