

AGK

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

WRIT PETITION NO.2589 OF 2025

ATUL
GANESH
KULKARNI

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1. Harsh Bubna, aged 40 years,
Indian Inhabitant, residing at
Flat No.A-502, Abrol House,
Off. Link Road, Khandelwal Layout,
Malad (West), Mumbai 400 064
2. Neha Bubna, aged 37 years,
Indian Inhabitant, residing at
Flat No.A-502, Abrol House,
Off. Link Road, Khandelwal Layout,
Malad (West), Mumbai 400 064

... Petitioners

V/s.

1. Suryaprakash Bubna, aged 68 years,
Indian Inhabitant, residing at
Flat No.A-502, Abrol House,
Off. Link Road, Khandelwal Layout,
Malad (West), Mumbai 400 064
2. The State of Maharashtra
(through officers functioning as the
Ld. Appellate Tribunal and Ld. Tribunal
constituted under the Maintenance and
Welfare of Parents and Senior Citizens
Act, 2007 having address at 9th Floor,
Administrative Building,
Bandra (East), Mumbai 400 051

... Respondents

Ms. Sonal with Mr. Rohit Gupta, Mr. Advait Helekar
and Mr. Vijit Shinde i/by Mr. Adithya R. Iyer for the
petitioners.

Mr. Siddharth Singh with Ms. Priti Rao i/by Mr. Ashok
M. Saraogi for respondent No.1.

Mr. O.A. Chandurkar, Additional G.P. with Mrs. M.S.
Srivastava, AGP for respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 28, 2025

PRONOUNCED ON MARCH 25, 2025

JUDGMENT:

1. By the present Writ Petition filed under Article 226 of the Constitution of India, the petitioners have assailed the legality, propriety and correctness of the Judgment and Order dated 10th February 2025, passed by the Appellate Tribunal constituted under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the said Act"), in Appeal No.55 of 2024. By the said order, the Appellate Tribunal has been pleased to confirm the Judgment and Order dated 15th April 2024 passed by the Tribunal in Appeal No.105 of 2023, whereby the Tribunal had allowed the application preferred by respondent No.1 seeking eviction of the petitioners from the premises in their occupation.

2. The facts and circumstances giving rise to the filing of the present Writ Petition, briefly stated, are as under:

Respondent No.1, claiming to be a senior citizen within the meaning of Section 2(h) of the said Act, preferred Application No.105 of 2023 before the Tribunal constituted under the said Act, invoking jurisdiction under Section 4 thereof, read with Sections 2(a), 2(b), 2(f) and 2(k). In the said application, respondent No.1 sought a direction for eviction of the petitioners from the residential premises presently occupied by them, contending that their continued occupation was causing mental and emotional

disturbance to him and was in violation of his right to peaceful and dignified life as a senior citizen.

3. The petitioners appeared before the Tribunal and contested the said application by filing their written submissions. They contended that respondent No.1 was possessed of sufficient means and resources to maintain himself and, therefore, did not fall within the protective ambit of Section 4 of the said Act. It was further alleged by the petitioners that respondent No.1 had developed an extra-marital relationship, and the present proceedings were actuated by ulterior motives. Petitioner No.2 asserted that she was residing in the said premises as a matter of right, being a victim of a failed matrimonial relationship and that the premises constituted a 'shared household' within the meaning of the applicable law. The petitioners placed on record documentary material to contend that respondent No.1 has substantial financial means, including savings in bank accounts, fixed deposit receipts, and investments in a Public Provident Fund (PPF) account, cumulatively amounting to approximately Rs.40 to Rs.50 lakhs.

4. The Tribunal, upon appreciating the rival contentions of the parties and after affording full opportunity of hearing to both sides, proceeded to pass a reasoned Judgment and Order dated 15th April 2024, whereby it was pleased to allow the application filed by respondent No.1. The Tribunal directed eviction of the petitioners from the premises in question and further restrained them from undertaking any activity which may result in causing disturbance or interference in the peaceful possession and

enjoyment of the premises by respondent No.1.

5. Aggrieved by the aforesaid decision of the Tribunal, the petitioners preferred Writ Petition No.6741 of 2024 before this Court, wherein this Court, by an order dated 8th May 2024, was pleased to grant ad-interim relief in favour of the petitioners. However, upon consideration of the availability of an efficacious statutory remedy of appeal under the provisions of the said Act, this Court, by order dated 4th December 2024, relegated the petitioners to avail such remedy, while continuing the ad-interim protection for a further period of two weeks to enable them to approach the Appellate Tribunal.

