IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.907 of 2023

In

Civil Writ Jurisdiction Case No.7851 of 2022

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1. Ravi Shankar S/o- Rajeshwar Prasad Roy R/o- G626 Preeti Rest House Rajendra Nagar overbridge, Permanent address 122, Rental Flat Kankarbagh, P.S. Kankarbagh.Dist.-Patna.
2. Minu Kumari W/o-Ravi Shankar Resident of G626 Preeti Rest House Rajendra Nagar over Bridge, Permanent address 122, Rental Flat Kankarbagh, P.S. Kankarbagh, Dist.-Patna.

..... Appellant/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The Chairman cum Sub Divisional Officer, Patna Sadar.
4. The Senior Superintendent of Police, Patna.
5. The Deputy Superintendent of Police, Patna.
6. The Officer Incharge, Kankarbagh Police Station, Patna.
7. The Officer Incharge, Rajendra Nagar Police Station, Patna.
8. Rajeswar Prasad Roy Son of Sookhil Rai Resident of 122 Rental Flat, Kankarbagh, P.S. - Kankarbagh. Dist.-Patna.

..... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Syed Alamdar Hussain, Advocate Ms. Surya Nilambari, Advocate
For the State	:	Mr. P.K. Verma, AAG-3 Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the Respondent no.8	:	Mr. Bindhyachal Singh, Sr. Advocate Ms. Smriti Singh, Advocate Mr. Vipin Kr. Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-01-2024

Law and morality regulate and control human behaviour in society. Though complementary, when morality is

infused into legislation, the legislatures have to caution themselves from overstepping the legal premise and the Courts have the daunting task of avoiding a judicial overreach hinged only on popular notions of right and wrong. That parents have to be looked after by children require no legislative imprimatur but in deciding property rights, we should be conscious of the interplay of such rights regulated by various statutes.

2. The order impugned in the appeal is one affirming the order issued by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the Senior Citizens Act). The 8th respondent, who was the father of the first appellant was before the Tribunal seeking eviction of the 1st appellant & his wife-the 2nd appellant, who were residing in the rest house owned by the 8th respondent; the rent received from which is asserted to be the only income of the 8th respondent.

3. The petitioners in the writ petition, appellants herein, claimed that the prayers made by the 8th respondent, the applicant under the Senior Citizens Act, could not have been made since there was total lack of jurisdiction conferred on the Tribunal under that Act to evict the son and his family who were residing in the rest house; a permissive occupation or even if it

is alleged to be a trespass. It was argued by the appellants that problems arose within the family due to the marriage of the appellants, solemnized on 14.06.2018, which was not to the liking of the 1st appellant's parents. The appellants also contended that there was no prayer for maintenance made by the 8th respondent, who had sufficient means to look after himself. The residence of the appellants and their daughter in the three rooms in the rest house does not in any manner prejudice the 8th respondent. The 8th respondent is deprived only of the rent of the said rooms and he continues to collect the rent from the other 20 residential rooms and 21 shop rooms situated in the very same building. The appellants also have a case that the rest house is one purchased by the father, the 8th respondent, from out of the funds of the joint Hindu family to which they belonged and there is a partition suit filed by the 1st appellant; which makes him a co-owner entitled to reside in the premises.

4. The 8th respondent on the other hand points out that the first petitioner is well employed and the second petitioner is a professional, an Advocate, who can look after themselves and even rent out an accommodation. The 8th respondent asserted that he and his wife, in their old age, with multiple ailments, are forced to live in a rented flat and he earns

only a meagre pension, thus being wholly dependent on the income from the rest house. Allegation is raised that both the appellants are troublemakers and have been harassing their parents continuously and now, by occupying three rooms in the rest house, to which they can raise no valid claim. The rest house at Kankarbagh, Patna is a self-acquired property of the 8th respondent allotted by the Bihar State Housing Board, Patna by a perpetual lease dated 20.07.1992, in favour of the 8th respondent. The 1st appellant requested a room for his sole residence from the 8th respondent, which was permitted, after which he moved in along with his wife and child and captured the entire rest house. The specific contention also is that they captured room no. 209 of the rest house and later on broke the locks of two more rooms and are residing there illegally.

5. The 2nd appellant is alleged to be a constant troublemaker, even for her family; having lodged criminal complaints against her own mother. The 2nd appellant also lodged criminal complaints against her in-laws and there is also a complaint lodged against her by the 8th respondent. The partition suit said to have been filed by the 1st appellant is after the application filed under the Senior Citizens Act, as a retaliatory measure. The 2nd appellant has also filed a case under

the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Domestic Violence Act'). The 8th respondent and his wife, senior citizens coming within the ambit of Senior Citizens Act have been deprived of their valuable property, to recover which they have approached the authority under the Senior Citizens Act, which is promulgated with a view to provide a speedy and inexpensive remedy to senior citizens and to ensure protection of their life and property.

