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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1919 OF 2025

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Kalikant Ramchandra Jha & Anr.

... Petitioners

V/s.

Raushan Kalikant Jha & Ors.

... Respondents

Mr. Dushyant Pagare for the petitioners.

Ms. Dhruti Kapadia, AGP for the State-respondent
Nos.2 to 4.

Mr. Siddhesh Bhole i/by Apoorva Kulkarni i/by SSB
Legal and Advisors for respondent No.1.

Mr. Raushan Jha, respondent No.1 is present in Court.

CORAM : AMIT BORKAR, J.

DATED : MARCH 24, 2025

P.C.:

1. The present writ petition is filed under Article 227 of the Constitution of India, wherein the petitioners – who are senior citizens – have assailed the legality and propriety of the order dated 11th December 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 been pleased to set aside the order passed by the Tribunal constituted under the said Act, whereby the Tribunal had directed the eviction of respondent No.1 from the residential premises admittedly

owned by the petitioners.

2. It is an admitted position on record that as on the date of filing of the application under the provisions of the said Act, the petitioners were the exclusive and undisputed owners of the subject property. Relying upon the provisions of Sections 4 and 5 of the said Act, the petitioners approached the Tribunal with a prayer seeking eviction of respondent No.1 from the said premises, contending that the presence of respondent No.1 in the said premises is a source of harassment, thereby affecting their peaceful living and well-being, and that they are in need of possession of the said premises for their personal use and maintenance.

3. The said application came to be opposed by respondent No.1, who, in his reply, contended that a similar application filed by the petitioners before the competent authority at Ghaziabad under the very same Act had earlier been dismissed on the ground of maintainability. It was further submitted that pursuant to the order passed by the said authority at Ghaziabad, respondent No.1 has been regularly paying maintenance to the petitioners to the tune of Rs.25,000/- per month. It is the case of respondent No.1 that between the period October 2017 to December 2022, he has disbursed an aggregate sum of Rs.28,33,356/- towards maintenance of the petitioners, and hence, there exists no cause for seeking eviction under the garb of claiming maintenance or protection under the said Act.

4. Upon due consideration of the rival submissions and on perusal of the record, the Tribunal, after arriving at a finding that

the petitioners are the exclusive owners of the property in question and being satisfied that the petitioners require possession of the same for their own maintenance and sustenance, was pleased to pass an order dated 18th June 2024 directing the eviction of respondent No.1 from the premises in question. The Tribunal, in exercise of powers under Section 23 of the said Act, held that retention of possession by respondent No.1 was not conducive to the well-being of the petitioners and was in breach of the spirit and object of the legislation enacted for the protection and welfare of senior citizens.

5. Being aggrieved by the aforesaid order passed by the Tribunal, respondent No.1 preferred Appeal No. SR 4 of 2024 before the Appellate Authority under the provisions of the said Act. The Appellate Authority, by the impugned order, was pleased to set aside the eviction order primarily on the ground that the Authority at Ghaziabad had already passed an order directing respondent No.1 to pay maintenance of Rs.25,000/- per month to the petitioners, which was being complied with. The Appellate Authority also took into account that a civil suit instituted by respondent No.1 challenging the validity of the gift deed executed by him in favour of the petitioners was pending adjudication before the competent Civil Court. In light of the aforesaid circumstances, the Appellate Authority held that it could not be concluded that the petitioners had transferred their property to respondent No.1 upon a promise of maintenance which was subsequently breached, and therefore, the preconditions for invoking relief under Section 23 of the said Act were not fulfilled,

thereby denying relief to the petitioners.

6. Upon a meticulous perusal of the record, it emerges that the Tribunal at Ghaziabad, while exercising jurisdiction under the provisions of the said Act, has indeed passed an order directing respondent No.1 to pay maintenance of Rs.25,000/- per month to the petitioners. Be that as it may, it must be emphasized that the said order granting maintenance under Section 4 of the said Act does not, and cannot, preclude the petitioners—being senior citizens and undisputed owners of the property in question—from asserting their right to recover possession of their property under other substantive provisions of the said Act. The conferment of maintenance under Section 4 is in furtherance of one of the objects of the legislation, namely, ensuring basic sustenance of senior citizens; however, such relief does not act as a bar to invoke provisions such as Section 23 for redressal in case of eviction from self-owned premises.