6. Thereafter, the petitioners preferred an appeal before the Appellate Tribunal. However, by its Judgment and Order dated 10th February 2025, the Appellate Tribunal was pleased to uphold the decision of the Tribunal and dismissed the appeal. Being aggrieved thereby, the petitioners have approached this Court by filing the present Writ Petition.

7. Learned counsel Ms. Sonal, appearing on behalf of the petitioners, vehemently urged that the application filed by respondent No.1 before the Tribunal was not maintainable in law. She submitted that the foundational requirement for invoking the jurisdiction under Sections 4 and 5 of the Senior Citizens Act, namely the pleading of necessary averments with respect to the need for maintenance, had not been fulfilled. It was her contention that a mere grievance of alleged harassment, unaccompanied by any plea or proof that eviction was necessitated as a measure for

ensuring maintenance and welfare of the senior citizen, would be insufficient to sustain the application under the provisions of the said Act.

8. In support of her contention, learned counsel placed reliance upon the decision of a Coordinate Bench of this Court in *Ranjana Rajkumar Makharia v. Mayadevi Subhkaran Makharia & Ors.*, reported in 2020 SCC OnLine Bom 2017, wherein it has been held that an application under the Senior Citizens Act for recovery of possession or eviction must necessarily demonstrate that such relief is sought as a measure of maintenance and protection of the senior citizen; and that in the absence of such foundational pleadings, the Tribunal would lack jurisdiction to entertain such a claim under Sections 4 and 5 of the said Act.

9. Learned counsel further submitted that upon a bare perusal of the application filed by respondent No.1, it becomes apparent that the only ground pleaded for seeking eviction is the alleged harassment said to have been caused by the petitioners. She submitted that there is no whisper in the application that the respondent No.1 was in need of maintenance or that the presence of the petitioners was impeding the enjoyment of his property to such an extent as to amount to a failure of maintenance in terms of the Act.

10. In support of her submission that a daughter residing in her parental home after a failed marriage has a right to reside in the shared household, learned counsel placed reliance upon the decision of the Hon'ble Supreme Court in *Prabha Tyagi v. Kamlesh*

Devi, reported in (2022) 8 SCC 90, wherein it has been held that every woman in a domestic relationship, irrespective of the nature of such relationship, possesses a right of residence in a shared household. It was further observed therein that such a woman need not have any title, legal right, or beneficial interest in the premises to assert such a right. A daughter, by reason of her blood relation with her father, stands in a domestic relationship and is entitled to residence in the shared household. The Supreme Court, in the said case, also recognised the right of a woman, who is an aggrieved person under the provisions of the Protection of Women from Domestic Violence Act, 2005, to reside in the shared household which may include the house of her in-laws.

11. To fortify her argument, learned counsel also relied upon two decisions of this Court in *Ritika Prashant Jasani v. Anjana Niranjana Jasani*, reported in 2021 SCC OnLine Bom 1802, and in *Anjana Niranjana Jasani v. Ritika Prashant Jasani & Ors.*, in Writ Petition (L) No.13291 of 2022, decided on 20th October 2022, wherein the legal position regarding the right of a woman to reside in the household owned by her parents or in-laws was reiterated. She further placed reliance on the judgment of the Hon'ble Supreme Court in *S. Vanitha v. Deputy Commissioner, Bengaluru Urban & Ors.*, reported in (2021) 15 SCC 730, to submit that the right of a woman to reside in the shared household must be balanced with the rights of the senior citizen, and cannot be abridged unless the legal preconditions for eviction under the Senior Citizens Act are satisfied.

12. Per contra, learned counsel Mr. Saraogi, appearing for respondent No.1, opposed the petition and supported the impugned orders passed by both the Tribunals below. He submitted that petitioner No.2 had independently initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 in relation to the shared household of her second husband, and as such, no right of residence could be claimed by her in the premises belonging to respondent No.1, who is her father. He emphasized that the object and purpose of the Senior Citizens Act is to ensure the welfare, maintenance and protection of elderly citizens, keeping in view the growing concerns of their neglect, abuse and insecurity in the twilight years of life. He submitted that aging has become a serious social issue, and the statutory provisions must be interpreted purposively to safeguard the dignity and peaceful existence of senior citizens.

13. Learned counsel further submitted that respondent No.1 had borne all the expenses for the education and upbringing of the petitioners and had extended all necessary care and support to them. He asserted that the property in question is undisputedly owned exclusively by respondent No.1, and he is desirous of spending the remaining years of his life in peace and dignity. It was submitted that the judgments relied upon by the petitioners are clearly distinguishable on facts, as in none of those cases was the senior citizen the exclusive and absolute owner of the property in question.

