





Ms. Leena Patil, B Panel Counsel for Respondent Nos.2 and 3.

**CORAM: N.J.JAMADAR, J.**

**RESERVED ON : 11 FEBRUARY 2026**

**PRONOUNCED ON : 5 MARCH 2026**

**JUDGMENT :**

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioners take exception to a judgment and order dated 29 October 2025 passed by the Appellate Tribunal in Appeal No.80 of 2025, whereby the said appeal, preferred by the Petitioners, against the order dated 26 August 2025 passed by the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (the Senior Citizens Act, 2007), thereby directing the Petitioners to vacate the premises i.e. House No.C-209, Siddhi Co-op. Hsg. Soc. Ltd., Mhada Colony, Navghar Road, Mulund (the subject flat) came to be dismissed by affirming the order passed by the Maintenance Tribunal.

3. The background facts necessary for the determination of this Petition can be stated, as under :

3.1 The Respondent No.1 is the mother of Petitioner No.1. Petitioner No.2 is the wife of Petitioner No.1. The Petitioners are residing in the said flat.



Respondent No.1 – senior citizen, filed a complaint being Case No.41 of 2025, before the Maintenance Tribunal, asserting that the Petitioners were harassing, abusing and assaulting her. Few incidents of the alleged harassment and torture at the hands of the Petitioners were narrated in the said complaint. It was, *inter alia*, alleged that the Petitioners subjected the Respondent No.1 to physical assault, abused and coerced her to execute the documents to transfer the subject flat in favour of Petitioner No.1. The Petitioners eventually drove the Respondent No.1 out of the subject flat. Respondent No.1, thus, prayed that the Petitioners be evicted from the subject flat, so that she can live a normal life in her own premises.

3.2 The Petitioners resisted the application. It was refuted that the Respondent No.1 is the sole and absolute owner of the subject flat. According to the Petitioners, the Petitioner No.1 and Respondent No.1 had purchased the subject flat for the residence of the family for a total consideration of Rs.6,18,000/-. Although, the subject flat was purchased in the name of Respondent No.1, substantial part of the consideration was contributed by the Petitioner No.1. To finance the said acquisition, the Petitioner No.1 had allegedly paid a sum of Rs.2,18,000/- to the Respondent No.1, in cash.

3.3 The Petitioner No.1 and Respondent No.1 had also jointly purchased another flat being Flat No.405, C Wing, Mulund Shree Sawant Co-op. Hsg. Soc. For the said acquisition, the Petitioner No.1 had contributed a sum of



Rs.2,60,000/-. In the year 2013, the Petitioners alleged, Respondent No.1 had illegally and without the consent of the Petitioner No.1, sold the said Flat No.405 for a total consideration of Rs.76,00,000/- and the entire sale proceeds were handed over by Respondent No.1 to Kishor, the elder brother of the Petitioner No.1. Kishor and his wife Seema had executed documents acknowledging receipt of the said amount and the liability to maintain Respondent No.1 for her lifetime.

3.4 It was alleged that the Respondent No.1 has been suffering from mental ailments. The Petitioners have been taking care of Respondent No.1, including her personal, medical and daily needs. Respondent No.1 had left the subject flat on her own volition and started to reside with Kishor. The complaint was lodged before the Maintenance Tribunal by the Respondent No.1 at the instigation of Kishor and another self-styled called social worker.

3.5 The Maintenance Tribunal, after appraisal of the rival contentions and the material on record, found that the subject flat stood in the name of Respondent No.1. The provision for residence fell within the ambit of the definition of maintenance under Section 2(b) of the Act, 2007. Respondent No.1 had a right to live a peaceful and normal life in her own premises. Thus, the Maintenance Tribunal directed the Petitioners to deliver possession of the subject flat to the Respondent No.1, without prejudice to the rights of the parties to succeed to the property under the provisions of the Hindu



Succession Act, 1956.

3.6 Being aggrieved, the Petitioners preferred an appeal before the Appellate Authority. By the impugned order, the Appellate Authority declined to interfere with the impugned order, finding no infirmity therein. It was reiterated that the Respondent No.1 had a right to live a peaceful, undisturbed and normal life in her own house.

3.7 Being further aggrieved, the Petitioners have invoked the writ jurisdiction.

4. I have heard Mr. R.S.Dubey, learned Counsel for the Petitioners, Mr. Kulkarni, learned Counsel who was appointed to espouse the cause of Respondent No.1 and Ms. Leena Patil, learned Counsel for Respondent Nos.2 and 3, at some length. Learned Counsel for the parties took the Court through the pleadings and material before the authorities under the Act, 2007.

