
(2024) 01 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No. 7392 Of 2021, Interim Application No. 17712 Of 2023

Dinesh Bhanudas Chandanshive

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 2(f), 3, 4, 4(2), 4(3), 5, 7, 8, 9, 11, 15, 16, 23, 24, 25, 27

Citation : (2024) 01 BOM CK 0098

Hon'ble Judges : G. S. Kulkarni, J; Firdosh P. Pooniwalla, J

Bench : Division Bench

Advocate : Harshal N. Mirashi, P.J. Gavhane, Ajit M. Savagave

Final Decision : Disposed Of

Judgement

G. S. Kulkarni, J

1. An unfortunate saga of a mother, who is a senior citizen, requiring to initiate proceedings against her son and his wife, who illegally ousted her from her abode, is the subject matter of the present proceedings.

2. This petition under Article 226 of the Constitution of India assails an order dated 17 September, 2021 passed by the Senior Citizens Maintenance Tribunal (for short "Tribunal"). By the impugned order, the petitioner, who is the son of respondent no. 4-Smt. Laxmi Bhanudas Chandanshive ("the mother") has been ordered to vacate the tenement belonging to her.

3. The mother had approached the Tribunal invoking its jurisdiction against the petitioner and his wife contending that the petitioner and his wife have illegally removed her from tenement no. 310, Vishwa Sahakar Cooperative Housing Society Ltd., Gautam Nagar, Dindayal Upadhyay Marg, Mulund (West), Mumbai – 400 080. The mother contended that the tenement was allotted to her deceased husband (petitioner's father), who passed away on 15 June, 2015.

After her husband's demise, she was peacefully residing in the said tenement. She has contended that she has three sons and one daughter, all of whom are married and are residing in their respective houses. The mother complained that after the demise of her husband, the petitioner along with his wife visited her and thereafter refused to leave the tenement. It was her case that severe harassment was caused to her by the petitioner and his wife, as a result of which in a state of being driven out of her own house, she had to leave the tenement and have a shelter with her elder son Vijay Bhanudas, who was staying at Kisannagar, Wagle Estate, Thane in a small tenement, where she is presently residing.

4. The mother contended that the motive of the petitioner to illegally oust her so as to exclusively occupy her tenement with an intention to grab the tenement that too during her life time and to the exclusion of the other siblings of the petitioner. She contended that by fabricating documents, the petitioner intended to sell the tenement. The mother contended that her deceased husband had in fact financially helped the petitioner to purchase a tenement at Gatipada, Mulund, where the petitioner was residing with his family. Hence, despite having an independent house, the petitioner with the sole motive and to divest her from her only asset, which exclusively belonged to her after the demise of her husband, caused her removal depriving her of a roof over her head in the sunset years of her life. It is in these circumstances, she approached the Tribunal praying for the relief that the petitioners be directed to be removed from the tenement and she be put in possession.

5. The Tribunal, after granting an opportunity to the petitioner to file a reply to the complaint made by the mother, as also granting sufficient opportunity of a hearing and after considering the rival contentions, by the impugned order dated 17 September, 2021 allowed the complaint/application of the mother in terms of the following operative order:

(Translation of Photocopy of an Order, typewritten in Marathi.)

ORDER

1. Application of the Applicant is allowed.
2. Opponent Nos. 1 and 2 should vacate the said suit house and hand over possession thereof to the Applicant within 30 days from the date of receipt of the order. The Tahsildar, Kurla, Mulund shall ensure the implementation of the order with the help of Senior Police Inspector of concerned Police Station and shall take such action that the order is implemented and submit a report to that effect.
3. The Order of Maintenance given under this Act shall operate and shall remain in force as per the directions issued under Chapter-9 of the Criminal Procedure Code, 1973 (2 of 1974) and this order shall be executed as per the procedure prescribed for implementation, under the said Code.
5. No order as to costs.

