

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16375 OF 2025

Bholenath Mevalal Nishad
Age: 46 yrs., Occ.- Business,
Presently Residing at Flat No. 403,
A-Wing, 4th Floor, The Baya Park
Central CHS Ltd., Sitaram Jadhav
Marg, Lower Parel (W), Mumbai 13.

...Petitioner

Versus

1. Shyamdulari Mevalal Nishad,
Age: 73 yrs., Occ. - Homemaker
Unemployed, presently residing at
A/401, Thanekar Hilchrist, Shirgaon.
Bhosale Nagar, Badlapur (E),
Thane District – 421 503

2. The Ld. Presiding Officer,
Welfare of Parents & Sr. Citizen
Tribunal cum Dy. Collector (S.P.)
Mumbai City.

3. The Addl. Collector cum Appellate
Authority, Appellate Tribunal for
Parents & Sr. Citizen, Mumbai City

...Respondents

Mr. S S Redekar, for the Petitioner.
Mr. Mohan Pillai, for Respondent No. 1.
Ms. S R Crasto, AGP for the Respondent-State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 11th FEBRUARY 2026
PRONOUNCED ON : 05th MARCH 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioner takes exception to a judgment and order dated 30th October, 2025 passed by the Appellate Tribunal whereby an appeal preferred by the petitioner against an order of eviction passed by the Maintenance Tribunal under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('the Senior Citizens Act, 2007'), came to be dismissed by affirming the said order.

3. Shorn of superfluities, the background facts necessary for the determination of this petition can be summarized as under:-

3.1 The Respondent No. 1 is the mother of the petitioner. She is a senior citizen. The Respondent No. 1 claims to be the holder of Flat No. 403, A-wing, the Baya Park Central C.H.S. Ltd. ('the subject flat').

3.2 The Respondent No. 1 filed an application before the Maintenance Tribunal asserting *inter alia* that, the petitioner had been residing separately from the Respondent No. 1 since the year 2013. The petitioner had instituted a suit against his brother Mr. Shankar Nishad – younger son of Respondent No. 1. However, the said suit came to be disposed by an order dated 07th April 2017 passed by the City Civil Court. The petitioner is aggressive and quarrelsome in nature. The Respondent No. 1 had thus been residing alongwith her younger son at Badlapur.

3.3 On 05th November, 2023, the Respondent No. 1 alleged the petitioner broke open the lock of the subject flat and trespassed into the subject flat. The Respondent No. 1 approached the Police. As the FIR was not immediately registered, the Respondent No. 1 was constrained to file a private complaint. The Respondent No. 1 thus filed the application before the Maintenance Tribunal seeking protection from the petitioner and an order to direct the petitioner to vacate the subject flat.

3.4 The petitioner resisted the application. The petitioner contended that, the petitioner was permitted to occupy the

subject flat in lieu of the Respondent No. 1 collecting rent to the tune of Rs. 25,000/- to 30,000/- per month, of the shop premises situated at Lower Parel, Mumbai. Since the Respondent No. 1 was not claiming any maintenance, the application for eviction of the petitioner was not maintainable before the Maintenance Tribunal.

3.4 It was denied that, the petitioner had subjected the Respondent No. 1 to harassment and torture. The petitioner had also expressed willingness to maintain the Respondent no. 1 out of whatever meager income the petitioner was earning.

3.5 After appraisal of the rival contentions and the material on record, by an order dated 04th March, 2025, the Maintenance Tribunal was persuaded to allow the application and direct the petitioner to vacate and deliver the possession of the subject flat to Respondent No. 1. The Maintenance Tribunal was of the view that, in her old age the Respondent No. 1 had a right to live a normal life in her own home with dignity and self-respect. The petitioner has unlawfully occupied the subject flat by breaking open

the lock. Hence, it was necessary to protect the residence of the senior citizen/Respondent No. 1.

3.6 Being aggrieved, the petitioner preferred an appeal before the Appellate Tribunal under Section 16 of the Senior Citizens Act, 2007.

3.7 By the impugned order, the Appellate Tribunal declined to interfere with the order passed by the Maintenance Tribunal. The Appellate Tribunal concurred with the view of the Maintenance Tribunal that the Respondent No. 1/senior citizen was entitled to live a peaceful, dignified and normal life in her own home.

