

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

WRIT PETITION NO.882 OF 2024

Vimal Dagadu Kate & Anr. V/S State of Maharashtra & Ors.	...Petitioners ...Respondents
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**WITH
INTERIM APPLICATION NO.7682 OF 2024
IN
WRIT PETITION NO.882 OF 2024**

Vimal Dagadu Kate & Anr. IN THE MATTER BETWEEN Vimal Dagadu Kate & Anr. V/S State of Maharashtra & Ors.	...Applicants ...Petitioners ...Respondents
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Mr. Santosh S. Jagtap with Mr. Amar K. Shilwant *for the Petitioners/Applicants.*

Mr. S.D. Rayrikar, AGP *for Respondent Nos.1 and 3 / State.*

Mr. Mahesh H. Chandanshiv *appointed Advocate for Respondent No.2.*

Ms. Suman R. Pawar representative of Respondent No.2 (younger sister) present in Court.

**CORAM: SANDEEP V. MARNE, J.
DATE : 10 MARCH 2025.**

P.C.:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and final disposal.

2. By this Petition Petitioners have challenged order dated 30 October 2023 passed by the Maintenance and Welfare of Senior Citizen Tribunal (**Tribunal**) under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**the Act**) by which the Tribunal has directed Petitioners to handover possession of the premises to Respondent No.2.

3. I have heard Mr. Jagtap, the learned counsel appearing for the Petitioners, Mr. Chandanshiv, the learned counsel appearing for Respondent No.2 and Mr. Rayrikar, the learned AGP appearing for the Respondent Nos.1 and 3/State.

4. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that Respondent No.2 filed proceedings under the Act for seeking eviction of the Petitioners from the premises located on first floor of the slum structure. It is an undoubted position that Respondent No.2 herself resides in the ground floor premises and her real grouse is that the Petitioners have encroached upon the first floor premises of the structure. This clearly appears to be proceedings for recovery of possession of first floor premises. which in my view cannot be filed by invoking the provisions of the Act. The proceedings appear to my mind in the nature of suit for recovery of possession of first floor premises, which could not have been entertained and decided by the Tribunal. To make the case of Respondent No.2 worse, Petitioner No.1 is her sister and also a

senior citizen. Jurisdiction of Maintenance Tribunal cannot be invoked by one senior citizen to recover possession of premises from another senior citizen. Petitioner No.1 is admittedly not supposed to maintain Respondent No.2. Therefore jurisdiction of the Tribunal could not have been invoked to seek recovery of possession of first floor premises from the Petitioners. In Summary Inquiry conducted by the Tribunal, complicated questions about right of an occupier to possess first floor premises cannot be adjudicated. Such adjudication can be undertaken only before a Civil Court. In my view therefore, the present case involves gross abuse of jurisdiction of the Tribunal which is utilized for the purpose of securing possession of first floor premises from one senior citizen by another senior citizen.

5. Considering the above unique facts and circumstances of the present case, I am not inclined to entertain the objection about maintainability of the present Petition raised by the learned counsel for Respondent No.2 by relying on Division Bench judgment of this Court in ***Jagdish Pitamber Pawar vs. Pitamber Pundalik Pawar and others***, in Writ Petition No.36 of 2023, decided on 29 November 2023 about availability of alternate remedy of filing Appeal before the Appellate Authority. Since the order is without jurisdiction, there is no point in relegating the Petitioners to alternate remedy of Appeal considering the unique facts and circumstances of the present case. It is however clarified that this order shall not be read to

mean as if the alternate remedy of Appeal can be circumvented in every case by filing a direct Petition before this Court. The present order is passed in unique facts and circumstances of the case and shall not be treated as precedent in any other case.

6. Mr. Chandanshiv would complain that while occupying the premises on the first floor, Petitioners are not even paying electricity charges, water charges etc. Mr. Jagtap would submit that Petitioners shall duly pay the entire dues of electricity charges, water charges etc. in respect of their occupation of first floor premises.

7. The Petition accordingly succeeds and I proceed to pass the following order:

i) Order dated 30 October 2023 passed by the Maintenance Tribunal is set aside.

ii) Respondent No.2 would be at liberty to initiate such proceedings as would be maintainable for recovery of possession of first floor premises from the Petitioners.

iii) Till Respondent No.2 adopts necessary remedies for seeking recovery of possession of first floor premises from

the Petitioners, the Petitioners shall not cause any harassment or torture to Respondent No.2-senior citizen.

iv) Time spent in prosecuting the proceedings before the Maintenance Tribunal shall be excluded while computing the period of limitation for institution of Civil Suit.

8. With the above directions, the Petition is allowed and **disposed of**. Rule is made absolute. No order as to costs.

9. In view of the disposal of the Writ Petition, nothing would survive in the Interim Application for stay and the same is also **disposed of** accordingly.

(SANDEEP V. MARNE, J.)

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