



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

WRIT PETITION NO.4807 OF 2024

Shri Madan Pandurangji Rahate
Aged about 78 years,
R/o Plot No.6 Purohit Layout,
Near Varma Layout, Ambazari,
Nagpur.

..... **PETITIONER**

...VERSUS...

1. Presiding Officer of Maintenance and Welfare of Parents and Senior Citizens Tribunal/Sub Divisional Officer, Nagpur, Room No.2, Tahsil Office, Nagpur City, Nagpur, Civil Lines, Nagpur.
2. Collector/District Magistrate
Collector Office, Nagpur.
3. Commissioner of Police,
Nagpur City, Nagpur.
4. Police Station Officer,
Police Station Ambazari,
Nagpur.
5. Sau. Shubhangi w/o Pranab Maiti
Aged about 42 years,
Occupation not known,
Present R/o Plot No.6 Purohit Layout,
Near Verma Layout, Ambazari, Nagpur.
6. ~~Pranab Bishwajit Maiti~~
~~Aged about 45 years,~~
~~Occupation not known,~~
~~Mobile Contact No. 9165002005~~
~~Present residential address not known.~~
~~Adhar Card No. 5671 4477 2878~~
~~Address on Adhar Card : A 167 C Block A~~
~~Uttam Nagar, West Delhi - 110059.~~ **RESPONDENTS**

Respondent No.6
deleted as per
Court's order dtd.
04.10.2024

Mr. V. N. Morande, Advocate for Petitioner.
Mr. B. M. Lonare, AGP for Respondent Nos.1 to 4/State.
None for Respondent No.5.

CORAM: **SMT. M. S. JAWALKAR, J.**
DATE: **6th JANUARY, 2025.**

ORAL JUDGMENT:

Heard learned counsel for the petitioner and the learned Assistant Government Pleader for respondent nos.1 to 4. In spite of service of notice to respondent no.5, she chooses to remain absent and no reply is filed. The present petition is filed by senior citizen aged about 78 years challenging the order passed by respondent no.2 – District Magistrate, Nagpur in Appeal No.05/2024 rejecting an application for eviction of respondent no.5 from his house and for protection of his life and property.

2. The petitioner was retired from service as Senior Assistant from Zilla Parishad, Nagpur. He resides at his self acquired house situated at Plot No.6, Purohit Layout, Ambazari, Nagpur.

3. This is the second round of litigation. Earlier vide Writ Petition No.1230/2024, the petitioner approached this Court

under Article 226 of the Constitution of India with grievance of inaction on the part of respondent nos.1 to 4 to perform their duties under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, to protect the life and property of the petitioner from respondent no.5 his daughter and respondent no.6 who claimed to be his son-in-law.

4. During pendency of Writ Petition No.1230/2024 the said petitioner came to know that respondent no.1 – Tribunal vide communication dated 24.01.2024 had already disposed of his application seeking protection of his property and life from respondent no.5 his married daughter and her husband by giving reasons that the Tribunal has no jurisdiction to evict the respondent nos.5 and 6.

5. The petitioner preferred appeal dated 19.03.2024 before respondent no.2 – District Magistrate, which was registered as Appeal No.05/2024. In the writ petition, filed earlier, directions were given by this Court to the Collector/District Magistrate, Nagpur to take decision on appeal of the petitioner within a period of four weeks.

6. The District Magistrate, after hearing the petitioner

relying on the police report allegedly based on telephonic communication observed that the petitioner has no grievance in the matter, and accordingly dismissed the appeal of the petitioner.

7. It appears that the petitioner has one son and three daughters. Wife of the petitioner expired in the year 2007. Husband of his elder daughter died in the year 2008. He has purchased a flat in the neighbourhood of the petitioner in Verma Layout, Nagpur. The petitioner's younger daughter is unmarried and is staying with the petitioner. The son is residing with the petitioner and he is taking care of the petitioner.

8. Respondent No.5 broke off all ties with the petitioner and family and left home in the year 2000 and she never disclosed her whereabouts. It is contended by the petitioner that everything was going well in the family. Suddenly in the year 2016-2017, respondent no.5 Shubhangi came to the house of the petitioner with one child. She also brought respondent no.6 and introduced him as her husband.