6. Both the parties relied on a number of decisions and the learned Single Judge passed an elaborate order running to more than one hundred pages. The learned Single Judge looked at the preamble of the Senior Citizens Act and the statement of objects and reasons to find that the enactment was intended at upholding the traditional norms and values of Indian society, which emphasizes due care for the elderly especially by reason of the deteriorating joint family system. The travails of the aged, converted into a major challenge to the society itself, is sought to be addressed by the enactment though there are other enactments enabling maintenance. The provisions of the Senior Citizens Act and the Bihar Maintenance and Welfare of Parents and Senior Citizens Rule, 2012, (hereinafter referred to as the Rules of 2012) were copiously quoted from to emphasize

the simple speedy and inexpensive mechanism brought in for the protection of life and property of the senior citizens; which is also a constitutional guarantee emanating from Article 21, 39(A), 41 and 46 of the Constitution of India.

7. On facts it was noticed that admittedly, the 1st appellant was given a room in the rest house on his own request for a few days. The 1st appellant overstayed his welcome and brought his family to reside with him, as also trespassed into two other rooms. It was found that the rest house being one obtained by a perpetual lease, the said property does not fall within the scope of a family partition. It was held that if the argument of the appellant's, that the Tribunal under the Senior Citizens Act did not have the power to evict a person is accepted, then the benefit and protection granted to the senior citizens cannot be effectively provided especially when there is constant harassment and mental torture by the children. It was found from the facts that the 8th respondent, who was 73 years old was being harassed to *'bits' (sic)* by the appellants and he cannot be relegated to the civil court to avail the remedy of a suit for recovery of possession. The nuisance created by the appellants had to be removed immediately and the Senior Citizens Act has an over-riding effect especially by virtue of

Seciton 3, which precludes the civil court from exercising jurisdiction in matters which are covered under the Senior Citizens Act. The 8th respondent has a right to live in peace and the mere filing of the title suit, in which there is no interim injunction obtained, would not enable the appellants to interfere with his peaceful life. The title suit is belatedly filed wherein imaginary claims are made with bald allegations. Reliance was also placed on the decision of the Hon'ble Supreme Court in **S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District & Others**, reported in **(2021) 15 SCC 730**, wherein the Tribunal under the Senior Citizens Act was found to 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; though the facts in the cited decision were found to be different from the facts of the present case.

8. Various other decisions were also referred to, the paragraphs from which were profusely extracted, which we would look at in the course of our findings in the appeal. Relying on the extensive extracts from **S. Vanitha** (supra) and also the decisions of the various High Courts, it was reaffirmed that the Senior Citizens Act and Rules of 2012 were enacted and framed to provide simple, speedy and inexpensive mechanism

for the protection of the life and property of the senior citizens, from imaginary claims foisted on them and their property, by persons who have no rights to begin with and raise bogus claims to harass them in their twilight years. Unless there is shown a legally enforceable civil right and its denial there cannot be a cloud found on the right of a senior citizen to his/her property, thus depriving them of its full enjoyment. The measure of directing the 8th respondent to file a civil suit for recovery of possession was found to be frustrating the whole purpose and object of the Senior Citizens Act. Again, reference was made to Section 3 of the Senior Citizens Act to find the jurisdiction of the civil court to be curtailed. It was found that the appellant have to be moved out of the premises for peaceful enjoyment of the 8th respondent and even if the appellants choose to pursue the title suit, it can only be continued to its logical conclusion; and in the context of no interim protection having been granted there is no question of any interference to the rights of the 8th respondent at this stage. The eviction order issued by the Tribunal was thus affirmed by the learned Single Judge.

9. Before us learned Counsel Shri Syed Alamdar Hussain argued for the petitioners and learned Senior Counsel Shri. Bindhyachal Singh countered, for the 8th respondent. Shri.

P.K. Verma, learned AAG-3 appeared for the State, to assist us.

10. The learned counsel for the appellants reiterated the argument raised before the learned Single Judge, as noticed in the judgment to impugn it as grossly erroneous. It was asserted that there is no power of eviction conferred on the Tribunal by the Senior Citizens Act or the Rules framed in the State of Bihar. The judgments relied on in the impugned decision, of the High Court of Delhi were in the specific context of the rules under Section 32 of the Senior Citizens Act providing for an eviction. In the present case, there is no scope for any inquiry under Section 5 of the Senior Citizens Act since the 8th respondent does not claim any maintenance and on the other hand asserts in the application filed before the Tribunal that he does not require any maintenance from the first appellant herein, who is his son. There is also no claim under Section 23(1) since there is no deed of transfer executed by the 8th respondent in favor of the 1st appellant, with or without any condition that the transfer is made on the undertaking of the 1st appellant, the son, to look after his parents in old age. There is also no transfer under Section 23(2) of the Senior Citizens Act, of any estate from which the 8th respondent is entitled to maintenance. The 1st appellant was inducted into the rooms in