Sd/-

(Padmakar Rokade)

Sub-Divisional Officer

And Chairman, Senior Citizen Maintenance Tribunal"

6. It is against such order passed by the Tribunal, the present proceedings are filed by the petitioner/son.

7. The case of the petitioner sought to be made out in the present petition hardly depicts any substantive ground which would show any legal right of the petitioner in respect of the tenement in question. There is no whisper in this petition in regard to the petitioner having his own house, as specifically asserted by the mother before the Tribunal as also before this Court. The only contention as raised on behalf of the petitioner is that if a son like the petitioner is to be aggrieved by the Tribunal's order, an effective remedy of an appeal is not provided under the statutory scheme, as Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Senior Citizens Act") provides for a remedy of an appeal only to a senior citizen or a parent and it does not provide for a remedy of an appeal to any other person. Hence, according to the petitioner, such provision is arbitrary.

8. The case of the petitioner is also on the ground that the petitioner had suffered a paralytic attack in the year 2019 for which he was hospitalized. He contends that he is now a disabled person and without an employment. He also contends that he is dependent on his wife, who is doing small works and which is the only source of the income. It is his contention that for such reason, the impugned order needs to be set aside and the petitioner along with his wife ought to be permitted to reside in the said tenement.

9. A reply affidavit has been filed by the mother, who has denied the case of the petitioner in the Writ Petition. She has contended that the tenement in question was allotted to her deceased husband Bhanudas Chandanshiv, for residential purpose by the Slum Rehabilitation Authority and after the demise of her husband, the petitioner and his wife, without her consent, started residing with her in the said tenement. She has contended that in doing so, the petitioner and her other son Satish neglected to maintain her. They did not bother to even provide her medical assistance. She has contended that she had thus no alternative but to leave the tenement and reside with her elder son Vijay, who was impleaded as respondent no. 3 in the proceedings before the Tribunal. She has contended that when the petitioner had purchased the flat at Gatipada, Mulund, her late husband had provided financial help to the petitioner for purchasing the said flat, which has not been denied by the petitioner anywhere. She has contended that the tenement is her only source of livelihood. She could not have been thrown out from her own house by the petitioner which was only for material gains. She has specifically contended that the petitioner has

recovered from paralysis and he has an employment at a theatre, as also, his wife is working in a hospital. She contends that despite all this, the petitioner and his wife had neglected to maintain her. She has contended that she has no independent source of income and is leading a miserable life at her old age. She has stated that the tenement is the only shelter for her. She has reiterated that the petitioner is trying to create third party interest in respect of her tenement, and if that happens, it would create further complications, which would be beyond her means to remedy them, thereby causing her an irreparable harm and prejudice. She has also stated that due to old age and her ailments, it is difficult for her to survive for want of income. She has stated that she is residing in a small tenement with her elder son. She has also stated that she is suffering from various ailments requiring medical treatment and that the petitioner as also her another son Satish had failed to make provision for her food, clothing and that the entire help is being provided by the elder son Vijay with his meager source of income. It is stated that Vijay is also not in a sound financial condition. She has contended that the Tribunal after appreciating the evidence on record as also considering the intention of the legislation, has passed a reasoned order, which would not warrant interference of this Court. She also contended that the petitioner has not approached this Court with clean hands and he would not be entitled to pray for discretionary and equitable reliefs. She contended that for this reason, the petition be dismissed. There is no rejoinder affidavit filed on behalf of the petitioner.

10. We may note that this petition was filed on 12 October, 2021. By an order dated 28 October, 2021, an interim protection came to be granted in favour of the petitioner by the co-ordinate Bench of this Court which continued upto 28 June, 2023, when the co-ordinate Bench of this Court making serious observations on the conduct of the petitioner vacated the ad-interim order. The said order reads thus:

"1. Prima facie, it is clear that the Petitioner has obtained a protective order of 28th October 2021 from a Division Bench of this Court in an Interim Application No. 3162 of 2021 completely suppressing the fact that the Petitioner had not cared to serve the original complainant, his mother. She was the one who complained against the Petitioner under the Maintenance and Welfare of Parents and Senior Citizens Act 2007. She is Respondent No. 4 to the Petition and her address in the cause title is deliberately wrong. The order of 28th October 2021 notes the appearance for the State. None appeared

for the 4th Respondent. There is no statement that Respondent No. 4 was absent though served.