5. Mr. Dubey, learned Counsel for the Petitioners, took a slew of exceptions to the impugned order as well as the order passed by the Maintenance Tribunal. First and foremost, according to Mr. Dubey, an application for eviction of the children simplicitor without a prayer for award of maintenance under the Act, 2007 is not legally tenable. In the order passed by the Maintenance Tribunal, it has been categorically recorded that the Respondent No.1 was not seeking any maintenance from the Petitioner No.1. Therefore, in the absence of a prayer for maintenance, towards the



enforcement of which only an order for eviction can be lawfully passed, authorities under the Act, 2007 committed grave jurisdictional error in passing the impugned orders.

6. Secondly, Mr. Dubey would urge that, the provisions contained in the Act, 2007, cannot be the basis to order the eviction of the children or relatives of the senior citizen in a summary manner, when they assert an independent right in the premises. Amplifying the aforesaid submission, Mr. Dubey would urge, in the facts of the case at hand, there is material to indicate that the Respondent No.1 has been earning sumptuous amount by way of licence fee/rent of the shop premises. In fact, the Respondent No.1 does not require any financial assistance and she cannot be said to be unable to maintain herself from her own earning out of the property owned by her. Resultantly, the very jurisdictional fact to entertain a prayer to evict the Petitioners cannot be said to have been fulfilled.

7. To lend support to this submission, Mr. Dubey placed a very strong reliance on a Division Bench judgment of this Court in the case of **Jitendra Gorakh Megh V/s. Additional Collector & Appellate Authority and Anr.**<sup>1</sup>, wherein it was, inter alia, enunciated that, though the Senior Citizens Act, is a beneficial statute it cannot be (mis)used by the Senior Citizens as a tool for summary eviction without fulfillment of the statutory requirements.

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<sup>1</sup> OOCJ WP(L) No.31614 of 2025 dated 8 Dec. 2025



8. Mr. Dubey also placed reliance on a three-Judge Bench judgment of the Supreme Court in the case of **Smt. S. Vanitha V/s. The Deputy Commissioner, Bengaluru Urban District and Ors.**<sup>2</sup>, wherein the Supreme Court emphasised that the Senior Citizens Act, 2007 and the Protection of Women from Domestic Violence Act, 2005, are required to be harmoniously considered. Mr. Dubey also banked upon the judgment of the Supreme Court in the case of **Samtola Devi V/s. State of Uttar Pradesh and Ors.**<sup>3</sup>, wherein it was, inter alia, observed that the Senior Citizens are simply entitled to maintenance rather than eviction of their son/relatives.

9. Mr. Dubey would submit that, in the instant case, a complaint was made before the Maintenance Tribunal with an oblique motive to evict the Petitioners, though Respondent No.1 does not require any maintenance, nor she has been subjected to any harassment, as alleged. Thus, the impugned orders deserve to be quashed and set aside.

10. In opposition to this, Mr. Kulkarni, learned Counsel for Respondent No.1, supported the impugned order. Mr. Kulkarni would urge that the instant case is a typical illustration of the neglect, harassment and torture, to which a senior citizen is subjected to, and for whom the Senior Citizens Act, 2007 has been enacted.

11. Mr. Kulkarni laid emphasis on the fact that the things have come to

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<sup>2</sup> Civil Appeal No.3822 of 2020 dated 15 Dec. 2020

<sup>3</sup> 2025 INSC 404



such a pass that the Respondent No.1 is made to take shelter in an old age home i.e. Banyan Tree Geriatric Care LLP Centre. Respondent No.1 is left in a state of destitution and helpless situation. Attention of the Court was invited to the invoice raised by Banyan Tree Geriatric Care LLP for the payment of the accommodation charges which have accumulated to Rs.1,05,000/-.

12. The substratum of the defence of the Petitioners that the Respondent No.1 has filed a complaint before the Maintenance Tribunal at the instance of her elder son, is belied by the fact that the Respondent No.1 is forced to reside in an old-age home. If the protection under the Citizens Act, 2007 is not granted to the senior citizen, like Respondent No.1, there can be hardly any better case for grant of reliefs under the said Act, urged Mr. Kulkarni.

