IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT PETITION NO. 15503 OF 2024 (GM-RES)

BETWEEN:

1. SRI. PRUTHVIRAJ
   S/O DHOOL RAJ JAIN
   AGED ABOUT 40 YEARS

2. SMT. LALITHA
   W/O PRITHVIRAJ
   AGED ABOUT 37 YEARS

   BOTH PETITIONERS ARE
   R/AT PREMRAJ AND SONS
   INFRONT OF OSWAL GOLDEN SHOP
   B.M.ROAD, SAKALESHPUR
   HASSAN DISTRICT-573 127

...PETITIONERS

(BY SRI: P P HEGDE, SENIOR COUNSEL A/W
SRI: RAJARAMA S, ADVOCATE)

Digitally signed by PREMCHANDRA M R
Location: HIGH COURT OF KARNATAKA

AND:

1. THE DEPUTY COMMISSIONER
   HASSAN DISTRICT
   HASSAN-573 127

2. THE ASSISTANT COMMISSIONER
   SAKALESHPUR SUB DIVISION
   SAKALESHPURA-573 127

3. SRI. DHOOL RAJ JAIN
   S/O PREMRAJ
   AGED ABOUT 65 YEARS

4. SMT. RASAAL BAI
W/O DHOOL RAJ JAIN
AGED ABOUT 63 YEARS

BOTH RESPONDENT NOS.3 AND 4 ARE
R/AT PREMRAJ AND SONS
INFRONT OF OSWAL GOLDEN SHOP
B.M.ROAD, SAKALESHPUR
HASSAN DISTRICT-573 127

…RESPONDENTS

(BY SRI: M SRINIVAS KUMAR, HCGP FOR R1 & R2;
SRI: P D SUVARNA, ADVOCATE FOR R3 & R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE RESPONDENT NO.1 MAG(HI.NA.RA) NO.15/2023-24 DATED 06.02.2024 AND CONSEQUENTLY TO QUASH THE ORDER PASSED BY RESPONDENT NO.2 MAG (HI.NA.RA) 285/2019-20 DATED 06.01.2022 VIDE ANNEXURE-A AND B RESPECTIVELY.

THIS WRIT PETITION, HAVING BEEN RESERVED FOR ORDERS ON 15.10.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **T.P.VIVEKANANDA J.,** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV ORDER

The petitioners are before this Court assailing the order dated 06.01.2022 passed by respondent No.2 and the order dated 06.02.2024 passed by respondent No.1 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act').

2. Respondent Nos.3 and 4 are the father and mother of petitioner No.1 and in-laws of petitioner No.2. Respondent Nos.3 and 4 had approached respondent No.2 under the provisions of Act. The petition filed by respondent Nos.3 and 4 has been forwarded to the Conciliation Officer as provided under Section 18 of the Act. The Counsellor, Senior Citizen Helpline of Hassan District has recorded the statement of the applicants and the respondents before the Assistant Commissioner and submitted the report on 26.11.2021. The statement made by respondent Nos.3 and 4 i.e., the parents before the Counsellor was that they are not maintaining good health and they require about Rs.50,000/- for the medical expenses and an arrangement may be made for the separate residence of the respondents i.e., the son and daughter-in-law, so that, they can live peacefully during their advanced age.

3. The statement of the petitioners/respondents was that they and other children of respondent Nos.3 and 4 are all residing in the family house and they were thrown out even without considering the fact that one of the daughter is suffering from cancer and it is in the said circumstances, they have approached the police and also filed civil suit and obtained an order of injunction. The parents are discriminating between

3 children and the father is getting the rental income of about Rs.3,00,000/- per month and earning about Rs.40 lakhs per annum from out of the coffee plantation and sale of areca nut. The parents have the asset worth Rs.30 crores and they have no financial difficulty and the house where they are presently residing do not have the amenities and all the bank records and income tax records are also in the custody of the parents. Therefore, the same needs to be returned to them. It is pursuant to the said report, respondent No.2 - Assistant Commissioner has conducted the proceedings and passed the impugned order. The order impugned reflects the very same statements recorded before the Counsellor, which is reiterated above.

4. At last paragraph before the operative portion of the order, the Assistant Commissioner records that the applicants i.e. the parents have stated that they would execute the document in respect of the property situated on the hind side of Sakaleshapura, old bus stand, which measures 2500 square feet and the opponents i.e. the petitioners herein would vacate the house, where they are presently residing within one year from 06.01.2022. In case of the respondents/petitioners not shifting from the house in question, the document that

would be registered would be cancelled under Section 23 of the Act and for the aforesaid arrangement, the respondents have consented. It is only on the basis of the aforesaid statements of the parties, the Assistant Commissioner has passed the impugned order directing the execution of the registered document in respect of the afore detailed property i.e., the petitioners herein shall vacate the house property within one year.

