



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2902 OF 2024

Usha Late Radheshyam Jhunjhunwala

VERSUS

Shankar Late Radheshyam Jhunjhunwala And Another

- Mr. A. S. Bajaj, Advocate for the Petitioner
- Mr. S. G. Karlekar, Advocate for the Respondents

CORAM : R. M. JOSHI, J
RESERVED ON : MARCH 20, 2025
PRONOUNCED ON : MARCH 25, 2025

ORDER :

1. This Petition takes exception to the order passed by the Competent Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') dated 03.02.2023 and confirmation thereof by Appellate Tribunal in Appeal dated 27.10.2023.

2. Petitioner is the mother of Respondent No. 1 and mother-in-law of Respondent No. 2. She filed application under Section 4 of the Act before competent Authority seeking following reliefs:

आपण माझ्या मुलास (शंकर राधेश्याम झुनझुनवाला) व त्याची पत्नी (सौ. अरूणा शंकर झुनझुनवाला यांना त्यांच्या स्वतःच्या घरात राहण्यास जाण्याबाबत कायद्याने बंधनकारक करावे, जेणे

करून मला एकटीला माझे उर्वरीत आयुष्य सुखा समाधानाने जगता येईल. कृपया योग्य ते सहकार्य लवकरात लवकर करावे ही नम्र विनंती.

3. During the course of hearing before the Maintenance Tribunal though claim of maintenance was made but later on she restricted her prayer to the extent of eviction of the Respondents from the subject house bearing CTS No. 17306 and Plot No. 34/01, Anand Niwas, New Osmanpura, Opp. Sant Eknath Rangmandir, Aurangabad. Competent Authority after hearing both sides partly allowed the application. Instead of directing eviction of Respondents from the subject premises, direction was issued not to cause any obstruction to the possession of the Petitioner over the subject property. This order came to be challenged before the Appellate Authority under Section 16(2) of the Act unsuccessfully. Hence, this Petition.

4. Learned Counsel for the Petitioner submit that the Petitioner is aged about 78 years and that she has been forced out of the subject property by Respondents with effect from 10.10.2020. It is his contention that the subject property was purchased by her husband -

Radheshyam Jhunjhunwala from his income in the name of Petitioner, Respondent No. 1 and her another son Deepak. It is his submission that though they have equal share of subject house, the Respondents are not permitting her to reside therein. In this regard, reference is made to the complaints made so also communication entered into between the parties. Learned Counsel for Petitioner further submits that during the pendency of the Petition, Petitioner wishes to forego her contention seeking eviction of the Respondents from the suit house and has further restricted her claim to giving exclusive possession of the 1/3rd portion of the suit house to her. It is his contention that the same is permissible in law and more particularly in view of provisions of Act. To support his submissions, he placed reliance on following judgments: Ashish Vinod Dalal and Others vs. Vinod Ramanlal Dalal and Others, 2022(1) Mh.L.J. 511, Shweta Shetty vs. State of Maharashtra and Others, 2022(1) Mh.L.J. 279, Dinesh Bhanudas Chandanshive vs. The State of Maharashtra and Others, Writ Petition No. 7392 of 2021 decided on 30.01.2024, Shefali Sanjiv Patel and Another vs. Jyotiben Manubhai Patel and Another, Writ Petition No.

2441 of 2021, decided on 14.10.2021, Govind Laxman Bawkar vs. Mrs. Pranimal Prakash Sodye and Others, Writ Petition No. 10659 of 2023, decided on 26.04.2024, Suryakant Kisan Pawar vs. Deputy Collector, Mumbai and Another, Writ Petition No. 2141/2019, decided on 18.12.2022, Mrs. Vaishali Abhishek Mehta and Anr vs. The Hon'ble Sub-Divisional Officer and Ors, Writ Petition No. 14388/2023, decided on 13.12.2023, & Mr. Pawan Ravindra Panchal and Anr vs. State of Maharashtra and Anr, Writ Petition No. 379/2023, decided on 13.03.2024.

