

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 31614 OF 2025

Jitendra Gorakh Megh

S/o. Gorakh Govind Megh,

Age : 53 Yrs, Occu : Unemployed

R/at. Bungalow No. 30, Four

Bungalows MHADA, S.V.P. Nagar

Andheri (West), Mumbai – 4000 053

... Petitioner

V/s.

1. Additional Collector & Appellate Tribunal,
Mumbai Suburban District,
Administrative Building, 9th Floor
Government Colony, Bandra (E),
Mumbai – 400 051.

2. Gorakh Govind Megh
S/o. Govind Megh
Age : 75 Yrs, Occ : Retd. IAS Officer
R/at. Flat No. A502, Amaltas Co-op. Hsg. Soc. Ltd,
Juhu Versova Link Road,
Andheri (W) Mumbai – 400 053.

... Respondents

Mr. Jitendra Gorakh Megh, [party-in-person]

Mr. Suraj Gupte, learned AGP for Respondent No. 1.

Mr. Kapil Moya a/w. Ms. Eesha Jaifalkar i/b. Mr. S.R. Page for Respondent
No. 2.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

RESERVED ON : 17th NOVEMBER 2025
PRONOUNCED ON : 8th DECEMBER 2025

JUDGMENT (*Per Farhan P. Dubash J.*) :

1. A short but interesting question has posed itself for consideration in this matter – 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?

2. The present Writ Petition challenges the order dated 1st October 2025 (**appellate order**) passed by the Additional District Collector – Mumbai exercising power as the Appellate Tribunal (**Appellate Tribunal**) under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (**Act**). By the appellate order, the Appellate Tribunal dismissed the appeal preferred by the Petitioner challenging the order dated 26th August 2025 passed by the Sub-Divisional Officer – Andheri exercising power as the Presiding Officer – Parents and Citizens Maintenance Tribunal (**Tribunal**) under the Act which *inter alia* allowed the application preferred by his father, Respondent No.2 herein (**senior citizen**) directing the Petitioner to vacate

Bungalow No. 30 of ground plus one upper floor situated at Four Bungalows, MHADA, S.V.P. Nagar, Mumbai 400053 (**subject premises**) and handover vacant and peaceful possession thereof to him.

3. Since the dispute involves a father and his son, we personally met both the parties in chambers and tried our level best to see that an amicable resolution is reached. However, despite our best efforts, we were unable to succeed in our endeavors. Hence, we then placed the matter on board and heard the arguments of both parties in open court.

BRIEF BACKGROUND

The facts relevant for adjudication of the present proceedings are set out hereunder:

4. The senior citizen is the 75 year old father of the Petitioner, who is a retired IAS Officer. On 26th March 2024, the senior citizen filed an application under Section 5 of the Act (**said application**) before the Tribunal seeking an order evicting the Petitioner from the subject premises and to also restrain him from causing any mental harassment to the senior citizen. The said application also seeks monies stated to have been earned by the Petitioner from using the subject premises.

5. In the said application, the senior citizen has pleaded that:
- 5(a) he is the owner of the subject premises which is stated to have been purchased by him, from his own income.
 - 5(b) he does not reside in the subject premises but instead, resides in Flat No. 502, Amaltas Co-operative Housing Society Limited, Juhu Versova Link Road, Andheri (W), Azad Nagar, Mumbai together with his wife, the step-mother of the Petitioner.
 - 5(c) he permitted the Petitioner to live in the subject premises on the ground of humanity, love and affection but the Petitioner illegally encroached upon the entire subject premises, by purportedly taking advantage of his illness and age.
 - 5(d) he is bearing all the expenses of the subject premises including for its maintenance, electricity bills, water bills, repairs etc. even though the Petitioner exclusively resides therein.
 - 5(e) the Petitioner is unemployed since several years and living in the subject premises free of charge despite illegally exploiting the subject premises for commercial purposes by renting out a portion thereof (on the ground

floor) for the shooting of tv serials without the permission of the senior citizen.

5(f) the Petitioner has filed various false cases against him including *inter alia* a suit, in this Court, and as a result, he did not want to allow the Petitioner to continue to stay in the subject premises any longer.