13. Mr. Kulkarni assiduously submitted that, incontrovertibly the subject flat stands in the name of Respondent No.1. The Petitioner No.1 is laying false claim over the subject flat by contending that, he had contributed to the consideration at the time of acquisition of the subject flat. The said contention cannot be countenanced in a proceeding before the Maintenance Tribunal. The Petitioner No.1 may work out his remedies before the appropriate Civil Court.

14. In the backdrop of the aforesaid facts, Mr. Kulkarni would urge, the challenge to the jurisdiction of the Maintenance Tribunal to pass an order of



eviction when no maintenance is claimed by the senior citizen, is unworthy of countenance. A provision for maintenance clearly falls within the ambit of “maintenance”, as defined under Section 2(b) of the Act, 2007.

15. Mr. Kulkarni submitted that, the reliance placed by Mr. Dubey on a Division Bench judgment in the case of **Jitendra Gorakh Megh (supra)**, to urge that the application for eviction of the children / relatives without seeking maintenance is not tenable, is wholly unfounded. On the one hand, Mr. Kulkarni would urge, the fact-situation in the case of **Jitendra Gorakh Megh (supra)**, was completely different. On the other hand, the import of the definition of maintenance under Section 2(b) of the Act, 2007, was not examined in its fullest amplitude in the case of **Jitendra Gorakh Megh (supra)**.

16. Mr. Kulkarni would urge that, there are two prior Division Bench judgments of this Court, wherein a prayer for eviction simplicitor of the children / relatives without a prayer for maintenance, has been upheld by this Court. Reliance was placed by Mr. Kulkarni on the Division Bench judgments in the cases of **Shweta Shetty V/s. State of Maharashtra and Ors.**<sup>4</sup> and **Dinesh Bhanudas Chandanshive v/s. State of Maharashtra and Ors.**<sup>5</sup>.

17. Mr. Kulkarni further submitted that, in the case of **Smt. S. Vanitha (supra)**, as well, the Supreme Court has enunciated that the Tribunal under the Senior Citizens Act, may have the authority to order eviction if it is

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4 2021 SCC Online Bom 4575

5 2024 SCC Online Bom 336



necessary and expedient to ensure the maintenance and protection of the senior citizen or parents. Therefore, the submissions on behalf of the Petitioners that, sans the prayer for maintenance, an application for eviction is not maintainable, cannot be sustained.

18. I have given anxious consideration to the aforesaid submissions canvassed across the bar. The broad factual backdrop, in which the question of law sought to be urged on behalf of the Petitioner arises, is not much in contest. The relationship between the Petitioners and Respondent No.1 is not in dispute. Nor the fact that the subject flat stands in the name of the Respondent No.1. It has been allotted to the Respondent No.1 under a letter of allotment dated 12 February 2001 issued by the Mulund Siddhi CHS Ltd. The share certificate stands in the name of Respondent No.1.

19. By and large, there is not much controversy over the fact that the Respondent No.1 has been currently residing in a facility meant for the senior citizens i.e. Banyan Tree Geriatric Care LLP. It is also not in dispute that the Respondent No.1 did not claim any maintenance from the Petitioners and sought their eviction from the subject flat. The parties are at issue over the treatment meted out to the Respondent No.1 by the Petitioners. However, the fact remains that the things came to such a pass that the Respondent No.1 was constrained to take shelter in a facility for the senior citizens.

20. In the backdrop of the aforesaid facts, the moot question that



wrenches to the fore is : whether the application for eviction of the children / relative simplicitor sans a prayer for award of maintenance from the premises belonging to the senior citizen is maintainable under the provisions of the Act, 2007 ?

21. In the quest of exploring an answer, reference to few provisions of the Senior Citizens Act, 2007 and the legislative object behind its enactment would be indispensable. Under Section 2(h), “senior citizen” means any person being a citizen of India, who has attained the age of sixty years or above; under clause 2(a), “children” includes son, daughter, grandson and grand-daughter but does not include a minor; under clause (d), “parent” means 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; and under clause 2(g), ‘relative’ means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

22. The Senior Citizens Act, 2007, primarily and predominantly deals with the maintenance and welfare of the parents and senior citizens. ‘Maintenance’ is defined under clause (b), as under :

“(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;”

“Welfare” is defined under clause (k), as under :



“(k) “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens;”

23. Chapter II of the Senior Citizens Act, 2007 subsumes provisions under the caption “Maintenance of Parents and Senior Citizens”. Under Section 4, a senior citizen, including parent, who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to make an application under section 5, in case of (i) parent or grand-parent, against one or more of his children not being a minor; (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2. Sub-sections (2) and (3) of Section 4 describes the nature of the obligation of the children or relative to maintain a senior citizen or parent by emphasising that the obligation extends to the needs of such senior citizen / parent, so that he can lead a normal life.

