



(1)

WP-7794-20

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7794 OF 2020

1. Chandiram Anandram Hemnani,
Age 67 years, Occu: Business.
2. Sau. Sushila Chandiram Hemnani,
Age 66 years, Occu: Household,

...PETITIONERS

VERSUS

1. Senior Citizens Appellate Tribunal/
District Collector, Nandurbar.
Tq. And Dist. Nandurbar.
2. Senior Citizens Tribunal/
Sub Divisional Officer, Nandurbar.
Tq. And Dist. Nandurbar.
3. Mukesh Chandiram Hemnani
Age 37 years, Occu: Business.
4. Sau. Ritu Mukesh Hemnani
Age 36 years, Occu: Business.
Both R/o Vrundavan Colony,
Nandurbar, Tq. Nandurbar.
District Nandurbar.

...RESPONDENTS

Advocate for the petitioners : Mr. N. S. Jaju h/f. Mr. P. P. Patni
AGP for Respondent Nos.1 and 2 : Ms. M. L. Sangit

CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 28th APRIL 2025
PRONOUNCED ON : 18th JUNE 2025

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. This petition, invoking Article 227 of the Constitution of India, filed by senior citizens depicts the plight of the senior citizens who are required to contest litigations against their own son and daughter-in-law to enable them to enjoy their own house property. The instant case is an example where the parents were compelled to invoke the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, to secure the protection granted to the senior citizens.
3. By way of instant petition, the petitioners who are parents of respondent No.3 have impugned the order dated 07.08.2000 passed by the Appellate Tribunal under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act”) by which the appeal filed by their daughter-in-law-respondent No.4 is

allowed and the application filed by the present petitioners invoking provisions of the Act came to be rejected. The petitioners' are aggrieved by the decision of the appellate tribunal which has set aside the order passed by the Tribunal which had ordered eviction of the respondents from the house owned by the petitioners.

4. The petitioners are senior citizens, who have preferred an application invoking provisions of the Act, seeking eviction of the respondent Nos.3 and 4, who are their son and daughter-in-law from the house owned by them. The respondent No.3 is son of the petitioners and respondent No.4 is their daughter-in-law. The petitioners had alleged that they allowed their son and daughter-in-law to reside in their home considering their immediate needs after their marriage. However, after the daughter in law started frivolous litigations against them, they approached the Tribunal seeking eviction from their house. The application filed by the petitioners was contested by respondent Nos.3 and 4. By order dated 18.02.2019, Tribunal constituted under the Act, presided over by the Sub Divisional Officer, Nandurbar allowed the

petitioners' application directing the respondent Nos.3 and 4 to vacate their house within a period of 30 days. This order was assailed by respondent No.4 before the Senior Citizens Appellate Tribunal presided over by the Resident District Collector by way of appeal u/s 16(1) of the Act. The appeal was filed by the respondent no.4 i.e. the daughter in law only and in that she has *inter alia* alleged that she had the right to reside in the said property mainly because of pendency of matrimonial proceedings under Section 13 of Hindu Marriage Act, 1955 and proceedings under Domestic Violence Act, 2005 against the husband (respondent No.3) and also the criminal proceedings for offence under Section 498-A, 323, 504 and 506 of Indian Penal Code. The appeal was contested on merits by both the parties and by order dated 07.08.2020, the Appellate Tribunal allowed the appeal, observing that the reliefs claimed by the petitioners herein could not be granted since they were in the nature of the civil dispute and the petitioners are entitled to initiate appropriate civil proceedings. Consequently, the order passed by respondent No.2-Tribunal directing the respondent Nos.3 and 4 to vacate the petitioners' house was quashed and therefore the petitioners are

constrained to challenge the order passed by the Appellate Tribunal by way of instant petition.

5. Assailing the impugned order passed by the Appellate Tribunal, Adv. N. S. Jain, learned counsel for the petitioners vehemently submitted that the Appellate Tribunal adopted a perverse approach defeating the object and purpose of the Act which ensures grant of protection to the rights of the senior citizens. He submitted that the petitioners are the absolute owners of the Bungalow i.e. suit property bearing part of Survey No.138/1 to 5, having Plot No.115 Jaihind Colony, Nandurbar, which they have purchased in the year 2008 from Shri. Mahesh Manumal Gurubakshani out of their own funds. It is the case of the petitioners' that respondent Nos.3 and 4 are the son and daughter-in-law of the petitioners who have performed love marriage and requested for allowing them to stay in their house and accordingly the petitioners allowed them to reside in the said property. On account of disputes in between respondent Nos.3 and 4, the respondent No.4 started harassing the petitioners and she even filed criminal cases

against the petitioners, apart from matrimonial proceedings against her husband. The petitioners' case is that they have obtained loan to purchase the said property which they are repaying but are now deprived from enjoying their own property and therefore they were constrained to approach the Tribunal under Section 5 r/w 20 of the Act. The learned counsel for the petitioners vehemently submitted that the Appellate Authority grossly erred in passing the impugned order which is *ex-facie* arbitrary and contrary to the spirit behind the Act. Assailing the impugned order, he submitted that the Appellate Tribunal has misdirected itself in considering the dispute as purely civil dispute and the rejection of the petitioners' application for eviction frustrated the protection granted to senior citizens.