2. Learned Advocate for the Respondent No. 4 says that even after entering of an appearance, several requests to the Advocate for the Petitioner for a copy of the Petition went unanswered. Finally, he was able to get a copy only today and that too from the learned AGP, Mrs Gavhane. The Petition was filed in October 2021. Until end of June 2023, there is no service properly effected on the 4th

Respondent, the main contesting Respondent. It is quite evident that this Petitioner is trying to obtain orders of this court without sufficient notice and by actively misleading the court.

3. The ad-interim order of 28 th October 2021 is vacated .

4. The Affidavit in Reply by Respondent No. 4 is to be filed and served by 10th July 2023. Affidavit in Rejoinder is permitted and is to be filed and served on or before 17th July 2023.

5. List the matter on 25th July 2023.”

(emphasis supplied)

11. Despite the aforesaid order vacating the ad-interim protection, the petitioner has refused to vacate the premises and it is for such reason, now the authorities had initiated process to evict the petitioner so as to implement the Tribunal’s order.

12. Learned counsel for the petitioner has limited submissions in assailing the impugned order. He has reiterated the submissions as averred in the petition. He submits that the Court should take sympathetic view of the matter, as the petitioner had suffered a disability. His next contention is that the petitioner, as a legal representative of his deceased father, would have a right and entitlement to be in possession of the property and therefore, the impugned order ought not to be foisted on the petitioner. It is submitted that the petitioner would maintain his mother and the case of the mother ought not to be accepted. Thus, the basic contention on behalf of the petitioner is that of the petitioner’s legal right to inherit the father property.

13. On the other hand, learned counsel for the mother has placed reliance on the reply affidavit to submit that none of the contention as urged on behalf of the petitioner is tenable. It is submitted that the petitioner has his own tenement, which is not been denied by him despite a clear case to that effect is pleaded by the mother before the Tribunal as also in the present proceedings. He submits that the petitioner cannot have exclusive legal right, much less to oust his mother and deprive her of the maintenance which she would derive from the tenement in question. He submits that there is no denial of the fact that the petitioner and his wife are in employment, whereas there is no source of income whatsoever to the mother. He, therefore, submitted that the petition be dismissed.

14. Before we discuss the rival contentions, we may note that there are several errors of dates in the petition including in the prayer clauses. The petition is also not properly exhibited, which do not correspond with the averments as made in the petition. Also, the documents as referred in the averments are not annexed. Although, the petition is pending for quite sometime, no steps were taken to correct the memo of the petition, which is replete with the errors and defects.

Analysis and Conclusion

15. We have heard learned counsel for the parties. We have also perused the record.

16. At the outset, we may observe that it is most unfortunate that the mother in the twilight years of her life, after her husband had passed away, instead of receiving love, affection, care and empathy from her sons and their family members (barring the eldest son), was required to take recourse to legal proceedings in approaching the tribunal, being ousted by her son from her house. The feeling of being disowned by one of her sons itself has caused her a trauma. None of the parents should suffer this way. In one's life, there is much more than material things. Proud would be the parents of such children who would have their own achievements on all fronts and not look at the wealth and money of their old parents. However, litigation which has reached the Courts, would show that the world cannot so idealistic, as human greed is a bottomless pit. This is certainly neither the stage in life or the age of the mother, that she should suffer on such cause. It is for such reason, the legislature in recognising the rights of the senior citizens and to protect their rights, have framed the Senior Citizens Act.

17. The object and intention of the act is to make provisions for maintenance and welfare of the parents and senior citizens guaranteed and recognized under the Constitution. The Statement of objects and reasons of the enactment clearly set out the intention behind the legislation recognizing the core human values of empathy, namely, that the 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. 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. It is also set out that though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive, Hence, a need was felt to have simple, inexpensive and speedy provisions to claim maintenance for parents. It is with such solemn intention the Parliament has enacted the Senior Citizens Act.