14. He, therefore, contended that the application filed by respondent No.1 before the Tribunal was perfectly maintainable

under the provisions of the Senior Citizens Act, and the directions issued by both the Tribunal and the Appellate Tribunal are just, proper and in consonance with the objects of the legislation.

15. Rival contentions now fall for consideration.

16. Upon perusal of the record, and particularly the contents of the application filed by respondent No.1 before the Tribunal under the provisions of the said Act, it emerges that while the pleadings in support of the entitlement to maintenance may not have been elaborately articulated in terms of statutory language, nonetheless, the substance of the relief sought and the circumstances pleaded therein clearly disclose a case falling within the ambit of Section 4 read with Section 23 of the said Act.

17. Respondent No.1 has specifically stated in the application that he retired in the year 2018 and spent his life savings, inter alia, on the marriage of petitioner No.2. It is further asserted that he had undergone five surgeries between November 2021 and June 2022, which evidently indicates his deteriorating medical condition. Importantly, it is asserted that the flat in question was purchased in the year 2005 from the respondent's own earnings, and despite residing therein, the petitioners have failed to provide basic care, including meals, compelling respondent No.1 to order food from outside. The financial condition of the petitioners is not in dispute — petitioner No.1 being a professionally practicing individual earning more than ₹2 lakhs per month, and petitioner No.2 also gainfully employed, earning approximately ₹1 lakh per month.

18. Respondent No.1 has categorically expressed his desire to spend the remaining years of his life in peace and dignity, and has attributed the toxic and hostile atmosphere created by the petitioners within the household as exacerbating his medical complications. More significantly, clause (ii) of the application expressly prays for maintenance of ₹25,000/- per month along with ₹10,000/- per month towards medical expenses, thus unequivocally seeking relief of maintenance.

19. In the backdrop of these averments, it cannot be held that the application was bereft of essential ingredients for invoking the jurisdiction of the Tribunal under Section 4, which recognizes the right of a senior citizen to claim maintenance including provision for basic necessities and physical needs. Accordingly, I am of the considered opinion that the application of respondent No.1 could not have been rejected solely on the ground that the necessary pleadings were insufficient, when in substance, the factual foundation and reliefs sought clearly invoke the protective regime of the said Act.

20. It is true that a coordinate Bench of this Court in *Ranjana Rajkumar Makharia (Supra)*, has held that an application for eviction or recovery of possession simpliciter, which is not rooted in the requirement for maintenance or protection of the senior citizen, would not be maintainable under Sections 4 and 5 of the Senior Citizens Act. However, in the present case, the factual pleadings coupled with the specific prayer for monetary maintenance and the narration of circumstances impeding peaceful cohabitation within the premises, clearly satisfy the

statutory threshold under Sections 4 and 5.

21. Thus, the case at hand is distinguishable on facts, as respondent No.1 has not merely sought eviction on the ground of ownership, but has also demonstrated that such eviction is integrally connected to his physical well-being, medical condition, and the fundamental right to live with dignity — which are central to the objectives sought to be achieved by the Senior Citizens Act. Hence, the reliance placed by the petitioners on the above decision is misplaced in the present factual scenario.

22. Furthermore, it is an admitted position that the residential flat in question is the self-acquired and exclusively owned property of respondent No.1. There is no material placed on record by the petitioners to dislodge this ownership. Once it is established that respondent No.1 is the absolute owner of the premises, he cannot be denied his right to seek exclusive possession of the property, particularly when his physical, emotional and medical well-being is demonstrably impacted by the continued presence of the petitioners in the said premises.

23. In this context, reference may usefully be made to the decision of a coordinate Bench of this Court in *Dattatreya Shivaji Mane v. Lilabai Shivaji Mane & Ors.*, reported in (2018) 6 Mh.L.J. 681, wherein it was held that a senior citizen, being the exclusive owner of the premises, cannot be compelled to suffer the indignity of hostile or abusive cohabitation merely because the occupants are related by blood or marriage. The Court observed that if a senior citizen, particularly an aged mother, is required to institute

a civil suit for eviction of such family members, who fail to maintain her or subject her to cruelty, it would render the benevolent scheme of the Senior Citizens Act nugatory.

24. The Court, in emphatic terms, held that the object of the Act is to provide simple, speedy and inexpensive remedy to senior citizens to secure their rights to maintenance, and more importantly, their right to live in peace. It was further observed that the jurisdiction of the Tribunal under the said Act is not to be equated with that of a civil court and must be construed in a purposive manner so as to ensure effective implementation of the legislative intent.