4. Being further aggrieved, the petitioner has invoked the writ jurisdiction.

5. An affidavit-in-reply has been filed on behalf of the Respondent No. 1.

6. I have heard Mr. Redekar, the learned Counsel for the petitioner, Mr. Mohan Pillai the learned Counsel for the Respondent No. 1, and Mr. Savina Crasto the learned AGP for the Respondent Nos. 2 and 3 – State. With the

assistance of learned Counsel for the parties, I have also perused the material on record.

7. Mr. Redekar, the learned Counsel for the petitioner, submitted that, the application before the Maintenance Tribunal for eviction simplicitor of the petitioner was not maintainable. Inviting the attention of the Court to the averments in the application before the Maintenance Tribunal, especially the assertion that the Respondent No. 1 has been residing with her son at Badlapur and the prayers in the application, particularly that of a direction to the petitioner to vacate the subject flat, Mr. Redekar would urge that, the application was clearly beyond the jurisdictional competence of the Maintenance Tribunal. It was submitted with tenacity that, an application for eviction of the children/relative simplicitor without seeking the relief of maintenance, is not maintainable.

8. Mr. Redekar would submit that, the petitioner is sought to be singled out. Admittedly, the Respondent No. 1 has been residing with the brother of the petitioner at Badlapur. The Maintenance Tribunal as well as Appellate Tribunal have recorded in clear and explicit terms that, the

senior citizen was not claiming maintenance. Thus, the Tribunals had no authority to exercise the jurisdiction under Senior Citizens Act, 2007 to order the eviction of the petitioner from the subject flat.

9. To lend support this submission, Mr. Redekar placed a very strong reliance on a judgment of the Division Bench of this Court in the case of *Jitendra Gorakh Megh V. Additional Collector & Appellate Tribunal & Anr*¹. Reliance was also placed on another judgment of a learned Single Judge of this Court in the case of *Ranjana Rajkumar Makharia Vs. Mayadevi Subhkaran Makharia & Ors*².

10. In opposition to this, Mr. Pillai the learned Counsel for the Respondent No. 1 submitted that, the petitioner presents himself as an ungrateful son. The petitioner has not only subjected the Respondent No. 1 to harassment but even broken open the door of the house of the Respondent No. 1. A report was attempted to be lodged by the Respondent No. 1, instantaneously. This very act of breaking open the lock demonstrates the manner in which the petitioner has been treating the Respondent No. 1.

1 WP(L)/31614/2025

2 2020 (3) Mh.L.J. 587

11. Mr. Pillai laid emphasis on the fact that, the subject flat stands in the name of the Respondent No. 1. The petitioner has no right, title and interest in the subject flat. Despite being the owner of the subject flat, the Respondent No. 1 is constrained to reside at Badlapur in a rented premises. Therefore, the Respondent No. 1 deserves protection under the provisions of Senior Citizens Act, 2007.

12. Mr. Pillai would further urge that, it is not necessary that the senior citizen must first apply for maintenance and, in that case only, an order of eviction can be passed towards securing the maintenance. In the facts of the case, the Respondent No. 1 has not claimed monetary maintenance from the petitioner. However, her need to have a roof over her head, falls within the ambit of the definition of “maintenance”, under Section 2(b) of the Senior Citizens Act, 2007. Mr. Pillai further urged that, the provisions of Senior Citizens Act, 2007 have an overriding effect and are required to be interpreted so as to advance the object of the said Act.

13. Mr. Pillai placed reliance on a Division Bench judgment of the Delhi High Court in the case of ***Sunny Paul V. State of NCT of Delhi & Ors.***³, wherein it was enunciated that, keeping in view the fact that the enactment being a social legislation and the same requires to be given liberal interpretation to achieve the mandate of the Act, 2007 i.e. for the welfare of the parents and senior citizens and for the protection of their life and property, there is no doubt that the Tribunal does have the jurisdiction to direct vacation by the children of any property in which the senior citizen has a right of residence/possession.

14. I have given anxious consideration to the aforesaid submissions canvassed across the bar. The moot question that wrenches to the fore is : whether the application for eviction of the children / relative simplicitor sans a prayer for award of maintenance from the premises belonging to the senior citizen is maintainable under the provisions of the Act, 2007 ?