18. Broadly, the scheme of the Senior Citizens Act can be noted. Section 3 provides that the provisions of the Senior Citizens Act shall have effect notwithstanding anything inconsistent contained in any enactment other than this Act, so as to provide for an overriding effect of Senior Citizens Act. Section 4 is in regard to "Maintenance of Parents and Senior Citizens". Section 5 inter alia provides for 'Application for maintenance' made under section by the senior citizen or a parent as the case may be. Section 6 provides for 'Jurisdiction and procedure' of the tribunal. Section 7 provides for 'Constitution of Maintenance Tribunal'. Section 8 provides for "Summary procedure in case of inquiry". Section

9 provides for "Order for maintenance". Section 11 provides for "Enforcement of order of maintenance" and there are other substantive provisions of Constitution of Appellate Tribunal under section 15 and the provision for appeal under section 16 of the Act. Chapter III provides for "Establishment of Oldage Homes". Chapter IV provides for "Provisions for medical care of senior citizens". Chapter V provides for "Protection of Life and Property of senior citizen", having provisions in regard to measures for publicity, awareness etc. for welfare of senior citizens. Section 23 thereunder provides for "Transfer of property to be void in certain circumstances". Chapter VI provides for "Offences and Procedure for trial". Section 24 thereunder provides that whoever, having the care or protection of senior citizen, leaves such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both. Section 25 provides for "Cognizance of offences". Chapter VII provides for Miscellaneous provision thereby barring the jurisdiction of Civil Courts under section 27.

19. It is thus seen from the legislative scheme of Senior Citizens Act that it provides for complete mechanism so as to achieve the object and intention of the legislation to recognize the rights of the senior citizens and their maintenance and welfare. In *Abhimanyu Jayesh Jhaveri vs. Nirmala Dharmadas Jhaveri & Anr.* Writ Petition No. 4650 of 2021 decided on 17 Deember, 2021 , a learned Single Judge of this Court considering the object and intention of the Act made significant observations on the plight of the senior citizens, as intended to be remedied by the Senior Citizens Act. The Court observed thus:

16. The object of the Act is to provide for more effective provisions for the welfare and maintenance of parents and senior citizens as guaranteed and recognized under the Constitution of India and matters connected therewith. Senior citizens at their advanced age in life become helpless, more particularly, when confronted with an obnoxious and unpleasant situation, where greedy and selfish children and relatives intend to exploit the senior citizens for material gains. Most vulnerable become those senior citizens, who have movable and immovable properties, earned by them by their hard work, only to suffer such nightmare and a calamity, being foisted on them by such selfish and greedy members of the family. It would not be out of place to state that Courts have witnessed senior citizens knocking the doors of the Courts throughout the country, praying for reliefs under the Act. It is seen that when such senior citizens have property and when they become physically, psychologically and mentally weak and dependent and or they are in ill health, in such helpless position, the torture, harassment and depravement to them, from self-centered relatives and family members commences so as to grab their property."

20. A learned Single Judge of this Court in interpreting the provisions of Section 4 of the Senior Citizens Act in *Ashish Vinod Dalal & Ors. v. Vinod Ramanlal Dalal & Ors.* Writ Petition No. 2400 of 2021 considered the scope of section 4 of the

Senior Citizens Act to hold that the intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizen's rights, which are fundamental to their very survival and/or livelihood at their old age. It was observed that in dealing with the grievances of the senior citizens falling under Section 4, the Court's approach cannot be narrow and pedantic in applying the provisions of the Senior Citizens Act. It was held that protection from harassment, exploitation, neglect, psychological disturbances, psychological needs, and all possible facets to safeguard the senior citizen's physical and mental health is required to be recognized under sub-section (2) and sub-section (3) of section 4, as it is categorically provided that the obligation of the children or relatives is to cater to the needs of the senior citizens so that they 'live a normal life'. It was also observed that 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, which would include a right to prevent themselves from being harassed by children and by relatives. It was held that it would be permissible for the senior citizen to seek a relief in regard to the senior citizen's property. The relevant observations as made by the Court are required to be noted, which reads thus:

"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 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. 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."

