

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR**

**AFR**

<b>MISC PETITION NO.</b>	<b>2679/2020</b>
<b>Parties Name</b>	GANESH AND ANOTHER VS. SMT. INDU BAI AND ANOTHER
<b>Bench Constituted</b>	Single Bench
<b>Judgment delivered By</b>	<b>HON'BLE SHRI JUSTICE VISHAL DHAGAT</b>
<b>Whether approved for reporting</b>	<b>YES</b>
<b>Name of counsel for parties</b>	<b>For petitioner:</b> Shri Abdul Waheed Choudhary, Advocate.  <b>For Respondent no.1:</b> Shri Arpan Pawar, Advocate.
<b>Law laid down</b>	Tribunal constituted under Maintenance and Welfare of Parents and Senior Citizens Act, 2007, can order eviction of person who is in unauthorized occupation/forcefully occupied the property of parent or senior citizen, if it is necessary and expedient to ensure maintenance and freedom of senior citizen and parents.
<b>Significant paragraph number</b>	10 to 13

**( O R D E R )**  
**10/02/2021**

1. Petitioners have filed this Misc. Petition challenging order dated 6.8.2020 passed by Sub Divisional Officer, Khandwa, in application filed for maintenance under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'Act of 2007'). By said order, learned Tribunal has passed an order under Sections 21, 22 and 23 of the Act of 2007, for eviction of respondent nos.1 & 2 from the house situated in Prem Nagar, District Khandwa.

2. Petitioners had challenged the order passed by SDO, Khandwa before Collector Khandwa. Collector, Khandwa vide its order dated 16.9.2020 has dismissed the appeal as not

maintainable on the ground that appeal under Section 16 can only be preferred by senior citizen and parent and further party shall not be represented through legal representative. As petitioner has no other alternative remedy under Act of 2007, has approached this Court under Article 226 of the Constitution of India, for quashing or order of Sub Divisional Officer. Order passed by Collector is not called in question in this misc. petition.

**3.** Petitioners have challenged the order of SDO dated 6.8.2020 on the ground that SDO has no jurisdiction to pass the order of eviction.

**4.** Learned counsel for the petitioners as well as respondents had relied on a judgment passed by the Apex Court in the case of **S. Vanitha vs. Dy. Commissioner, Bengaluru Urban District and Others, 2020 SCC Online 1023.**

**5.** Learned counsel for the petitioners submitted that Sections 20, 21, 22 & 23 of the Act of 2007, does not provide any power to Tribunal to pass an order of eviction. Under Section 20, the State Government shall ensure medical support for senior citizens; under Section 23, senior citizens who have, after commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide 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 and shall be

declared void by the Tribunal. Section 9 of the Act of 2007, provides for order of maintenance.

6. It is submitted by learned counsel for the petitioners that petitioners who are legal representatives of deceased has a share in the property. Being the legal heir of deceased and co-owner of property with respondent no.1 Indu Bai, petitioners cannot be deprived of their right and they cannot be evicted from the house. It is further argued by him that as per the judgment passed by the Apex Court in the case of **S. Vanitha** (supra) eviction orders which was passed by the Tribunal and confirmed by the Appellate Authority and Division Bench of High Court of Karnataka were set aside by the Apex Court. The issue involved in the case was that one **S. Vanitha**, who was daughter-in-law, filed an appeal before Apex Court against the order of High Court where she has challenged the jurisdiction of the Tribunal to pass an order of eviction under the Act of 2007. The Apex Court, in para-41 of the judgment, held that appellant **S. Vanitha** (supra) has a right of residence in the share household under the provisions of Domestic Violence Act, 2005 and said right cannot be eliminated by evicting appellant **S. Vanitha** (supra) in exercise of summary powers entrusted by the Act of 2007, and due to said reason orders by the Tribunal, Appellate Authority and High Court were set aside. In this background it was urged by him that tribunal has no jurisdiction to pass an order of eviction under the Act of 2007.

**7.** Learned counsel for respondent no.1 has relied on the same judgment and took shelter of para-20 of said judgment. Relying on the said paragraph, it is submitted by him that Tribunal under the Act of 2007, may have authority to order eviction, if it is necessary and expedient to ensure the maintenance and protection of senior citizen or parent. Eviction, in other words, would be an incident of the enforcement of the right to maintenance and protection. Supreme Court has further observed in said paragraph that remedy of eviction can be granted only after adverting to the competing claims in the dispute. In view of the said observations made by Apex Court and also considering Section 2(b), Section 9 and Rule 20 of the Rules of 2009, power to order eviction is implicit in the Act so that a senior citizen or parent can peacefully live in the house with dignity.

