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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 15th OF SEPTEMBER, 2024WRIT PETITION No. 27277 of 2024*CHAKRADHAR AND OTHERS**Versus**COLLECTOR/DISTRICT MAGISTRATE /APPELLATE AUTHORITY
AND OTHERS*

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Appearance:

Shri Anil Kumar Dwivedi, Advocate for petitioners.

*Shri Swapnil Ganguly, Deputy Advocate General and Ms. Priyanka Mishra, Govt.
Advocate, for the respondents-State.*

Shri Om Prakash Dwivedi, Advocate for the caveator.

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ORDER

Matter is taken up on request of Shri Anil Kumar Dwivedi, learned counsel for petitioners by this Bench on constitution of a Special Bench by the orders of Hon'ble the Acting Chief Justice.

2. Petitioners are challenging the order dated 09.07.2024, passed by the respondent No.2, Sub Divisional Officer (Revenue)-cum- Maintenance Tribunal, Jaisingh Nagar, District Shahdol (M.P.), whereby, learned Tribunal has passed an order to handover possession of the disputed property in favour of the respondent No.3 herein, otherwise that order shall be implemented through the process of the Tahsildar Jaisinghnagar and Station House Officer.

3. Learned counsel for petitioners submit that initially the said property which is subject matter of dispute, contained in Survey No.638/2, measuring



0.68 hectare, at Village Banke, was allotted in favour of his grand-father Shri Ram Kishore S/o Shri Trishul Dhari Rai, vide order dated 09.01.1974. It is submitted that since it is an ancestral property and name of Shri Ram Kishore was recorded in the Khasra Panchshala, as is evident from the document available on record at page 96, it is submitted that it is a shared property and, therefore, the respondent No.3, who happens to be the father of petitioners has no exclusive right to claim on that property and thus, he had no cause of action to seek eviction of the present petitioners, merely, on the strength of he being a senior citizen.

4. It is further submitted that provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'Act of 2007' for short), have been invoked in an arbitrary and illegal manner, inasmuch as, no transfer of property was made in favour of the petitioners and, therefore, there is no need to declare any transaction to be void.

5. It is also submitted that since the petitioners have themselves constructed a Kachcha hutment over the said land and are running a puncture repairing shop, they are being evicted through the respondent No.3, who is in fact a dummy person, inasmuch as, the petitioners are son and grand sons and other brothers are provoking respondent No.3 to evict the petitioners, so to deprive them to earn their livelihood.

6. It is also submitted that the property in question is a Government property and some of the portion of the Survey Number on which petitioners have raised construction and are earning their livelihood is a Government



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property and, therefore, no orders could have been issued by the concerned Sub Divisional Officer (Revenue) to evict them.

7. Shri O.P. Dwivedi, Advocate, appearing for the respondent No.3, has raised a very naive and immature argument to submit that the petitioners have a remedy of appeal. This argument is not maintainable in terms of the provisions contained in the Act of 2007, inasmuch as, remedy of appeal is available only to the senior citizen as can be seen from Section 16 of the Act of 2007.

8. Section 16 of the Act of 2007, provides that 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. Thus, it is evident that an appeal is provided only in the hands of a senior citizen or a parent and by nobody else. Thus, this argument deserves to be and is rejected.

9. At this stage, Shri Anil Kumar Dwivedi, learned counsel for petitioners, has placed reliance on the judgment of Supreme Court in *Sudesh Chhikara Vs. Ramti Devi and another, (2022) 17 Scale 293* and also on the judgment of Supreme Court in *Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and others, (2020) 14 Scale 210*, to submit that the Sub Divisional Officer (Revenue) acted beyond his jurisdiction.

10. Shri Ganguly, learned Dy. Advocate General, for the State, supports the impugned order.

11. After hearing learned counsel for the parties and going through the



record, it is necessary to go into the long history of litigations to which parties have resorted from time to time.

12. First petition was filed by the respondent No.3, Jagdish Prasad Dwivedi, as M.P. No.3012/2020. This petition was disposed of by a Coordinate Bench vide order dated 04.12.2021, wherein, the Coordinate Bench had set aside the order dated 18.08.2020, passed by the Collector and order dated 17.12.2019, passed by the Sub Divisional Officer (Revenue) and had directed the authorities to pass specific order in regard to the prayer for protection of his life and property as petitioner therein was not claiming any maintenance.