the guest house by the 8th respondent himself and is a permissive occupant. The 1st appellant also has a contention that the estate was purchased by the 8th respondent using funds of the Hindu Undivided Family and a title suit is pending on that issue. The learned Single Judge erred in finding no sustainable claim in the title suit which had to be agitated in the suit and not in the summary proceedings before the Tribunal under the Senior Citizens Act or in a judicial review; which power this Court is exercising. The 1st appellant being a co-owner is entitled to occupy the premises of the guest house and he has not deprived the 8th respondent from the income he obtains as rent from the other rooms in the guest house; rented out for commercial and residential purposes. The income obtained by the 8th respondent is also subject to any claim of mesne profits the 1st appellant is entitled to, in the event of the title suit being decreed in his favor. However, as of now, since there is no interim order obtained in the suit, the 1st appellant has not obstructed the receipt of income by the 8th respondent from the said rooms. The decisions relied on by the 8th respondent has no application since the appellants are not staying along with the 8th respondent and his wife and there cannot be any complaint of harassment or physical violence against them. The learned counsel would seek

for setting aside the order of the Tribunal as affirmed by the learned Single Judge of this Court.

11. Learned Senior Counsel appearing for the respondent, on the other hand, would contend that both the title suit and the application filed under the Domestic Violence Act are misconceived and intended only to defeat the proceedings before the Tribunal under the Senior Citizens Act. The provisions of the Act are specifically read out to impress upon this Court the purpose and intention of the same. The Act intends to provide protection to the Senior Citizens and their property to effectuate which, in the present case an eviction is expedient. The appellants, the son and daughter-in-law of the 8th respondent have been continuously harassing the families on both sides by filing frivolous criminal cases against all and sundry. The 1st appellant is well employed and so is the 2nd appellant, who is a practicing lawyer. The appellants have sufficient means to look after themselves and there is no reason to occupy three rooms of a guest house from which the 8th respondent derives an income. The 8th respondent is a retired employee and both himself and his wife are living on a meager pension of Rs. 4089/- and their lives are sustained only by the rental income from the guest house. The 8th respondent and his

wife are entitled to seek eviction of the appellants from the guest house which is the only source of income for their sustenance, under the Senior Citizens Act, which provides a speedy and expedient remedy insofar as the protection of the life and property of senior citizens. The 8th respondent and his wife have a right to live with dignity, which they are deprived of by their own son and daughter-in-law. Despite the Senior Citizens Act not containing an express provision enabling the Tribunal to pass an eviction order, it is argued that this has to be read in, to be comprised within the jurisdiction conferred on the Tribunal, by necessary implication, so as to effectuate the provisions of the Act. The primary object of Sections 22 and 32 of the Senior Citizens Act read with the Rules of 2012 is the protection of life and property of senior citizens by the authorized officers, who are entitled to take every necessary step to ensure protection of the life and property of senior citizens. The order of the Tribunal under the Senior Citizens Act is well within the powers of the Tribunal under the enactment.

12. Both the parties placed before us a number of judgments and we would hence, first look at the decision of the Hon'ble Supreme Court and then of the various High Courts relied on by the opposing parties. ***S. Vanitha (supra)*** is a

decision of the Hon'ble Supreme Court in which the appellant, the daughter-in-law, was residing in a house originally purchased by her estranged husband, the 4th respondent, who later sold it to his father, the 3rd respondent, who gifted it to his spouse, the 2nd respondent, the mother of the 4th respondent. The 2nd respondent filed a suit seeking a permanent injunction restraining the appellant from interfering with the possession of the suit property and while the same was pending, the marriage of the appellant and the 4th respondent were dissolved, against which an appeal was filed by the appellant and a separate proceeding for maintenance was instituted under Section 125 of the Cr.P.C. It was in this background that the 2nd and 3rd respondents invoked the provisions of the Senior Citizens Act seeking eviction of their daughter-in-law from the suit premises, an order of maintenance of Rs.15,000/- from the 4th respondent, their son, and legal expenses for the proceedings from both the appellant and the 4th respondent. The 2nd respondent had also instituted a petition under the Domestic Violence Act claiming the subject premises as a '*shared household*'.

13. In considering the issue as to whether the Tribunal constituted under the Senior Citizens Act would be empowered to evict the daughter-in-law from the house in which she was

residing, the Hon'ble Supreme Court considered the provisions of the Senior Citizens Act and the provisions of the Domestic Violence Act so as to harmonize the same, with a view to avoid any conflict insofar as the separate proceedings initiated by the senior citizens and that initiated by their daughters-in-law. It was found that sub-section (1) of Section 23 deals with a situation where the transfer of property is with the specific condition to provide for amenities and needs of a senior citizen. Sub-section (2) envisages a situation where the senior citizen has a right to receive maintenance from an estate; which right to receive maintenance, he/she is deprived of by reason of a transfer; with notice of such right or if the transfer is gratuitous. It was held that sub-section (2); the right to maintenance from an estate, cannot be enforced as against a transferee for consideration, who does not have a notice of such right. The transfer spoken of in sub-section (1) was held distinguishable from that spoken of in sub-section (2) to the extent of the former referring to a transfer by the senior citizen, while the latter takes within its ambit not only a transfer by the senior citizen, but also a transfer by a third party.