6. In support of his submissions, he placed reliance on judgments of this Court in the matter of *Dattatrey Shivaji Mane vs. Lilabai Shivaji reported at 2018 (6) Mh.L.J. 681* and *Shweta Shetty vs. State of Maharashtra reported at 2022 (1) Mh.L.J. 279*. In order to substantiate his contentions about the claim of the petitioners for

seeking eviction by invoking the provisions of the Act, he invited court's attention to the specific observations in these judgments interpreting the provisions and directly dealing with the issue. He has also relied upon a judgment of the Single Bench of this Court in the matter of ***Sima w/o Dipak Ahirrao (Patil) -V – The Senior Citizens Appellate Tribunal*** in WP No.11807 of 2019, which had dealt with similar fact situation. Further, he invited attention of the court to the avowed object behind the enactment particularly the Aims and Objects of the Act along with provisions of Section 5 and 22 and submitted that the provisions of the Act cannot be read in isolation and a holistic approach need to be adopted in accordance with the Aims and Objects of the Act.

7. In response to the notice for final disposal, the Respondents no.3 and 4 were served and respondent no.4 had caused his appearance through lawyer, who later on got himself discharged. Pertinently, nobody appeared for respondent Nos.3 and 4 although they are served and have even suffered an order dated 21-12-2022 by which this Court had directed them to deposit an amount of Rs.20,000/- per month. Record

reveals that there is no compliance of this order by the respondents no.3 and 4.

8. Adv. M. L. Sangit, learned Assistant Government Pleader, argued for respondent Nos.1 and 2. She submitted that in view of the peculiar facts of the case, the Appellate Tribunal has in no way disturbed the rights of the petitioners to approach the civil court for seeking eviction and no fault could be found with the impugned order. She also submitted that on plain reading of Section 5 of the Act, which deals with provision to grant maintenance to senior citizens, the Tribunal has rightly refused claim for eviction.

9. Having heard the respective counsels, the rival contentions now fall for my consideration.

10. On careful consideration of the factual aspects involved in the matter, it does appear that the petitioners are owners of the Bungalow i.e. suit property, which is purchased by them and apparently it is their self acquired property. There is no document on record

establishing any kind of ownership right of respondent Nos.3 and 4 in this suit property. Further, record indicates that respondent Nos.3 and 4 who are the son and daughter-in-law of the petitioners are occupying a part of the property and the petitioners have been constrained to initiate proceedings for evicting them.

11. It has to be noted that while considering the factual circumstances, the impugned order passed by the Appellate Tribunal records that the petitioners are owning substantial properties including the suit property and with this impression has accepted the contentions of respondent No.4 that she was entitled to reside in the suit property. The appellate tribunal has although nowhere disputed about the ownership of the petitioners but concluded that no case is made out for eviction of the respondent no.4. The Appellate Authority ultimately inferred that the petitioners claim for eviction of respondent Nos.3 and 4 is in the nature of a civil dispute and the petitioners are therefore directed to approach the appropriate Civil Court.

12. Perusal of the impugned order shows that the Appellate

Authority got highly impressed by existence of rights in favour of the daughter-in-law in the nature of right to claim maintenance and right to reside with her husband. The primary contention of respondent No.4 as deduced from her memorandum of Appeal before the Appellate Tribunal is her right to claim maintenance and to reside in the property and her contentions about pendency of the matrimonial proceedings and criminal case against her husband and petitioners. However, it is crucial to note that there is nothing on record in the nature of any order or decree directing grant of maintenance or right to reside in favour of respondent No.4. Neither there is any specific order under the provisions of the Protection of women from Domestic Violence Act, 2005 in favour of respondent No.4 to claim residence in the property of the petitioners. Thus, apart from her bare contentions in the appeal before the Appellate Authority, there is no document on record establishing any right in favour of respondent No.4 to reside in the suit property. It has to be noted that the petitioners have filed on record a copy of judgment in Regular Criminal Case No.106 of 2016 dated 13.09.2023, by which the petitioners and their son are acquitted from the criminal case. This fact

of acquittal is not disputed by any of the parties.