**8.** Learned counsel for the respondent no.1 submitted that SDO was well within its jurisdiction to pass an order of eviction. As per Section 2(b) of the Act of 2007, maintenance includes provision for residence. It is further submitted by him that as per Rule 19 of the Act of 2007, it is the duty and power of District Magistrate to ensure that life and property of Senior Citizens of the district are protected and they are able to live with security and dignity. In view of Section 2(b) of the Act of 2007 and Rule 19 of the Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as 'the Rules of 2009'), SDO has acted within its jurisdiction to pass the order of eviction. It is

further argued that respondent no.1 is mother and respondent no.2 who is aunt of petitioners is covered within the definition of senior citizen and parents in the Act of 2007. Petitioners have no right on the property of respondent no.2 and they may have some share in property of respondent no.1 but eviction of petitioners can be ordered by SDO. Petitioners have forcefully driven out respondents from their house. It is further submitted by learned counsel for respondent no.1 that she is aged more than 60 years. Right of residence and protection of the property will be without meaning if Tribunal does not have any power to order eviction. The power of Tribunal to grant relief of eviction is to be considered in the light and object of the Act of 2007. Respondents cannot be asked to approach the civil court seeking eviction of the petitioners. If such a direction is given, then same will defeat the very purpose of the Act of 2007, which is enacted to give speedy and immediate relief to elderly citizens and parents. In view of the aforesaid submission, he made a prayer for dismissal of this Misc. Petition.

**9.** Heard learned counsel for the petitioners as well as respondents.

**10.** There is no specific provision for ordering eviction of persons who had forcibly occupied the house of senior citizen and parent. However, the relief of eviction is implicit in the Act. Definition of maintenance given under Section 2(b) of the Act of 2007, includes provision for food, clothing and residence. The relief of residence to senior citizen and parents cannot be

granted unless and until there is an order of eviction of persons who have forcefully occupied premises/residential area of such parents and senior citizens. Maintenance includes residence, therefore, to give substantial justice to parents and senior citizen, Tribunal has power to order eviction. It has been submitted by learned counsel for petitioners that petitioner no.1 has right and interest in the property after death of his father. Giving right of residence or evicting a person from house who had forcefully occupied the house without recourse to law does not deprive him of his title or interest in the property. It only safeguards right of senior citizen and parents in the property. Independence and liberty of senior citizen and parents can only be ensured if there is protection of their property. Substantive justice of maintenance and protection of property of parents and senior citizen will only be illusory if Tribunal does not have right to evict. In cases where the person who is sought to be evicted is also having a right in the property or have right of residence in the property by virtue of some other Act, then for such eventuality Section 3 of Act of 2007, is provided. Section 3, is having a non-obstant clause which is as under:-

“3. **Act to have overriding effect.**- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”

**11.** In case of **S. Vanitha** (supra) Apex Court held Section 36 of Prevention of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act of 2005) not in nature of a

non-obstante clause, has to be construed harmoniously with non-obstante clause in Section 3 of the Act of 2007. Such ratio is laid down as both Acts i.e. Act of 2007 and Act of 2005, are special Acts. But where one Act is Special Act and other Act is General and in case of inconsistency between the provisions, provisions of Special Act will over-ride provision of General Act.

**12.** In view of same, Tribunal is empowered to pass an order of eviction against petitioners. Learned Apex Court, in the case of **S. Vanitha** (supra) has set aside the order of eviction as daughter-in-law was also having right of residence under Protection of Women from Domestic Violence Act, 2005 and, therefore, claim of daughter-in-law cannot be overlooked/eliminated in exercise of summary powers under the Act of 2007. Aforesaid case is distinguishable as rights of residence in share household under the Act of 2005 is not in issue in this case. In para-20 of the judgment passed in the case of **S. Vanitha** (supra), observations have been made that the Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent.

**13.** In view of the aforesaid facts and circumstances of the case and law, misc. petition filed by the petitioners is **dismissed**.

**(VISHAL DHAGAT)**  
**JUDGE**