

(2021) 09 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No.2400 Of 2021

Ashish Vinod Dalal & Ors

APPELLANT

Vs

Vinod Ramanlal Dalal & Ors

RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 21
Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 2(b),
2(f), 3, 3(2), 4, 4(2), 4(3), 5
Protection Of Women From Domestic Violence Act, 2005 — Section 19(c)

Citation : (2021) 09 BOM CK 0032

Hon'ble Judges : G.S.Kulkarni, J

Bench : Single Bench

Advocate : Yashpal Thakur, Surendra Raja, Mukund Pandya, Abhay Khandeparkar, Kunal Tiwari, Vaishali Nimbalkar

Final Decision : Dismissed

Judgement

G.S.Kulkarni, J

1. This is a sad case where petitioner no.1 alongwith his wife-petitioner no.2 and their daughter-petitioner no.3 have dragged his parents-respondent nos.1 and 2, who are aged 90 years and 89 years respectively, in protracted legal proceedings. It appears that as a last resort, respondent nos.1 and 2 (hereinafter referred to as "parents") invoked the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Senior Citizens Act") on which the impugned order has been passed by the Presiding Officer of the Maintenance Tribunal (for short "the tribunal") granting relief to the parents, against which the petitioners have filed this petition. The impugned order reads thus:-

"1. The application of the applicant is partly allowed.

2. The request for the maintenance amount has been rejected.

3. The respondents shall vacate the said flat no.13/B, 5th floor, Blue Sea Apartment, Near Juhu Koliwada, Juhu Road, Santacruz (West), Mumbai 400049 within thirty days from the receipt of this order and shall peacefully hand over its vacant possession to the applicants.

4. In case of any breach of above orders by the respondents, the applicants have to approach to the local Police Station. Tahsildar Andheri with the help of Senior Police Inspector, Juhu Police Station shall cause to implement these orders.

5. No order about the costs.

6. These orders have to be communicated to all concerned parties."

2. The record indicates that earlier respondent no. 2-mother was required to invoke the provisions of the Domestic Violence Act and in such proceedings, protective orders dated 31.01.2016 came to be passed in her favour by the Court of Metropolitan Magistrate, Bandra, Mumbai, whereby the petitioner Nos.1 and 2 were interalia prohibited from committing any act of domestic violence as also petitioner no.1 son was directed to pay Rs.7000/- p.m. to the mother from the date of application (6.2.2010) with a further direction that petitioner nos. 1 and 2 were restrained from dispossessing or in any manner disturbing possession of the mother from the shared household.

3. The misery of the parents at such advance stage of their lives however did not end as it appears from the parents' case before the Tribunal that petitioner no. 1 and 2 with a view to forcibly grab the flat in which the parents are residing and who had permitted the petitioners to reside along with them are harassing and torturing the parents since many years. It does not appear to be in dispute that the flat in question belonged to the father who gifted the flat in favour of his two daughters (sisters of petitioner no. 1) by registered gift deed dated 27 May, 2016. According to the parents, the daughters have permitted the parents to occupy the flat considering their old age. It appears that petitioner nos. 1 and 2 however were extremely dissatisfied with the father gifting the flat to the daughters. According to the parents, petitioner No.1-son, for selfish motives would not stop torturing them. Petitioner no. 1 also instituted proceedings before the Civil Court seeking declaration that the gift deed executed by the father in favour of his daughters be declared illegal.

4. Mr.Thakur, learned counsel for the petitioners has limited submissions to assail the impugned order passed by the Tribunal. He firstly submits that there are observations made by the learned Metropolitan Magistrate in the orders passed on the mother's application filed under the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act") to the effect that the mother would not be entitled for an order directing the son to be removed from the shared household. Hence, according to him, once such observation was made, it would be binding on both the parents and hence the Tribunal could not have passed the impugned order. The second contention as urged by the learned counsel for the petitioner is to the effect that under section 4 of the Senior Citizens Act, the

parents/senior citizens can seek a relief only qua the property owned by such senior citizens. It is submitted that in the present case the flat in question is not owned by the parents but has been gifted by the father (respondent No.1) to his daughters, hence, the application of the parents to seek any orders of maintenance qua the flat in question could not have been granted by the Tribunal. It is his submission that considering the proceedings under the Domestic Violence Act and the subsequent proceedings under the Senior Citizens Act, and although under both these proceedings orders are passed against the petitioners, a harmonious approach is required to be adopted so that the petitioners should not be removed from the flat in question. In support of his contentions, reliance is placed on the decision of the Division Bench of this Court in *Ritika Prashant Jasani vs. Anjani Niranjani Jasani & Ors.*, reported in 2021 SCC Online Bom 1802.

