



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

39 WRIT PETITION NO. 4715 OF 2025

Dhanashree Pankajkumar Choudhari
VERSUS
The District Collector Dhule And Others

...
Advocate for Petitioner : Mr. S.S. Dixit
AGP for Respondents: Mr. D.R. Korade
Advocate for Respondents 3,4 : Mr. M. S. Sonawane
...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 04, 2025

PER COURT :-

1. Present writ petition takes exception to the order dated 28.3.2025 passed by learned District Collector, Dhule in appeal no.1 of 2025, by which appeal filed by petitioner against the order dated 30.8.2023 passed by the Sub-Divisional Officer, Dhule in Senior Citizen Application No.11 of 2023 is rejected.

2. Respondent nos.3 and 4, who are in-laws of petitioner had filed proceeding no.11 of 2023 before Sub-Divisional Officer, Dhule under the provisions of Section 5 and 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Senior Citizens Act'). It was their contention that they are residing in house situated at

Kelenagar, Nakane Road, Deopur, District Dhule on the ground floor consisting of five rooms, whereas petitioner and her husband are residing on first floor of the same house. According to them, there were disputes between petitioner and her husband, due to such dispute they are facing nuisance.

3. Petitioner contested said application and specifically pleaded that she has filed a proceeding under the provisions of Protection of Women from Domestic Violence Act against her husband and present proceeding is collusively filed to counter her claim by her in-laws and husband. The learned S.D.O vide his order dated 30.8.2023 allowed the application filed by respondents nos.3 and 4 and directed petitioner to vacate first floor of residential house.

4. It appears that respondent nos.3 and 4 approached District Collector, Dhule by filing an application seeking implementation of the order passed by the S.D.O., However, same was wrongly treated as an appeal and registered as appeal no.3 of 2024 under section 16 of Senior Citizens Act. Accordingly, appellate court rejected the appeal filed by respondent no.3 and 4. Said order was assailed by respondent nos.3 and 4 before this Court in Writ Petition no.12658 of

2024. This Court vide order dated 25.11.2024 permitted respondent nos.3 and 4 to withdraw their application filed before Appellate Authority and granted them liberty to file execution proceeding before S.D.O. on the basis of order dated 30.8.2023.

5. It appears that when petitioner filed appeal under section 16 of the Senior Citizen Act before District Magistrate/Appellate Authority, same has been rejected vide impugned order observing that order dated 30.8.2023 passed by Sub-Divisional Officer, Dhule has been confirmed by this Court in writ petition no.12658 of 2024.

6. Mr. Dixit, learned advocate appearing for the petitioner submits that order of Appellate Court is erroneous. According to him, writ petition no.12658 of 2024 has been disposed off by this Court by permitting respondent nos.2 and 4 to withdraw the appeal with liberty in their favour to seek implementation of the order dated 30.8.2023. Therefore, observations of the appellate court that order dated 30.8.2023 is confirmed by this Court is erroneous. According to Mr. Dixit, the appeal filed by the petitioner under section 16 of Senior Citizens Act is not considered on merits and, therefore, he

urges to set aside the impugned order and remand the appeal back to the appellate authority.

7. Per contra, Mr. Sonwane, learned advocate appearing for respondents vehemently submits that petitioner has not prayed for setting aside the order dated 30.8.2023 in her appeal. In fact, she challenged the order passed in the execution. Therefore, appellate authority is justified in rejecting the appeal without entering into merits of the order dated 30.8.2023.

8. In support of his submissions, he relies upon observations of the Hon'ble Supreme Court of India in case of **Trojan & CO. Ltd Versus Rm. N. N. Nagappat Chettiar** reported in **(1953) 1 SCC 456** so also the decision of the Supreme Court in case of **Akella Lalitha Vs. Konda Hanumantha Rao and another** reported in **2002 SCC online SC 928**.

9. Having considered the submissions advanced, it cannot be disputed that respondent nos.3 and 4 had instituted proceeding under the provisions of Senior Citizens Act seeking directions against petitioner to vacate first floor of the residential house. The S.D.O./competent authority allowed

said application directing petitioner to hand over possession of first floor to respondent no.3. Respondent nos.3 and 4 had approached District Collector seeking implementation of the order, however, under misconception, District Collector registered application as appeal and set aside the order, which was passed in favour of respondent nos.3 and 4, which led them to approach this Court by filing writ petition no.12658 of 2024, which is disposed off by order dated 25.11.2024, thereby permitting respondent nos.3 and 4 to withdraw the application dated 16.1.2024 and file appropriate execution proceeding before the S.D.O. The aforesaid order passed by this Court cannot be considered as foreclosure of remedy of appeal available to the petitioner. In fact, net result of the order dated 25.11.2024 passed by this Court in the writ petition is that, no appeal was filed by respondent nos.3 and 4.

10. Petitioner, who is actually aggrieved by order dated 30.8.2023 has, therefore, filed appeal before the appellate authority. First paragraph of appeal memo clearly shows that she is aggrieved by the order **dated 30.8.2023**. However, the Appellate Authority again misconceived and

observed in clause no.5 of operative part of the order dated 28.3.2025, as under :-

पिठासन अधिकारी, जेष्ठ नागरिक निर्वाह न्यायाधिकरण तथा उपविभागीय अधिकारी, धुळे भाग धुळे यांनी दिनांक—३०/०८/२०२३ रोजी पारित केलेला आदेश मा. उच्च न्यायालय खंडपीठ औरंगाबाद यांनी कायम केलेला असल्यामुळे उपविभागीय अधिकारी धुळे भाग धुळे यांचेकडील दिनांक ३०/०८/२०२३ आदेशा नुसार कार्यवाही करण्यात यावी.

11. It is therefore, eminent that under misconception that this Court has confirmed the order dated 30.8.2023, appeal filed by the petitioner is not considered on its own merit.

12. In that view of the matter, this Court deems it proper to quash and set aside the impugned order dated 28.3.2025 passed by respondent no.1 appellate authority and relegate the appeal no.1 of 2025 filed under section 16 (1) of the Senior Citizens Act for re-consideration and decision on its own merits. In the result, following order is passed.

ORDER

- i. Writ Petition is **partly allowed**.
- ii. The impugned order dated 28.3.2025 passed by the learned District Magistrate, Dhule in appeal no.1 of 2025 is hereby quashed and set aside.

- iii. Respondent no.1 is directed to re-consider the appeal filed by petitioner under section 16 of the Senior Citizens Act, on its own merits and pass fresh order after hearing the parties.
- iv. Respondent no.1 shall decide the appeal on it's own merit within a period of eight weeks from today.
- v. Till disposal of the appeal, interim relief granted by this Court vide order dated 8.4.2025, to operate.

(S. G. CHAPALGAONKAR)
Judge

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