5. Feeling aggrieved by the order of the Assistant Commissioner, the petitioners herein have approached the Deputy Commissioner under Section 16(1) of the Act. The said appeal was not maintainable. However, the Deputy Commissioner has considered the same and dismissed the appeal. It is the aforesaid two orders of respondent No.2 and respondent No.1 are called in question in the present writ petition.

6. The contention of the petitioners is that, the residential house where they are residing along with their parents is a family residence and they are entitled to reside in the family house until the family properties are partitioned in the manner known to law. It is their further contention that the

provision under which respondent Nos.3 and 4 have approached the Assistant Commissioner is not clear from the orders passed by the authorities. Inasmuch as, the Assistant Commissioner has indicated in his order that he has exercised the power under Section 9(1) and 23(1) of the Act. Section 9(1) and 23(1) of the Act does not empower the Assistant Commissioner to pass the order of the kind which is at Annexure-B.

7. It is the submission of learned senior counsel Sri P P Hegde appearing for the petitioners that the suit in OS No.75 of 2021 has been filed by the petitioners and an ad-interim injunction has been granted on 22.04.2021. The another son Sri S D Suresh has filed OS No.63 of 2023 for partition and separate possession and the said suit is pending consideration. Petitioners herein have also instituted another suit in OS No.10 of 2024, seeking partition and separate possession and the same is also pending consideration. When the suit for partition and separate possession are pending consideration, the Assistant Commissioner gets no jurisdiction to pass an order of eviction of one of the family members from the family residence.

8. It is the submission of the learned senior counsel that the tenor of order of the Assistant Commissioner is like an arrangement made between the parties by consent. However, no such consent has been given by the parties before the Assistant Commissioner. Learned senior counsel has relied upon the judgment of the Hon'ble Supreme Court in ***S Vanitha Vs Deputy Commissioner, Bengaluru Urban District and Others***[1] and contends that in exercise of the powers conferred under the Act, the daughter-in-law cannot be evicted from the shared household.

9. *Per contra,* Sri P D Surana, learned counsel appearing for respondent Nos. 3 and 4 i.e., the parents submits that the strict rule of pleadings and provisions cannot be applied in respect of the proceedings under the Act and notwithstanding the fact that respondent Nos.3 and 4 have not specifically stated the relevant provisions of the Act, however, respondent No.2 being an officer who has been assigned with the powers under the Act for protection of the senior citizen, has every power to pass orders in order to safeguard the

[1] (2021) 15 SCC 730

interest of the senior citizens and therefore, any argument contrary to the said proposition is liable to be rejected.

10. It is the submission of learned counsel that the parties have made submissions before the Assistant Commissioner for the interim arrangement and which has been recorded by the Assistant Commissioner in its order. It is not open for the petitioners to dispute the statements made before the Assistant Commissioner. Learned counsel has pointed out from the pleadings of the writ petition, more particularly, paragraph 5, which reads as follows:

> *"The petitioners pleaded that they are having 3 daughters. One of the daughters is suffering from cancer. The respondents assured before the Assistant Commissioner that they would register the house situated behind the old bus stand Sakaleshpura in favour of petitioners (the area of is 2,500 Sq ft). It was agreed by the petitioners that they would shift from the house of respondents and settle in the house situated behind old bus stand within a year from 06.01.2022."*

11. In light of the aforesaid admission, the petitioners have no right to challenge the impugned order. In addition, it is contended that the residential house where the petitioners were earlier residing belongs to respondent Nos.3 and 4 and the

petitioners cannot insist respondent Nos.3 and 4 to allow them to reside in the residential house in question, in contrast of the wish and will of respondent Nos.3 and 4. The occupation of the petitioners in the family house was only a permissive occupation and the petitioners have no legal or vested right to insist respondent Nos.3 and 4 to permit them to reside in the residential house in question. The fact that the petitioners have filed suit for injunction during the pendency of the proceedings before the Assistant Commissioner suggests that they have no intention of vacating the house in question within one year from the date of the order, so as to enable respondent Nos.3 and 4 to comply with the direction of the Assistant Commissioner.

12. Learned counsel for the respondents has placed reliance on the following judgments:

(i) ***Shamsher Singh Vs District Magistrate, U T Administration, Chandigarh and Others[2];***

(ii) Skanda Sharath Vs Asst. Commissioner and Others[3]; *and*

(iii) Rakesh Soni and Others Vs Premlata Soni and Others[4].

