



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

WRIT PETITION NO. 1091 OF 2024

Vijay Tejrao Ugale
Add : Dhodap Khurd, At Post Mangul Zanak,
Tahsil Risod, District Washim.

... PETITIONER

V E R S U S

1. Kesarabai Tejrao Ugale
Add : Bhapur, At Post Gobhani, Tal. Risod,
District Washim.
2. District Collector, Washim
Collector Office, Washim.
3. Sub Divisional Officer and Presiding Officer,
Maintenance Tribunal, District Washim.

... RESPONDENTS

Mr. Vikrant Raje, Advocate for Petitioner.
Mr. P. K. Mohta, Advocate for Respondent No.1.
Ms. D. I. Charlewar, AGP for Respondent Nos.2 and 3.

CORAM : R. M. JOSHI, J.
DATE : JUNE 09, 2025.

ORAL JUDGMENT

. By consent of both sides heard finally at the stage of admission.

2. This Petition takes exception to the order dated 6/4/2023 passed by the Sub Divisional Officer/Maintenance Tribunal, Washim under Section 5 and 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*for short, 'the Senior Citizens Act'*) and its confirmation by Appellate Authority/Collector, Washim, under Section 16 of the Senior Citizens Act.

3. Facts which are not in dispute can be summarized in nutshell as under :

There is no dispute about the fact that the Petitioner is adopted son of Respondent No.1. The Respondent No.1 is a woman aged about 77 years. She invoked provisions of Sections 5 and 9 of the Senior Citizens Act before the Maintenance Tribunal alleging that the Petitioner herein is not maintaining her. It is specifically claimed that she has no source of income to maintain herself. It is further alleged that Petitioner has forced to leave the house since five to six years after removing all her ornaments. Due to this reason she is required to stay with her daughter, Latabai, who is a widow. It is further claimed that owing to poor financial condition of daughter, she has to survive by doing labour work. On these amongst other submissions along with other reliefs order of maintenance of Rs.15,000/- per month was sought. Petitioner, herein, appeared before the Tribunal and resisted the said contention. Both parties were admittedly accorded opportunity of hearing.

4. The Maintenance Tribunal, by order dated 6/4/2023 allowed the application and directed the Respondent Nos.1 to 5 therein to pay Rs.2000/- per month by way of maintenance to the Senior Citizen. This order was taken

exception by Respondents in the original proceeding before the Collector, Washim in an appeal filed under Section 16 of the Senior Citizens Act. By impugned order dated 26/12/2023 Collector has modified the order. The order passed by the Maintenance Tribunal against the original Respondent Nos.2 to 5 came to be set aside. The present Petitioner, however, is directed to pay maintenance of Rs.10,000/- per month to the Senior Citizen/mother.

5. The learned Counsel for Petitioner has made an attempt to canvass that though the Petitioner is adopted son of Respondent No.1, practically he has never stayed with her but has always been with his biological parents. It is further argued that Respondent No.1 was having agricultural land which was sufficient for her to maintain herself. In this regard a reference is made to Section 4 of the Act, which according to him, provides that the Senior Citizen who is unable to maintain himself from his own earning or out of the property owned by him, would be entitled to make an application under this provision. In this case according to him, senior citizen has sold property standing in her name for valuable consideration. He has further made reference to Section 5(1) of the Senior Citizens Act in order to submit that if the children neglected or refused to maintain senior citizens who is unable to maintain himself he is entitled for order of maintenance. According to him, the Petitioner has always shown his readiness and willingness to look after the Respondent No.1/senior citizen and to maintain her provided that she stays with him. To support this submission, he placed reliance on the Judgment of the Co-ordinate Bench of this Court in the case of *Deorao Tanbaji Bobde and another V/s Pramod Deorao Bobade and others, reported in 2021(5) Mh.L.J. 97.*

6. The learned Counsel for contesting Respondent i.e. senior citizen supported the impugned order.

7. Though it is now sought to be argued that the Petitioner has stayed with his biological parents though he was given in adoption to Respondent No.1, there is no dispute about the fact that the Petitioner is adopted son of Respondent No.1. The said status of the Petitioner still subsists. It is needless to say that once the Petitioner has been given in adoption, he becomes practically just like a biological child and he would carry all rights and obligations of biological son of Respondent No.1. There is not only legal but also moral duty of any son to maintain age old parents.

8. There is no dispute about the fact that the Petitioner is bodily able person having agricultural land, and who can maintain himself and his family. With regard to the earnings/income of Petitioner, there is no specific challenge nor any evidence is led by him to indicate that direction to pay maintenance of Rs.10,000/- to be excessive. Though it is sought to be argued on behalf of the Petitioner that Respondent No.1 was having agricultural land, which was sold during the pendency of the proceedings, the question arises as to whether there is any material evidence led on record before Tribunal to indicate any income derived by the senior citizens from the said land. It cannot be ignored that the Respondent No.1 is a woman aged about 77 years and it would be too much to expect from her to work in a field and earn her livelihood. In absence of any concrete evidence with regard to earnings of senior citizen, this Court finds no substance in the said contention.

9. Another contention of the Petitioner is about exclusion of daughter of the Respondent No.1 from the array of Respondents and no claim of maintenance being made against her before the Maintenance Tribunal is concerned, pertinently, the Act does not mandate filing of any proceedings against all children or any particular child. It is sole discretion of senior citizen to initiate such proceedings even against any one of the children. Moreover, in the instant case there are specific averments about daughter being widow with poor financial condition. Thus, this Court finds no reason to accept contentions of the learned Counsel for Petitioner that exclusion of the daughter from the array of Respondents before the Maintenance Tribunal could become ground to cause interference in impugned order.

10. The next contention of the Petitioner is that the Respondent No.1 is staying with her daughter and her refusal to stay with Petitioner would become a ground for denying order of maintenance. Considering the age of Respondent No.1, she needs a shelter if her son does not discharge his duty. Thus, she had no option but to take refuge with daughter. It is canvassed that Petitioner offered mother to stay with him and since she refused the said offer, she is not entitled to receive any amount of maintenance from him. Reference was made to the Judgment in the case of *Deorao Bobde (cited supra)*. This Court has carefully gone through the said Judgment. In the said case there was no dispute about the fact that senior citizen therein was receiving pension and had assets/properties. There was specific finding recorded by the Tribunal to that effect. The said order passed by the Tribunal rejecting claim was upheld by the Appellate Authority. This Court in exercise of writ jurisdiction refused to cause interference therein. The said order records, one of the contention of

party with regard to the offer of son to the mother to stay with him and same was refused. By no stretch of imagination, it can be said that the said Judgment lays down ratio that in case parents refuse to stay with children, they would not be entitled to claim maintenance. If this view is accepted, then same would lead to laying down a condition precedent for any senior citizen to stay with children in order to seek maintenance, which has not been done by legislature. We cannot ignore the realities of life that there could be situations in which senior citizens are physically or emotionally abused by children and in those circumstances they cannot be compelled to share household with abusive children. Imposition of such condition would be contrary to the intent of legislature in bringing Senior Citizen Act on statute book. The contention of the Petitioner, therefore, deserves to be rejected in toto being sans merit.

11. Moreover, this Court is testing the correctness of the impugned orders in exercise of writ jurisdiction. It would not be open for this Court to substitute its own view and cause interference in the order impugned, unless there is perversity shown in the impugned order. For want of any perversity in the same, no interference is called therein.

12. As a result of above discussion, Writ Petition stands dismissed.

(R. M. JOSHI, J.)

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