5(g) he is suffering from diabetes, arthritis, leg pain and in lieu thereof, is stated to have difficulty in walking. On account of these ailments, he needs medical assistance on a daily basis. On this ground, he asserts that it would be convenient for him to stay on the ground floor of the subject premises.

6. The Petitioner defended the said application and in his reply, he has pointed out that:

6(a) the senior citizen was previously residing in Government residence at Yashodhan, Opposite C.C.I., Churchgate, Mumbai 400 020 before shifting to Flat No. 502 in Amaltas Co-operative Housing Society Ltd., which is stated to be a luxurious 1600 sq. feet flat comprising of 4 bedrooms, hall, kitchen on the 5th Floor of the building

having 2 lifts.

6(b) in addition to this flat, the senior citizen also owns about 9 other properties which includes a bungalow and 7 other residential properties and commercial units.

6(c) the senior citizen is financially well off and has employed a maid, a nurse, a driver and other staff to look after his daily needs.

6(d) the subject premises is not the self-acquired property of the senior citizen but instead, purchased by him from the funds received from the yield from the crop of ancestral property, in which, the Petitioner also has a share.

6(e) he has already filed a suit in this Court being Suit No. 1215 of 2019 seeking partition of all the properties owned by the senior citizen in his capacity as the Karta of his HUF, which includes the subject premises.

6(f) the senior citizen earns upwards of Rs. 10,00,000/- on a monthly basis from letting out the said properties.

6(g) the senior citizen has not stayed in the subject premises for even a single day and only he and his wife (post their marriage) have been exclusively residing and occupying the subject premises.

6(h) all the expenses including *inter alia* towards its

maintenance, property tax, water, electricity, etc., are paid solely by him and not by the senior citizen.

- 6(i) a written declaration dated 2nd January 2013 has been given by the senior citizen expressly permitting the Petitioner and his wife, not only to reside in the subject premises but also to conduct their business therefrom, for as long as they want and without having to pay any monies to the senior citizen, in lieu thereof.

7. By an order dated 26th August 2025 (**eviction order**), the said application came to be allowed by the Tribunal and the Petitioner was directed to vacate the subject premises within 30 days and handover vacant and peaceful possession thereof to the senior citizen. The Petitioner was also prohibited from doing any act that may harm the senior citizen's physical and mental health or in any way affect his social standing or disturb the peace of the senior citizen's home.

8. A perusal of the eviction order reveals that after noting all the contentions of the senior citizen and the Petitioner, and which are also noted hereinabove, a finding is given in favour of the senior citizen that he is entitled to maintain the said complaint. The eviction order then holds that since the senior citizen is suffering from arthritis and diabetes and

needs to travel frequently for medical treatment, it would be proper that the Petitioner be evicted from the subject premises and accordingly, ordered eviction of the Petitioner from the subject premises.

9. The eviction order also expressly records that since the senior citizen has not made any claim or demand for maintenance, there is no need to go into or comment on that point. There is also a finding that the pendency of the partition suit by the Petitioner would not have any bearing on the said application and prevent the passing of the eviction order.

10. Being aggrieved by the eviction order, the Petitioner approached the Appellate Tribunal and filed Appeal No. 75 of 2025 under Section 16 of the Act. However, the Appellate Tribunal found favour with and affirmed the eviction order and the said appeal came to be dismissed by the appellate order dated 1st October 2025, which is challenged in the present Writ Petition.

SUBMISSIONS OF THE PARTIES

11. Mr. Jitendra Megh, the Petitioner herein, appears in person. He has taken us through the previous litigation between himself and the senior citizen under the Act and also the partition suit filed by him. He has reiterated the grounds already taken by him in his reply to the said

complaint. He reiterates that the senior citizen has never resided in the subject premises. He also submits that the senior citizen is financially very well off and does not seek any maintenance from him. To corroborate this position, he also relies on the written statement filed by the senior citizen in the partition suit where the senior citizen has admitted to owning the nine immovable properties. Our attention is invited to an order dated 18th April 2019 passed by this Court in the said partition suit in which, the statement was recorded by the advocate who appeared on behalf of the senior citizen therein, that pending the hearing and final disposal of the said partition suit, the senior citizen did not intend to deal with, dispose of, alienate and/or part with possession of the said immovable properties that are situated in Maharashtra which included the subject premises. By relying on this statement, the Petitioner contends that the appellate order amounts to a breach of the said statement/order.

