

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 8<sup>th</sup> OF FEBRUARY, 2023**

**WRIT PETITION No. 18083 of 2022**

**BETWEEN:-**

1. ANIL CHOUPDA S/O  
DASHRATHJI  
CHOUPDA, AGED  
ABOUT 50 YEARS,  
OCCUPATION:  
SERVICE 106,  
NEWROAD, RATLAM  
DISTRICT RATLAM  
(MADHYA PRADESH)
2. SMT. ALKA W/O ANIL  
CHOUPDA, AGED  
ABOUT 45 YEARS,  
OCCUPATION:  
HOUSEHOLD 106,  
NEWROAD, RATLAM  
(MADHYA PRADESH)
3. YASH S/O ANIL  
CHOUPDA, AGED  
ABOUT 25 YEARS,  
OCCUPATION: JOB  
106, NEWROAD,  
RATLAM (MADHYA  
PRADESH)

**.....PETITIONERS**

**(BY SHRI G.K. PATIDAR - ADVOCATE)**

**AND**

1. SUBHADRA W/O LATE  
DHASHRATHLALJI  
CHOUPDA, AGED  
ABOUT 77 YEARS,  
OCCUPATION:  
NOTHING 106,  
NEWROAD, DISTRICT

**RATLAM (MADHYA  
PRADESH)**

**2. JILA DANDADHIKARI  
COLLECTORATE  
KAARYALAY RATLAM  
(MADHYA PRADESH)**

**3. ANUVIBHAGEEY  
DANDADHIK  
COLLECTORATE  
KAARYALAY RATLAM  
(MADHYA PRADESH)**

**....RESPONDENTS**

**(BY SHRI VISHAL LASHKAR – ADVOCATE FOR RESPONDENT NO.1  
BY SHRI SHANTANU CHOURASIA – ADVOCATE FOR RESPONDENTS NO.2 & 3 )**

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**Reserved on : 08.02.2023  
Pronounced on : 18 .04. 2023**

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*This petition having been heard and reserved for orders, coming on for pronouncement this day, **HON'BLE JUSTICE PRANAY VERMA** pronounced the following:*

**ORDER**

By this petition preferred under Article 227 of the Constitution of India, the petitioners have challenged the order dated 22.07.2022 (Annexure P/1) passed by the Collector, District Ratlam affirming the order dated 28.03.2022 (Annexure P/2) passed by Sub Divisional Officer, Ratlam (City), Ratlam whereby application filed by respondent No.1 seeking re-entry to the disputed house under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act, 2007') had been allowed.

**2.** Facts in brief are that respondent No.1 filed an application before the Sub-Divisional Officer, the Tribunal constituted under Section 7 of the Act, 2007. As per her, she is widow of Late Dashrath Chopda and was residing in the disputed house along with him which was their self acquired property and was in their joint possession. During life time of her

husband, they had executed a joint Will on 18.01.2014 with respect to the disputed house as per which upon death of either of them, the survivor was to become the sole owner thereof. Thus, upon death of her husband, she became the sole owner of the disputed house and was in its possession but in June, 2021 the petitioners forcibly dispossessed her therefrom. Prayer was hence made by her for possession of the disputed house and return of articles kept therein forcibly taken by the petitioners.

**3.** Petitioners opposed the application by submitting that under the Will set up by respondent No.1 there is no clause that they would be liable to be dispossessed from the disputed house. Respondent No.1 has no right to evict them from the disputed house as they are also entitled for joint possession of the same. Respondent No.1 is already having sufficient property and cash and is residing along with her elder son at Indore hence is not entitled for possession of the house.

**4.** Upon recording of evidence of the parties, the application preferred by respondent No.1 was allowed by the Tribunal by holding that she was residing along with her husband in the disputed house till the time of his death. As per the Will dated 18.01.2014, upon his death she became the sole owner thereof in which petitioners do not have any title or right of possession during her life time. She is hence entitled for possession of disputed house. It was further held that respondent No.1 has not been provided for in any manner by the petitioners hence is entitled for award of maintenance at Rs.10,000/- per month from them. The said order has been maintained in appeal having been preferred by the petitioners by the Collector by the impugned order.

**5.** Learned counsel for the petitioners has submitted that the Tribunal has erred in allowing the application filed by respondent No.1 directing for

their eviction from the disputed house in exercise of powers under the Act, 2007. Thereunder there is no right conferred upon the Tribunal to direct for delivery of possession of property and it can only grant reliefs as specifically provided for under the Act. By directing for recovery of possession it has acted beyond jurisdiction. It is further submitted that petitioners were not affording due opportunity of hearing by the Tribunal which aspect has also not been considered by the appellate authority. The respondent No.1 has totally failed to prove the averments as made by her in her application whereas the petitioners have categorically proved that she is residing with her elder son at Indore and also that there is sufficient space available in the disputed house itself for residence of all the parties. Under the Will set up by respondent No.1 no right was given to her for evicting the petitioners from the disputed house. It is hence submitted that the impugned orders deserve to be set aside. Reliance has been placed on the Division Bench decision of this Court in **Writ Appeal No.1085/2022 (Sunil Sharan Dixit and others vs. Smt. Urmila Dixit) decided on 31.10.2022** and of the Hon'ble Supreme Court in **Government of Anadhra Pradesh vs. Thummala Krishna Rao and another, (1982) 2 SCC 134.**