3 2017 SCC OnLine Del 7451

15. In the quest of exploring an answer, reference to few provisions of the Senior Citizens Act, 2007 and the legislative object behind its enactment would be indispensable. Under Section 2(h), “senior citizen” means any person being a citizen of India, who has attained the age of sixty years or above; under clause 2(a), “children” includes son, daughter, grandson and grand-daughter but does not include a minor; under clause (d), “parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen; and under clause 2(g), ‘relative’ means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

16. The Senior Citizens Act, 2007, primarily and predominantly deals with the maintenance and welfare of the parents and senior citizens. ‘Maintenance’ is defined under clause (b), as under :

“(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;”

“Welfare” is defined under clause (k), as under :

“(k) “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens;”

17. Chapter II of the Senior Citizens Act, 2007 subsumes provisions under the caption “Maintenance of Parents and Senior Citizens”. Under Section 4, a senior citizen, including parent, who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to make an application under section 5, in case of (i) parent or grand-parent, against one or more of his children not being a minor; (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2. Sub-sections (2) and (3) of Section 4 describes the nature of the obligation of the children or relative to maintain a senior citizen or parent by emphasizing that the obligation extends to the needs of such senior citizen / parent, so that he can lead a normal life.

18. Section 5 of the Senior Citizens Act, 2007 contains provisions in regard to the application for maintenance. Section 6 provides for jurisdiction and procedure to

determine such application. Constitution of Maintenance Tribunal is provided for under Section 7. Under Section 8, the Tribunal, subject to the rules that may be prescribed by the State Government, may follow such summary procedure as it may deem fit. Under Section 9, the Tribunal is empowered to award maintenance at such monthly rate, as the Tribunal may deem fit, subject to the maximum maintenance allowance as may be prescribed by the State Government, which shall not exceed Rs.10,000/- per month. Under Section 12, an option is given to the senior citizen to seek maintenance under the Act, 2007 or Chapter IX of the Code of Criminal Procedure, 1973. The senior citizen may claim such maintenance under either the Senior Citizens Act, 2007 or Code of Criminal Procedure, 1973, but not under both. Section 15 provides for constitution of Appellate Tribunal. Appeals are provided under Section 16 before the Appellate Tribunal.

19. Chapter III deals with establishment of old age homes. Provisions for medical care of senior citizens are envisaged in Chapter IV. Chapter V is dedicated towards the protection of life and property of senior citizens.

Section 23, in particular, empowers the Tribunal to declare the transfer of property by way of gift deed or otherwise, made by the senior citizen, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, void if such transferee refuses or fails to provide such amenities and physical needs. Section 27 of the Act, 2007 bars the jurisdiction of civil court in respect of any matters to which any provisions of the said Act applies. Section 3 gives overriding effect to the provisions of Act, 2007 over the provisions of any other enactment or instrument.

20. At this juncture, 'Statement of Objects and Reasons' of the Senior Citizens Act, 2007, deserves to be noted. It reads as under :

"Statement of Objects and Reasons"

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly

reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance for parents.”

21. A conjoint reading of the provisions contained in the Act, 2007 as a whole, in the light of the Statement of Objects and Reasons, makes the intent of the legislature explicitly clear. The Parliament intended to address alarming situation caused by the neglect and harassment of the parents and senior citizens in the evening of their life. Senior Citizens were found to be deserted and deprived of the basic physical necessities, medical care and amenities which are required the most in the advanced age. Many elderly persons, particularly widowed women, were found to have been forced to spend their twilight years all alone, and were exposed to emotional neglect and want of physical and financial support. This mischief was sought to be addressed by the Parliament by providing a simple, inexpensive and speedy mechanism to claim

maintenance and also by making provisions for the institutionalized care of the senior citizens in old age homes, medical support and, most importantly, protection of life and property of the senior citizens. The Statement of Objects and Reasons specifically records that, though under the provisions of the Code, 1973, parents can claim maintenance, the procedure was both time consuming as well as expensive.

22. The capacious breadth of the provisions of the Act, 2007 leaves no manner of doubt that it is a beneficial legislation, enacted to advance the object of care and protection of the senior citizens. Thus, while interpreting the provisions of the Senior Citizens Act, 2007, it is imperative to adopt tools of interpretation which are required to be applied when interpreting the beneficial piece of legislation. The cardinal principle is that the beneficial legislation must receive liberal construction in consonance with the objectives such legislation seeks to achieve. Interpretative process must be attuned to the purposive construction informed by the legislative object. In a given case, if two views are plausible, the Court must lean in favour of an interpretation which favours the

beneficiaries rather than one which stultifies object of the beneficial legislation.

23. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of *K. H. Nazar V/s. Mathew K. Jacob*⁴, wherein the Supreme Court expounded the approach to interpretation of a beneficial legislation, as under :

“11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court’s duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.

.....

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified, and then a construction that suppresses the problem and advances the remedy should be adopted. It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction. It was observed in *Shivram A. Shiroor V. Radhabai*

4(2020) 14 SCC 126

*Shantaram Kowshik*⁵ that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in *Minister Administering the Crown Lands Act V/s. NSW Aboriginal Land Council*⁶, Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.”

(emphasis supplied)

24. Keeping in mind the aforesaid beneficial intent of the statute, some of the key provisions of the Act, 2007, adverted to above, deserve to be revisited.

24.1 Firstly, the definition of maintenance under Section 2(b) is inclusive. Maintenance includes provision for food, clothing, residence, medical attendance and treatment. Evidently, the definition of maintenance is of wide amplitude. The Parliament has designedly not given restrictive meaning to the term ‘maintenance’.

24.2 Secondly, the term ‘property’ under section 2(f) of the Senior Citizens Act, 2007, has also been defined in

⁵(1984) 1 SCC 588

⁶(2008) 237 CLR 285

expansive terms. Property means, property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.

24.3 Thirdly, the obligation of the children or relative to maintain the senior citizen or parent under Section 4(2) and (3), as the case may be, extends to the needs of such senior citizen or parent so that he may lead a normal life. This statutory obligation, in contradistinction to the moral or pious obligation, if read in juxtaposition with the definition of maintenance under Section 2(b), further expands the protective umbrella of the Senior Citizens Act, 2007. So construed, the obligation to maintain a senior citizen in such manner as to the facilitate the senior citizen to lead a normal life transcends the monetary connotations.

24.4 The obligation of the children or relative under Section 4(2) and (3) impliedly gives statutory recognition to the right of the senior citizen to live a life free from neglect, harassment, exploitation, physical and emotional disturbance. The expression 'normal life' connotes a safe,

dignified, peaceful and physical and emotional stress free life. A senior citizen is entitled to safeguard his physical and mental health. All the facets which make life a normal life, given the situation in life of the senior citizen, are subsumed within the expression 'normal life'.

25. In the case of **Jitendra Gorakh Megh (supra)**, the Division Bench of this Court considered the following question :

“Whether an eviction order can be passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 without any claim towards maintenance being made by the senior citizen ?

26. After adverting to the facts of the case, the Statement of Objects and Reasons, key provisions of the Senior Citizens Act, 2007 and the judicial precedents, including the judgment of the Supreme Court in the case of ***Smt. S. Vanitha V/s. The Deputy Commissioner, Bengaluru Urban District and Ors.***⁷ and judgments of this Court in the cases of **Ranjana Rajkumar Makharia V/s. Mayadevi Subhkaran Makharia**⁸, **Ritika Prashant Jasani**

⁷ Civil Appeal/3822/2020 dt. 15/12/2020

⁸ 2020(3) Mh.L.J. 587

V/s. Anjana Niranjana Jasani⁹ and Shweta Shetty V/s. State of Maharashtra and Ors.¹⁰, the Division Bench enunciated, *inter alia*, as under :

“20. Section 4 of the Act contains provisions dealing with the maintenance of parents and senior citizens. It prescribes that a senior citizen who is unable to maintain himself from his own earnings or from property owned by him, is entitled to make an application for maintenance under Section 5 of the Act. The said section further prescribes that the obligation of children to maintain the senior citizen extends to the needs of such senior citizen so that he may lead a normal life. Section 5 contains provisions relating to the application which the senior citizen can make for maintenance. Sub-section (2) enables the Tribunal to order monthly allowance to be paid to the senior citizen towards interim maintenance. In these circumstances, when the senior citizen has made no claim for maintenance, we fail to see how the said application which has been filed by the senior citizen under section 5(2) of the Act, is maintainable, in the first place. This position appears to have been completely overlooked, both in the eviction order and also in the appellate order.

.....