14. Looking at sub-section (1), it was held that when a transfer is made by a senior citizen subject to the condition that

he/she will be looked after and provided with basic amenities and physical needs; which the transferor has failed to deliver, then two consequences follow :- (i) by a fiction the transfer would be deemed vitiated on grounds of fraud, coercion or undue influence and (ii) at the option of the transferor the transfer can be declared void by the Tribunal. Such a deeming fiction is not incorporated in sub-section (2) and what would arise from sub-section (2) is the right to receive maintenance from the transferred estate, which can be enforced against the transferee, who is put to notice of such right or when the transfer was gratuitous. It was also held that transfer would include not only the absolute transfer of property but also the transfer of right or interest in the property.

15. The Hon'ble Supreme Court in ***S. Vanitha*** *(supra)* while observing that the Tribunal under the Senior Citizens Act, may have the authority to order eviction, if it is necessary and expedient to ensure the maintenance and protection of senior citizens; held that such eviction can only be an incidence of the enforcement of right to maintenance & protection which remedy can be only after adverting to the competing claims in the dispute. It was in this context that the fact situation in that case was recapitulated; of the daughter-in-

law being sought to be evicted from a house originally purchased by her husband in which they had been residing as a family, which was subsequently transferred in the name of the husband's father and later gifted to his mother. The woman's right of residence and the safeguard against domestic violence as provided in the Domestic Violence Act were emphasized, in which circumstance there was a requirement that the claim of the subject property constituting a *'shared household'* having to be adjudicated under the Domestic Violence Act. We have to immediately notice and emphasize that the dictum in ***S.Vanitha*** (supra) does not support the remedy or relief of an eviction, in the case of a claim of maintenance from a transferred estate, in which contingency the remedy is only to enforce the right of maintenance as against the transferee.

16. A number of decisions of the various High Courts have been relied on by the learned Senior Counsel for the 8th respondent to contend that there is a power implied on the Tribunal constituted under the Senior Citizens Act to carry out eviction; which would be in furtherance of the intention of the statute. The majority of the decisions referred to are of the High Court of Delhi; in which State we cannot but notice that the rules framed under the Senior Citizens Act specifically confers

the power of eviction on the Tribunal; which is absent in the Rules of 2012 framed in the State of Bihar. We also have to observe at the outset itself that in the majority of the decisions placed before us, the complaint of the senior citizens who approached the Tribunal under the Senior Cititzens Act was real and imminent physical violence and mental torture perpetrated on them, by their wards and their in-laws; who were residing in the very same residential building, from which the eviction was sought.

17. Insofar as the decisions of the Delhi High Court are concerned, we refer to the Division Bench decision in **Sunny Paul vs. State of NCT of Delhi; 2018 SCC Online Del 11640** which was either followed or reiterated in the other decisions. There, the senior citizens were concerned with the maltreatment and harassment perpetrated on them by their two sons, who also had criminal antecedents. The harassed parents also for reason of the criminal antecedents of their children had disowned and dis-inherited them by way of publication taken out in a newspaper. The issue considered was as to whether a claim for eviction is maintainable before the Tribunal under Section 23 of the Senior Citizens Act; that too on allegations of forcible ouster of the senior citizens, especially in the absence of

a claim for maintenance. It was held that there was nothing in Section 23 which presupposed an application for maintenance as a prerequisite for seeking relief of declaring a transfer void. The provision enabled an application at the option of the transferor, for reason of basic amenities and physical needs having not been provided to the transferor, which was the intention behind the transfer and a condition specifically stated. The Division Bench relied on an amendment made to the rules under the Senior Citizens Act in the year 2016, which specifically empowered the Deputy Commissioner/District Magistrate to consider an application for eviction of a son, daughter or a legal heir from a self-acquired property, by a senior citizen on account of his non-maintenance and ill-treatment, which was again amended in 2017, expanding the nature of the property and transfer effected; the scope and ambit of which may not be relevant for consideration in the present case.

18. In **Sandeep Gulati vs. Divisional Commissioner & Ors.; 2020 SCC Online DEL 2517**, the son and grandson of the senior citizens were objecting to the order of eviction passed from a property against which they unsuccessfully filed for a decree of partition. Reliance was placed on **Smt. Darshna vs. Govt. of NCT of Delhi** judgment

in **W.P. (C) No. 6592 of 2018** dated 18.07.2018, wherein another learned Single Judge held that when there is no right title and interest in the premises, there cannot be any insistence on the part of the children that they should be allowed to live with their parents especially when the very object of the Act was to allow the senior citizen to live in peace and tranquility. Again **Smt. Darshna** (supra) relied on the rules entitling a senior citizen to seek eviction under the Senior Citizens Act.