12. Our attention is also invited to several documents including *inter alia* letters addressed by the senior citizen to various authorities including MHADA and the MCGM and by relying on such correspondence that has been addressed during the period 2022-2023, it is contended that the senior citizen has dishonestly taken the plea and contended that he is bearing all the expenses towards the subject premises. In fact, on perusal of such correspondence addressed by the senior citizen, prima facie it is

revealed that in fact, the Petitioner is bearing all the expenses. Lastly, the Petitioner submits that since the subject premises of a bungalow which comprises of ground plus one upper floor, he has no objection to senior citizen occupying the ground floor, as sought by him and he would occupy only the 1st floor of the subject premises. He also undertook to conduct himself in a manner not to harass the senior citizen.

13. *Per contra*, Mr. Kapil Moye, learned counsel who appears on behalf of the senior citizen defends the appellate order and submits that such an order is wholly justified under the provisions of the Act. He submits that the subject premises belongs to the senior citizen and merely because the Petitioner makes a claim to the title by filing a suit, its pendency would not prevent the senior citizen from invoking the provisions of the Act and approaching the Tribunal for an order of eviction. On instructions, Mr. Moye admits that the senior citizen has never resided in the subject premises. He further submits that the senior citizen owns the various immovable properties that are alleged by the Petitioner, who, he contends, the Petitioner has no share therein. He also submits that the senior citizen does not need any financial assistance and therefore, he did not seek any maintenance from the Petitioner. He therefore prays that the eviction order ought not to be disturbed and the present Writ Petition, instead, ought to be dismissed. He has also relied on the decisions of this Court in ***Shweta***

*Shetty v. State of Maharashtra and Anr.*¹ and that of the Delhi High Court in *Nasir v. Govt. of NCT of Delhi & Ors.*² to buttress his submissions.

ANALYSIS & FINDINGS

14. In this background, we are required to consider whether the senior citizen was entitled to invoke the summary provisions of the Act, only to evict the Petitioner from the subject premises and without seeking any relief of maintenance from him.

15. At this juncture, it would be apposite to refer to the statement of objects and reasons of the Act, which are set out hereunder:

“Statement of Objects and Reasons:

1. *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 a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.*
2. *The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up old age homes for providing maintenance to the indigent older persons.*

¹ 2021 SCC Online Bom 4575

² 2015 SCC Online Del 13060

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. *The Bill, therefore, proposes to provide for:-*

- (a) *appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;*
- (b) *providing better medical facilities to senior citizens;*
- (c) *for institutionalisation of a suitable mechanism for protection of life and property of older persons;*
- (d) *setting-up of old age homes in every district.*

4. *The Bill seeks to achieve the above objectives.”*

16. Next, it would be beneficial to note a few relevant provisions of the Act, which are extracted hereunder:

“Section 4 - Maintenance of parents and senior citizens.

- (1) *A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be 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.*
- (2) *The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.*
- (3) *The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.*
- (4) *Any person being a relative of a senior citizen and*

having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

Section 5 - Application for maintenance

- (1) *An application for maintenance under section 4, may be made -*
- a. *by a senior citizen or a parent, as the case may be;*
or
 - b. *if he is incapable, by any other person or organisation authorised by him;*
or
 - c. *the Tribunal may take cognizance suo motu.*

Explanation: For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force.

- (2) *The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.*
- (3) *On receipt of an application for maintenance under sub-section(1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.*
- (4) *An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:*

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

- (5) *An application for maintenance under sub-section (I) may be filed against one or more persons:*

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

- (6) *Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.*

- (7) *Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.*

- (8) *If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:*

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."

"Section 9 - Order for maintenance.

