

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11534 OF 2024

Kavita Ramesh Kathare and anr.

... Petitioners

Versus

Appellate Authority and Additional Collector and
Ors.

... Respondents

Mr. Aditya Lele along with Mr. R. U. Deo,, Advocate for the Petitioners.
Mr. Ashok B. Tajane along with Ms. Kavita P. Shinde and Mr. Yuvraj
Tajane, Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATED : 19th AUGUST, 2024.

P.C. :

1. Heard learned counsel for both the sides.
2. Learned counsel for the petitioners submits that without there being any finding recorded by the authority under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Act"), order is passed for removal of the petitioners from the property in question i.e. shop No.82. It is his submission that exceeding jurisdiction, a finding is recorded to the effect that the contesting respondent is the owner of the said property. It is submitted that the petitioners have already raised objection before the authority in respect of the Will purportedly executed

by the father of petitioner No.1 and husband of contesting respondent. It is submitted that since the property involved in this proceeding is from Mumbai, the Will without probate cannot be implemented.

3. Learned counsel for the contesting respondent vehemently opposed grant of any relief. It is his contention that the contesting respondent is the co-owner of the said shop. It is submitted that the petitioners are doing business in the said shop and earning about Rs.3,00,000/- to Rs.4,00,000/- per month. It is submitted that, in any event, the contesting respondent who is senior citizen has not been maintained by the petitioners.

4. No doubt there is prima facie substance in the contention of the learned counsel for the petitioners with regard to the exceeding of jurisdiction by the authority under the said Act by observing that the contesting respondent is the owner of the said property on the basis on unprobated Will. However, at the same time, there is no dispute about the fact that the contesting respondent is senior citizen and has no independent source of income.

5. Having regard to the objects and reasons of the enactment of the said Act, while passing any order of granting stay to the impugned order, it needs to be seen that the interest of the senior citizen is protected.

6. Learned counsel for the petitioners, on instructions, makes a statement that without prejudice to the rights and contentions, the petitioners are ready to deposit a sum of Rs.20,000/- per month in this Court to show their bona fides. This submission is opposed by the learned counsel for the contesting respondent on the ground that undisputedly the income from the said business is Rs.3,00,000/- to Rs.4,00,000/- per month, hence, at least Rs.50,000/- per month be directed to be deposited.

7. Considering the order impugned, the petitioners have made out a case for stay of clause (2) of the impugned order till the next date of hearing, subject to the petitioners depositing the sum of Rs.35,000/- per month before this Court.

8. The said amount be deposited on or before 10th day of each month. It is clarified that any default in making such payment/deposit, shall result in vacating order of stay without reference to the Court.

9. Hence, issue notice to the respondents returnable on 9th October 2024.

10. Mr. Tajane, learned counsel, waives service on behalf of respondent No.2.

11. Till next date of hearing, there would be stay to clause (2) of the impugned order subject to the condition as mentioned hereinabove.

12. Affidavit-in-reply, if any, be filed before the next date of hearing.

(R. M. JOSHI, J.)