19. **Aarshya Gulati vs. Govt. of NCT of Delhi & ors.; 2019 SCC Online DEL 8801** was an application filed by two minor children, the grandchildren represented by their mother, objecting to an order of remand made by the Divisional Commissioner in an appeal under the Senior Citizens Act. **Sunny Paul** (supra) was relied on to uphold the proceedings before the Tribunal. **Shadab Khairi & anr. vs. The State & Ors; 2018 SCC Online DEL 7626** again considered the question of jurisdiction of the Maintenance Tribunal to order eviction. The two children who were the appellants were challenging the order of eviction obtained by their father, the applicant in a proceeding before the Maintenance Tribunal. The appellants were occupying different floors of the same building in which the respondent-father was also living. The respondent

claimed that despite spending considerable amounts for the separate residence of his sons, the sons resiled from an undertaking to pay him a monthly sum of Rs. 20,000/- collectively towards his maintenance and for the day-to-day requirements of their mother, who was suffering from a prolonged illness. Again, **Sunny Paul** (supra) was relied on and the rule enabling eviction resulted in the dismissal of the appeal against the order of the learned Single Judge which affirmed the order of eviction.

20. **Saraswati Devi vs. Ganga Ram Sharma & anr.; 2023 SCC Online DEL 2093,** was another Division Bench considering a case in which the widowed daughter-in-law was ordered to be evicted by the Tribunal under the Senior Citizens Act on an application made by her parents-in-law. Reliance was placed on **S. Vanitha** (supra) and after elaborate consideration of the objective of the enactment, the order of the Maintenance Tribunal was upheld. The contention regarding the conflict between the two enactments that is, the Senior Citizens Act and the Domestic Violence Act, the latter filed by the daughter-in-law, was negatived finding that the latter case was filed after the order of the learned District Magistrate under the Senior Citizens Act. Immediately it has to be noticed that the Hon'ble

Supreme Court in **S. Vanitha** (supra) held that "*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"* (sic). The finding in **Saraswati Devi** (supra) by the Delhi High Court, according to us is in direct conflict with the dictum in **S. Vanitha** (supra). Albeit, in **Saraswati Devi** (supra) the application under the Domestic Violence Act was filed after the order of eviction under the Senior Citizens Act; the adjudication insofar as the claim of *'shared household'* would be frustrated by an order of eviction.

21. **Namdeo and anr. Vs. State of Maharastra; W.P. No. 2035 of 2020** was a case of the husband's parents obtaining an eviction order under the Senior Citizens Act against their son and daughter-in-law. The allegation was that the son had taken illegal and forceful possession of a part of the self-acquired property of the father and was continuing there in a manner causing serious threat to the safety and security of the parents. There were also allegations of physical assault and obstruction of visitors including the other children. The son, however, raised

allegations against the father which the learned Judge found is not expected of a son in the conservative Indian society; to which observation in a judicial order, we cannot, with due respect, subscribe to. It was held that in ensuring the peace of the senior citizen there is no illegality in evicting the children from the residential house which again was relying on **Sunny Paul** (supra) and **S. Vanitha (**supra).

22. **Neeraj Shivkumar Maholay & anr. Vs State of Maharastra** a decision of a learned Single Judge of the High Court of Judicature at Mumbai in **CRWP No. 5508 of 2018** and connected cases again was with respect to eviction of the son and daughter-in-law from a common household in which they were residing with the old aged parents. The contention of the children was also that the eviction sought was not from a self-acquired property but from an ancestral property. The said contention was rejected on the ground that the object of the Senior Citizens Act has to be achieved by all means since it is a special statute to protect the interest of the senior citizen and parents to live with peace and dignity. Though, eventually the property may devolve upon the children through their parents; the immediate need was to maintain the life, liberty, dignity and property of the parents.

23. **Anil Kumar Dhiman & anr. Vs. The State of Haryana and Ors.** in **CRWP No. 1357 of 2019** was the judgment of a learned Single Judge which commenced with a quote from *Guru Granth Sahib* to condemn the callous manner in which the children treat their aged parents, giving short shrift to the untold sorrows and miseries suffered by the parents to rear the very children, who now ignore them and at times perpetrate torture and harassment on them. Looking at the Action Plan framed under Section 22 and the elaborate procedure for eviction, the order passed under the Senior Citizens Act was upheld resulting in the eviction of the children.

24. We notice that the aforesaid judgment delivered on 21.09.2021 did not refer to an earlier judgment of the very same High Court by another learned Single Judge in **Simrat Randhawa vs The State of Punjab And Ors** in **CWP No.4744 of 2018,** wherein again a daughter-in-law was sought to be evicted by the mother-in-law. The learned Single Judge while finding the power of eviction to be not available under the Senior Citizens Act, found the Action Plan to have arbitrarily introduced the concept of eviction; foreign to the scheme under the Senior Citizens Act. We extract from the operative portion of the judgment paragraph nos. (iv) to (viii):-

(iv) The Action Plan has not been prescribed in the Rules and to the extent of eviction and thus it is beyond the powers delegated by Parliament in the MWPSC Act. The Punjab Action Plan is an executive order and the District Magistrate does not possess the power of eviction. The Action Plan is open to wide abuse of the process of law in the hands of the executive.

