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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4977 OF 2021**

Smt. Sulochana Dattatraya Patil
Age : 63 years, Occ : Nil
005, Shri Vighnagar Sankul,
Near Bhoir wadi, Chikanghar
Birla College Road, Kalyan (West)-421301

..... Petitioner

Vs.

1. Mr. Shailesh Dattatraya Patil
Age : Adult, R/a Season Society
Flat No. 202, Dmart Road
Near Shani Mandir Road, Kalyan (W)
Pin-421301
2. Deputy Collector
Welfare and Maintenance of
Sr. Citizens Act, 2007 Tribunal
1st Floor, Court Naka, Thane (W)
3. The Sub Division Officer,
Mohan Pride Cultural Centre
2nd Floor, Near Podar International
School, Khadak Pada, Kalyan(W) – 421
303
4. Depty. Registrar, Malhar Complex
A Type, B Wing, 1st floor
Near Mohinder Sing High School
Ghodekhot Aali, Kalyan West-421303

5. The Secretary / Chairman
Shri. Vighnagar Sankul, Nr. Bhoir Wadi
Chikanghar, Birla College Road
Kalyan (W) – 421 301

6. The State of Maharashtra
Having Office at PWD Building
High Court, Bombay

..... Respondents

Mr. Anand Jondhale (through VC) a/w. Mr. Medha Jondhale,
Ms. Rajnandini Jondhale and Mr. Harshvardhan Shinde for the
Petitioner.

Mr. Kishor Patil i/b. Mr. Nilesh Mandavkar for the Respondent No. 1.

Mr. Sandesh Deshpande for Respondent No. 5.

Mr. P. V. Nelson Rajan, AGP for the State-Respondent Nos. 2, 3 and 6.

CORAM : GAURI GODSE, J.

DATE : 10th APRIL 2024

Oral Judgment:

1. Heard. Rule. Rule made returnable forthwith.

2. Mr. Patil waives service for respondent no. 1, Mr. Deshpande
waives service for respondent no. 5 and learned AGP waives service
for respondent nos. 2, 3 and 6. By consent of parties taken up for final
disposal.

3. This petition takes an exception to the order passed by the Appellate Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (“Senior Citizens Act”). The Appellate Tribunal has dismissed the appeal preferred by the petitioner for challenging the dismissal of her application filed under Section 5, read with Section 23 of the Senior Citizens Act.

4. The petitioner is the mother of respondent no.1. She filed an application challenging the Gift Deed of two properties executed by her in favour of respondent no.1. Her case is that she was forced to execute the Gift Deeds, and she was thrown out of the property of her husband. Learned counsel for the petitioner submits that the petitioner’s husband expired on 15th June 2018, and thereafter, in the month of September 2018, two separate Gift Deeds were executed, forcibly transferring two properties of her husband in favour of respondent no. 1.

5. Learned counsel for the petitioner submits that the Tribunal rejected the petitioner’s application without making any inquiry into it and only by referring to a Memorandum of Understanding under which eleven flats were allegedly given to the petitioner. The petitioner is

disputing that flats are available for her residence.

6. Learned counsel for the petitioner submitted that none of the flats claimed to have been transferred in the name of the petitioner are available for her residence. He submits that there are no flats with any occupation certificates. Hence, after she was driven out of her husband's property, the petitioner was required to live at the mercy of her daughter and son-in-law, and hence, she filed a police complaint on 3rd May 2019 and thereafter approached the Tribunal under the Senior Citizens Act.

7. Learned counsel for the petitioner submits that since no proper inquiry was made as required under Section 23 of the Senior Citizens Act, the matter may be remitted back to the Tribunal for a fresh decision, taking into consideration all the relevant aspects with reference to the petitioner's prayer in the application.

8. Learned counsel for respondent no. 1 opposed the contention raised on behalf of the petitioner. He submits that pursuant to the Memorandum of Understanding executed between the petitioner, respondent no. 1 and the daughter of the petitioner, the property which

is the subject matter of the two Gift Deeds was agreed to be given to respondent no.1. He submits that false allegations are made against the petitioner. He further submits that there is no foundation laid in the application for challenging the Gift Deed. However, learned counsel for respondent no. 1, on instructions of respondent no. 1, submits that he has no objection if the matter is remitted back to the Tribunal for deciding it afresh in accordance with law.

9. Learned counsel for respondent no.1 on instructions submits that respondent no.1 shall continue to pay an amount of Rs.3000/- as directed by the Tribunal by order dated 8th November 2019. Learned counsel for the petitioner submits that at the time of fresh hearing after remand, the Tribunal be directed to decide the prayer for maintenance afresh and the amount paid at the rate of Rs.3000/- per month be without prejudice to the rights and contentions of both parties.

10. He further submits that the parties may not be permitted to file fresh pleadings and that the Tribunal should decide the application based on existing pleadings and material already produced by the parties in support of their contentions.

11. Learned counsel for the petitioner has no objection if the Tribunal is directed to decide the application afresh based on the existing pleading and the material already produced by the respective parties.

12. I have perused the papers. The Tribunal has recorded reasons for rejecting the application only with reference to the contention raised by respondent no. 1 that there are eleven flats available for the petitioner. Perusal of the reasons recorded by the Tribunal does not indicate that necessary inquiry as contemplated under Section 5 read with Section 23 of the Senior Citizens Act has been carried out by the Tribunal at the time of deciding the application of the petitioner.

13. Perusal of the reasons recorded by the Appellate Tribunal also does not indicate that the aspect of necessary inquiry has been taken into consideration. The Appellate Tribunal has again referred to the eleven flats allegedly available in the name of the petitioner and certain amounts in her account.

14. In my view, the reasons recorded by both Authorities do not satisfy the criteria required for holding an inquiry as contemplated under Sections 4 and 5, read with Section 23 of the Senior Citizens

Act. Since the parties consent to remit the matter back to the Tribunal, I am not inclined to examine the rival contentions of the parties on the merits of the application.

15. Hence, by consent of petitioner and respondent no. 1 petition is partly allowed by passing the following order :

- (i) The impugned order dated 26th February 2021 passed by the Additional Collector (Appellate Authority) under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in Appeal No. 4 of 2019, is quashed and set aside.
- (ii) The impugned order dated 8th November 2019 passed by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in Application No. 6 of 2019, is quashed and set aside.
- (iii) Application No. 6 of 2019 is restored to the file of the Tribunal, i.e. Sub-Divisional Officer and Executive Magistrate, Sub-Division-Kalyan, for deciding the application afresh in accordance with law.

(iv) It is clarified that I have not examined the rival contentions of the parties on the merits of Application No. 6 of 2019. Hence, all contentions of both parties are kept open.

(v) The statement made on behalf of respondent no.1 that the amount of Rs.3000/- shall be paid to the petitioner till further orders are passed by the Tribunal is accepted. It is clarified that the payment of the said amount is without prejudice to the rights and contentions of the parties.

(vi) Needless to record the Tribunal shall decide all the prayers afresh in accordance with the law and uninfluenced by the reasons recorded in the impugned orders.

(vii) Parties shall appear before the Tribunal on **23rd April 2024 at 11:00 a.m., and thereafter**, the Tribunal shall fix the schedule of the hearing.

(viii) Writ Petition is disposed of in the above terms.

[GAURI GODSE, J.]