6. *Per contra*, learned counsel for respondent No.1 has submitted that the Tribunal has not committed any error in passing the impugned order. It had the jurisdiction to direct for eviction of petitioners from the disputed house the same being owned by respondent No.1. Under the Act, 2007 it specifically has such a right. The petitioners were afforded due opportunity of hearing by the Tribunal which rightly held that respondent No.1 has duly proved her claim hence no interference is called for. Reliance has been placed on the Division Bench decision of this Court in

**Writ Appeal No.214/2021 (Ganesh and another vs. Smt. Indu Bai and another) decided on 25.04.2022 and of the High Court of Punjab and Haryana in CWP NO.24508 of 2015 (O & M) decided on 01.12.2015 (Gurpreet Singh vs. State of Punjab and Ors.).**

7. I have heard the learned counsel for the parties and have perused the record.

8. Section 2(b), 4(1), 5(1), 16 (1) and 23 of the Act, 23 of the Act, 2007 being material are reproduced below:

**2 (b). "maintenance" includes provision for food, clothing, residence and medical attendance and treatment;**

**4(1). Maintenance of Parents and Senior Citizens**

**1. A senior citizen including parent who is unable to maintain himself from his own earning or 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**

**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 sua motu.**

**16. Appeals**

**1. Any senior citizen or a parent, as the case may be, aggrieved by an order of a Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:**

**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.**

**9.** In **Ganesh and another (supra)** relied upon by learned counsel for petitioners it has been specifically held that the argument that the Tribunal is not empowered under the Act, 2007 to pass an order of eviction does not have any substance. It has been held in paragraph No.11 to 14 as under:

**11. A perusal of overall Scheme of the Act of 2007 would clearly demonstrate that the intention of the legislature is to ensure that the parents and senior citizens should be ensured food, clothing, residence, medical attendance and treatment etc. The maintenance includes the provisions for food, clothing, medical assistance, treatment and residence. The provisions of Act of 2007 have been given overriding effect by virtue of Section 3 of the Act of 2007 on the provisions of any other enactment.**

**12. In the instant case, the house in question admittedly belongs to the respondents. The appellants are claiming the**

right of co- ownership which has not yet been determined by any competent Court. The fact has come on record to show that respondents are residing elsewhere and the house in question is occupied by the appellants. It is unfortunate to note that the appellant No.1 being son of the respondent No.1 is objecting for the shelter of her widowed mother that too in a house purchased and constructed by late husband of the respondent No.1 herself.

13. So far as the argument of learned counsel for appellants that the Tribunal is not empowered under the Act of 2007 to pass an order of eviction is concerned, the same does not have any substance and deserves to be rejected under the facts of the present case. In para 4 to 6 of the application, submitted by the respondent No.1 before the Tribunal, the following averments have been made :-

“4. यह कि स्व. नामदेव की मृत्यु दिनांक 13.08.2018 को होने के बाद से आवेदक कं 1 का पुत्र गणेश शराब पीने का आदि हो गया। आये दिन गणेश व उसकी पत्नी चंदा वाद विवाद करने लगी। मकान में रहने नहीं देते। गणेश पेंशन का पैसा भी चाकू अड़ाकर छुड़ा लेता है। लगातार मारपीट व दुर्यवहार कर रहे हैं। अब तो हद कर दिया है। 8दोनों वरिष्ठ नागरिकों को प्रताड़ित कर मकान से बाहर कर दिया है, जबकि मकान में उनका कोई हक नहीं है।

5. यह कि दिनांक 20.11.2019 को मारपीट कर घर से निकालने पर आवेदकगण सिटी कोतवाली खंडवा में रिपोर्ट करने गये थे, परन्तु पुलिस द्वारा उनके विरुद्ध प्रतिबंधात्मक कार्यवाही कर एसडीएम न्यायालय में पेश किया गया था। जहाँ उन्हें जमानत करनी पड़ी थी। इसकी शिकायत कलेक्टर महोदय एवं पुलिस अधीक्षक महोदय को भी की गयी थी।

6. यह कि प्रार्थीगण वृद्ध व ननद है। स्व. नामदेव के साथ मकान में रहती थी। पेंशन से गुजारा करती है। घर से निकालने के बाद रिश्तेदारों के यहाँ रह रही है। गणेश व उसकी पत्नी से उन्हें जान का खतरा है, प्रताड़ित वे दुर्यवहार करते हैं। अतः अपरोक्त आधारों पर श्रीमान् से विनम्र निवेदन है कि उन्हें निम्न सहायता प्रदान करने की कृपा करें। ”

14. It is, thus, seen that the respondent No.1 was requesting for right of “residence” in her own house. The object of the Act of 2007 not only includes maintenance, provision for food, clothing, medical assistance and treatment, but it also includes provision for “residence”. Moreso, the respondents were