24. The Act is a beneficial statute intended to safeguard the vulnerable (senior citizen), but it cannot be (mis) used by the senior citizen as a tool

9 2021 SCC Online Bom 1802

10 2021 SCC Online Bom 4575

for summary eviction without the fulfilment of statutory requirements. In the present case, we find that the said application does not satisfy the requirements of Sections 4 and 5 of the Act and is therefore not maintainable. Accordingly, the eviction order could not have been passed by the Tribunal and upheld by the Appellate Tribunal, vide the appellate order. The senior citizen has not claimed any maintenance from the Petitioner and the order of eviction is not in furtherance thereof. Eviction, as also held in S. Vanitha (supra) would be an incident of the enforcement of the right to maintenance and protection which should be granted only after adverting to the competing claims of both parties in dispute. This has admittedly not been done in the appellate order or in eviction order (which it confirms).

25. In fact, the senior citizen is financially well-to-do and owns several other immovable properties, both residential and commercial and instead, the record reveals that the Petitioner (if evicted from the subject premises) would not have any other roof over his head. This is not disputed by the senior citizen in the said application who in-fact asserts that the Petitioner has been unemployed for several years. In such circumstances, it was incumbent on the Tribunal and the Appellate Tribunal to have considered these material factors before passing the eviction and appellate orders. This has admittedly not been done. Instead, the eviction order accepts all the averments made in the said application and proceeds to hold that since the subject premises

belong to the senior citizen and he needs to reside therein since he travels frequently for medical treatment, the Petitioner is required to be evicted therefrom.

26. The eviction order is thus clearly contrary to the scheme of the Act. In fact, the Tribunal and the Appellate Tribunal have both also lost sight of the fact that the said application is bereft of any allegations of harassment and/or cruelty by the Petitioner, which has not been considered whilst passing the eviction order and the appellate order. There is no finding, let alone any discussion in terms of Section 9 of the Act, that the senior citizen had suffered neglect at the hands of the Petitioner, which was required as per the decision in *Ritika Prashant Jasani (supra)*. Hence, both the appellate order as also the eviction order, cannot be sustained.

27. The decision in *Shweta Shetty (supra)* is of no assistance to the senior citizen and is easily distinguishable on its facts. In that case, the daughter who was initially residing in Germany, returned to India and began residing with the senior citizen and refused to vacate his premises, unless she was given 'her share'. *Nasir V/s. Govt. of NCT of Delhi and Ors.*¹¹ was a case where the Tribunal permitted the senior citizen, who was admittedly the owner of the property, to occupy one floor and give out the other two floors on rent and recover the income therefrom. This is also distinguishable on facts. Hence, neither decision is

of any assistance to the senior citizen.”

27. At this stage, as noted above, the expansive and wide definition of maintenance, and, obligation of the children and relative, assume critical salience. If a senior citizen is turned out of her home and made to take shelter in the premises of another child / relative, can it be said that the obligation of the child / relative who is alleged to have driven the senior citizen out of her home, to maintain the senior citizen is discharged ? Would it still be incumbent upon the senior citizen to first seek maintenance from such child/relative who has allegedly driven her out of her property ?

28. A purposive interpretation of the provisions of the Senior Citizens Act, 2007 would provide a legitimate answer. In a situation of the present nature, the senior citizen can be said to be enforcing her right to lead a normal life, which obligation is correspondingly and statutorily cast on the child/relative. Definition of maintenance, which includes residence; has both positive and negative connotations. In the positive form, there is an obligation on the child / relative to provide residence to

the parent/senior citizen in case the parent/senior citizen does not hold the property as defined under section 2(f) of the Senior Citizens Act, 2007. In the negative sense, there is an obligation on the child/relative not to dispossess a senior citizen of her own residence and when a senior citizen approaches the Tribunal seeking eviction of the child / relative, who has allegedly dispossessed the senior citizen forcibly or by making the life of the senior citizen miserable by acts of omission or commission, the prayer still partakes the character of enforcing the obligation of the child / relative to allow the senior citizen to lead a normal life.

29. In the case of *Shweta Shetty (supra)*, a Division Bench of this Court repelled an identical challenge to the order of the Maintenance Tribunal. In that case, senior citizen was seeking to evict from his flat, one of the daughters, who had forced herself upon the senior citizen. A submission was canvassed on behalf of the daughter that, it was impermissible under the scheme of the Senior Citizens Act, 2007 to seek eviction of a person for, under Section 5, only an application for maintenance could be entertained by the Tribunal, and, thus, the Tribunal had

acted without jurisdiction in directing eviction of the daughter.

