

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 1019 OF 2025**

Suresh Bhima Palve and Anr.

...Petitioners

Versus

Sitabai Bhima Palve and Ors.

...Respondents

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Mr. Shahed Ali Ansari, for the Petitioners.

Ms. S.S. Bhende, AGP, for the Respondents.

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PALLAVI  
MAHENDRA  
WARGAONKAR

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**CORAM : G. S. KULKARNI &  
ADVAIT M. SETHNA, JJ.**

**DATE : 20 JANUARY 2025**

**P.C.:**

1. Not on board. Upon mentioning taken on board.
2. We have heard learned counsel for the petitioners and learned AGP for the respondent – State.
3. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs which reads thus :-

- “(b) This Hon’ble Court be pleased to direct the Respondent No.3 to decide the Appeal within 3 months, in accordance with Law.
- (c) This Hon’ble Court be pleased to allow the Petitioners to re-enter their Said Flat by granting stay against the Order dated 09.12.2019 passed by the Respondent No.4, as long as the Appeal is not decided by Respondent No.3, as Petitioners have come on road with their family, now staying with neighbours for few days on their mercy.”

4. The learned counsel for the petitioners has stated that the Appeal filed by the petitioners is pending before the Appellate Authority as also

observed by this Court in the petitioners' Writ Petition No.6326 of 2021 decided by order dated 13 December 2024 which reads thus :-

- “1. The challenge in the present petition is to the order dated 9<sup>th</sup> December, 2019 passed by Respondent No.4 which is the Competent Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the order dated 27<sup>th</sup> January, 2020 passed by the Appellate Authority.
2. By the order dated 27<sup>th</sup> January, 2020, the Appellate Tribunal has refused to entertain the appeal on the ground that the remedy is available only to the senior citizens. The issue is no longer res integra and has been decided by the Division Bench of this Court in Jagdish Sairaj Pitamber Pawar v. Pitamber Pundalik Pawar<sup>1</sup> where the Division Bench of this Court (Aurangabad Bench) has taken the view that the remedy of appeal is available even to the relatives and children of the senior citizens.
3. In light of the above, the impugned order dated 27<sup>th</sup> January, 2020 is hereby quashed and set aside. The Appellate Tribunal is directed to consider the Appeal in accordance with law. Interim Application does not survive for consideration and the same stands disposed of.”

5. Thus, the Senior Citizens' Tribunal had ordered eviction of the petitioners vide its order dated 9 December 2019 which is the Competent Authority for the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

6. By virtue of the aforesaid order, the Appeal is now required to be heard by the Appellate Authority. In the meantime, learned counsel for the petitioners has stated that the orders passed by the Tribunal came to be executed and the petitioners is evicted on 31 December 2024, and the Senior Citizen – Respondent No.1 (mother of the petitioner no.1) is granted the occupation of the said premises. It appears to be not in dispute that the tenement belonged to her husband - Bhima Palve, who has

expired and who was original complainant.

7. The learned counsel for the petitioners has a grievance that the order of the Senior Citizen's Tribunal was not implemented in accordance with law and therefore, he has impleaded the concerned Officer of the Social Welfare Department as respondent no.5.

8. On a query made to the learned counsel for the petitioners as to whether the tenement in question in lieu of maintenance of the parents was gifted to the petitioners and/or whether any order of the appropriate Court or jurisdiction is available declaring any share of the petitioners in the said property, he has fairly stated that there is no such order. He however, submits that the petitioner would have "Right to Shelter" under Article 21 of the Constitution of India. In the facts of circumstances, we do not agree.

9. Be that as it may, we are of the clear opinion that as now the petitioners has filed an Appeal which is pending before the Appellate Authority and as observed by the learned Single Judge of this Court in the order dated 13 December 2024 in the proceedings of Writ Petition No.6326 of 2021(Supra), we are of the opinion that it is appropriate that all contentions, as raised by the petitioners need to be now asserted by the petitioners in the pending appeal including on any interim orders which the petitioners is seeking.

10. In the event, the petitioners are interested to remove some of the belongings in the tenements, let the petitioner point out the said belongings to the appellate authority by an application. After the respondent no.4 ascertains the presence of such belongings of the petitioners and if such, belongings are available at the said premises, the the Appellate Authority to pass appropriate orders within one week of such application being filed. The Appellate Authority shall pass such order providing appropriate police protection so that the belongings can be removed and the report of the lawful removal of the belongings can be placed on record of the Appellate Authority.

11. Thus, keeping open all the contentions of the petitioner to be urged in the writ petition, the petition is disposed of.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]