13. Pertinent to note, the petitioners have filed on record an affidavit dated 19.06.2024 categorically stating therein that during the pendency of the present petition, the respondent No.4 has purchased a house property by way of registered sale deed dated 27.08.2021, consisting of three bedrooms and presently she is residing in the said house. It is stated that despite her own independent house property, the respondent No.4 is also occupying a portion of the suit property belonging to the petitioners. Along with this affidavit the petitioners have also filed on record copy of sale deed in favour of respondent No.4. It is important to note, respondent No.4 has not filed any counter affidavit disputing this categorical assertion by the petitioners. In the wake of these factual aspects, it has to be inferred that the respondent No.4 has failed to establish any right to occupy or reside in the suit property.

14. In this factual scenario, the petitioners' application invoking provision of the Act needed due consideration by the authorities under the said Act. A perusal of the aims and objects of the Act would surely

indicate that the Act is aimed not only to provide a mechanism to claim maintenance to the senior citizens, but also to ensure protection of their life and property. Notably, **sub-section 2 of Section 22 of the Act** provide that *‘The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.’* Further Section 4 of the Act captioned ‘Maintenance of parents and senior citizens’ enables the senior citizens to submit application under section 5 for seeking maintenance . Section 5 of the Act contains provision for ‘Application for maintenance’ by the senior citizens. Pertinently, these provisions under section 4 and 5 fell for consideration before the division bench of this court in the matter of ***Dattatrey Shivaji Mane (Supra)*** and the provisions were elaborately considered and interpreted in the backdrop of the Aims and Objects of the Act. Relevant observations as reflected in paragraph No.24, 25 and 31 of this Judgment are reproduced below:

“24. In so far as the submission of the learned counsel for the petitioner that under section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could

*be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of **Sunny Paul and anr. vs. State NCT of Delhi and ors.** (supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.*

25. *If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his/her property from the children or grand children during his/her lifetime. The said Act is enacted for the benefit and protection of senior citizen from his children or grant children. The principles of law laid down by the Delhi High Court in the case of **Sunny Paul and anr. vs. State NCT of Delhi and ors.** (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.*

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.”

On the first blush the argument that there is no provision in the Act under which eviction can be sought, appears attractive, however, in view of these pertinent observations of the division bench interpreting the provisions of the Act, the further argument that the provisions of section 4 and 5 only enable the senior citizens to apply for maintenance and claim for eviction is not maintainable, is not at all acceptable.

15. Applying this legal position to the case in hand, it is crucial to

note that the suit property is self acquired property of the petitioners and the son and daughter-in-law had failed to establish any legal right to reside in that house. As stated earlier, only because respondent Nos.3 and 4 were allowed by the petitioners to reside in their house, the same cannot be construed to have conferred any right in favour of the daughter-in-law particularly when her relations with the son have turned hostile. In any case, the son and daughter-in-law cannot compel their parents to allow them to reside in their property against their desire. As such there is no legal basis for the claim of the respondent no.4 to reside in the petitioners' house and on the contrary the petitioners are entitled to invoke provisions of the Act to seek eviction of the respondents no.3 and 4.

16. As regards, the contentions of respondent No.4 based on her right to claim maintenance or right to reside in the property of her husband, the same can be independently enforced by her, if situation so arises. However, under the pretext of enforcing her rights arising out of any matrimonial proceedings as against her husband, she cannot be

allowed to defeat the rights of her parents-in-law which are independently protected under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. As such, the competing rights of the daughter-in-law cannot be compromised at the cost of rights of the senior citizens to enjoy their own property independently. Thus, in the peculiar facts of this case, particularly, considering the legal position, directing the petitioners to initiate fresh civil proceedings for eviction of their daughter-in-law would be detrimental and would defeat the purpose of the enactment. In the light of the factual and legal opinion I am of the firm view that the Appellate Tribunal has grossly erred in allowing the appeal and directing the parties to approach civil court for seeking eviction.

17. Perusal of the impugned order shows that the Appellate Authority has failed to consider the legal position with respect to the provisions of the Act which ensures protection to the property of the senior citizens. The inference of the Appellate Authority that the right to seek eviction is merely a civil right and the petitioners should approach

the Civil Court, is apparently an erroneous approach defeating the purpose of the provisions under Sections 4, 5 r/w Section 22 of the Act. The impugned order is thus perverse and deserves to be quashed and set aside.

18. The statute in consideration, The Maintenance and Welfare of parents and Senior Citizens Act, 2007, is undisputedly a piece of beneficial legislation. It is a special statute aimed to provide mechanism for granting maintenance and also providing protection to the life and property of the senior citizens. A profitable reference can be made to the recent pronouncement of the Hon'ble Supreme Court in the matter of ***Urmila Dixit – V – Sunil Sharan Dixit and others reported at 2025 (2) SCC 787***, in which while dealing with a case under section 23 of the Act, the apex court considered the Aims and Objects of the Act and after referring to various judgments about interpretation of beneficial statutes, has observed thus,

‘13. The Preamble of the Act states that it is intended towards more effective provisions for maintenance and welfare of

parents and senior citizens, guaranteed and recognised under the Constitution.

