

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9303 OF 2023

Smt. Dhanesari Sanjay Patel.

...Petitioner.

Versus

Smt. Shanti Babubhai Patel.

...Respondent.

AND

WRIT PETITION (ST.) NO. 20192 OF 2023

Saurabh Sanjay Patel.

...Petitioner.

Versus

Smt. Shanti Babubhai Patel.

...Respondent.

Mr. Sachin B. Shetye for the petitioner.

Mr. S. T. Pandey for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : January 16, 2024.

P. C. :

1. Writ Petition (St.) No. 20192 of 2023 is not on board. However, since the petition takes exception to the common order, as assailed in Writ Petition No. 9303 of 2023, Writ Petition (st.) No. 20192 of 2023 is taken on board

2. The petitioners are aggrieved by the order dated 31st May 2023 passed by the Tribunal in an application filed by the respondent—

mother in law under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

3. Learned counsel appearing for the petitioners would submit that since the date of marriage of the petitioner with the respondent's son in the year 1998, the parties are residing together in the subject premises. He would submit that the premises was tenanted premises of which petitioner no.1's father-in-law was the tenant and after his death in the year 2010, the petitioner and her son along with the respondent are residing in the said premises. He submits that petitioner no.1's husband expired on 2nd May 2020 and apart from the said premises there is no other premises for the residence of petitioner. He would further submit that the Tribunal has not followed the procedure prescribed under section 6(4) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which provides for evidence to be taken in the presence of parties against whom an order for payment of maintenance is proposed to be made.

4. *Per contra* learned counsel appearing for the respondent would submit that the respondent was subjected to constant abuse by the petitioners which has led to N.Cs. being filed. He submits that there is no denial of the right of petitioners in the subject premises and in fact

it has been recorded by the Tribunal while answering issue no.1. He, on instructions, further submits that as and when the subject premises is sold, the petitioners will be entitled to a share in sale proceeds. He submits that the share of petitioners has not been denied in the subject premises.

5. Considered the submissions.

6. The object of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is to provide effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution.

7. The respondent is a senior citizen and the allegation has been made that she is subject to constant abuse by the petitioners. The Tribunal after considering the material on record has partly allowed the application and directed the petitioners to vacate the premises within a period of one month from the date of order.

8. The submission of Mr. Shetye that provisions of section 6(4) of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 have not been followed by the Tribunal is misplaced inasmuch as the said provision is applicable in case the application is for maintenance of parents and senior citizens. In the present case, the applicant is

seeking direction to the petitioners to vacate the premises, which has been provided under section 21 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. That being the position, the provisions of section 6 are clearly inapplicable and it is not required that the evidence be led.

9. It is not disputed that the property was tenanted property of the father-in-law of the petitioner and the Tribunal has recorded a finding that the electricity bill as well as the tenancy receipts are in the name of respondent. As such, no fault can be found in the order of Tribunal directing the petitioners to vacate the premises. It also needs to be noted that a specific submission has been recorded by the Tribunal that the respondent is not averse to handing over share of the petitioners in event the property is sold. It means that the rights of petitioners in the subject premises is recognised by the respondent.

10. Considering the above, order of Tribunal does not require interference. The petitioners are directed to vacate the subject premises within a period of two months from the date of uploading of the present order. Writ petitions stand disposed of.

11. It is made clear that the petitioners are at liberty to adopt

appropriate proceedings for determination of their right, title and interests in the subject premises which proceedings shall be decided independently in accordance with law.

[Sharmila U. Deshmukh, J.]

[Corrected order as per speaking to the minutes order dtd. 5-8-2024.]