30. The Division Bench negated the challenge, after adverting to the Division Bench judgment of this Court in the case of *Ritika Prashant Jasani (supra)*, in the following terms :

“9. As to the jurisdictional question we do not believe the point is well taken. The definition of maintenance in clause 2(b) reads thus :

“(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;”

10. Clearly it includes residence; and this means residence of the senior citizen.

12. In Jasani, therefore, the claim of the appellant was that the house was a ‘shared household’, i.e. that she had a legally definable right in the property itself. That is not the case before us at all, where Shweta accepts that she has no right in the flat in question. The mere use of the word ‘eviction’ is not by itself determinative. To constitute eviction, or to invoke any prohibition against eviction, it must be shown that some legally enforceable civil right of the appellant in the property itself has been determined and that the appellant has been denied that right. Removal of a person with no right in the premises is not eviction so as to attract any such prohibition. After all, as Jasani notes, the statutory intent is to protect senior citizens. It is not to foist on senior citizens an imaginary claim over their own property where the claimant has no such right to begin with. The statutory intent is not to limit the

rights of senior citizens, but exactly the reverse.”

(emphasis supplied)

31. The Division Bench in the case of ***Shweta Shetty (supra)***, also adverted to another judgment of a learned Single Judge of this Court in the case of ***Dattatrey Shivaji Mane V/s. Lilabai Shivaji Mane***¹², wherein it was enunciated that Section 4 of the Senior Citizens Act, 2007 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), (d) and (f) of the said Act, 2007 and the mother cannot be restrained from recovering exclusive possession from her son or other family members for the purpose of generating income from the said premises or to lead a normal life.

32. In ***Shweta Shetty (supra)***, the Division Bench also followed the Division Bench judgment of the Delhi High Court in the case of ***Sunny Paul (supra)***, and observed with reference to the enunciation of law in ***Dattatrey Shivaji Mane (supra)*** and ***Sunny Paul (supra)***, as under :

“We entirely endorse the views of the learned Single Judge and accept them as our own. We are also fully in agreement with the views of the Division Bench of the Delhi High Court in the case of Sunny Paul (supra), a

most careful and elaborate judgment that includes what appears to us to be a comprehensive overview of the jurisprudence.”

33. In the case of *Dinesh Bhanudas Chandanshive (supra)*, which again arose out of the struggle of a mother, who was illegally ousted from her own abode, to take back the same from her son, the Division Bench after following the decision in the case of *Shweta Shetty (supra)*, rejected the challenge to the order passed by the Maintenance Tribunal on the ground that the Tribunal had no jurisdiction to order eviction. It was, *inter alia*, exposted that, during the lifetime of the parents, children cannot assert any legal right whatsoever in respect of the property of their parents claiming exclusive ownership or possession of the parents property. The mother certainly deserves to be maintained from her own tenement. The Petitioner has no legal right whatsoever to oust the mother from her tenement so as to make her roofless and/or deprive maintenance from her tenement.

34. At this stage, the decision in the case of *Smt. S. Vanitha (supra)*, deserves to be consulted. The Supreme

Court in the said case has illuminatingly postulated the path to be traversed where two enactments, namely, the Senior Citizens Act, 2007 and the Protection of Women from Domestic Violence Act, 2005, both having non-obstante clauses compete for operation. It was enunciated that the Tribunal must adopt a harmonious construction. In paragraph No.17 of the said judgment, the Supreme Court postulated that the Tribunal may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words, would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after advertent to the competing claims in the dispute.

35. It is in the aforesaid context, in the case of ***Samtola Devi Vs. State of Uttar Pradesh & Ors***¹³, it was enunciated that the provisions of the Act, nowhere specifically provides for drawing proceedings for eviction of persons from any premises owned or belonging to such a senior citizen. It is only on account of the observations made by the Supreme Court in ***S. Vanitha (supra)***, that the Tribunal under the

Senior Citizens Act, may also order eviction if it is necessary and expedient to ensure the protection of the senior citizens. It must be noted that the decision in *Samtola Devi (supra)*, also turned on the peculiar facts of the said case.

36. The matter can be looked at from the two other perspectives, especially where the allegation is that the senior citizen has been driven out of her own home/property. First, under the provisions of Section 23 of the Act, 2007, the Tribunal is conferred with the authority to declare a transfer, made by the senior citizen in favour of the transferee, void if the transferee refuses or fails to provide basic amenities and physical needs to the transferor, post transfer. In a sense, the power is drastic in nature. The Tribunal is empowered to declare a registered instrument inter vivos void, and, resultantly, put the transferor – senior citizen in possession of the property for failure of the condition subsequent; express or implied.

