

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 02nd OF NOVEMBER, 2022
WRIT PETITION No.2293 OF 2021**

BETWEEN:-

VINAY KUMAR SARASWAR, AGED ABOUT 72 YEARS, S/O LATE SHRI PRATAP SINGH, OCCUPATION BUSINESS MAN, R/O 270, RAM NIWAS TRIANGULAR PARK, BEHIND BANK OF BARODA, DHARAMPETH, NAGPUR, MAHARASHTRA 440010

.....PETITIONER

(BY SHRI AKASH CHOUDHARY, ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH COLLECTOR BALAGHAT, R/O COLLECTOR OFFICE, DISTRICT BALALGHAT (MP)
2. SUB DIVISIONAL MAGISTRATE BALAGHAT, DISTRICT BALAGHAT (MP)
3. SAMRAT SINGH SARASWAR S/O SHRI ASHOK SINGH SARASWAR, AGED ABOUT ADULT, R/O WARD NO.27, CIRCUIT HOUSE ROAD, BALAGHAT (MP)

.....RESPONDENTS

(RESPONDENT NOS.1 AND 2/STATE BY MRS. ARTI DWIVEDI, PANEL LAWYER)

(RESPONDENT NO.3 BY SHRI UMESH TRIVEDI, ADVOCATE)

.....
RESERVED ON : 06.09.2022

DELIVERED ON : 02.11.2022
.....

This petition coming on for hearing this day, the Court passed the following:

ORDER

Since pleadings are complete, therefore, with the consent of learned counsel for the parties, the petition is heard finally.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 16.12.2020 (Annexure-P/1) passed by respondent No.2, whereby the said authority rejected his application preferred under Section 22(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short the 'Act, 2007') holding that the dispute as has been raised by the petitioner in the application is of civil nature and as such, it cannot be decided under the provisions of the Act, 2007.

3. To resolve the controversy involved in the case, certain important facts are required to be mentioned which are as under:-

(3.1) As per the petitioner, he owned a land of Khasra No.313/5^न area measuring 0.046 hectare, Patwari Halka No.13/2 situated at Tahsil and District Balaghat over which, a house is constructed and

entry in this regard has also been made in the revenue records.

- (3.2) As per the petitioner, the said house was given to him by his maternal uncle namely late Hanuman Singh Rana by executing a 'Will' in his favour and thereafter, he started residing in that house. According to him, to acquire the said house in pursuance to the 'Will' executed in his favour, all proceedings of revenue and even depositing the tax of the house in the Municipality, Balaghat, were carried out by him.
- (3.3) As per the petitioner, his elder brother namely Ashok Singh Sarswar who was residing at Nagpur, contested the assembly election from Balaghat in the year 1998 and during that period, he used some portion of the said house as his office.
- (3.4) According to the petitioner, after the death of his wife in the year 2016, his elder brother came to Balaghat and since there was nobody to look after him, therefore, taking into account the petitioner's old age, he advised him to keep respondent No.3 with him for getting his assistance. The petitioner has only one daughter who got married, therefore, he gave his consent to keep respondent No.3 with him, who, after spending some time, started terrorising the

petitioner for transferring the said house in his name. Subsequently, the elder brother of the petitioner called him at Nagpur in the month of November, 2019 and retained him there unnecessarily for 20 days and during that period, respondent No.3 not only changed the doors and locks of the house, but also changed the name plate of the petitioner and finally occupied the house unauthorizably. After coming to know about the said fact, the petitioner along with his daughter and son-in-law came to Balaghat on 06.12.2019 and tried to enter into the said house, where he found his elder brother who along with respondent No.3 restrained them to enter into the house. Thereafter, some altercation took place between them in which, respondent No.3 not only abused them, but also threatened them to take shelter of Civil Court. Thereafter, a report in this regard was lodged by the petitioner at Police Station Kotwali on 06.12.2019.

(3.5) Left with no option, the petitioner started residing at his village i.e. Nakshi and thereafter, he moved an application under Section 22(2) of the Act, 2007 before respondent No.2 for invoking jurisdiction provided under the provisions of the Act, 2007 so as to evict respondent No.3 from the house in question.

