

Bombay High Court

Mr. Dattatrey Shivaji Mane vs Mrs. Lilabai Shivaji Mane And Ors on 26 June, 2018

Bench: R.D. Dhanuka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10611 OF 2018

Dattatrey Shivaji Mane)
R/a. 502, 5th Floor, B-Wing,)
Darshan Heights, Zavaba Wadi,)
Thakurdwar, Girgaon, Mumbai.) ..
Petitioner

Versus

1. Lilabai Shivaji Mane)
R/a. 502, 5th Floor, B-Wing,)
Darshan Heights, Zavaba Wadi,)
Thakurdwar, Girgaon, Mumbai.)
2. Dy.Collector/Officer,)
Parents and Senior Citizen's Welfare)
Tribunal, Mumbai City,)
Old Custom House, Shahid Bhagatsingh)
Road, Fort, Mumbai.)
3. State of Maharashtra)
(Notice to be issued upon Government)
Pleader, Appellate Side, (Writ Cell),)
High Court, Mumbai.) .. Respondents

Mr.J.P. Kharge for the petitioner.

Mr.Sandeep Naik for the respondent no.1.

Mr.S.D.Rayrikar, AGP for the respondent nos.2 & 3.

CORAM : R.D. DHANUKA, J.

DATE : 26th June 2018 Judgment :-

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 1st February 2018 ppn 2 5.wpst-10611.18(j).doc passed by the Tribunal for Welfare of Parents and Senior Citizens on a complaint filed by the respondent no.1 who is the mother of the petitioner no.1, under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the said Act").

2. It is the case of the petitioner that the petitioner has been staying in the tenement i.e. Room No.502, 5 th floor, B-Wing, Darshan Heights, Zavaba Wadi, Thakurdwar, Girgaon, Mumbai along with his wife, son, daughter and the respondent no.1. Admittedly the said tenement belongs to the respondent no.1 exclusively.

3. The respondent no.1 filed a complaint against the petitioner inter alia praying for maintenance and eviction of the petitioner on various grounds. The said complaint was resisted by the petitioner. The Tribunal passed an order on 1 st February 2018 thereby directing the petitioner and his other family members to evict themselves from the said tenement within 30 days from the date of the said order and hand over vacant possession thereof to the respondent no.1. This order of the Tribunal is impugned by the petitioner in this petition under Article 227 of the Constitution of India.

4. Learned counsel appearing for the petitioner challenged the said order on the ground that the complaint was filed by the respondent no.1 against the petitioner only whereas in the impugned order, the Tribunal has passed the impugned order of eviction also against the wife, son and daughter of the petitioner from the suit premises which is not permissible in law.

5. The next submission of the learned counsel for the petitioner is that under Section 4 of the said Act, the Tribunal has no jurisdiction to evict the petitioner as well as his family members from the tenement owned by the respondent no.1. The entire order is thus without jurisdiction.

6. The next submission of the learned counsel for the petitioner is that the petitioner has been maintaining the respondent no.1 for last several years. The respondent no.1 has been harassing the petitioner and his family members. All the criminal complaints filed by the respondent no.1 against the petitioner and his family members are disposed of. The complaint filed under the provisions of the Protection of Women from Domestic Violence Act, 2005 against the petitioner is dismissed for default.

7. It is submitted by the learned counsel for the petitioner that the respondent no.1 has been independently earning substantial amount and thus could not seek any relief against the petitioner by filing a complaint under Section 4 of the said Act.

8. Learned counsel appearing for the respondent no.1, on the other hand, submits that because of mental torture and continuous harassment to the respondent no.1 by the petitioner and his family members, the respondent no.1 has filed several complaints against them in last ten years. The Tribunal however has not taken any action on those complaints filed by the respondent no.1 against the petitioner and his family members.

9. In so far as the complaint filed by the respondent no.1 under the provisions of the Protection of Women from Domestic Violence Act, 2005 against the petitioner is concerned, the said complaint has been dismissed for default and not on merit.