37. Indeed, the said measure falls under the Chapter of Protection of life and property of senior citizen. However, if the provisions of the Act, are read as a whole, chapter by

chapter, section by section; and word by word; which is the standard rule of interpretation (*Reserve Bank of India V/s. Peerless General Finance and Investment Co. Ltd. and Ors.*)¹⁴, then if the Tribunal is empowered to declare a transfer, which has already been effected by instruments inter vivos void, a *fortiori*, the Tribunal in exercise of its power to enforce the right of maintenance of the senior citizen and the corresponding obligation of the child / relative, would have the authority to order eviction of the child / relative who has unlawfully dispossessed the senior citizen or created an atmosphere which forces the senior citizen to take shelter elsewhere than her own home.

38. Second, under the provisions of the Act, the Tribunal can award maintenance not exceeding Rs.10,000/- per month. In a metropolis like Mumbai, where the property commands premium, for a senior citizen, who is dispossessed of her own premises, an award of maintenance of the maximum amount of Rs.10,000/- per month can hardly be a solace. The said amount would hardly be sufficient to have a roof over the head of the senior citizen.

14(1987) 1 SCC 424

39. Thus, the submission premised on the impression that the maintenance under the Senior Citizens Act, 2007 can be measured only in monetary terms, is fallacious and does not merit countenance.

40. In the light of the aforesaid consideration, this Court must revert to the decision in the case of **Jitendra Gorakh Megh (supra)**. From the perusal of the said judgment, in its entirety, it becomes abundantly clear that the peculiar facts of the said case, including that the senior citizen had never resided in the subject premises; the senior citizen resided in a separate residential flat in another society with his wife, which was not claimed to be unsuitable for the senior citizen; there was a declaration by the senior citizen expressly permitting the Petitioner therein to reside in the subject flat and to conduct business therefrom, for as long as the Petitioner therein desired, without any charges for the occupation; there was no allegation of harassment and/or cruelty made by the senior citizen and the senior citizen appeared to be financially sound and owned several other immovable properties, both residential and commercial, and, in contrast, the Petitioner therein, if

evicted from the subject flat, would not have any other roof over his head weighed with the Division Bench. In the respectful understanding of this Court, in the backdrop of aforesaid facts, especially the sound financial position of the senior citizen who was found to have a number of properties, no allegation of cruelty and/or harassment at the hands of the Petitioner therein, and the said application having been filed as a counter-blast to the suit instituted by the Petitioner therein, the Division Bench ruled that, such an application without seeking maintenance was not maintainable.

41. I am, thus, of the considered view that it cannot be laid down as an immutable and absolute rule of law that the application for eviction simplicitor sans the prayer for monetary maintenance is not maintainable, even when the senior citizen claims that she has been dispossessed of her property or she requires the property to generate income out of the said property to lead a normal life. To hold otherwise, would amount to defeating the very objective of the Act, 2007.

42. Mr. Redekar laid emphasis on the fact that respondent No.1 is not the absolute owner of the subject flat. A strenuous effort was made to drag home the point that the subject flat came to be allotted as a permanent alternate accommodation in lieu of the old house premises bearing House No.91/34 Pardiwala Chawl, which came to be redeveloped. Mr. Redekar advanced a criticism that the Tribunals under the Senior Citizens Act, 2007, despite having noted the said fact, have proceeded to pass the order of eviction against the petitioner. In substance, Mr. Redekar's submission was that the petitioner also has a right to occupy the subject flat and he could not have been evicted by resorting to the summary procedure under the Senior Citizens Act, 2007, especially when respondent No.1 neither required nor claimed maintenance.

43. The material on record, however, indicates the nature of right and interest of respondent No.1 in the subject flat, nay the character of the subject flat. The letter of possession dated 11th August, 2023 issued by Renaissance Homes, the developer, clearly indicates that the possession of the subject flat was delivered to respondent No.1 as and by way of permanent alternate accommodation, pursuant

to the PAAA dated 21st April, 2019 registered with the Registrar of Assurances. The said letter clearly indicates that, by and under the captioned PAAA, respondent No.1 was allotted the new premises i.e. Flat No.403, Wing A, Baya Central - the subject flat. The said communication *prima facie* implies that the PAAA was executed with respondent No.1 and the possession of the subject flat was also allotted, and its possession was delivered, to respondent No.1.