(3.6) The said application was replied by respondent No.3 wherein he had not only denied the facts mentioned in the application, but also denied the title of the petitioner over the said house. In the reply, respondent No.3 had also disclosed the fact that the petitioner never resided in the disputed house, whereas he is a permanent resident of Nagpur from where he is controlling his business and in support whereof, filed various documents. In the reply, it was also disclosed that father of respondent No.3 namely Ashok Singh Saraswar in the lifetime of late Hanuman Singh Rana did his schooling from Balaghat, but for his higher education, he went to Jabalpur and in the year 1990, late Hanuman Singh Rana handed over the house to the father of respondent No.3 and thereafter, he along with his family started living in the said house at Balaghat and since last more than 64 years, they are in occupation of the house in question. Along with the reply, respondent No.3 had filed various documents like Ration Card and Gas Connection to indicate that father of respondent No.3 is being resided in the house in question with his family since long. In the reply, the 'Will' by virtue of which the petitioner is claiming right over the house, was claimed to be a forged and fabricated document for the

reason that at the relevant point of time, Hanuman Singh Rana was neither physically well nor in a position to take any independent decision. In the reply, it was also stated that the information with regard to executing a 'Will' in his favour by late Hanuman Singh Rana was never disclosed by the petitioner in time nor any intimation for getting the mutation and other changes was given to them, but the petitioner tried to dispossess respondent No.3 and his father from the said house forcefully and as such, a report in that regard was also made to the police.

(3.7) Respondent No.2 after considering the facts and circumstances and looking to the nature of dispute involved in the case, vide order dated 16.12.2020 (Annexure-P/1) rejected the application preferred by the petitioner holding therein that the dispute as has been raised by the petitioner is of civil nature and as such, it cannot be decided under the provisions of the Act, 2007. Hence, this petition.

4. The respondents/State have filed a reply to the petition whereby they have supported the order passed by respondent No.2. Along with the reply, various documents have been filed showing that it is a dispute with regard to title of the house. As per the respondents, looking to the dispute involved in the case, respondent No.2 has rightly rejected the

petitioner's application and according to them, the petition deserves dismissal.

5. Respondent No.3 has also filed a reply to the petition and raised an objection with regard to maintainability of the application preferred before respondent No.2 saying that looking to the nature of dispute, the remedy was elsewhere but not before respondent No.2. It is also stated in the reply that respondent No.3 is neither a son nor relative of the petitioner and as such, he cannot claim any protection or maintenance under the provisions of the Act, 2007 against respondent No.3 especially when he has a daughter though she is married and residing at Nagpur. In the reply, it is also stated that the petitioner did not require any maintenance because he is running his business at Nagpur and having sufficient assets and income to maintain himself whereas the house in question is nothing but a house which is owned and possessed by respondent No.3 since long over which the petitioner has no legal and valid title, but somehow he is trying to grab the property by virtue of a false and forged 'Will'. In the reply, it is also stated that respondent No.3 neither comes within the definition of children of the petitioner nor of his relative and as such, claiming maintenance or any protection against respondent No.3 under the garb of Act, 2007 is without any jurisdiction. By and large, it is the stand of respondent No.3 that there is no valid document with the petitioner to establish his title over the house in question and so far as the entries made in the revenue records are concerned, the same cannot be

treated to be the documents of title. According to respondent No.3, the title over a property can only be determined by the Civil Court for which a civil suit can be filed by the petitioner. It is also stated in the reply that the 'Will' has never been proved nor any probate has been obtained by the petitioner and since the same is being disputed, therefore, the proper course is to file a civil suit. Respondent No.3, in his reply has supported the order passed by respondent No.2 saying that the authority had no jurisdiction to entertain the dispute involved in the case and as such, claimed that the petition has no merits and it is liable to be dismissed.

6. Shri Choudhary, learned counsel for the petitioner submits that the petitioner has filed this petition mainly on the ground that under the provisions of Section 22(2) of the Act, 2007, respondent No.2 can pass an order by restoring the possession of the petitioner in the house which at present is in occupation of respondent No.3. He further submits that respondent No.3 falls within the meaning of relative and as such, the application filed by the petitioner was maintainable because the petitioner was not claiming any monetary maintenance against respondent No.3, but he was claiming eviction of respondent No.3 from the house in question. In support of his submissions, he has placed reliance upon decisions of various High Courts viz. **2013 SCC OnLine P&H 26189 [Promil Tomar and others Vs. State of Haryana and others]**; **2012 SCC OnLine Guj 6281 [Jayantram Vallabhdas Meswania Vs. Vallabhdas**

Govindram Meswania]; 2017 (2) RLW 1436 (Raj.) [**Rashmi Saxena (Smt.) Vs. Suresh Prakash Saxena**] and also on a judgement of this Court passed in **M.P. No.5217/2019 [Smt. Amrita Bhatia and others Vs. Baljeet Singh Bhatia and others]**. According to learned counsel for the petitioner, in light of the law laid down by the various High Courts in the aforesaid cases, the application preferred by the petitioner should have been entertained by respondent No.2, but he failed to do so. He submits that rejecting the application on the ground of jurisdiction is illegal and frustrates the very object of the Act, 2007. He, therefore, prays that the matter may be remitted back to respondent No.2 for considering the application afresh.