[2] MANU/PH/0394/2017
[3] WP No.1171/2019 DD 13.02.2019

and contends that;

(i) the Tribunal under the Act possesses the power to grant the relief of possession to senior citizen or parent;

(ii) Till such time, the petitioners establish their right of ownership or right to remain in possession of the residential house in question in the pending suit they cannot be permitted to reside in the residential house in question;

(iii) Merely because the parents have allowed residence so long as relations were cordial does not mean that the parents were forced to bear the burden throughout their life. Children of the senior citizen can live in the house only at the mercy of the parents upto the time the parents allow them to stay.

13. It is his further contention that since the petitioners have approached the Civil Court seeking partition and separate possession of the suit schedule properties and seriously contesting the matters, are not entitled for any relief in the present writ petition. In view of the fact that the petitioners have challenged the order passed by the Assistant

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[4] MANU/RH/1282/2019

Commissioner before the Deputy Commissioner and filed the suit for partition and separate provisions before the Civil Court at Sakaleshapura, the question of respondent Nos.3 and 4 executing the deed of conveyance of the property measuring 2,500 square feet situated at the hind side of Sakaleshapura, old bus stand does not arise. In that event, the order passed by the Assistant Commissioner insofar as the execution of document by respondent Nos.3 and 4 in favour of the petitioners herein does not arise. Accordingly, the only order that needs to be given effect to is the order containing the eviction of the petitioners from the residential house in question. Accordingly, he seeks for dismissal of the writ petition.

14. On 12.10.2026, this Court after hearing for sometime had passed the following order:

> *"Heard the learned Senior Counsel Sri.P.P.Hegde appearing for the petitioners and the learned counsel Sri.P.D.Surana appearing for respondent nos.3 and 4.*
>
> *The principal contention of the writ petitioners is that, respondent nos.3 and 4 herein had approached the Assistant Commissioner/Competent Authority under Section 9(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeking maintenance from*

their children, however, the Assistant Commissioner has enlarged the scope of the proceedings and has considered the claim under Section 23 of the Act and directed the petitioners to vacate the residential house where they are presently residing.

The copy of the petition filed before the Assistant Commissioner is not placed on record. In order to verify the prayer sought in the petition filed by respondent nos.3 and 4 before the Assistant Commissioner, the records of the Assistant Commissioner relating to passing of the order at Annexure-B is necessary.

Therefore, learned HCGP is directed to secure the records relating to the order passed by the Assistant Commissioner as per Annexure-B."

15. Pursuant to the aforesaid direction, learned High Court Government Pleader has made available the file maintained by respondent No.2 whose order is impugned in the present writ petition. On perusal of the file, it is seen that respondent Nos.3 and 4 had approached respondent No.2 on 20.07.2021 by submitting an application in Form-A (Rule 3). As against Column-13 regarding the other information which the applicants intends to furnish, it is stated that the detailed complaint is enclosed. It is seen from the records that there is no written detailed complaint attached to the application in

Form-A. There is a report from Senior Citizen Helpline dated 26.11.2021 enclosing the statements of the applicants and the opponents recorded on 16.10.2021 in respect of the complaint dated 20.07.2021. The report of the Counsellor, Senior Citizen Helpline refers to the statements recorded on 16.10.2021 and informs the Assistant Commissioner to decide the matter in accordance with law. It is pursuant to the said report of the Senior Citizen Helpline, notice of hearing was issued on 24.12.2021 fixing the date of hearing as 29.12.2021.

16. From the order sheet maintained by respondent No.2, it is seen that no hearing took place on 29.12.2021. However, the proceedings appear to have been conducted on 06.01.2022. In the order sheet, it is recorded as follows:

> "*Case called. Both parties heard. G.Tree made and singed by both parties. A pleaded for R to evict their house. R has 3 daughters, with 1 daughter suffering from blood cancer. As per High Court directions eviction order cannot be issued in the cases under Senior Citizen Act, 2007 against the daughter-in-law.*
>
> *Appellant has agreed to provide residential plot in old bus stand back side [2500 sq feet] in Sakleshpur town and the respondent has agreed to vacate the parental house within 1 year from today. If R failed to*

vacate the parental house within 1 year from today, any registered deed executed by the A for transfer of property for the said residential plot would be deemed to be void as per Sec 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007."

17. The order sheet is signed by petitioner Nos.1 and 2 and respondent No.3. On a reading of the statements recorded by respondent No.2, which is extracted above, it can be easily inferred that there was an understanding/consensus between the petitioners and respondent No.3 to the effect that the registered deed of transfer in respect of the property on the hind side of old bus sand (measuring 2500 square feet) would be executed in favour of the petitioners and the petitioners have agreed to vacate the family house where they are presently residing within one year from 06.01.2022. It is based on the said consensus of the parties, respondent No.2 has passed the impugned order verbatim reproducing the statements recorded in the order sheet dated 06.01.2022.