44. The nature of the subject flat also becomes explicitly clear from the order passed by the City Civil Court in Suit No.0101604/2014, which was instituted by the petitioner against his brother Shankar. The said order reads as under:

“Adv. Sandeep Ghogre for plaintiff present. Defendant present. Adv. Bankar for defendant present. Ld. Advocate for defendant on instruction from defendant who is present in the Court, submits that since the plaintiffs and defendant are real brothers, all staying in the suit hose at the mercy of their mother who is the tenant. He had never caused any disturbance to the occupation of the plaintiffs and he submits that he would never ever cause any disturbance to their occupation therein. The statement is accepted. Ld. Counsel for

the plaintiff in view of the aforesaid statement,
submits that the suit itself be disposed off. In such
circumstances suit as well as Notice of Motion No.
2253/2014 stands disposed off.”

45. Evidently, the aforesaid order pertains to the premises in which the parties were residing before the subject flat came to be allotted to respondent No.1. Both the brothers have conceded that they were staying in the suit house at the mercy of their mother (R1 herein), who was the tenant of the said premises. Thus, the right and interest of respondent No.1 even in the premises which went for redevelopment cannot be controverted.

46. It is imperative to note that, the possession of the subject flat was delivered to respondent No.1 vide letter dated 11th August, 2023. Obviously, the old premises was demolished and redeveloped. Thus, the petitioner cannot claim that he had been residing in the old premises immediately preceding the delivery of possession of the subject flat. That lends *prima facie* support to the claim of respondent No.1 that the petitioner had been residing separately in Lower Parel, (East), Mumbai.

47. It is in the aforesaid context, the allegations of respondent No.1 that on 5th November, 2023, the petitioner

broke open the door of the subject flat and forcibly dispossessed her, deserves to be appreciated. The alleged dispossession occurred under a couple of the months of the delivery of the possession of the subject flat by the developer to respondent No.1. The latter has instituted a private complaint against the petitioner for committing trespass and forcibly dispossessing her.

48. The Appellate Tribunal has recorded that it is a matter of fact that respondent No.1 is residing in a rented premises at Badlapur. The said fact could not be controverted. It is not the case of the petitioner that the respondent is residing at Badlapur in the premises which she, or for that matter his younger brother, owns. At this juncture, the expansive definition of “property” under Section 2(f) of the Senior Citizens Act, 2007 assumes significance. The term, “property” includes rights and interest in the property whether movable or immovable, ancestral or self-acquired, tangible or intangible. In the face of the expansive definition of property, the submission of Mr. Redekar that respondent No.1 senior citizen is not the absolute owner of the subject flat thus falls through. In

no circumstances, it could be controverted that respondent No.1 has right and interest in the subject flat.

49. The position which, thus, obtains is that respondent No.1 has been forcibly dispossessed of her flat. The petitioner by forcibly barging into the subject flat and, in a sense, forcing himself upon respondent No.1, has committed the breach of the obligation under Section 4(3) of the Senior Citizens Act, 2007. Conversely, respondent No.1 has been deprived of the roof over her head. The resultant effect is that respondent No.1 on account of being deprived of her own residence finds unable to maintain herself. If the averments in the application before the Maintenance Tribunal are considered through the prism of the circumstances which forced respondent No.1 to lodge private complaint against the petitioner for having committed trespass into the subject flat and thereby dispossessed her, the element of refusal or neglect to maintain the senior citizen as envisaged by Section 9 of the Senior Citizens Act, 2007 can be said to have been made out.

50. I am, therefore, persuaded to hold that in the facts of the case, the Tribunals were justified in ordering the

eviction of the petitioner towards the enforcement of the right of respondent No.1 for maintenance and protection.

51. Hence, the following order:-

:: O R D E R ::

- i] The Writ Petition stands dismissed.
- ii] Rule discharged.

[N. J. JAMADAR, J.]

At this stage, the learned Counsel for the petitioner seeks continuation of the ad-interim relief.

As the order is of eviction, the ad-interim relief shall continue to operate for a period of three weeks subject to the petitioner filing an undertaking, not to create any third party rights and part with possession of the subject flat, within a period of one week from today.

[N. J. JAMADAR, J.]