10. Learned counsel for the respondent no.1 submits that even during the pendency of this petition, the petitioner had caused physical ppn 5 5.wpst-10611.18(j).doc hurt to the respondent no.1 and thus the respondent no.1 was compelled to file a police complaint against the petitioner with the concerned police station.

11. Learned counsel for the respondent no.1 placed reliance on the judgment of the Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. delivered on 15th March 2017 in Writ Petition (C) No.10463 of 2015 and also another judgment of the Delhi High Court in the case of Sachin & Anr. Vs. Jhabbu Lal & Anr. delivered on 24th November 2016 in RSA 136 of 2016. He submits that the tribunal has ample power to pass an order of eviction against the persons under the provisions of the said Act from the tenement in which the respondent no.1 has right, title and interest.

12. Learned counsel for the respondent no.1 submits that on one hand, the petitioner or his wife who allegedly earns income of Rs.12,000/- per month, on the other hand, he has been paying substantial amount of education

fees of his child and has been living lavishly. The respondent no.1 does not have any major source of income and cannot be forced to permit the petitioner and his family members to occupy the tenement owned by her.

13. It is not in dispute that the respondent no.1 has exclusive rights in the tenement which is allowed to be occupied by the petitioner and his family members by the respondent no.1. It is not in dispute that the respondent no.1 has filed several police complaints against the petitioner and his family members in various police stations alleging harassment and other offences. The complaints filed against the petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005 has been dismissed not on merit but for default.

14. Learned counsel for the petitioner could not point out any legal right of his client to occupy the tenement owned by the respondent no.1 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or under any other provisions of law. The submission of the petitioner is that since the petitioner has been allegedly maintaining the respondent no.1 for last several years, no order of eviction could be passed by the tribunal under Section 4 of the said Act or under any other provisions of the said Act. Per contra, the respondent no.1 has produced sufficient material on record before this Court and also the Tribunal showing that the respondent no.1 has been harassed by the petitioner and his family members for last several years.

15. In so far as the submission of the learned counsel for the petitioner that since no complaint was filed by the respondent no.1 against the wife, son and daughter of the petitioner before the Tribunal, no order could be passed by the Tribunal against the other family members of the petitioner is concerned, in my view, there is no merit in this submission of the learned counsel for the petitioner. Section 4 of the said Act permits a senior citizen including parent who is unable to maintain himself from his earning or out of property owned by him and if such senior citizen is unable to lead a normal life to apply for such relief not only against his children but also the grand children. Be that as it may, the wife, son and daughter of the petitioner have not challenged the impugned order.

16. In so far as the complaints filed by the respondent no.1 which are alleged to have been disposed of are concerned, it is the case of the respondent no.1 that the concerned police station did not take any action on those complaints filed by her. The petitioner does not dispute that those complaints were filed by the respondent no.1 against the petitioner making serious allegations of harassment and other offences. Merely because the police station has not taken any action on those ppn 8 5.wpst-10611.18(j).doc complaints, the petitioner cannot be allowed to urge that he and his family members had not harassed or tortured the respondent no.1.

17. Learned counsel for the respondent no.1 states that his client wants to evict the petitioner and his family members from her premises to stop the harassment and torture in future, from the petitioner and his family members, for peace of mind and to lead a normal life and does not want any maintenance from the petitioner henceforth. Statement is accepted.

REASONS AND CONCLUSIONS :-

18. A perusal of the record indicates that it is an admitted position that even according to the petitioner, the petitioner had been requesting the respondent no.1 for entering the names of his son and daughter in the ration card in respect of the said tenement which the respondent no.1 has refused. According to the petitioner, it has been an apprehension in the mind of the respondent no.1 that if the names of the son and daughter of the petitioner were entered in the ration card, the petitioner and his children would claim right in the said tenement owned by her. The petitioner could not show any right of any nature whatsoever in the said tenement of the respondent no.1 under any provisions of law.

