

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4970 OF 2019

1. Mayur Vaijanath Tawde,
aged about 39 years,
Indian Inhabitant, residing
at R 3/6, Gurukrupa Chawl,
Seva Sangh, Shani Mandir Road,
Meghwadi, Jogeshwari East,
Mumbai 400 060.
And
 2. Neha Vaijanath Tawde,
aged about 32 years,
Indian Inhabitant, residing
at R 3/6, Gurukrupa Chawl,
Seva Sangh, Shani Mandir Road,
Meghwadi, Jogeshwari East,
Mumbai 400 060. .. Petitioners
- v/s.
1. State of Maharashtra
 2. Sub-divisional Officer,
acting as the Senior Citizens
Maintenance Tribunal,
Mumbai (Western Sub-division),
9th Floor, Administrative Building,
Bandra (E), Mumbai.
 3. Vaishali Vaijanath Tawde,
aged about 63 years,
Residing at Sadhana Teli Galli
Cross Road, Sampada Society,
Andheri East, Mumbai 400053 and

at R 3/6, Gurukrupa Chawl,
Seva Sangh, Shani Mandir Road,
Meghwadi, Jogeshwari East,
Mumbai 400 060.

.. Respondents

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Mr. Adithya R. Iyer, a/w. Mr. Advait Melekar, Mr. Nyayosh Bharucha,
Mr. Manoj Borkar and Mr. Jayesh Bhosle, for the Petitioners.

Ms. Reshmarani J. Nathani, for Respondent No.3.

Mr. Arfan Sait, APP, for State.

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CORAM : R.G. AVACHAT, J.

RESERVED ON : 1 FEBRUARY 2023.

PRONOUNCED ON : 7 FEBRUARY 2023.

JUDGMENT:-

Heard.

2. The challenge in this writ petition is to the order dated 6 September 2019 passed by Sub-divisional Officer-cum-Presiding Officer of the Tribunal constituted under Section 7 of the Maintenance And Welfare of Parents And Senior Citizens Act, 2007 (Act of 2007).

Vide order impugned herein, the Petitioners have been directed to vacate and handover possession of room no.3/6, Gurukrupa

Chawl, Seva Sangh, Shani Mandir Road, Meghwadi, Jogeshwari East, Mumbai 400 060 (disputed premises) to Respondent No.3 within a period of 15 days.

3. Facts giving rise to the present petition are as follows:-

Respondent No.3 is step-mother of the Petitioners herein. On the demise of mother of the Petitioners, their father-Vaijanath married Respondent No.3. Vaijanath was serving with Morarji Mills. He passed away in 2014. The disputed premises belonged to deceased Vaijanath. Both the Petitioners were living separately from their father and Respondent No.3. Both the Petitioners would visit the disputed premises. Both of them had occasionally stayed in the disputed premises. Petitioner No.1 is gainfully employed. Petitioner No.2 is differently abled (psychologically). Both the Petitioners would harass and ill-treat Respondent No.3 on the demise of their father. It is the case of Respondent No.3 that she was 60 plus and, thus, a senior citizen. It is her right to stay peacefully and comfortably in the disputed premises. The Petitioners, by one or the other way, harassed and ill- treated her and thereby made her living miserable. She, therefore, filed application to the tribunal and urged for eviction of the Petitioners from the disputed premises.

4. The Petitioners have their side of story to tell. According

to them, their mother passed away when Petitioner Nos.1 and 2 were 8 and 1½ years of age, respectively. Respondent No.3, being step-mother, ill-treated the Petitioners. The Petitioners, therefore, took shelter at the house of their maternal grand-mother. On the demise of their grand-mother, the Petitioners came back to the disputed premises and started living with their father and the step-mother/Respondent No.3. According to them, Respondent No.3 earns her living. She has been staying at her sister's residence. The Petitioners have right, title and interest in the disputed premises, since they inherited the same as Class I heirs on the demise of their father. According to them, the tribunal has only jurisdiction to grant maintenance in terms of quantum of money. The tribunal has no jurisdiction to pass any other order, specifically one in question in this writ petition.

5. Both the learned Advocates made their submissions consistent with their respective case referred to hereinabove. Learned Advocate for the Petitioners further submitted that Respondent No.3 got her name recorded in the in the society record. She wanted to sell out the disputed premises. The Petitioners, being Class I heirs of deceased Vaijanath, have every right to stay in the disputed premises. The impugned order herein is, thus, liable to be set aside.

6. Considered the submissions advanced. Perused the order impugned herein. Also gone through the authorities relied on.

7. The Statement of Objects and Reasons of the Act of 2007 is – 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.

Section 2(b) of the Act of 2007 defines the term “maintenance” to include provision for food, clothing, **residence** and medical attendance and treatment. Sub-clause (d) of Section 2 defines the term “parent” to mean father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.

8. It is true that the tribunal has jurisdiction to grant

maintenance allowance not exceeding Rs.10,000/- per month. Section 5 of the Act of 2007 speaks of application for maintenance. If one goes by the definition of the term maintenance, it includes a provision for residence.

9. The disputed premises originally belonged to late Vaijanath. There is nothing to support the claim of the Petitioners that Vaijanath was unemployed and the disputed premises was purchased out of the funds provided by their natural mother. True, on the demise of Vaijanath, the Petitioners and Respondent No.3, being Class I heirs, inherited the disputed premises and thereby became entitled to occupy the said premises. During the submission advanced by the learned Advocates for the parties, it has come on record that the disputed premises are vacant. Both the Petitioners have been residing in a premises taken on rent. For non-payment of electricity charges, electric supply of the premises has been discontinued. Other dues of the society, such as maintenance and drainage charges, etc., are outstanding. Respondent No.3 is said to have been residing at her sister's house. Necessarily the same is at the mercy of her sister. Respondent No.3 is above 65 years of age. Being one of the Class I heirs of deceased Vaijanath, she is entitled to reside in the disputed premises. Learned Advocate for the Petitioners submitted before this Court that Vaijanath did not leave behind any other property. It is the case of Respondent No.3 that deceased was allotted a room as he was

in service with Morarji Mills. It is the specific case of Respondent No.3 that all the papers in relation to the said room are with Petitioner No.1-Mayur, who is little over 45 years of age. He is admittedly gainfully employed. Petitioner No.2 is psychologically disabled. Petitioner No.1 takes her care. He admits to have been residing in a room taken on rent. Respondent No.3, being in the evening of her life, does need comfort and peace. The relations between the Petitioners and her were strained. She being the stepmother of the Petitioners, there is no likelihood of all of them residing together peacefully in a disputed premises. In the facts and circumstances of the case, the tribunal was, therefore, justified to pass the order directing the Petitioners to vacate the dispute premises and handover its possession to Respondent No.3. The Court finds no reason to interfere with the impugned order. True, the Petitioners have a reasonable apprehension that Respondent No.3 may create third party interest in respect of the disputed premises or may bring her sister and her relations to stay with her.

10. This Court is, therefore, inclined to direct Respondent No.3 not to create any third party interest in respect of the disputed premises, which would be prejudicial to the right, title and interest of the Petitioners herein.

11. With the aforesaid direction, the writ petition is dismissed.

(R.G. AVACHAT, J.)