5. Per contra, Mr. Khandeparkar, learned counsel for the parents has submitted that this is a clear case where the parents at such advanced stage of their lives are tortured and harassed by petitioner nos. 1 and 2. He has argued on various such instances pointing out as to how inhuman treatment has been meted out to the parents by petitioner no. 1 and his wife. According to Mr. Khandeparkar, the only selfish motive of petitioner nos.1 and 2 is to grab the flat which has already been gifted by registered gift deed in favour of the two daughters who have no objection whatsoever, that the parents continue to live in the said flat during their life time. Mr.Khandeparkar submits that it is unthinkable that petitioner no. 1 and his wife despite having sufficient independent properties intend to impose themselves on the parents which itself is a harassment in the circumstances the parties stand. Mr. Khandeparkar would submit that Section 4 which provides for maintenance of parents and senior citizens cannot be construed narrowly, as according to him, when sub-section (1) uses the words "out of the property owned by him" the definition of property as defined in Section 2(f) would be required to be looked into which defines "property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and would include interest in such property". Mr. Khandeparkar, thus, submits that the petitioners' case that merely because the flat has been gifted by the father in favour of daughters would not be the property for the purposes of Section 4 is totally an untenable interpretation. It is his submission that the Senior Citizens Act is a beneficial legislation which is intended to provide more effective provisions for the maintenance and welfare of parents and senior citizens and protect the rights guaranteed to them under the Constitution. Mr. Khandeparkar submits that the record is replete with proceedings after proceedings instituted against the old parents by the petitioners and purely with a greed to grab the flat in question to which, according to him, neither of the petitioners have any legal right. It is his contention that the tribunal has appropriately considered the plight of the parents in exercising the jurisdiction vested in it in passing the impugned order under the Senior Citizens Act.

6. Having heard learned counsel for the parties and having perused the record, I

am unable to persuade myself to agree with any of the contentions as urged on behalf of the petitioners. At the outset, it needs to be noted that it is not in dispute that the flat in question originally belonged to the father (respondent no. 1) who thought it appropriate to gift the same to his two daughters by the gift deed dated 27 May 2016. It clearly appears that the father has taken a conscious decision on the backdrop of the mother moving a complaint before the Court of learned Metropolitan Magistrate under the D.V. Act which was filed on 06.02.2010 against petitioner nos. 1 and 2 and after it was decided by the learned Metropolitan Magistrate against petitioner Nos.1 and 2 by his judgment dated 13.01.2016. The learned Metropolitan Magistrate has observed that the mother along with her husband were staying in terror and suffering at the hands of petitioner nos. 1 and 2. It is recorded that the case of the mother that they were also threatened to be killed had substance as seen from the evidence of the mother. It was also observed that there was strong possibility of the parents being dispossessed from the household and hence protection was required to be granted by restraining the petitioner no. 1 and 2 from dispossessing the mother. It was also observed that petitioner is having a separate flat at New Mumbai as also he jointly held a bungalow at Nerul. Also there was a vacant flat belonging to petitioner no. 2 at Dahisar. The Metropolitan Magistrate also took into consideration the police reports filed by respondent no. 1-father which showed harassment even after filing of the said complaint under the D.V. Act. The learned Metropolitan Magistrate also rejected the contention of petitioner no. 1 that the mother was fighting with her son only on the instigation of outsiders by observing that no mother can fight with her son only on the instigation of the outsiders. In answering Issue no. 3 whether the mother was entitled to monetary or other reliefs as provided under the Act, a stray observation as made by the learned Metropolitan Magistrate in paragraph 11 of the order is sought to be capitalized by the petitioners. Such paragraph of the order passed by the Metropolitan Magistrate is required to be noted, which reads thus:

11. The applicant sought orders U/s.19(b) of the Act, directing the respondents to remove themselves from the shared household and U/s. 19(c) of the Act, to restrain from alienating or disposing any portion of the shared household. The applicant stated that respondents are having a separate flat at New Bombay. Respondent no.1 jointly with her own a bungalow at Nerul. There is vacant flat of respondent No.2's father at Dahisar. While, she has hereditary. The property of father of respondent No.2 at Dahisar, cannot be considered as alternative residence for the respondents. On behalf of the applicants 7/12 extract of Gut No.28/2, 28/4/A, 28/4/B, 29 of Village Ganegaon, Chinchvali, Tal. Karjat, Dist. Raigad was produced on record at Exh.27. Also these 7/12 extracts cannot be considered as alternative residence for the respondents. Respondent No.1, being son of the applicant and respondent No.2 being daughter-in-law of the applicant, have right to reside in the shared household. The applicant is not entitled for the order directing them to remove themselves from the shared household."

7. In my opinion the above observation would not assist the petitioners

considering the operative order passed by the learned Metropolitan Magistrate, which prohibited petitioner nos. 1 and 2 from committing any act of domestic violence and further restrained petitioner no. 1 and 2 from dispossessing or in any manner disturbing the possession of the mother from the shared household. It also cannot be overlooked that the said order was passed on the sole complaint of the mother to which the father-respondent no. 1 was not a party. It also cannot be overlooked that the father had independent rights also along with the mother to pursue independent proceedings under the Senior Citizens Act which ultimately they have pursued on which the impugned order has been passed by the tribunal directing that the petitioners shall remove themselves from the flat.

8. There is a more fundamental question which needs to be addressed, namely, whether the parents in the present facts were in any manner precluded from taking recourse to the provisions of Sections 4 and 5 of the Senior Citizens Act to enforce the needs of such senior citizens to lead a normal life. The answer to this question would certainly be in the negative. The provisions of the Senior Citizens Act are required to be construed to take within its ambit the maintenance of the senior citizens which certainly would include all facets of maintenance as provided for in Section 4 of the Senior Citizens Act, which would aid the senior citizens to lead a normal life. This certainly includes the senior citizens asserting rights in respect of 'property', the meaning of which, is spelt out by section 2(f) of the Act to mean property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and which would include rights or interest in such property.

9. As provided in sub-section (2) of Section 4, 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, which would certainly take within its ambit a protection from any harassment and torture meted out by a son or relative by keeping himself on the premises of the senior citizens. The intention of the legislature to provide such protection to live a normal life to the parents is also reflected in the provisions of sub-section (3) of Section 4 which provides that the obligation of the children to maintain his or her parents extends to the need of such parents either father or mother or both, as the case may be so that such parents 'may live a normal life'. Maintenance is also defined in Section 2(b) to include provision for food, clothing, residence, medical attendance and treatment. Further Section 3 of the Senior Citizens Act gives an overriding effect to the provisions of the said Act notwithstanding anything inconsistent therewith contained in any enactment other than the said Act.

10. It is thus clear that the intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizens rights, which are fundamental to the their very survival and/or livelihood at their old age. Certainly the Court's approach cannot be narrow and pedantic in applying the provisions of the Senior Citizens Act to the grievances of the senior

citizens falling within the ambit of the said Act. A protection from harassment, exploitation, neglect, psychological disturbances, psychological needs, and all possible facets to safeguard their physical and mental health are required to be recognized when sub-section (2) and sub-section (3) of Section 4 clearly provide that the obligation of the children or relatives would be to cater to the needs of the senior citizens so that they 'live a normal life'. The words "normal life" as used in these provisions would possess a far deeper and wider concept, deriving its meaning and having a bearing on the fundamental rights of livelihood as guaranteed and enjoyed by senior citizens under Article 21 of the Constitution. Certainly, this would include a right to prevent themselves from being harassed by children and by relatives. This is also clearly borne out by the preamble to the Senior Citizens Act which reads thus:-

"An act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto."