5. On merit, it is his submission that the affidavit-in-reply filed by the Respondents clearly indicates that the possession of the subject house from which according to him 1/3rd share can be carved out for exclusive use of the Petitioner. It is his submission that relying upon various judgments recorded herein below that the need of the senior citizen must be considered paramount while passing any order. It is his submission that this Court while exercising powers under Article 226 and 227 of the Constitution of India is not prevented from passing appropriate order to

avert the miscarriage of justice. He argues that under Section 4 of the Act not only order of maintenance but also order of residence can be passed. In support of overall submissions, he placed reliance on following judgments: *B. R. Rambhadriah vs. Secretary, Food and Agriculture Department, Andhra Pradesh and Others, (1981) 3 SCC 528, Kishore Samrite vs. State of Uttar Pradesh and Others, (2013) 2 SCC 398 & Nitin Rajendra Gupta vs. Deputy Collector, Mumbai and Others, Writ Petition No. 590/2023, decided on 10.04.2024.*

6. Learned Counsel for Respondents opposed the said submissions essentially on the ground of the claim of the Petitioner is not genuine. It is his submission that the Petitioner at the instigation of the brother of Respondent No. 1 is trying to get the dispute of the properties resolved by invoking the provisions of the Act. It is his submission that the proceedings under the Act are summary in nature and in this Petition, it is not permissible to decide the rights of the property in respect of the properties. By referring to Sections 4 & 5 of the Act, it is his submission that these provisions deal only with the issue of maintenance of

senior citizen and that the same cannot be invoked for the purpose of passing any order of eviction of Respondents from the subject house. It is his submission by referring to Section 23 of the Act that only in case of gift deed or any transfer of property by the senior citizen in favour of other person, the said provision can be invoked. It is his submission that since this has not been the case made out before this Court, question of exercising said powers does not arise. It is his argument that this Court in exercise of powers under Articles 226 and 227 of the Constitution cannot dislodge the findings recorded by the Courts below and in any case, it is not permissible for this Court to substitute the said findings and to pass any order contrary. He further drew attention of the Court to the documentary evidence on record which are annexed with the affidavit-in-reply and rejoinder in order to submit that the case of the Petitioner about she being forcibly removed from the subject house on 10.10.2020 is false in view of the correspondence entered into by her till 03.01.2021. It is his further submission that the allegations made against the Respondents are false and fabricated and that the

Petitioner has even gone to the extent of creating false record before this Court. In this regard, reference is made to the report of the architect and letter purportedly written by father of Respondent No. 1 along with Petitioner. It is his submission that this is a fit case for taking up action of perjury. To support his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of **Rajendra Diwan vs. Pradeep Kumar Ranibala and Another, (2019) 20 SCC 143.**

7. While deciding this issue, it is absolutely necessary to take into consideration the object of enactment Act, which reads thus:-

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the

procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives.

It is thus clear that for the purpose of

deciding any issue under the provisions of this Act, the interest of the senior citizen needs to be considered paramount. Though this Court finds substance in the contention of learned Counsel for Respondents that the rights of the parties cannot be decided in the said proceeding being summary in nature, however merely because objections are raised with regard to the rights of the party in the property, the Authorities are not barred from taking into consideration the material evidence on record on its face value and to issue appropriate direction. Such directions can be issued in appropriate cases even without recoding findings with regard to the rights of the parties and such determination of rights can be left to the decision of Civil Court. Suffice it to say that when a *prima facie* strong case is made out by senior citizen that it is important for her to live in peace and tranquility, appropriate directions can certainly be issued, which may not ultimately affect the rights of the parties.

