



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4324 OF 2024

Ratnakar Wamanrao Wahane,
Aged about 65 years, Occ.-Retired,
R/o. Plot No.18, Radhakrushna
Society, Beltarodi Road,
Sham Nagar, Nagpur.

.... **PETITIONER**

// VERSUS //

- 1) District Magistrate/Appellate Authority,
Senior Citizen Maintenance Tribunal,
Collectorate Compound,
Civil Lines, Nagpur – 01.
- 2) Sub Divisional Officer and
President of Maintenance and
Welfare of Parents and Senior
Citizens, Nagpur City, Nagpur.
- 3) Sau. Nirupma Ratnakar Wahane,
Aged about 55 years, Occ.-Household,
- 4) Snehal D/o Ratnakar Wahane,
Aged about 32 years, Occ.-Household,
- 5) Sagar S/o Ratnakar Wahane,
Aged about 30 years, Occ.-Private Service,
- 6) Shivani Ratnakar Wahane,
Aged about 28 years, Occ.-Lawyer,

Nos.3 to 6 R/o. Plot No.18,
Radhakrushna Society,
Shyam Nagar, Nagpur.

.... **RESPONDENTS**

Mr. A. R. Ingole, Advocate for the Petitioner.
Mr. H. D. Futane, Assistant Government Pleader for Respondent
Nos.1 and 2.
Mr. P. J. Mehta, Advocate for the Respondent Nos.3 to 6.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 06th FEBRUARY, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. By this petition the petitioner is challenging the order dated 05.07.2024, passed by the respondent No.1 – District Magistrate/Appellate Authority, Senior Citizens Maintenance Tribunal, Nagpur in Appeal No.19/2023 as well as the order dated 12.12.2023 passed by the respondent No.2 – Sub Divisional Officer and President of Maintenance and Welfare of Parents and Senior Citizens, Nagpur in Application No.53/MRC-81/2021.

3. Earlier, the Application No.53/MRC-81/2021 filed by the present petitioner before the Sub Divisional Officer – respondent No.2, came to be rejected on 26.05.2022. The petitioner preferred an Appeal against the said order vide Appeal No.1/2022, the District Magistrate – respondent No.1, rejected the said Appeal vide order dated 18.08.2022. Against the said order, the petitioner filed Writ Petition No.5729/2022 before this Court. The said writ petition came to be partly allowed by this Court by order dated 13.09.2023. This Court after referring Section 8 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rule 13 of the Maharashtra Maintenance

and Welfare of Parents and Senior Citizens Rules, 2010, held in para Nos.5, 6 and 7 as under :

“5. It is also evident from the provisions, particularly subsection (2) of section 8 that the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed.

6. Rule 13 (1) of the Rules of 2010 says that the Tribunal shall give to both the parties an opportunity of leading evidence in support of their respective claims, and shall, after holding a summary inquiry as provided in sub-section (1) of section 8, pass such order as it may deem fit.

7. In the present matter, admittedly no such procedure has been followed. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the Sub-Divisional Officer for deciding the same afresh, in accordance with the law, and under Section 8 of the Act of 2007 and Rule 13 of the Rules of 2010.”

4. In view of this provisions and observations as no such procedure is followed, the matter was remitted back to the Sub Divisional Officer to decide the same afresh after hearing both the parties and after following the procedure as provided in law.

5. After remand, it appears that the Sub-Divisional Officer passed the order without giving any consideration to the directions

given by this Court, granted maintenance of amount of Rs.10,000/- from each of the respondent Nos.3 and 4. The petitioner challenged the said order of Sub-Divisional Officer to the extent that no directions were issued for eviction of respondents before the learned District Magistrate. The learned District Magistrate after hearing the parties and considering their income and also directions issued by this Court, remitted the matter back as the Sub-Divisional Officer has not recorded any evidence nor granted sufficient opportunities to the parties.

6. I have gone through the contentions of the parties and also orders passed by the Sub-Divisional Officer as well as the District Magistrate. I do not see any perversity or illegality in the order passed by the learned District Magistrate as the Sub-Divisional Officer passed the order contrary to the directions issued by this Court.

7. The petitioner is also seeking eviction of his wife however, there was a proceeding going on between the parties. The learned Counsel for the respondents relied on the case of ***S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and Ors.***, reported in ***(2021) 15 SCC 730***, wherein para 38 reads as under :

“38. This Court is cognizant that the Senior Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to

conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the overriding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act, 2005. The PWDV Act, 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under Ssection 2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act, 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act, 2005 and the Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to override and nullify other protections in law, particularly that of a woman's right to a "shared household" under Section 17 of the PWDV Act, 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act, 2007, she shall be duty-

bound to inform the Magistrate under the PWDV Act, 2005, as per Sub-section (3) of Section 26 of the PWDV Act, 2005. This course of action would ensure that the common intent of the Senior Citizens Act, 2007 and the PWDV Act, 2005, of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.”

In view of that, the petitioner cannot evict his wife from the shared household.

8. As such, there is no substance in the petition, the Writ Petition stands **dismissed**. The order dated 05.07.2024, passed by the respondent No.1 – District Magistrate/Appellate Authority, Senior Citizens Maintenance Tribunal, Nagpur in Appeal No.19/2023 is hereby confirmed.

9. The learned Sub-Divisional Officer, is hereby directed to decide the matter as early as possible, preferably within a period of three months.

The Writ Petition stands disposed off in the above terms.
No costs.

(SMT. M.S. JAWALKAR, J.)