7. *Per contra*, Mrs. Arti Dwivedi, learned Panel Lawyer has supported the order passed by respondent No.2 and submitted that the order is a reasoned one and the same does not call for any interference.

8. Shri Trivedi, learned counsel for respondent No.3 has opposed the submissions advanced by learned counsel for the petitioner and submitted that the petitioner did not have any claim of maintenance against respondent No.3 for the reason that respondent No.3 does not fall within the meaning of relative as has been defined under Section 2(g) of the Act, 2007. He has further submitted that since the only child of the petitioner i.e. his daughter is still alive, therefore, he cannot be considered to be a childless person and as such, maintenance, if any, is required to be claimed that should have claimed by

the petitioner against his daughter. He has also submitted that in the facts and circumstances of the case, respondent No.2 did nothing wrong while rejecting the application of the petitioner and as such, the petition deserves to be dismissed.

9. I have heard the rival submissions of learned counsel for the parties and perused the record.

10. Considering the submissions advanced by learned counsel for the parties and taking into account the facts and circumstances of the case, following questions emerge to be considered:

- “(a) Whether respondent No.2 was right in rejecting the application preferred by the petitioner on the ground of jurisdiction?
- (b) Whether provisions of the Act, 2007, is applicable against respondent No.3 especially when the daughter of petitioner is still alive?”

11. Section 4 of the Act, 2007, entitles a senior citizen to claim maintenance and for that he/she has to move an application under Section 5 of the Act, 2007 before the competent authority. Section 4 of the Act, 2007 reads as under:-

“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.”

Perusal of Section 4, makes it clear that a senior citizen including a 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 against one or more of his children not being minor or if a senior citizen is childless, then he can claim maintenance against such of his relative referred to in Clause (g) of Section 2 of the Act, 2007. Here in the present case, admittedly, the daughter of the petitioner is alive, therefore, he cannot be considered to be a childless person and, as such, maintenance if any, is required to be claimed that should have been claimed by the petitioner against his daughter.

12. In this case, though no monetary claim towards maintenance was raised by the petitioner against respondent

No.3, but sought his eviction from the house in question who admittedly was not his child. From the language used in Section 4, it is clear that maintenance from a relative can be claimed in view of the definition provided in Clause (g) of Section 2, but that definition comes into operation only when a senior citizen is childless. The definition of relative as defined in Clause (g) of Section 2 reads as under:-

“**2(g)** “relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.”

In view of the above definition, respondent No.3 cannot be considered to be a relative of the petitioner as he is not a childless senior citizen, but having a daughter who is aged about 44 years and residing at Nagpur. The daughter comes under the definition of children as has been defined in Clause (a) of Section 2 which reads as under:-

“**2(a)** “children” includes son, daughter, grandson and grand-daughter but does not include a minor.”

In view of the aforesaid, I am of the opinion that the petitioner being a senior citizen cannot claim any sort of maintenance against respondent No.3 and as such, the application filed by the petitioner before the competent authority seeking maintenance from respondent No.3 was not maintainable and had rightly been rejected by the authority. Although, the authority while rejecting the application had not consider this aspect of the matter, but dismissed the same saying that the dispute is of civil nature and as such, it could only be decided by the Civil Court.

13. Undoubtedly, in the present case several disputed facts including the title of the petitioner over the house in question from where eviction of respondent No.3 was sought are involved, but until and unless the competent authority determines the title of a party over the disputed house, no direction can be issued. As per the facts, indisputably the house over which the petitioner is claiming right came to him by virtue of a 'Will' said to have been executed by the actual owner late Hanuman Singh Rana, but that 'Will' is being disputed by respondent No.3 saying that his father has been residing in that house since beginning. Thus, giving any direction of eviction under the provisions of the Act, 2007 on an application moved by the petitioner against respondent No.3 would frustrate the very object of the law as the claim which can be determined under other provisions of law, cannot be determined by the authority having no jurisdiction. Looking to the claim raised before the authority, the dispute with regard to title cannot be determined by respondent No.2 under the provisions of the Act, 2007. The Supreme Court in a case reported in **AIROnline 2020 SC 897 [Smt. S. Vanitha Vs. Dy. Commissioner, Bengaluru Urban District & others]** after reversing the order of eviction passed by the competent authority under the provisions of the Act, 2007 has held that if the order of eviction frustrates the provisions of other Act, then the same cannot be done. The Supreme Court in **Smt. S. Vanitha** (supra) has observed as under:-