14. *Therefore, it is apparent, that the Act is a beneficial piece of legislation, aimed at securing the rights of senior citizens, in view of the challenges faced by them. It is in this backdrop that the Act must be interpreted and a construction that advances the remedies of the Act must be adopted.*

17. *While issuing a slew of directions for the protection of senior citizens in **Ashwini Kumar v. Union of India**, this Court had highlighted : (SCC p. 641, paras3-4)*

3. *The rights of elderly persons is one such emerging situation that was perhaps not fully foreseen by our Constitution-framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want*

and indeed to their dignity and sustenance due to their age.

4. Eventually, age catches up with everybody and on occasion, it renders some people completely helpless and dependent on others, either physically or mentally or both. Fortunately, our Constitution is organic and this Court is forward looking. This combination has resulted in path-breaking developments in law, particularly in the sphere of social justice, which has been given tremendous importance and significance in a variety of decisions rendered by this Court over the years. The present petition is one such opportunity presented before this Court to recognise and enforce the rights of elderly persons-rights that are recognised by Article 21 of the Constitution as understood and interpreted by this Court in a series of decisions over a period of several decades, and rights that have gained recognition over the years due to emerging situations.'

19. Section 7 of the Act envisages the constitution of a Maintenance Tribunal, which, as per sub-section (2), is to be presided over by an

officer not below the rank of Sub-Divisional Officer. Further, Section 15 provides for establishment of an Appellate Tribunal, to be presided over by an officer not below the rank of District Magistrate. Both the Tribunal and the Appellate Tribunal are statutory authorities constituted under this special enactment and are vested with the jurisdiction to adjudicate disputes concerning senior citizens. It is, therefore, incumbent upon the presiding officers of these forums to remain mindful of the objectives and legislative intent underlying the special statute. Moreover, they are duty-bound to acquaint themselves with the prevailing legal position, including the authoritative pronouncements of the Hon'ble Supreme Court and the High Courts interpreting the provisions of this legislation, and to apply the same judiciously while deciding cases. In the instant case, the approach of the appellate tribunal, in not considering the authoritative pronouncement of this court delivered in the year 2018 (judgment of Dattatrey Mane), while deciding the appeal in the year 2020, demonstrates insensitivity on its part. It is thus evident that the Appellate Tribunal has adopted an unduly hyper-technical approach, thereby defeating the very object and purpose of the special statute,

which is in the nature of beneficial legislation enacted to safeguard the rights and interests of senior citizens. Although vested with statutory powers under the said enactment, the Appellate Tribunal has displayed an indifferent attitude towards the issues raised by the senior citizens. In such circumstances, the impugned order is wholly unsustainable in law and deserves to be set aside.

20. In the instant case, the conduct of respondent No.4 daughter-in-law which has constrained the petitioners to initiate legal proceedings, warrants serious and thoughtful consideration. The appeal u/s 16 (1) was filed only by the respondent no.4. Although the respondent No.4 has contested the proceedings before the Tribunal and Appellate Authority, however, she has blatantly ignored the mandate of the order passed by this court. It has to be noted that despite a specific order passed by this Court on 21.12.2022, directing respondent Nos.3 and 4 to deposit an amount of Rs.20,000/- per month towards occupation of the suit property from the date of order passed by the Tribunal, the same is not at all complied by them. It is apparent that

during the pendency of the petition, the respondent No.4 has continued to occupy the petitioners' home in absence of any right in her favour thereby compelling the petitioners to indulge in litigations up to this court. This conduct on the part of respondent No.4 is deprecated. Since respondent No. 3 and 4 have failed to comply with the mandate of the order passed by this Court directing to pay Rs.20,000/- per month from the date of order of the Tribunal i.e. 18 February 2019, it is necessary in the interest of justice to direct the respondent No.3 and 4 to comply with the said order. Accordingly, the respondent no. 3 and 4 are directed to comply and pay to the petitioners the entire amount of arrears at the earliest and also to bear with the costs of the instant petition.

21. On consideration of the overall factual and legal aspects of the matter, the instant petition needs to be allowed. The impugned order dated 07.08.2020 passed by respondent No.1-Senior Citizens Appellate Tribunal/District Collector, Nandurbar, in case No.2020/home/Division-2/Appeal/4/2020 is quashed and set aside and the order dated 18.02.2019 passed by respondent No.2-Sub Divisional Officer in Case

No. 2019/Senior Citizen/Kavi/02 is hereby confirmed. Accordingly, the respondents no.3 and 4 are directed to vacate the house property of the petitioners within a period of 30 days from the date of this judgment.

22. The writ petition is allowed with costs upon the respondent No.3 and 4.

23. Rule stands discharged.

[PRAFULLA S. KHUBALKAR, J.]

PRW