(emphasis supplied)

21. In *Shweta Shetty v. State of Maharashtra & Ors.* Writ Petition (L) No. 9374 of 2020, Justice G.S. Patel speaking for the Division Bench, observed that to constitute eviction or to invoke any prohibition against eviction, it must be shown that some legally enforceable civil right of the appellant in the property itself has been determined and that the appellant has been denied that right. It was observed that the removal of a person with no right in the premises is not eviction so as to attract any such prohibition. It was also observed that the statutory intent is to protect senior citizens. It is not to foist on senior citizens an

imaginary claim over their own property where the claimant has no such right to begin with. The statutory intent is not to limit the rights of senior citizens, but exactly the reverse. Referring to the various decisions, it was further observed that the harassment is an attempt to somehow grab the senior citizen's property in his or her lifetime without thought spared to the mental or physical health well-being or happiness of these seniors. We fully endorse the views of the Division Bench.

22. As seen from the above decisions, it is quite settled that during the life time of the parents, the children cannot assert any legal right whatsoever in respect of the property of their parents claiming exclusive ownership or possession of the parents property. The proper remedy for the petitioner would be to file a suit in the event the other brothers are also claiming any right in the premises and this cannot be during the life time of the mother.

23. Thus, applying the provisions of the Senior Citizens Act and the law as laid down and interpreted in the aforesaid decisions, in our opinion, we do not find any perversity and illegality in any of the findings of the Tribunal. We are hence not persuaded to accept the contentions as urged on behalf of the petitioner. It appears to be quite clear that the mother was residing in the tenement after the demise of her husband in the year 2015. There is no material on record that she has any other independent premises where she can otherwise stay. It also appears that the petitioner had entered the premises visiting the mother and later on refused to remove himself from the premises and obtained occupation of the premises by creating circumstances to achieve her removal from her own house. She could not have suffered a "living hell" in her own house. The mother in such circumstances appears to have taken shelter at the small tenement of her elder son Vijay, who is himself in difficult financial situation. It appears that the petitioner also refused to maintain the mother and provide her basic medical needs apart from food and clothing requirements. Also there is no denial of the fact that the petitioner although has his own tenement, the intention of the petitioner to oust the mother was to create third party rights in respect of the tenement. There is no denial of such case as pleaded in the reply affidavit. In our opinion, the above circumstances are quite glaring and it was imperative and imminent for the Tribunal to exercise jurisdiction under the act to pass an order directing the petitioner and his wife to be removed from the premises.

24. The mother certainly deserves to be maintained from her own tenement. The petitioner has no legal right whatsoever to oust the mother from her tenement so as to make her roofless and/or deprive maintenance from her tenement.

25. Insofar as the contention of the petitioner is concerned that merely because a remedy of an appeal is not provided to the petitioner, section 16 of the Act becomes arbitrary and illegal, is wholly untenable. A legislative provision cannot be struck down on such count in the absence of any substantive ground acceptable in law being made out by the petitioner, so as to assail the provisions to be unconstitutional. The provisions also cannot become bad only because the

petitioner feels so. A right of an appeal is to be conferred by law. The legislature in its wisdom has refrained from providing a right of an appeal except to the senior citizens. In any event, it cannot be said that the petitioner has no legal remedy.

26. For the aforesaid reasons, we find that no interference whatsoever is called for in the impugned order. The petition is thoroughly misconceived. It is accordingly rejected.

27. The petitioner is directed to vacate the premises within a period of 15 days from the day a copy of the order is made available, failing which, the procedure in law to implement the order which is set into motion be taken forward and the petitioner along with his wife be evicted from the premises.

28. Needless to observe that till such time, the vacant possession of the flat is handed over to the mother, the petitioner is directed not to create any third party right whatsoever or to part with the possession of the tenement.

29. Ordered accordingly.

30. No costs.

31. In view of disposal of Writ Petition, Interim Application does not survive and the same is accordingly disposed of.