(v) The stand of the Union of India is accepted as the correct legal position that power of eviction was not visualized, intended or enacted in the Parent Act by Parliament nor can be entrusted to the Maintenance Tribunal.

(vi) The Act did not authorize the State Government and its officers for executing a summary procedure for eviction to subvert substantive rights, disabilities and obligations under the MWPSC Act and the actionable rights under the personal civil law, to the peril of the respondent, where neither maintenance nor neglect nor transfer of property is involved.

(vii) The Maintenance Tribunal is not an Eviction Tribunal.

(viii) Eviction can take place only in accordance with procedure established by law and by reading in the Act rights to property under Article 300-A of the Constitution as explained by the Supreme Court in K.T. Plantation case as a ground of challenge, that is, the Rule of Law as part of the basic structure and Separation of Powers albeit there is no absolute rigidity in the dividing lines of the three pillars of a democratic republic and the State.

(viii) The MWPSC Act does not provide for relief of eviction simpliciter, but at best as a

consequential relief under Section 23 of the Act for void transfers.

25. We cannot but notice that the decisions placed before us by the learned counsel for the 8th respondent has emphasized the intention behind the legislation; as justification for providing measures, which do not find a place in the enactment itself or the rules framed thereunder. Based merely on the Preamble and the Statement of Objects and Reasons; we are of the view that the Tribunal or this Court cannot provide for measures which are not part of the prescription under the Rules. As has been held in **S.Vanitha** (supra) if the application is under Section 23(1) then there may be a power under the Senior Citizens Act to carry out eviction of the transferee; which the appropriate Government could also prescribe under the Rules. But otherwise we fully agree with the learned Single Judge in **Simrat Randhawa** (supra)**.**

26. Chapter-2 of the Senior Citizens Act refers to maintenance of parents and citizens and Section 4 provides for persons, who would be entitled to make an application as also the persons against whom such applications could be filed. The application for maintenance itself is to be filed under Section 5, which can be considered in a summary procedure as is provided

under Section 8. Section 11 speaks of enforcement of order of maintenance. Chapter-2 also constitutes a Maintenance Tribunal as per Section 7 and an Appellate Tribunal as per Section 15; by Section 9, provides for the order for maintenance, by Section 10, provides for alteration and by Section 13 permits deposit of the maintenance amount and the award of interest as per Section 14.

27. Protection of life and property of senior citizens comes under Chapter-5. Section 23 as has been found in **S. Vanitha** (supra) has two limbs. By sub-section (1), a transfer by the senior citizen; with a condition of providing basic amenities and physical needs, being rendered void at the option of the transferor on such conditions not being satisfied. Sub-section (2) provides for protection of the right to receive maintenance from an estate; transferred with notice of such right or gratuitously, enforceable as against the transferee. While under sub-section (1) a transfer made by the senior citizen alone can be declared void, under sub-section (2) a right to maintenance can be enforced against a transferee, if the senior citizen has a right to maintenance from that estate; whoever makes the transfer. We cannot but observe that under Section 23 (1), if a transfer is declared void, then it would be frustrating the object of the Act

if a consequent eviction is not made; to which end is the declaration of law in **S. Vanitha** (supra). The executive government has the power to provide for the same in the rules, in furtherance of the purposes of the Act. The rules as framed in the State of Bihar does not provide for an order of eviction, if such a declaration is made by the Tribunal. More pertinent is the fact that the instant case is not one under Section 23 (1) and it would not be proper for us to decide whether, even in the absence of an enabling rule, there could be an order of eviction based on the lofty and noble motivation with which the statute is enacted.

28. However, in the context of the transfer of an estate from which the senior citizen has a right to maintenance, there is no question of the transfer being declared void or consequently an eviction from that property, since, what the law provides is only for enforcement of such right of maintenance against the transferee; who has obtained the property gratuitously and even otherwise if such transfer is with notice of such right of maintenance. We perfectly agree with the cited decisions of the High Courts that a claim for maintenance is not a prerequisite for an application under Section 23. Even if the senior citizen has the wherewithal to look after himself/herself,

if the transfer has been on the condition of provision of basic amenities and physical needs; which is not confined to the financial support the elderly expects from his or her ward, the denial of such basic amenity and physical needs; which words are to be construed as per the facts arising in each case, would result in a violation of the condition, thus rendering the transfer void as one vitiated by fraud, coercion or undue influence, at the option of the transferor senior citizen.

29. Sub-section (2) does not in the contingency contemplated, provide for the transfer to be declared void. We cannot but repeat that Section 32 empowers the State Government to make rules by notification in the official gazette for carrying out the purpose of the Act, which again is protection of the life and property of senior citizens and also provision for adequate maintenance. As we noticed, in the State of NCT of Delhi, the rules provide for an eviction of a son/daughter or legal heir, the *vires* of which is not under challenge before us and we would restrain ourselves from making any observation on that. In any event that power of eviction, could be exercised when a transfer is declared void, but not when the transfer of an estate has frustrated the right to maintenance from it; in which case the right can only be

enforced against the transferee. It is very pertinent that the Rules of 2012 as framed by the State of Bihar does not provide for an eviction from the property whether it be under Section 23(1) or under Section 23(2).

