

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11349 OF 2023

Shri.Subhash Madhav Yeole & Anr.

... Petitioners

Versus

Shri. Prashant Subhash Yeole & Ors.

... Respondents

Ms. Rutvi J. Solanki i/b. Shashank Shubham with Puneet Fonia, for the Petitioners.

Ms. Shruti D. Vyas, Addl. Govt. Pleader with Ms. P. N. Diwan, AGP for the State.

**CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.**
DATED: 22 JANUARY, 2024

P.C.

1. The petitioners who are senior citizens had approached the Maintenance and Welfare of Parents and Senior Citizens Tribunal (for short '**Senior Citizens Tribunal**') against their son with a grievance that Respondent Nos.1 and 2 are harassing the petitioner in occupying the flat in question and in this situation they had approached the Senior Citizens Tribunal with a prayer that respondent Nos. 1 and 2 be directed to vacate the said premises as also with a prayer for maintenance being provided to them by son.

2. Such complaint came to be filed before the Tribunal on 24 February 2021 which came to be decided in favour of the petitioners by a judgment and

order dated 6 June 2022 whereby respondent Nos. 1 and 2 were directed to vacate the flat as also to pay an amount of Rs. 5000/- per month as maintenance per month. The operative order passed by the tribunal reads thus:

“ORDER

1. The application of the Applicant is allowed on the basis of sample analysis and the conclusion drawn in the result letter.
2. Mr. Prashant Subhash Yeole, Mrs. Jayshree Prashant Yeole, where they lives in Flat No.201-2B, Plot No.50, Seawood Heritage CHS, Sector-4, Kharghar, Navi Mumbai-410210 and remove all furniture, electronic equipment belonging to them and being prohibited from staying in the house. They are ordered to leave the house immediately and not to cause any kind of trouble to the Plaintiff under the provisions of Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act,2007.
3. If the Respondent defaults in complying with this order, they shall be liable to imprisonment of any description or to imprisonment for a term which may extend to one month and to a fine which may extend to five thousand rupees or to both under the provisions of Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act,2007.
4. Also Mr. Prashant Subhash Yeole is to pay subsistence allowance of Rs.5,000/- per month from the date of this order.
5. If the Applicant or Respondent is aggrieved by this order, they may file an appeal against the order before the Competent Tribunal under the provisions of Section 16 of this Act.
6. According to the said order, if Applicant requests the co-operation of the Police Department, the Police Department should co-operate immediately.
7. Copies of this order should be sent to all concerned.

Dated:06/06/2022

Sd/-

(Rahul Mundke)

President, Senior Citizens' Settlement
Tribunal and Sub-Divisional Officer and
Sub-Divisional Magistrate, Sub-Divisional
Panel.”

3. The petitioners contend that respondent Nos.1 and 2 have however refused to comply with the orders passed by the Senior Citizens Tribunal. It is contended that neither respondent Nos.1 and 2 are vacating the premises nor they are paying maintenance of Rs.5,000/- per month and directed by the tribunal. In such circumstances, the petitioners have also filed an execution application on 11 May 2023, which is stated to be pending and no cognizance has been taken of the said application.

4. The case of the petitioners is that on the only ground that the respondent Nos. 1 and 2 have filed an appeal invoking Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, neither the execution proceedings are being taken forward in regard to the recovery of the maintenance nor the tribunal is taking any action to get the premises vacated. It is submitted that in fact the police authorities are also acting at the behest of respondent Nos.1 and 2. It is in these circumstances, the present petition has been filed.

5. We had heard learned Counsel for the parties on 19 January 2024 when we passed the following order:-

“1. The Respondents are already served and Affidavit of Service is on record, however, it appears that they are not interested to appear and contest the same. Considering the nature of the prayers, we have requested Ms. Vyas, learned Additional Government Pleader, to take instructions as to the position of appropriate action being taken by the concerned to implement the orders passed by the Senior Citizens Welfare Tribunal. Let the appropriate report in that regard be placed on record.

2. Stand over to 22nd January 2024 “HOB”.

6. Even today respondent Nos.1 and 2 are not represented.
7. In pursuance of the said order, Ms. Vyas, learned Additional Govt. Pleader has placed on record a communication received by her from the Assistant Police Inspector, Kharghar Police Station, dated 22 January 2024 as also a communication from the Sub-Divisional Officer / Presiding Officer of the Senior Citizens Tribunal, Panvel in relation to the Execution proceeding. Both the communications dated 22 January 2024 are taken on record and marked "X-1" and "X-2" respectively, for identification.
8. The communication addressed by the Assistant Police Inspector states that the action was intended to be taken by the police authority as per the directions of the Senior Citizens Tribunal, however, there were certain reasons given by respondent no.1 which are recorded in paragraph 3 of the communication, hence, action could not be taken. It appears from paragraph 4 of the said communication that the concerned officer has expressed inability to take action. We are not at all satisfied with this report of the Assistant Police Inspector. The intention of the Police Officer appears to be clearly not to act under the order passed by the Senior Citizens Tribunal. There is no justifiable reason whatsoever in the said report.
9. Insofar as the execution proceedings are concerned, a letter addressed by the Presiding Officer of the Senior Citizens Tribunal to the learned Government Pleader dated 22 January 2024 clearly states that as respondent

Nos.1 and 2 are in appeal, hence, awaiting the result in the proceedings of the appeal, the execution application has not been taken forward. Even in regard to this report, the explanation is far from satisfactory.

10. Respondent Nos.1 and 2, as noted above, appears to be not interested to contest the present proceedings. They have sufficient notice of the proceedings. Infact, an e-mail communication addressed by Advocate for the petitioner has been responded by respondent Nos.1 and 2.

11. Considering the aforesaid facts, as contended by learned Counsel for the petitioners, there is a serious doubt on whether the appeal filed by respondent Nos.1 and 2 is itself maintainable under Section 16 of the Act. Apart from this, there is no interim stay to the orders dated 6 June 2022 passed by the tribunal. It is more than one and half years that the orders passed by the Senior Citizens Tribunal are in subsisting and the same are not being implemented. This, in our opinion, is causing a serious prejudice to the petitioners who are senior citizens. In fact the very object and intention of the Act is being defeated in the petitioners being deprived of the fruits of the orders passed by the Senior Citizens Tribunal and without any warrant in law.

12. In the aforesaid circumstances, certainly reliefs are required to be granted to the petitioners who, in our opinion, are suffering despite the orders passed by the tribunal on 6 June 2022. We accordingly, dispose of this petition by the following order:-

ORDER

- i. Respondent Nos. 1 and 2 are directed to hand over the possession of the flat to the petitioners within a period of ten days from the date a copy of this order is served on them.
 - ii. In the event, respondent Nos.1 and 2 do not hand over the possession of the flat to the petitioners, the orders of the tribunal shall be implemented in letter and spirit in the manner as directed by the Senior Citizens Tribunal in paragraph 6 of the order.
 - iii. The execution application, as filed by the petitioners as pending before the tribunal, be decided within a period of four weeks from the date a copy of this order is placed before the tribunal.
 - iv. All contentions of the parties on any pending proceedings, are expressly kept open.
 - v. The appeal filed by respondent Nos.1 and 2 be taken up for adjudication by the Appellate Authority and be decided within a period of six weeks from today.
13. Learned Advocate for the petitioners shall communicate this order to respondent Nos.1 and 2 for compliance.
14. Parties to act on the authenticated copy of this order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)