9. Respondent no.5 along with her husband started demanding money to the petitioner. Due to illegal demand, the petitioner stopped providing them monetary help. Since then, the

respondent nos.5 and 6 started behaving aggressively with the petitioner and other family members. In view of the quarrel and torture at the hands of respondent no.5 along with her husband, day and day out the petitioner felt unsecured in the evening of his life. He has apprehended that the sole intention of respondent nos.5 and 6 is to grab the property of the petitioner. She was repeatedly insisting the petitioner to transfer the house in her name by giving threats. It is alleged that on 03.04.2023 respondent no.5 Shubhangi raised her hand on the petitioner.

10. On 04.12.2018 the report was lodged in Police Station Ambazari, Nagpur. However, there was no positive response from Ambazari Police Station. As there was no response from the police, a detailed complaint was filed by the petitioner. During inquiry by the petitioner, he got information that husband of respondent no.5 is an absconding person. He cheated people in different places and looted their huge amount and jewelry. The petitioner placed on record copy of F.I.R. lodged against husband of respondent no.5 at Mumbra Police Station in Thane District.

11. In this backdrop, the petitioner filed representation to the Collector, Nagpur, Commissioner of Police, Nagpur City,

Nagpur, Police Station Ambazari, Nagpur. Finally, he filed application before respondent no.1 Tribunal on 24.08.2023 for eviction of respondent no.5 and for protection of his life and property. The authority has expressed that he has no jurisdiction to do the same. The petitioner submitted various representation. However, without giving any consideration to the said rulings filed by this Court, the District Magistrate deputed his subordinate employee to look into the matter and directed to report to Senior Police Inspector. Vide order dated 17.05.2024, the District Magistrate rejected the appeal on the basis of report dated 17.05.2024. On perusal of report it reveal that only on the basis of telephonic conversation the Senior Police Inspector informed to the applicant that the matter is settled between the parties. On the basis of said report, on the very same day i.e. on 17.05.2024 petitioner's application came to be rejected in spite of referring various provisions under the act and judgments of this Court. The learned appellate authority rejected the appeal on the basis of the report without verifying its contents nor any opportunity was granted to the petitioner while doing so. The learned appellate authority failed to follow the rules provided under the Act. In fact, duty is casted on the authorities to promptly admit the complaint and problems of senior citizen, the person, who is approaching the

authority and this Court for redressal of his grievance.

12. The learned counsel for the petitioner relied on *Shweta Shetty v. State of Maharashtra and others 2022(1) Mh.L.J. 279*. This Court relied on *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane (2018) 6 Mh.L.J. 681*. The relevant paragraphs read thus:

22. The provision of Section 4 of the said Act permits such application for eviction of child and grand child if the condition set out in that provision read with other provisions are satisfied. In my view, there is thus no substance in the submission of the learned counsel for the petitioner that the order of eviction cannot be passed by the Tribunal under Section 4 of the said Act read with other provisions of the said Act.

31. In my view, Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. The respondent no.1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent no.1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.

13. The learned counsel for the petitioner also relied on unreported judgment dated 13.03.2023 in *Writ Petition*

No.6367/2022 Sushila wd/o Ramesh Hajare v. Presiding Officer of Maintenance and Welfare of Parents and Senior Citizens Tribunal/ Sub Divisional Officer Gadchiroli and others, wherein reliance is placed on the judgment in *Sheetal Devang Shah v. Presiding Officer, and others dated 06.05.2022 in Writ Petition No.3323/2019*, in which similar view has been taken.

14. In my considered opinion considering various documents placed on record and criminal complaint against respondent no.5, apprehension of senior citizen is required to be considered seriously by the respondent authorities. It appears that there is continuous mental harassment to the petitioner. In the object of the Act and rules thereunder is to extend more protection to the senior citizen as their advance stage life become helpless specifically when they are holding movable and immovable property. In my considered opinion, respondent no.1 has passed impugned order without considering the settled position of law and only on the basis of report, on telephonic conversation. Moreover, the report is filed and on the same day, appeal is decided. As such, admittedly, there was no opportunity granted to the petitioner to comment on the report or defend himself. Nor facts about telephonic conversation verified from petitioner.

This Court make it clear that respondent to deal with such matter of senior citizens sensitively and shall extend all co-operation and protection. As such, the order passed by the District Magistrate, Nagpur in Appeal No.05/2024 as well as communication dated 24.01.2024 issued by respondent no.1 Tribunal is hereby quashed and set aside. The respondent nos.1 to 4 are directed to consider representation afresh as per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules thereunder within a period of one month. By that time, the respondent no.5 is hereby restrained from entering the house of the petitioner.

15. The parties to remain present before respondent no.2 – Collector, Nagpur on 13.01.2025 at 11:00 a.m.

16. The petition is allowed in the aforesaid terms.

JUSTICE