30. As has been held by us, the Act does not vitiate the transfer itself, under Section 23 (2), merely for reason of an existing right for maintenance from the estate transferred, as conferred on a senior citizen. Under sub-section (2) of Section 23 only the right for maintenance from the estate can be enforced as against the transferee.

31. In the present case, there is no claim for maintenance in the application made before the Tribunal under the Senior Citizens Act. There is neither a claim for maintenance nor a claim for declaring void a transfer of property for reason of non-provision of basic physical needs and amenities; the furnishing of which was a condition for the transfer. On facts, it has to be noticed that the 8th respondent is the father who owns the building in which now the appellants are residing; specifically in three rooms out of many. The claim of the 8th respondent is that he has only a meagre pension and he maintains himself and his wife; both of whom are afflicted with old age illness and other ailments, with the income received

from the guest house. Admittedly, there are other rooms in the guest house which have been rented out and there is no contention raised that the lessees in the other rooms are not paying rent to the senior citizen or that the first appellant who is residing in the property, is forcibly receiving such rent from others. The 8th respondent has also admitted that he had himself permitted the residence of the son in one of the rooms and on such permissive occupation the son has encroached on two other rooms and also brought his wife and child to stay along with him. There is no allegation of a real or imminent threat of physical violence raised against the appellants. However, there is a claim of frivolous criminal complaints having been filed by the 2nd appellant against the 8th respondent also under the Domestic Violence Act.

32. It is in the context of such myriad problems arising from allegations and counter allegations that we thought it fit to conduct a mediation. The son wanted to see the father, which he said was being prohibited by other siblings. We hence appointed an Advocate Commissioner, in whose presence the meeting was scheduled, in the hope of the son and father reuniting. The Advocate Commissioner appointed by us accompanied the son, when he met the father and she has filed a

report which does not indicate any rapprochement having been made at the meeting. The parents were bitter about the conduct of the appellants when they were residing with them and the various misdeeds alleged, even after they were allowed to occupy the guest house. The remorse expressed by the 1st appellant, failed to pacify the parents who showed no signs of a reconcilement, is the report of the Advocate Commissioner. We again persuaded the learned counsel appearing for both the parties to mediate on the issue. It was also suggested that the appellants could be allowed to continue in the guest house in the three rooms and the 2nd appellant would be persuaded to withdraw all the criminal complaints filed against the aged parents-in-law. In the present case, we were also of the *prima facie* opinion that there is no question of a *'shared household'* being claimed by the 2nd respondent in the context of there being no estrangement between the husband and wife and there is no claim of joint residence in the guest house prior to the present occupation. The son cannot set up his wife to claim residence in the shared household, which belongs to the husband's parents. We immediately observe that this is only a *prima facie* observation since we are not looking at the proceedings under the Domestic Violence Act; which eventually will have to be

dealt with by the Court in which such application is made.

33. A translated copy of the application is produced before us and we deem it fit to refer to the contentions raised briefly. The applicant-8th respondent appearing before the authority under the Senior Citizens Act is living in a rented flat allotted to him during his service and he is also the owner and co-ordinator of the *Priti Rest House* which is the bone of contention in the present case. The applicant has three children, all well settled and the eldest one is looking after the parents. The second son is working at Bangalore and the third is the 1st appellant. The youngest son is said to have entered into a love marriage with the 2nd appellant which was grudgingly accepted by the parents, despite which, the wife by her unruly behaviour and nature was a cause of constant harassment. It is not clear as to whether the youngest son and daughter-in-law were ever living with the parents, but there is an allegation that they encroached into the house of the applicant and the rest-house with the intention of forcibly taking possession of both. It is also stated that since the younger son was living at the house of the in-laws, the applicant himself had offered to provide rented residential accommodation for the son's family to live in, despite the fact that both the son and his wife were earning

members. However, even such an offer did not abate the nuisance created by the youngest son and his wife. It is also stated that the youngest son complied with the request of the parents not to live in the house of his in-laws and sought for residing alone in the rest house for some time before he finds a separate rented accommodation. The 1st appellant was thus given one room which led to the various allegations raised in the application. There is also an allegation of the son and his wife having created nuisance to the public and lessees of the rest house.

