

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.847 OF 2025

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Gaurav Ajitkumar Patil & Anr.

... Petitioners

V/s.

Ajitkumar Bhikugonda Patil

... Respondent

Mr. Yuvraj Narvankar with Raufa Shaikh for the petitioners.

Mr. Varun V. Thokal for the respondent.

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2025

P.C.:

1. Rule. Rule is made returnable forthwith.
2. The present Writ Petition under Article 226 of the Constitution of India impugns the order dated 16th July 2024 passed by the Appellate Authority constituted under the provisions of the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* (hereinafter referred to as “the said Act”). By the said order, the Appellate Authority has directed the petitioners, who are the son and daughter-in-law of the respondent, to be restrained from entering upon the suit premises, which is the residential premises in question.

3. Upon careful perusal of the application filed by the respondent before the Authority, it is manifest that the respondent has neither specifically pleaded nor even impliedly sought the relief of maintenance as contemplated under Section 4 of the said Act. It is well settled that the remedy under the Act is a special statutory remedy, and the jurisdiction of the Tribunal or Appellate Authority under the Act is circumscribed by the conditions laid down therein. This Court in *Ranjana Rajkumar Makharia v. Mayadevi Subhkaran Makharia & Ors.*, 2020 SCC OnLine Bom 2017, has held that an application under Sections 4 and 5 of the said Act is maintainable only when a senior citizen asserts his or her statutory right to claim maintenance from the children or relative in terms of the said provisions. The Hon'ble Court in the said judgment has clearly held that the jurisdiction of the Tribunal under the Act is dependent upon the existence of a foundational plea seeking maintenance. In the absence of such a plea, the application cannot be said to be maintainable under the Act, and any order passed thereon would be without jurisdiction.

4. In the present case, no relief of maintenance has been sought; nor are there averments suggesting that the respondent is unable to maintain himself and is seeking assistance from the petitioners. Therefore, the order impugned herein, restraining the petitioners from entering the premises, travels beyond the jurisdiction conferred upon the Authority under the Act.

5. In view of the aforesaid legal position, it is apparent that the respondent's proper remedy, if any, lies in initiating appropriate civil proceedings based on his civil and ownership rights, if so

advised. The forum under the said Act cannot be invoked to indirectly obtain reliefs in the nature of possession or eviction, which are within the exclusive domain of the Civil Courts. It is a trite principle of law that jurisdiction cannot be conferred by consent or waiver when the statute does not provide for it. The jurisdictional fact, viz., a claim for maintenance under Section 4, is absent in the present case, and hence the Authority under the said Act could not have exercised jurisdiction to pass the impugned direction.

6. I am further informed that the petitioners have already instituted a civil suit in respect of the subject premises. Therefore, in my considered opinion, the impugned order being without jurisdiction and contrary to the statutory scheme of the Act, cannot be sustained and is liable to be quashed and set aside. Accordingly, the Rule is made absolute in terms of prayer clause (b) of the Petition.

7. It is clarified that this Court has not expressed any opinion on the merits of the dispute between the parties regarding title, ownership, or possession of the suit premises. The respondent is at liberty to pursue his remedies before the competent Civil Court, including the enforcement of ownership rights, if so available in law. All contentions of both parties in that regard are expressly kept open to be adjudicated before the appropriate forum.

8. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)