- (1) *If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the*

maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

- (2) *The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month."*

"Section 23 - Transfer of property to be void in certain circumstances.

- (1) *Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*
- (2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*
- (3) *If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."*

17. We have considered some past judicial precedents that have examined and interpreted the power of the Tribunal to pass an order of eviction under the Act in favour of the senior citizen. These are as under:

17(a) ***Smt. S. Vanitha v. Deputy Commissioner, Bangalore***

*Urban District*³ was one of the earliest decisions of the Supreme Court which held that the Tribunal may have the authority to order eviction, if it is necessary and expedient to ensure maintenance and protection of the senior citizen.

17(b) In *Ranjana Rajkumar Makharia v. Mayadevi Subhkaran Makharia*⁴ this Court has expressly held that the provisions of the Act, in particular Sections 4 and 5 thereof, cannot be used by a senior citizen to recover property from any person, whether it be a child or a relative of such senior citizen. This Court further clarified that in a given case, it could however be possible for a senior citizen to seek recovery of possession or prohibit someone from taking or continuing to be in possession of immovable property, as a measure of maintenance, and not otherwise.

17(c) In *Ritika Prashant Jasani v. Anjana Niranjan Jasani*⁵, the Tribunal had passed an order of eviction against the son and daughter-in-law of the senior citizen without any order of maintenance. This Court, whilst setting aside

³ AIR 2021 SC 177

⁴ 2020 (3) Mh.L.J. 587

⁵ 2021 SCC OnLine Bom 1802

the said order of eviction and remanding the matter back to the Tribunal for a fresh decision, recorded a finding that in terms of Section 9 of the Act, the Tribunal was required to be satisfied that the senior citizen had suffered neglect at the hands of the children or relatives or that they have refused to maintain the senior citizen. This Court further held that though the procedure contemplated under the Act was summary in nature, none-the-less, the Tribunal is required to find out as to whether, the flat in question belongs exclusively to the senior citizen or is ancestral property where the children may have a right in its ownership and/or residence.

17(d) In *Nitin Rajendra Gupta Vs. Collector*⁶, this Court, whilst interpreting the provisions of Section 23 of the Act has cautioned against using the machinery available under the Act for settling property disputes.

18. In this backdrop, it is relevant to note the following admitted factual position/events in the present case:

18(a) Despite filing the said application under Section 5(1) of

⁶ 2024 SCC OnLine Bom 1031

the Act, the senior citizen has neither made any claim nor sought any maintenance from the Petitioner.

18(b) The senior citizen does not reside in the subject premises with the Petitioner. In fact, the senior citizen has never resided in the subject premises.

18(c) The senior citizen resides in a separate residential flat in Amaltas Co-operative Housing Society Ltd with his wife. There is no pleading in the said application to suggest that this residential flat is not suitable to the senior citizen to reside in.

18(d) The senior citizen does not seek any financial assistance from the Petitioner.

18(e) The subject premises stand in the name of the senior citizen and there is no transfer thereof to the Petitioner. However, a written declaration dated 2nd January 2013 has been made by the senior citizen expressly permitting the Petitioner and his wife, to reside in the subject premises and to conduct their business therefrom, for as long as they want and without having to pay any monies to him.

18(f) No allegations of harassment and/or cruelty are made by the senior citizen against the Petitioner. The only

assertion made in the said application is that of mental pressure stated to have been caused to the senior citizen on account of the Petitioner having filed false case against him.

18(g) In fact, the said complaint proceeds on the basis that since the Petitioner has filed false case against the senior citizen in this Court, he does not want the Petitioner to reside in the subject premises any more.

18(h) The said complaint also contains a bare averment that due to the various ailments that the senior citizen is stated to be suffering from, it would be '*convenient*' for him to stay in the ground floor of the subject premises, which is his own property.

19. Thus, it is clear that the eviction order has not been passed in furtherance of any claim for maintenance made by the senior citizen. This position is also borne out from paragraph 10 of the eviction order which expressly records that the senior citizen has not demanded any money for maintenance and therefore, there is no need to comment on the same.

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.