25. Applying the ratio of the said decision to the present case, the right of respondent No.1 to exclusive possession of his self-acquired residential premises, in the face of neglect and indifference by the petitioners, stands on firm legal footing and cannot be diluted on a technical interpretation of pleadings.

26. A Division Bench of the Delhi High Court in the case of *Sunny Paul v. State of NCT of Delhi*, reported in 2018 SCC OnLine Del 11640, has taken a comprehensive overview of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as well as the Rules framed thereunder. The Court categorically upheld the jurisdiction and authority of the Maintenance Tribunal to pass orders of eviction against persons who have no legal right, title or interest in the property, if such direction is necessary to safeguard the welfare and protect the rights of senior citizens. The Delhi High Court further observed

that the Act is a social welfare legislation intended to ensure the protection, maintenance and well-being of elderly persons, and the power to evict unauthorized occupants is implicit in the power to enforce maintenance and secure peaceful possession of the senior citizen's property.

27. At this stage, it is imperative to consider the binding precedent of the Supreme Court in *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors.*, reported in (2021) 15 SCC 730. In the said case, the Apex Court was considering a dispute between senior citizen parents-in-law and their daughter-in-law, wherein the parents-in-law had sought eviction under the provisions of the Senior Citizens Act. The Supreme Court held that while the Tribunal constituted under the Senior Citizens Act may have the authority to direct eviction, such a power must be exercised judiciously and only where it is necessary and expedient to ensure the maintenance and protection of the senior citizen. The Court explained that eviction, in such cases, would be an *incident of the right to maintenance and protection* and not a remedy in rem.

28. The Supreme Court, however, also recognized that where the property in question is a shared household under the provisions of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act), and both parties claim protection under competing welfare legislations, the Tribunal is required to take into account the rival and overlapping statutory rights and mould the relief accordingly. The Court held that in such a situation, it would not be appropriate to mechanically direct eviction without

adjudicating or at least providing reasonable time for adjudication of the rights of the party claiming residence under the PWDV Act.

29. Drawing inspiration from the aforestated observations of the Supreme Court, a Division Bench of this Court in *Anjana Niranjani Jasani v. Ritika Prashant Jasani & Ors.*, in Writ Petition (L) No.13291 of 2022, decided on 20th October 2022, adopted a balanced approach and granted a period of six months to the daughter-in-law to get her rights adjudicated under the PWDV Act. The Division Bench emphasized the need to reconcile the coexisting rights of a senior citizen to peaceful possession of his property and the rights of a woman in a domestic relationship under the PWDV Act, and to ensure that the adjudicatory framework under both statutes is meaningfully implemented.

30. In the facts of the present case, petitioner No.2, who is the daughter of respondent No.1, has contended that she is residing in the premises due to breakdown of her marriage and has sought protection under the PWDV Act. In view of the pronouncement of the Supreme Court in *S. Vanitha* (supra), particularly paragraph 38 thereof, and the subsequent approach adopted by this Court in *Anjana Jasani* (supra), it becomes necessary to mould the relief appropriately by balancing the competing statutory protections available to petitioner No.2 and respondent No.1.

31. Accordingly, a period of six months is granted to petitioner No.2 to initiate proceedings under the PWDV Act before the competent Magistrate and to seek appropriate reliefs in accordance with law.

32. In my considered opinion, the impugned Judgment and Order passed by the Tribunal, as confirmed by the Appellate Tribunal, does not suffer from any infirmity warranting interference under Article 226 of the Constitution of India. However, having regard to the ratio laid down in *S. Vanitha* (supra), petitioner No.2 shall not be evicted from the premises for a period of six months from today, so as to enable her to assert her rights, if any, under the PWDV Act before the competent forum.

33. It is clarified that if petitioner No.2 fails to take appropriate legal steps within the stipulated period, or fails to obtain ad-interim/interim protection under the PWDV Act, then respondent No.1 shall be at liberty to take appropriate steps to recover vacant possession of the premises in accordance with law.

34. Insofar as petitioner No.1 is concerned, it is not disputed that he has no right, title or interest in the property, nor does he claim any protection under the PWDV Act. His continued occupation has been found to be a source of mental agony and harassment to respondent No.1. The order of eviction against petitioner No.1, therefore, stands confirmed and shall be implemented forthwith, without waiting for the expiry of the six-month period granted to petitioner No.2.

35. The writ petition stands disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)