24. Section 5 of the Senior Citizens Act, 2007 contains provisions in regard to the application for maintenance. Section 6 provides for jurisdiction and procedure to determine such application. Constitution of Maintenance Tribunal is provided for under Section 7. Under Section 8, the Tribunal, subject to the rules that may be prescribed by the State Government, may follow such summary procedure as it may deem fit. Under Section 9, the Tribunal is empowered to award maintenance at such monthly rate, as the



Tribunal may deem fit, subject to the maximum maintenance allowance as may be prescribed by the State Government, which shall not exceed Rs.10,000/- per month. Under Section 12, an option is given to the senior citizen to seek maintenance under the Act, 2007 or Chapter IX of the Code of Criminal Procedure, 1973. The senior citizen may claim such maintenance under either the Senior Citizens Act, 2007 or Code of Criminal Procedure, 1973, but not under both. Section 15 provides for constitution of Appellate Tribunal. Appeals are provided under Section 16 before the Appellate Tribunal.

25. Chapter III deals with establishment of old age homes. Provisions for medical care of senior citizens are envisaged in Chapter IV. Chapter V is dedicated towards the protection of life and property of senior citizens. Section 23, in particular, empowers the Tribunal to declare the transfer of property by way of gift deed or otherwise, made by the senior citizen, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, void if such transferee refuses or fails to provide such amenities and physical needs. Section 27 of the Act, 2007 bars the jurisdiction of civil court in respect of any matters to which any provisions of the said Act applies. Section 3 gives overriding effect to the provisions of Act, 2007 over the provisions of any other enactment or instrument.

26. At this juncture, 'Statement of Objects and Reasons' of the Senior



Citizens Act, 2007, deserves to be noted. It reads as under :

**“Statement of Objects and Reasons”**

Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection fo 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 need to have simple, inexpensive and speedy provisions to claim maintenance for parents.”

27. A conjoint reading of the provisions contained in the Act, 2007 as a whole, in the light of the Statement of Objects and Reasons, makes the intent of the legislature explicitly clear. The Parliament intended to address alarming situation caused by the neglect and harassment of the parents and senior citizens in the evening of their life. Senior Citizens were found to be deserted and deprived of the basic physical necessities, medical care and amenities which are required the most in the advanced age. Many elderly persons, particularly widowed women, were found to have been forced to spend their



twilight years all alone, and were exposed to emotional neglect and want of physical and financial support. This mischief was sought to be addressed by the Parliament by providing a simple, inexpensive and speedy mechanism to claim maintenance and also by making provisions for the institutionalized care of the senior citizens in old age homes, medical support and, most importantly, protection of life and property of the senior citizens. The Statement of Objects and Reasons specifically records that, though under the provisions of the Code, 1973, parents can claim maintenance, the procedure was both time consuming as well as expensive.

28. The capacious breadth of the provisions of the Act, 2007 leaves no manner of doubt that it is a beneficial legislation, enacted to advance the object of care and protection of the senior citizens. Thus, while interpreting the provisions of the Senior Citizens Act, 2007, it is imperative to adopt tools of interpretation which are required to be applied when interpreting the beneficial piece of legislation. The cardinal principle is that the beneficial legislation must receive liberal construction in consonance with the objectives such legislation seeks to achieve. Interpretative process must be attuned to the purposive construction informed by the legislative object. In a given case, if two views are plausible, the Court must lean in favour of an interpretation which favours the beneficiaries rather than one which stultifies object of the beneficial legislation.



29. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of **K.H.Nazar V/s. Mathew K. Jacob**<sup>6</sup>, wherein the Supreme Court expounded the approach to interpretation of a beneficial legislation, as under :

“11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court’s duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.

