

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

WRIT PETITION NO. 349 OF 2025

Dinesh Rajpal Kesale and Ors.

... Petitioners

Versus

State of Maharashtra Thr. Writ Cell and Ors

... Respondents

Mr. Ashok Kotangle *a/w Mr. Tanoj Joshi a/w Mr. Sumit Pal a/w Ms. Vaibhavi Dawale, Mr. Bhagat i/b Ms. Shivani A. Gautam for the Petitioners.*

Ms. Kavita N. Solunke, *AGP for Respondent Nos. 1 & 3-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 JANUARY 2025.

P.C. :

1) The Petition challenges order dated 16 February 2024 passed by the Sub-Divisional Officer-cum-President, Senior Citizens, Tribunal, Mumbai directing the Petitioners to hand over possession of the house in favour of Respondent No.2 – Senior Citizen with further direction not to enter the said house.

2) I have heard Mr. Kotangle, the learned counsel appearing for Petitioners, Ms. Solunke, the learned AGP appearing for Respondent Nos. 1 and 3.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the

concerned house property is undoubtedly owned by Respondent No.2-Senior Citizen. Petitioners have relied upon document styled as Sale Deed shown to have been executed by Respondent No.2 in favour of his grandson (Petitioner No.3) on 17 July 2020 by which the grandson is shown to have purchased Room No. 303 from Respondent No.2 on payment of consideration of Rs.2,00,000/-. The age of Respondent No.3 is described as 25 years in the cause title of the Petition and since the Sale Deed is shown to have been executed on 17 July 2020, Petitioner No.3 must be aged 20 years at the time of execution of the said documents. It is highly unbelievable that Petitioner No.3 would be in position to pay consideration of Rs.2,00,000/- at the tender age of 20 years. Even otherwise the said document styled as Sale Deed is neither properly stamped nor registered. Therefore the said document cannot have the effect of acquisition of ownership in respect of Room No. 303 by Petitioner No.3.

4) The learned counsel for the Petitioners would then rely upon affidavit executed by the wife of Respondent No.2 on 22 July 2008 and would submit that the said affidavit has effect of transfer of the other part of the Room (room No.2) in favour of Petitioner No.1. I fail to understand as to how the affidavit allegedly executed by the wife of Respondent No.2 on 22 July 2008 would have the effect of vesting of title in respect of said room No. 2 in favour of Petitioner No.1.

5) Petitioners have therefore failed to make out any case of ownership in respect of both the rooms, which admittedly stand in favour of Respondent No.2-Senior Citizen. In fact the finding recorded by the Maintenance Tribunal would indicate that

Petitioners admitted ownership of Respondent No.2 before the Tribunal.

6) Petitioners therefore do not have any right to reside in the house belonging to the senior citizen and since the senior citizen has complained of harassment by the Petitioners, the Maintenance Tribunal is fully justified in directing ouster of the Petitioners from the house. The Maintenance Tribunal has conducted factual enquiry into the matter and has thereafter arrived at a conclusion that Petitioners cannot be permitted to reside in the house belonging to Respondent No.2. No interference is therefore warranted in the impugned order of the Maintenance Tribunal. The Writ Petition is accordingly **rejected**.

7) After the order is pronounced the learned counsel for the Petitioners seeks stay of the order of the Maintenance Tribunal for a period of eight weeks. He would however fairly admit that the order has already been executed and the Petitioners have already been evicted from the house property. In that view of the matter, there is no necessity to stay the order passed by the Maintenance Tribunal. The request for stay is accordingly rejected.

[SANDEEP V. MARNE, J.]