19. In the complaint filed by the respondent no.1 before the Tribunal, the respondent no.1 had alleged that the petitioner and his family members were beating the respondent no.1 and had caused injuries to the hand and leg of the respondent no.1. It was further alleged that the petitioner and his family members are trying to oust the respondent no.1 from her house. The respondent no.1 was prevented from using her house by the petitioner and his family members. It was alleged by the respondent no.1 in the said complaint that the petitioner and his family members also prevented the respondent no.1 from using toilet and were closing the water tap.

20. A perusal of the complaint dated 7 th April 2007 filed by the respondent no.1 with L.T. Marg Police Station indicates that the respondent no.1 had alleged that the petitioner and his wife used to beat her regularly and also abusing her. Copies of all such complaints against the petitioner lodged by the respondent no.1 with the local police station were already annexed to the application filed by the respondent no.1 and are forming part of the record of the writ petition filed by the petitioner.

21. A perusal of the record clearly indicates that the relationship between the respondent no.1 and the petitioner and his family members are very strained resulting in the respondent no.1 filing various police complaints against the petitioner. In these circumstances, the respondent no.1 who is 73 years old cannot be compelled to allow the petitioner and his family members to stay with her. It is exclusively for the respondent no.1 to decide whether she wants to permit the petitioner and his family members to stay with her or not. In this case, the respondent no.1 has decided not to allow the petitioner and his family members to stay with her in the house owned by her. In my view, the Tribunal was thus fully justified in passing an order of eviction not only against the petitioner but also other family members of the petitioner.

22. The provision of Section 4 of the said Act permits such application for eviction of child and grand child if the condition set out in that provision read with other provisions are satisfied. In my view, there is thus no substance in the submission of the learned counsel for the petitioner that the order of eviction cannot be passed by the Tribunal under Section 4 of the said Act read with other provisions of the said Act.

23. The Objects and Reasons of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read thus :-

"1. 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 old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizen 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 old age homes in every district.

4. The Bill seeks to achieve the above objectives."

24. In so far as the submission of the learned counsel for the petitioner that under Section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. (supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under Section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.

25. If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his/her property from the children or grand children during his/her lifetime. The said Act is enacted for the benefit and protection of senior citizen from his children or grand children. The principles of law laid down by the Delhi

High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.

26. Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. (supra) has adverted to the another judgment of the Delhi High in the case of Nasir Vs. Govt. of Nct of Delhi & Ors.

-2015 (153) DRJ 259 and also the judgment of Gujarat High Court in the case of Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania - AIR 2013 Gujarat 160.

27. Delhi High Court in the case of Nasir Vs. Govt. of NCT of Delhi & Ors. (supra) while dealing with the matter under the provisions of the same Act and has held that once it is found that a senior citizen was the owner of the subject property, no error can be found with the directions issued by the Tribunal restraining the child of such senior citizen from interfering with the possession of the senior citizen who was the mother of the petitioner in that matter occupying the property and/or from recovering the rental income of the other property and further directing the son to maintain peace in the house and not to disturb his aged mother. It is held that in such situation, if it is said that the respondent mother ought to have been relegated by the Tribunal to the Civil Court, the same would have been in negation of the very purpose of setting up of such Tribunal. It is held that while interpreting the provisions, object of the Act has to be kept in mind which is to provide ppn 14 5.wpst-10611.18(j).doc simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The provisions have to be liberally construed as the primary object is to give social justice to parents and senior citizens.

28. Delhi High Court in the said judgment has adverted to the judgment of the Supreme Court in the case of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan- 1979(2) SCC 468 in which Supreme Court has held that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. In my view, the principles of law laid down by the Delhi High Court in the case of Nasir Vs. Govt. of NCT of Delhi & Ors. (supra) and the judgment of the Supreme Court in the case of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan (supra) apply to the facts of this case. I am in respectfully agreement with the views expressed by the Delhi High Court in the said judgment. The principles of law laid down by the Supreme Court in the aforesaid judgment are binding on this Court.