7. It is also pertinent to note that the analogy drawn by the Appellate Authority, wherein it held that the absence of a transfer of property based on a promise to maintain disentitles the petitioners to eviction, is wholly misplaced. In the present case, the petitioners are not seeking a declaration that a transfer made in favour of respondent No.1 is void or has failed for want of consideration in the form of promised maintenance. Rather, the petitioners, as the admitted and lawful owners of the premises, are seeking eviction of respondent No.1 who is in unauthorized occupation of their property, thereby affecting their ability to live with dignity and independence. In such circumstances, the

requirement of pleading and proving that a transfer was made upon a promise to maintain, as envisaged under Section 23(1), does not arise.

8. Once it is an admitted position that the property in question is exclusively owned by the senior citizens, the legal position stands fortified by the consistent view taken by this Court in *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane*, 2018 (6) Mah.L.J. 681. In the said decision, this Court has lucidly expounded that the provisions of Section 4 cannot be read in isolation but must be construed harmoniously with Section 23 as well as with the definitions provided under Sections 2(b), 2(d) and 2(f) of the Act. It was held that the object of the Act is to ensure not merely financial maintenance but a holistic and dignified life for senior citizens. Thus, the right of a senior citizen to reclaim possession of his or her own property cannot be curtailed solely on the ground that monetary maintenance is being paid.

9. In my opinion where the occupation of a child or relative, even in the absence of a formal transfer, becomes burdensome to the senior citizen, such as by causing emotional distress or obstructing the peaceful enjoyment of the property, the Tribunal has ample power under the Act to direct eviction, thereby ensuring that the senior citizen is enabled to live in dignity and with security.

10. The submission advanced by the learned advocate for respondent No.1, that since respondent No.1 is already paying Rs.25,000/- per month towards maintenance, the petitioners are

precluded from seeking possession of the property, is wholly untenable and contrary to the spirit and scheme of the Act. The right to maintenance under Section 4 and the right to reclaim one's own property under Section 23 are not mutually exclusive. A senior citizen is not required to choose between financial maintenance and possession of his or her property; rather, both entitlements co-exist and are integral to the legislative intent of ensuring a dignified and secure life.

11. Respondent No.1, being a recipient of the benefit of residence solely at the mercy of the petitioners, cannot assert a possessory right to the exclusion of the actual owner under the erroneous pretext of providing financial maintenance. The statutory scheme does not contemplate such a waiver of rights on the part of senior citizens. To accept such a proposition would amount to allowing a statutory beneficiary to defeat the very object of the Act.

12. In view of the foregoing discussion, and upon consideration of the facts and circumstances on record, I am of the considered opinion that the petitioners, being the lawful owners of the premises and also being senior citizens within the meaning of Section 2(h) of the Act, are entitled to recover possession of their property notwithstanding the payment of maintenance by respondent No.1. The impugned order passed by the Appellate Authority, which proceeds on a misapplication of the law and an erroneous appreciation of facts, cannot be sustained and deserves to be set aside. The Tribunal's order dated 18 June 2024, directing eviction of respondent No.1, being in consonance with the object

and provisions of the said Act, calls for restoration.

13. In view of the aforesaid discussion and for the reasons recorded hereinabove, this Court is satisfied that the petitioners have made out a case for exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The impugned order passed by the Appellate Authority, being legally unsustainable and contrary to the scheme and object of the Act, 2007, deserves to be quashed and set aside. Accordingly, the writ petition is allowed. Rule is made absolute in terms of prayer clause (a) of the petition.

14. It is, however, clarified that the observations made in the impugned order and in the present judgment shall not, in any manner, preclude the petitioners or the respondent No.1 from prosecuting the civil suit pending between the parties on its own merits. The observations made herein are confined solely for the purposes of adjudication under the said Act and shall not be construed as an expression of opinion on the merits of the issues involved in the said civil suit, which shall be adjudicated independently and in accordance with law.

15. At this stage, learned counsel appearing for respondent No.1 makes a request for stay of the present judgment and order, particularly in respect of the direction for eviction, on the ground that respondent No.1 is conducting his business from the premises in question and would require some time *to test the order before Hon'ble Supreme Court*. Considering the said request, and purely in the interest of justice, it is directed that the operation and implementation of the order passed by the Tribunal, as restored by

this judgment, shall remain stayed for a period of four weeks from today. It is made clear that no further extension shall be granted and this indulgence is being granted solely to enable respondent No.1 to make necessary arrangements without prejudice to the rights of the petitioners.

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

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 25 March 2025. The corrections in paragraph 15 are shown in italicize.