13. This order was assailed by the present set of petitioners before the writ Appellate Court by filing W.A.No.1273/2021. Division Bench of this Hon'ble Court vide its judgment dated 15.03.2022, dismissed the Writ Appeal and held that the orders of the learned Single Judge being impeccable does not warrant interference in the present intra-court appeal and directed the competent authority to deal with the directions of the learned Single Judge and pass appropriate orders.

14. Thereafter, in the second round of litigation, when an order was passed by the competent authority, then the present set of writ petitioners had filed Writ Petition No.19182/2022, to challenge that order. In that order, learned Single Judge had shown indulgence and had directed the parties to remain present before the Sub Divisional Officer (Revenue) on 19.09.2022 and the authority was directed to proceed further after giving opportunity of hearing and decide the dispute afresh in which petitioners may also raise an



objection with regard to maintainability of proceedings and if it is done, the authority shall take cognizance of the same and pass orders accordingly.

15. It will not be out of place to mention here that the ground which was raised in Writ Petition No.19182/2022, was that the dispute was in regard to their share of the property and property in question does not exclusively belongs to the respondent No.3, and accordingly, the order of eviction could not have been passed.

16. Similar ground was raised before the Supreme Court and this issue was answered by the Supreme Court in case of *Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and others (supra)*.

17. Pursuant to that order, when authority had passed an order on 22.08.2023, then another ground of litigation was pursued by the petitioners herein by filing Writ Petition No.1201/2024, which came to be decided by a Coordinate Bench on 22.01.2024. Vide W.P.No.1201/2024, grievance was raised that the objections raised by the petitioners were dismissed by the Sub Divisional Officer (Revenue), by passing an order dated 22.08.2023, and thereafter, Collector Shahdol had dismissed the appeal being not maintainable.

18. Learned Coordinate Bench observed that the decision of the Sub Divisional Officer (Revenue) in only recording the objection regarding impleadment of one son and not making any discussion on the rival submissions, became the ground for the Coordinate Bench to set aside the order and remit the matter to the Sub Divisional Officer (Revenue), to take a decision on objection raised as contained in Annx.P/14 filed therein.



19. Now, this is the next round of litigation. Perusal of the impugned order and the documents annexed herewith, leaves no iota of doubt and there is an admission by Shri Anil Kumar Dwivedi, learned counsel for petitioners that once land was allotted by the Government in favour of his grand-father Shri Ram Kishore, then on his death, it came to be recorded in the name of his father Jagdish Prasad in the year 1992-93, for which copy of Khasra is enclosed by the petitioners at page 98 (running page).

20. Since 1992-93, he has never raised any objection in regard to recording of the name of Shri Jagdish Prasad in the revenue records in place of his grand-father Shri Ram Kishore. It is also an admitted fact that petitioners did not file any suit for declaration or undertook any revenue proceedings to contest that name of his father Jagdish Prasad has been wrongly recorded in the revenue records. Thus, the contention put-forth by Shri Anil Kumar Dwivedi, learned counsel for petitioners, that the property in question is a shared property or he is a sharer in the property, is not made out. If that would have been proved, then petitioners would have acted bonafidely and contested the recording of name of his father Shri Jagdish Prasad in the revenue records in the year 1992-93.

21. As far as petitioner No.1, Chakradhar is concerned, he is son of Jagdish Prasad. Remaining persons are children of Chakradhar. Chakradhar's age is shown in the cause title as 51 years. Thus, it is evident that in 1992-93, he had attained adulthood to contest the mutation of the property of Shri Ram Kishore in the name of Shri Jagdish Prasad. Now, that claim is actually barred by law of limitation.



21A. Thus, the plea of shared household or share in the property being a bogie raised by the petitioners, is not substantiated from the documentary evidence available on record and, therefore, this plea of shared household property or shared property will be of no assistance to the petitioners.

22. As far as, contention of petitioners that they are running a shop on a Government land is concerned, that is for the Government to take a call. As far as impugned order is concerned, it talks of removal of petitioners from the property which was allotted in favour of Shri Ram Kishore and which came to be mutated exclusively in the name of Shri Jagdish Prasad.

23. As far as petitioners' contention that provisions of Section 23 of the Act of 2007, have been wrongly invoked, is concerned, merely mentioning an incorrect provision by the applicant before the SDO will not mean that the provisions of Section 23 of the Act were invoked. In fact, Rule 20 of M.P. Maintenance and Welfare of Parents and Senior Citizen Rules, 2009, deals with protection of life and property of senior citizen.