29. Gujarat High Court in the case of Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania (supra) while dealing ppn 15 5.wpst-10611.18(j).doc with a writ petition filed by the son of a senior citizen has construed Sections 4, 23 and various other provisions of the said Act. The son was occupying the property of his father who was admittedly a senior citizen. The said senior citizen needed to generate earning/income from the said part of the premises which were occupied by his son. Son was not maintaining the father. Gujarat High Court considered the objects and reasons of the said Act and held that son had not claimed any right of, or protection as statutory tenant or otherwise in respect of the said premises owned by the father. It is held that while explaining the object behind the enactment of the Act, the Legislature has clarified that, "the Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property."

30. After adverting to the objects and reasons of the said Act, Gujarat High Court has held that on overall consideration and having regard to the provision under Sections 2(b), 2(d), 2(f), 4 and the object of the Act, the said term should receive wider meaning so as to include possession/occupation of property, as well. The said concept is already recognised, accepted and internalised by the Act vide Section 4 of the ppn 16 5.wpst-10611.18(j).doc Act. It is held that the provisions under Section 23 of the Act cannot be, and need not be, read in isolation or by divorcing the said provision from other provisions, particularly Section 4 of the Act read with Sections 2(b), 2(f), 2(g) & 2(h) of the Act. Gujarat High Court accordingly rejected the writ petition of the son impugning the order of the Tribunal directing him to hand over possession of the property to the father and held that the said order passed by the Tribunal to hand over possession could not be said to be without jurisdiction or beyond the scope of Section 23 read with Sections 4, 2(b), 2(d) and 2(f) of the Act. In my view, the principles of law laid down by the Gujarat High Court Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania (supra) applies to the facts of this case. I am in respectfully agreement with the views expressed by the Gujarat High Court in the said judgment.

31. In my view, Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. The respondent no.1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent no.1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery ppn 17 5.wpst-10611.18(j).doc of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.

32. In my view, since under Section 23 of the said Act, a senior citizen is entitled to apply for a declaration of gift or transfer of his/her property by any other means given subject to the condition that the transferee shall provide the basic amenities and basic physical needs to such senior citizen and such child or grand child refuses to provide such amenities and physical needs, such senior citizen can apply for declaration of such transaction to be void, such senior citizen can even apply for recovery of possession from her child or grand child in the event of the child refusing to maintain such senior citizen and parents or does not comply with the obligations extending to the needs of senior citizen or such parents to enable such senior citizen or parents to lead a normal life. Such parents and senior citizen can certainly apply for recovery of vacant possession of the property and for a relief restraining such child or grand child or his other family members who are claiming through such child from entering upon the property of such senior citizen or parents. In my view, there is thus no merit in the submission ppn 18 5.wpst-10611.18(j).doc of the learned counsel for the petitioner that the Tribunal could not have passed an order of eviction against the petitioner and his family members from the tenement owned by the respondent no.1 under the provisions of the said Act.

33. Delhi High Court in the case of Sachin & Anr. Vs. Jhabbu Lal & Anr. (supra) has held that where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life. The principles of law laid down by the Delhi High Court in the case of Sachin & Anr. Vs. Jhabbu Lal & Anr. (supra) would squarely apply to the facts of this case. In my view, no child can compel his parents and more particularly senior citizen to allow such child or grand child to stay with him.

34. The impugned order passed by the Tribunal is in conformity with the powers granted to such Tribunal under Section 4 read with other provisions of the said Act. I do not find any infirmity in the ppn 19 5.wpst-10611.18(j).doc impugned order. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

35. In view of the fact that the impugned order of the Tribunal is upheld, the said order shall be complied with by the petitioner and by other occupants i.e. his wife, son and daughter within two weeks from today and shall hand over vacant possession to the respondent no.1 without fail. If the order is not complied with by the petitioner and his family members, the said order shall be executed by the respondent no.1 with the assistance of the police, if required. Parties as well as the Tribunal to act on the authenticated copy of this order.

R.D. DHANUKA, J.

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