8. Parties herein have filed reply, rejoinder, sur-rejoinders, etc. Once an allegation is made, the same is countered by filing affidavit. Though learned

Counsels for both sides sought to canvass their own case to be true, however, *prima facie* this Court is of view that the parties are not coming out with complete truth before the Court. It is claimed by Respondent No. 1 that he has become exclusive owner of the subject property by virtue of partition effected by his father during his lifetime, however, the said claim is disputed and the Respondent No. 1 has not got his right determined from appropriate Court. Apparently, the subject house is purchased during the lifetime of husband of Petitioner but in the name of Petitioner, Respondent No. 1 and his brother. It is material to note that at the relevant time the Respondent No. 1 was aged about 19 years and his brother was aged about 15 years. It is further relevant to consider that none of the parties have raised any issue before the Civil Court establishing their respective rights in the subject house. In the light of these facts, if the allegations are considered then the manner in which the litigation is fought by the Respondents by tooth and nail indicates that the relationship between parties is not cordial and therefore, the case of Petitioner, old lady, deserves to be accepted that she has a right to

stay separately in subject house, without disturbance/interference from the Respondents.

9. Here in this case, Petitioner is old widow and has lived most of her life in the subject house and has a desire to stay therein after demise of her husband. Even if it is accepted for the sake of argument that there are inconsistencies in the stand taken by the Petitioner at different point of time, however, as a matter of fact at all times she is insisting upon staying in the subject house. Importance of a person having attachment to the property belonging to the father or husband need not be elaborated. It is a emotional/psychological need of any one and more particularly aged person. Suffice it to say that the house in which the Petitioner has lived for a long period of time and she desires to stay therein in the twilight of her life, the said expectation is not unreasonable. The opposition of the Respondents to the Petition is sufficient enough to infer that Petitioner cannot be left to the mercy/discretion of the Respondents for such stay in the subject house. An intervention of the Court is absolutely essential.

10. At this stage, it would be relevant to take note of the definition of 'maintenance' under Section 2(b) of the Act, which reads thus:

(b) "maintenance" includes provision for food, clothing, residence and medical attendance and treatment;

This definition indicates that for the purpose of this Act, the general definition of term maintenance is not restricted to the monetary relief. In view of aims and objects of the Act, the definition is made enough to cover the provision for residence. Thus, there cannot be any impediment to grant appropriate relief to senior citizen in respect of residence.

11. It needs to be noted that during the course of hearing, learned Counsel for the Petitioner, on instructions, had made statement with regard to the allotment of two rooms for the Petitioners for her exclusive use and that the relief sought against Respondents of their eviction is not pressed. Though the said contention is opposed by learned Counsel for the Respondents on instructions, suffice it to say that it is within the right of the party to seek lessor

relief than the one sought at the initial stage of the proceedings. This Court is conscious of the fact that the Petitioner is a old aged lady and in such circumstances, it would be totally unjust to call upon her to move the maintenance Tribunal under the Act once again in order to seek appropriate relief. This Court, therefore, finds this to be a fit case wherein relief can be granted in order to avoid miscarriage of justice.

12. Respondents have filed reply/rejoinder dated 01.07.2024 along with it a map of the subject house is filed. Perusal of the same indicates that on the first floor there are two rooms towards western side as indicated in the map. If those two rooms are specifically allotted to the Petitioner, she would be in a position to live peacefully therein.

13. In view of the above, Petition stands partly allowed in following terms:

- a) Respondents are directed to handover exclusive possession of the two rooms as indicated in the stripped portion in map annexed to this judgment for exclusive

use of Petitioner.

- b) Petitioner shall be entitled also to use common kitchen. In case, Respondents do not desire to have common kitchen, Respondents, at their own cost, to make appropriate arrangements in two rooms for establishing a kitchen for Petitioner.
- c) Respondents are hereby restrained from preventing entry of the Petitioner in any manner in the subject house and her exclusive occupation of two rooms as indicated above.
- e) Petitioner not to handover possession of these two rooms to any person nor shall create any third party interest therein in any manner.
- f) It is clarified that the above arrangement shall prevail till the parties get their respective rights *qua* subject house from competent civil Court.

(R. M. JOSHI, J.)

Later On:

14. After pronouncement of this order, learned Counsel for the Respondents seeks stay to the order for

eight weeks.

15. Having regard to the fact that the order is passed in order to protect urgent need and the interest of senior citizen, the prayer for stay of the order stands rejected.

(R. M. JOSHI, J.)

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