“**22.** This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to

provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act

2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005-of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

26. Relief in other suits and legal proceedings. —(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

23. Adverting to the factual situation at hand, on construing the provisions of sub-Section (2) of section 23 of the Senior Citizens Act 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her 'shared household' within the meaning of Section 2(s) of the PWDV Act 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the Fourth

respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act 2007. The fact that specific proceedings under the PWDV Act 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizens Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act.

24. For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act 2007. The Second and Third Respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act 2007 for alteration of the maintenance

allowance, before the appropriate forum. For the above reasons, while allowing the appeal, we issue the following directions:

(i) The impugned judgment and order of the Division Bench of the High Court of Karnataka dated 17 September 2019 affirming the order of eviction against the appellant shall stand set aside with the consequence that the order of the Assistant Commissioner ordering and directing the appellant to vacate the suit premises shall stand set aside;

(ii) We leave it open to the appellant to pursue her remedies under the PWDV Act 2005. For that purpose, it would be open to the appellant to seek the help of the District Legal Services Authorities and if the appellant does so, all necessary aid and assistance shall be furnished to her in pursuing her legal remedies and rights;

(iii) IA 111352/2020 for restoration of the electricity connection is allowed by directing the Fourth respondent to take all necessary steps for restoration of the electricity connection to the premises within a period of two weeks from the receipt of a certified copy of this judgment. The Fourth respondent shall also continue to pay the electricity dues in future; and

(iv) In order to enable the appellant to pursue her remedies under the PWDV Act 2005, there shall be an order and direction restraining the respondents from forcibly dispossessing the appellant, disposing of the premises or from creating any right, title and interest in favor of any third party in any manner whatsoever for a period of one year, to enable the appellant to pursue her remedies in accordance with law. The appellant is at liberty to move the Court to espouse her remedies under the PWDV Act 2005 for appropriate orders, including interim protections.

The directions contained in (iii) and (iv) above emanate in exercise of the powers of this Court under Article 142 of the Constitution.

Here in this case, dispute of title is involved as both the parties are claiming title over the disputed house and as such, the same cannot be determined by respondent No.2 under the provisions of the Act, 2007. Since the dispute of title can only be decided by the Civil Court, therefore, the very jurisdiction of Civil Court cannot be taken away by passing an order under the provisions of the Act, 2007. In view of the discussion made in the preceding paragraphs, I am of the considered opinion that while rejecting the petitioner's application, respondent No.2 did nothing wrong saying that the dispute involved in this case is of civil nature which cannot be decided under the provisions of the Act, 2007.

14. The cases on which learned counsel for the petitioner has placed reliance are on different factual matrix and therefore, not applicable in the present case. If such type of claim is entertained by the authority under the provisions of the Act, 2007, then it may create an absurd situation because at any point of time, a senior citizen may come forward and seek eviction of a person who occupies the property of a senior citizen and that would be contrary to the object of legislature while forming the Act, 2007. The object for forming the Act, 2007 reads as under:-

“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.

Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:-

Statement of Objects and Reasons.-

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 oldage homes for providing maintenance to the indigent older persons.

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 oldage homes in every district.

4. The Bill seeks to achieve the above objects.”

From the above, it is clear that the object for forming the Act, 2007, was to provide mechanism under which senior

citizens/parents can get maintenance in a very simple, inexpensive and speedy way, but it does not mean that the right granted to others through different statute can be overlooked. The Supreme Court has also considered this aspect in the case of **Smt. S. Vanitha** (supra) which has already been reproduced in the preceding paragraph.

15. In view of the aforesaid, I do not find any infirmity in the impugned order passed by respondent No.2 and the same does not call for any interference.

16. The questions formulated are answered as per the discussion made hereinabove.

17. *Ex consequentia*, the petition fails and is hereby **dismissed**.

No order as to cost.

(SANJAY DWIVEDI)
J U D G E