

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12376 OF 2024

Bishwanath Hanumanprasad Sugala

....*Petitioner*

: *Versus* :

Devendra Bishwanath sugala
and Ors

....*Respondents*

Mr. Sandeep B. Naik, *for the Petitioner.*

Mr. J. P. Patil, *AGP for the Respondent Nos. 3 and 4-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 26 March 2025.

P.C. :

1) The petition challenges order dated 21 October 2022 passed by the Appellate Authority under the provisions of the Welfare and Maintenance of Parents and Senior Citizens Act, 2007 by which the Appeal preferred by the Petitioner has been dismissed and order passed by the Maintenance Tribunal on 12 August 2021 has been confirmed.

2) I have heard Mr. Naik, the learned counsel appearing for the Petitioner and Mr. Patil, the learned AGP appearing for State. I have also gone through the findings recorded by the Maintenance Tribunal and the Appellate Authority in their respective orders. I have also gone through the other records of the case filed alongwith the petition.

3) It must be observed at the very outset that the petition has been filed with substantial delay. The order of the Appellate Tribunal

was passed on 21 October 2022, whereas the petition is filed almost two years later i.e. on 18 July 2024. Petitioner is a senior citizen and claims lack of means for maintaining himself. If that is the case, the Petitioner ought to have been prompt in challenging the order of the Appellate Authority within reasonable time of passing of order dated 21 October 2022. Even if the aspect of delay is to be momentarily ignored, it is seen that the main grouse of the Petitioner was occupation of flat by his son-Respondent No.1 and daughter-in-law-Respondent No.2. However, it has come on record that the Petitioner is not the sole owner of the said flat and the flat was originally owned by Petitioner's mother and grandmother. Thus, the main dispute between the parties is about recovery of possession of flat, which is not owned by the Petitioner. In that view of the matter, whether jurisdiction of the Maintenance Tribunal could have been invoked for seeking recovery of possession of flat becomes highly questionable. In limited remit of enquiry under the provisions of the Act, the Maintenance Tribunal cannot decide complicated issues of title. The appropriate remedy in such a case is to file civil suit seeking declaration of title, as well as, for recovery of possession of property. The Maintenance Tribunal has recorded a finding of fact that the proceedings were initiated before the Maintenance Tribunal with a view to ensure that possession of the flat is secured from Respondent Nos.1 and 2, by the Petitioner, his daughter and his brother and for its possible sale. I am afraid jurisdiction of the Maintenance Tribunal cannot be invoked for such purposes. The Maintenance Tribunal and the Appellate Tribunal have concurrently rejected the prayer of the Petitioner for award of maintenance. No interference is warranted in the impugned orders in exercise of jurisdiction under Article 227 of the Constitution of India. The petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]