21. Moreover, neither of the two authorities *viz.* the Tribunal and the Appellate Tribunal have considered and/or applied their mind to the averments made in the said application. Admittedly, the senior citizen does not reside in the subject premises which is occupied solely by the Petitioner (and his wife). In fact, the senior citizen has never even resided in the subject premises. Instead, he resides in a separate residential premises situated in Amaltas Co-operative Housing Society Limited (as is also evident from the address mentioned in the cause-title) together with his wife, the

step-mother of the Petitioner. The only averment made in said application (justifying the requirement and need of the subject premises by the senior citizen) is that the senior citizen is suffering from diabetes, arthritis, leg pain and has difficulty in walking and needs medical assistance on a daily basis and therefore, it would be convenient for him to stay on the ground floor of the subject premises. In our opinion, this is a vague assertion and one, which is completely bereft of any details and/or particulars. There is no explanation whatsoever as to why the senior citizen is desirous of leaving his own residential premises (which is stated to be a 1600 sq. ft. apartment comprising of four bedrooms) and move to the subject premises which is a bungalow comprising ground plus one upper floor, especially when he has difficulty in walking and as a result, would not be in a position to conveniently enjoy the entire subject premises. Moreover, since the senior citizen has never resided in the subject premises, this is not a case where there is any sentiment attachment of the senior citizen to occupying it.

22. On the other hand, there appears to be some merit to the case of the Petitioner. Admittedly, a written declaration dated 2nd January 2013 was previously given by the senior citizen permitting the Petitioner (and his wife), not only to reside in the subject premises but also to conduct their business therefrom, for as long as they want and without having to pay any monies to the senior citizen, in lieu thereof. Moreover, there is also corre-

spondence addressed by the senior citizen himself which would reveal that it is the Petitioner who is incurring expenditure for the subject premises including *inter alia* towards its maintenance, property tax, water, electricity which is contrary to the case pleaded by the senior citizen in the said application.

23. The Tribunal and the Appellate Tribunal have also failed to appreciate that (much prior to the said application) the Petitioner had made a claim on the title to the subject premises and had already filed a suit in this Court being Suit No. 1215 of 2019 seeking partition of various properties owned by the senior citizen, in his capacity as the Karta of his HUF, which included the subject premises. In fact, this appears to be the main reason which has prompted the senior citizen to file the said application. This fact is clearly borne out from paragraphs 6 and 9 of the said application in which the senior citizen states that since the Petitioner has filed a false case in the Bombay High Court against him, he does not want the Petitioner to reside in the subject premises any more, and hence, he is desirous of evicting him therefrom. It is therefore quite evident that the said application is nothing but a counter blast by the senior citizen to the partition suit instituted by the Petitioner (which is still pending in this Court). The provisions of the Act cannot be employed as a means to secure the Respondent's summary eviction from the subject premises while the parties'

proprietary rights remain sub-judice before the competent civil court. This is reiterated in ***Ranjana Rajkumar Makharia*** (supra) and also in ***Nitin Rajendra Gupta*** (supra).

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 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** (supra) 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.

28. Before concluding, we would like to mention that prior to the commencement of arguments in the matter, we had suggested a workable arrangement to both parties – Since there were no allegations of cruelty and/or harassment against the Petitioner, whether the senior citizen would be agreeable to occupy the ground floor of the subject premises (as he had sought, in the said application) whilst the Petitioner (and his wife) would occupy only the first floor thereof. However, though the Petitioner was open to such an arrangement, the senior citizen was not agreeable to the same.

OPERATIVE ORDER

29. In the premises, the present Writ Petition is disposed of in terms of the following order:

ORDER

(a) The appellate order dated 1st October 2025 passed by the

Additional District Collector – Mumbai exercising power as the Appellate Tribunal and the eviction order dated 26th August 2025 passed by the Sub-Divisional Officer – Andheri exercising power as the Presiding Officer – Parents and Citizens Maintenance Tribunal are both, hereby quashed and set aside.

(b) There shall be no order as to costs.

[FARHAN P. DUBASH, J]

[R.I. CHAGLA, J.]

JYOTI
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PAWAR

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by JYOTI
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