24. Thus, it is evident that the allegation on the present petitioners as is evident from the application which was filed by the respondent No.3 before the Sub Divisional Officer (Revenue), was that the respondents therein i.e. Chakradhar and his children were causing nuisance by disconnecting his motor pump and had made a prayer for reconnection of the motor pump and for registration of a case against the respondents, who are the petitioners herein for the safety of his life and the property and initiate criminal proceedings. A prayer was also made that the respondents i.e. petitioners herein be restrained from raising/causing any construction or any



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interference in the property of the applicant therein, who happens to be respondent No.3 here and not to cause any hindrance in the use of procurement of water, use of toilet and easementary rights. For that prohibitory orders were sought.

25. When provisions contained in Rule 20 of the Rules of 2009, are taken into consideration, then the competent authority i.e. the Sub Divisional Officer (Revenue), is competent to pass such orders and, in fact, Rule 20(2) (iii) of the said Act, bestows a duty on the authorities to attend the complaints/problems of senior citizens promptly. Thus, when the Sub Divisional Officer (Revenue), has taken into consideration the problem of the senior citizen i.e. the respondent No.3 and has asked the petitioners to not to cause any interference in the life of senior citizen and further to remove themselves from the said property with a further direction to seek help of the Tahsildar and the police authorities, such order when tested on the touchstone of the provisions and aim, object of the Act of 2007 and Rules of 2009, cannot be faulted with.

26. Thus, when examined from this aspect from this aspect, then the law laid down in *Sudesh Chhikara Vs. Ramti Devi and another (supra)*, says that for exercise of Sub-section (1) of Section 23 of the Act of 2007, two conditions must be fulfilled; (i) the transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferer and (ii) the transferee refuses or fails to provide such amenities and physical needs to the transferer. If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be



deemed to have been made by fraud or coercion or undue influence.

27. However, in the present case, there is no aspect of transfer of the property to invoke the provisions of Section 23. Neither, petitioners have produced any deed of transfer in his favour nor there is any contention on the part of the respondent No.3, that he had transferred the property in dispute in favour of the petitioners herein with a caveat to maintain him and the petitioners are not maintaining him.

28. In fact, facts of the present case reveal that no maintenance was sought by the respondent No.3 and he only prayed for removal of nuisance caused by the petitioners. Therefore, the judgment in case of *Sudesh Chhikara Vs. Ramti Devi and another (supra)*, will have no application to the facts and circumstances of the present case.

29. As far as, judgment in *Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and others (supra)*, is concerned, the ratio of the judgment is that provisions contained in Section 17 of the Protection of Women from Domestic Violence Act, 2005, which provides for right to reside in a shared household, cannot be superseded by the provisions of the Act of 2007, because that will defeat the basic purpose of the Act of 2005.

30. In the present case, there are no fact situation presented to bring on record application of the provisions contained in the Protection of Women from Domestic Violence Act. None of the petitioners are feminine. It is not evident that how the provisions of Protection of Women from Domestic Violence Act, an Act which was promulgated in terms of the



Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995), which had acknowledged that domestic violence is undoubtedly a human rights issue, and was brought into force. Rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto can be invoked in this case.

31. Therefore, the judgment in case of *Smt. S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District and others (supra)*, has no application to the facts and circumstances of the present case. It appears that without understanding the meaning and ratio of the judgments, they are being bombarded on the court by the concerned counsel, which has no application. I deprecate this practice on the part of the counsel to supply judgments without having any application.

32. In view of such facts, when tested, it appears that petitioners have only one device and one motive to prolong the proceedings which they have been successfully doing since 2020, but that cannot be allowed to be at the cost of respondent No.3, who is a senior citizen and for whose protection, the Act of 2007, has been brought into force.

33. Therefore, petition deserves to fail and is dismissed as no cause of action or legal provision has been brought to the notice of this Court to substantiate the reliefs claimed by the petitioners. Petitioners shall bear cost of this litigation for the respondents, which is quantified at Rs.10,000/- (Rupees Ten Thousand). Prayer for grant of 15 days time is rejected. Shri Ganguly is directed to take action for compliance of the orders of the SDO



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during the course of the day as order has been dictated in the open Court.

(VIVEK AGARWAL)
JUDGE

A.Praj.