**ousted from the house in question by the appellants depriving them to enjoy the right of “residence” and, therefore, taking into consideration the overall object of the Act of 2007, it cannot be said that the order passed by the Tribunal is illegal or improper.**

**10.** Thus, the primary contention of the petitioners that under the Act, 2007 an order of eviction cannot be passed by the Tribunal has specifically been negated in the aforesaid decision by holding that what is granted thereunder is the ‘right of residence’ meaning thereby that eviction as understood under the common law is not ordered. It is only for the purpose of securing the right of residence of the Parent or Senior Citizen, as the case may be, that the person in unauthorized possession is directed to be evicted for securing such right. Moreover, the definition of ‘maintenance’ under Section 2(b) of the Act specifically includes within it provision for ‘residence’. If for providing maintenance in the form of residence under Section 4/5 of the Act, 2007 the Tribunal directs for dispossession or eviction of a person in possession thereof without any authority it cannot be said that it acts beyond jurisdiction in any manner.

**11.** So far as the judgment in the case of **Sunil Sharan Dixit and others (supra)** is concerned, the facts thereof disclose that it was a case where possession had been delivered under a gift deed and application had been filed for declaring such gift deed as void and for consequently obtaining possession of the property delivered under the deed. It is in that context that it was held that even if the gift deed or otherwise is held to be void by the Tribunal there is no provision for recovery of possession since the Act does not state as to how such possession is to be taken by the Tribunal. Section 23 of the Act, 2007 was considered and it was held that it is a standalone provision which only refers to the declaration of the gift



deed or otherwise to be void and beyond that there is no scope for the Tribunal to pass any order.

**12.** However the present is not a case under Section 23 of the Act, 2007 as no application was filed by respondent No.1 for declaration of any deed executed by her in favour of petitioners to be void and consequently seeking possession of the disputed house. It was an application seeking residence in the disputed house from the petitioners which belongs to her from which she had been forcibly dispossessed by them. Since the application was for seeking possession and/or right of residence in the disputed house, under Section 4/5 of the Act, 2007 it is the decision in the case of **Ganesh and another (supra)** which would be applicable to the facts thereof and not the decision in the case of **Sunil Sharan Dixit and others (supra)**.

**13.** In **Government of Andhra Pradesh vs. Thummala Krishna Rao and another (supra)** provision of AP Land Encroachment Act, 1905, was considered which was as regards eviction of unauthorized occupants from government property and it was held that eviction can be ordered only when unauthorized occupation is disputed but where title is bona fide disputed such dispute must be adjudicated by a Civil Suit. In the present case, it has been categorically held that respondent No.1 is the owner of the disputed house and petitioners are not the owners thereof and do not have any right to reside therein during her life time. The said decision also does not help the petitioners in any manner.

**14.** From a perusal of the record, it is apparent that petitioners have been afforded due and adequate opportunity of hearing by the Tribunal They had appeared before the Tribunal and had led their evidence and had

contested the application of respondent No.1. They were heard and had also submitted final arguments and thereafter only the order was passed.

**15.** The Will dated 18.01.2014 specifically stipulates that respondent No.1 would be the sole owner of the disputed house upon death of her husband. Admittedly her husband has expired and she has become the sole owner and during her life time the petitioners cannot claim as of right to reside therein even if in the Will there is no clause that respondent No.1 shall be entitled to evict them. On the contrary, it has been proved that respondent No.1 was in possession of the disputed house but has been forcibly dispossessed therefrom by the petitioners. The right or title of petitioners over the disputed house has not yet arisen. Respondent No.1 has been forced to reside elsewhere and the disputed house is occupied by the petitioners. It is greatly distressing that petitioners are objecting for her shelter in the disputed house of which she is the sole owner.

**16.** Though petitioners have contended that respondent No.1 is residing with her elder son at Indore and is being taken care of by him, but have not led any evidence in support of the said fact. Petitioner No.1 is the son, petitioner No.2 is the daughter-in-law and petitioner No.3 is the grandson of respondent No.1 hence it is their legal as well as moral obligation to maintain respondent No.1 during her life time. She is even otherwise legally entitled for award of maintenance from the petitioners under the provisions of Section 4/5 of the Act, 2007. The Tribunal has hence also not committed any error in directing the petitioners to pay maintenance to respondent No.1.

**17.** It is further seen that under Section 16 of the Act, 2007 it is only the parent or the senior citizen, as the case may be, who has the right to prefer an appeal against an order passed by the Tribunal before the

Appellate Tribunal. The wordings of the Section leave no room for doubt that the children or the relative, as the case may be, have no right to prefer an appeal against any order passed by the Tribunal. The appeal preferred by the petitioners before the Appellate Tribunal was itself not maintainable and ought to have been dismissed by it on this ground alone though it has not done so.

**18.** Thus, in view of the aforesaid discussion, I do not find any illegality having been committed by the Tribunal in allowing the application filed by respondent No.1. Petition being devoid of merits is hereby dismissed.

**(PRANAY VERMA)**  
**JUDGE**

jyoti