11. The statement of object and reasons in paragraph 3(c) reflects the intention behind the legislation also to provide for institutionalization of the suitable mechanism for protection of life and property of older persons. Thus, it was certainly appropriate and necessary for the parents in the facts of the present case to invoke the provisions of the Senior Citizens Act to seek a relief against the petitioners qua their property namely the flat in their possession.

12. This is a classic case where the petitioner nos.1 and 2 intend to prevent the parents from leading a normal life at their old age of about 90 years. The several legal proceedings between the parties are the evidence of the feeling of torture and harassment by the parents. The property in question is not an ancestral property on which the petitioner no.1 can claim any legal right so as to keep himself on such property alongwith his family and foist themselves on the parents against their wishes by remaining on the property without any legal rights. This itself is a harassment and/or defeating the parents right to lead a normal life.

13. The tribunal in the impugned order has rightly recognized the rights of the parents on the property, namely the flat in question, in respect of which on the petitioners' own showing there is not a semblance of any right vested in them.

14. Before parting and having noticed that this is a case where the old parents are suffering at the hands of petitioner no.1 the only son and petitioner no.2 - daughter-in-law, it appears that there is certainly some element of truth in the popular saying that "Daughters are daughters forever and sons are sons till they are married" albeit there would surely be exemplary exceptions. Be that as it may, the present case is a sad story of desperate parents who intend to be in peace at such advanced stage in life. Whether such bare minimum expectations and requirement should also be deprived to them by an affluent son, is a thought which the petitioners need to ponder on. Petitioner no.1 appears to be totally

blinded in discharging his obligations to cater to his old and needy parents and on the contrary has dragged them into litigation. The vehemence with which arguments were advanced by the learned Counsel for the petitioners also bears testimony to the approach of the petitioners. It is painful to conceive that whatever are the relations between the son and the parents, should the son disown his old aged parents for material gains ? This has become more clear from what Mr.Khandeparkar has said, that recently father was required to be hospitalized. In the entire vehemence of the submissions advanced on the flat, not a whisper was uttered on behalf of the petitioners on any attention the petitioners would like to provide to the father's medical need. I am certainly wrong in presuming such expectations from petitioner nos.1 and 2 considering their relations with the parents.

15. Lastly, the contention as urged on behalf of the petitioners relying on the decision in Ritika Prashant Jasani's case needs to be outrightly rejected, inasmuch as, the question which fell for consideration of the Court in such case was as to whether the tribunal under the Senior Citizens Act could evict a person from the tenement in which he has ownership rights. In the said case the property/ flat in question was the ancestral property having joint rights and it is in such context the right to reside in a shared household under the D.V.Act was examined by the Court. In the present case admittedly the property/ flat in question is not an ancestral property on which the petitioner no.1 can lay any claim. It was the property of the father (respondent no.1) who had gifted it to his daughters within his own legal rights. Moreover, paragraph 23 of the decision in Ritika Prashant Jasani's case goes completely contrary to the contention as urged on behalf of the petitioners, wherein the Division Bench has observed thus:

"23. At this stage, we may mention that in Smt.S.Vanitha (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure 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 adverting to the competing claims in the dispute."

It is clear that in the present case the petitioners cannot set up any competing claim in the absence of any legal right whatsoever, in respect of the flat in question.

16. As a result of the above discussion, the petition is wholly without any merit. It deserves to be rejected summarily. It is accordingly rejected.

17. The petitioners are directed to vacate the flat in question alongwith his family members within a period of ten days from today, failing which as ordered by the tribunal in the impugned order, the respondents shall be evicted with the help of the police.

18. Ordered accordingly.

19. No costs.

20. At this stage learned Counsel for the petitioners prays for a stay of this order. Considering that the impugned order itself is dated 21 October 2020 and the petitioners have continued to reside in the flat to the detriment of the parents, the request for stay would add to the agony and pain of the parents. The request, therefore, cannot be accepted and is rejected.