34. From the allegations raised it is clear that the son was a permissive occupant though according to the 8th respondent it was never intended that he stay in the rest house with his family and that too, occupy more than one room. The Advocate Commissioner has spoken about a common residence with the parents, which as of now is not in existence. The parents and the son and his family are residing in different places, the former at a rented accommodation and the latter in the rest house occupying three rooms; though there is allegation of harassment and nuisance. The fact that the parents and the son and his family are not living in one building would not enable a prayer for eviction. The rest house, which is a separate

building is where the son resides with his family. However, the claim of the father is that he is unable to maintain himself with the meagre pension and that he only has the income generated from the rest house to sustain himself. The said contention is raised alongside the assertion in the application that the eldest son, who is living along with the parents in the rental accommodation, takes care of his old aged parents and arranges all medical necessities. It has to be pertinently noticed that the allegation of income from the rest house being the only sustenance of the 8th respondent, was one ground which did not find a place in the application. In fact, the specific contention was that the father was willing to accommodate the son and his wife in a rental accommodation to ensure that the son does not live in the house of his wife, along with his in-laws.

35. In the above circumstances, we cannot find any ground to enable an eviction by the Tribunal constituted under the Senior Citizens Act; which we have found can at best be enforced, only under Section 23(1) of the Act. In fact, the Hon'ble Supreme Court in **S. Vanitha** (supra), only observed 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. Eviction in other words would be an incident of an enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute" (sic). In the cited case, the aforesaid observation was in the context of the daughter-in-law claiming the building in which she was residing to be a *shared household* which sharing is in the context of the husband and wife sharing the residence, before the death of the husband. It was to enable continued residence in the said building, she had taken the proceedings under the Domestic Violence Act. As has been noticed by us it was also observed in **S. Vanitha** (supra) that, the proceedings under the Domestic Violence Act being later to the application under the Senior Citizens Act would be of little consequence in claiming the right of a *shared household.*

36. In any event, for the present we are not adverting to the proceedings under the Domestic Violence Act, which is to be adjudicated by the appropriate Court, untrammeled by any observation made herein. But it has to be emphasized that neither is there a claim under Section 23(1) of the Senior Citizens Act nor is there a claim of maintenance. We immediately observe that a claim of maintenance would not be a

requirement insofar as an application under Section 23(1) or even under Section 23(2). Though there is no maintenance claimed from the 1st appellant, the younger son of the 8th respondent and there being no whisper in the application, about the income from the rest house being the only sustenance of the aged parents; it cannot but be noticed that the 8th respondent had rights over the property in which now the 1st appellant is staying with his wife and child in three rooms. There is of course a title suit filed by the 1st appellant, which again would have to be considered by the appropriate Court. As of now, since there is no injunction against the exclusive possession of the 8th respondent, the 1st appellant cannot claim any right of residence in the building as a co-owner, just as the father, a senior citizen, cannot seek eviction from the separate residence of the son in a building owned by him, under the Senior Citizens Act. The son also cannot claim a right to residence in a building exclusively owned by the father, by virtue of their relationship alone. Hence, though the allegation is of a permissive occupation, the specific contention of the 8th respondent is that he never intended a continued occupation by the son and that too in more than one room with his family. The appellants, the husband and wife also does not controvert the assertion of both of them being

engaged in fruitful occupations, capable of sustaining themselves with their earnings. In the above circumstances, the son would be liable to pay the rent for the three rooms he occupies, to his father.

37. We have specifically stated that we do not speak on the various proceedings & pending cases between the appellants and the 8th respondent before the various courts; specifically under the Domestic Violence Act and the title suit in the civil court. The observations made by us in this judgment about any proceeding, other than that under the Senior Citizens Act, are *prima facie* and would not regulate the adjudication of such other proceedings. In this context, we also set aside every such observation made by the learned Single Judge about the sustainability of the title suit and the efficacy of a petition under the Domestic Violence Act.

38. We are of the opinion that there could be no eviction ordered under the Senior Citizens Act since the claim is not under Section 23(1). The claim of the 8th respondent before the Tribunal under the Senior Citizens Act, if at all coming under Section 23(2) of the Act, there can only be an enforcement of the right of maintenance from the property. An occupation whether it is permissive or an encroachment would

have the trappings of a transfer, which would dis-entitle the owner of the property from the maintenance by way of rental income generated from the occupied rooms in the rest house. We make it clear that the appellants, as of now, do not have any right to claim the income from the other rooms in the rest house, nor can they obstruct or cause harassment to the other occupants of the rooms; which, if complained of to the District Magistrate, Patna or the Jurisdictional Station House Officer, the appropriate authority shall take proper measures to avert & avoid the same.

39. Insofar as the rental income entitled from the three rooms occupied by the appellants, we set aside the order of the Tribunal under the Senior Citizens Act for eviction as also the decision of the learned Single Judge, and remand the matter to the District Magistrate, Patna. The District Magistrate, Patna shall conduct an inquiry as to the reasonable rent that could be generated from the three rooms occupied by the appellants and pass an order directing the appellants to pay the same by way of regular remittances in the account of the 8th respondent. We also make it clear that the 8th respondent would be entitled to approach the civil court for eviction, if so desired, which proceeding ought be considered in accordance with law; again

untrammeled by any of our observations; which are confined to the proceedings under the Senior Citizens Act.

40. The appeal would stand allowed with the above directions. The parties are left to suffer their costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J : I agree.

(Partha Sarthy, J)

Aditya Ranjan/-

AFR/NAFR	AFR
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