18. From the order impugned coupled with the statement recorded in the order sheet dated 06.01.2022, there is no doubt in understanding that respondent No.3 herein had agreed to execute a deed of conveyance in respect of the

property measuring 2500 square feet situated on the hind side of old bus stand and the petitioners have agreed to vacate the family house within one year. There is an obligation on the part of the petitioners as well as the respondent No.3 to comply with the statement made before respondent No.2. On the ground that the contentions of the parties was not considered by respondent No.2 and passed the order on 06.01.2022 and also on the ground that respondent No.2 has exceeded its jurisdiction in passing the order dated 06.01.2022, the petitioners had preferred appeal before respondent No.1 - Deputy Commissioner. Though the same was not maintainable, nevertheless, respondent No.1 - Deputy Commissioner had dismissed the appeal.

19. It is seen from the writ petition papers that as on the date of passing of the impugned order by the Assistant Commissioner on 06.01.2022, an order of injunction restraining respondent Nos.3 and 4 herein from dispossessing the petitioners from the suit schedule property i.e. the family residence was in force. The said fact was recorded by the Counsellor, Senior Citizen Helpline. However, the details of the suit and the date of order of injunction is not recorded and neither the petitioners nor respondent Nos.3 and 4 have

brought to the notice of respondent No.2 about the nature of suit and the order of injunction passed by the Civil Court. The fact that the petitioners have filed the appeal before the Deputy Commissioner challenging the impugned order and continuing to prosecute the suit in OS No.75 of 2021 and the filing of suit in OS No.10 of 2024 in respect of the suit schedule properties including the family house, so also, the property which was agreed to be transferred in favour of the petitioners and the contest made by respondent Nos.3 and 4 in the aforesaid suits discerns that both the parties had no intention to adhere to their statements made before respondent No.2 which has been recorded in the order sheet. The direction issued by respondent No.2 for vacating the family house by the petitioners is dependent on the execution of deed of transfer by respondent Nos.3 and 4 in favour of the petitioners.

20. Since both the parties have not complied with their mutual obligations in terms of the impugned order, the said order which has been passed on the basis of consent of the parties cannot be enforced or interfered with. In light of the pending civil disputes between the petitioners and respondent No.3 and other family members and in light of subsistence of the interim orders passed therein, the petitioners and

respondent Nos.3 and 4 are required to work out their legal remedies in the pending suits and not in terms of the order passed by respondent No.2, which is impugned herein. The impugned order passed by respondent No.2 is not capable of implementation in respect of the contingent responsibility of both the parties.

21. Other than recording the statement of parties, more particularly, the statement recorded in the order sheet dated 06.01.2022, there is no other consideration of the contention of the parties. The impugned order does not disclose as to the provision under which such an order could have been passed by respondent No.2. Though in the operative portion of the order, it is stated that respondent No.2 has exercised the power under Section 9(1) and Section 23(1) of the Act, however, the nature of direction does not fit into the provisions of Section 9(1) or Section 23(1) of the Act.

22. As noticed supra, there is no clarity in the application filed by respondent Nos.3 and 4 before respondent No.2. In light of the aforesaid circumstances, the order impugned, which has been passed by respondent No.2 based on the consensus/agreement of the parties and both the parties

have declined to adhere to their statements need not be quashed and similarly, respondent Nos.3 and 4 are also not entitled to seek implementation of the impugned order for the reasons stated supra in view of restraint orders passed by the Civil Court.

23. It is to be observed that the respondents No.3 and 4 have not challenged the impugned order if they are aggrieved and it is not open for them to contend that the Assistant Commissioner could not have made the eviction of the petitioners from the family house subject to execution of the document in respect of the property measuring 2500 square feet at the hind side of Sakaleshpura old bus stand.

24. In the result, the following:

ORDER

(i) The writ petition is ***disposed of***.

(ii) The prayer of the writ petitioners for quashing of the impugned orders is rejected in view of the finding recorded in paragraphs 22 and 23 above.

(iii) The petitioners and respondent Nos.3 and 4 have to work out their remedies in the pending suits in OS No.75 of 2021, OS No.63 of 2023 and OS No.10 of 2024.

(iv) It is open for the respondent Nos.3 and 4 to initiate fresh proceedings under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in the manner known to law, however, which shall not be in contrast to the prayers in the pending civil suits and the subsisting interim orders.

Sd/-
(T.P.VIVEKANANDA)
JUDGE

BGN