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13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified, and then a construction that suppresses the problem and advances the remedy should be adopted. It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction. It was observed in **Shivram A. Shiroor V. Radhabai Shantaram Kowshik**<sup>7</sup> that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in **Minister Administering the Crown Lands Act V/s. NSW Abaroginal Land Council**<sup>8</sup>, Kirby, J. held that the

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6 (2020) 14 SCC 126

7 (1984) 1 SCC 588

8 (2008) 237 CLR 285



principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.” (emphasis supplied)

30. Keeping in mind the aforesaid beneficial intent of the statute, some of the key provisions of the Act, 2007, adverted to above, deserve to be revisited.

30.1 Firstly, the definition of maintenance under Section 2(b) is inclusive. Maintenance includes provision for food, clothing, residence, medical attendance and treatment. Evidently, the definition of maintenance is of wide amplitude. The Parliament has designedly not given restrictive meaning to the term ‘maintenance’.

30.2 Secondly, the term ‘property’ under section 2(f) of the Senior Citizens Act, 2007, has also been defined in expansive terms. Property means, property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.

30.3 Thirdly, the obligation of the children or relative to maintain the senior citizen or parent under Section 4(2) and (3), as the case may be, extends to the needs of such senior citizen or parent so that he may lead a normal life. This statutory obligation, in contradistinction to the moral or pious obligation, if read in juxtaposition with the definition of maintenance under Section 2(b),



further expands the protective umbrella of the Senior Citizens Act, 2007. So construed, the obligation to maintain a senior citizen in such manner as to facilitate the senior citizen to lead a normal life transcends the monetary connotations.

30.4 The obligation of the children or relative under Section 4(2) and (3) impliedly gives statutory recognition to the right of the senior citizen to live a life free from neglect, harassment, exploitation, physical and emotional disturbance. The expression 'normal life' connotes a safe, dignified, peaceful and physical and emotional stress free life. A senior citizen is entitled to safeguard his physical and mental health. All the facets which make life a normal life, given the situation in life of the senior citizen, are subsumed within the expression 'normal life'.

31. The thrust of the submission of Mr. Dubey was that the provisions contained in the Senior Citizens Act, 2007 cannot be used as a tool to evict the children or relative from the premises in which a senior citizen has some interest. What Senior Citizen Act, 2007 envisages is a provision for maintenance of the senior citizen by the children or relative. Eviction of a child or relative cannot be the sole purpose for which the senior citizen can approach the Maintenance Tribunal. At the highest, eviction may be a consequence of the enforcement of the right to be maintained by the senior citizen. Thus, in the absence of a prayer for maintenance, an application for



eviction simplicitor would be beyond the jurisdictional competence of the authorities under the Senior Citizens Act, 2007.

32. In the case of **Jitendra Gorakh Megh (supra)**, which constituted the anchor-sheet of the submission of Mr. Dubey, the Division Bench of this Court considered the following question :

“Whether an eviction order can be passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 without any claim towards maintenance being made by the senior citizen ?

33. After adverting to the facts of the case, the Statement of Objects and Reasons, key provisions of the Senior Citizens Act, 2007 and the judicial precedents, including the judgment of the Supreme Court in the case of **Smt. S. Vanitha (supra)** and judgments of this Court in the cases of **Ranjana Rajkumar Makharia V/s. Mayadevi Subhakaran Makharia<sup>9</sup>**, **Ritika Prashant Jasani V/s. Anjana Niranjan Jasani<sup>10</sup>** and **Shweta Shetty (supra)**, the Division Bench enunciated, inter alia, as under :

“20. Section 4 of the Act contains provisions dealing with the maintenance of parents and senior citizens. It prescribes that a senior citizen who is unable to maintain himself from his own earnings or from property owned by him, is entitled to make an application for maintenance under Section 5 of the Act. The said section further prescribes that the obligation of

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9 2020(3) Mh.L.J. 587

10 2021 SCC Online Bom 1802



children to maintain the senior citizen extends to the needs of such senior citizen so that he may lead a normal life. Section 5 contains provisions relating to the application which the senior citizen can make for maintenance. Sub-section (2) enables the Tribunal to order monthly allowance to be paid to the senior citizen towards interim maintenance. In these circumstances, when the senior citizen has made no claim for maintenance, we fail to see how the said application which has been filed by the senior citizen under section 5(2) of the Act, is maintainable, in the first place. This position appears to have been completely overlooked, both in the eviction order and also in the appellate order.

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24. The Act is a beneficial statute intended to safeguard the vulnerable (senior citizen), but it cannot be (mis) used by the senior citizen as a tool for summary eviction without the fulfilment of statutory requirements. In the present case, we find that the said application does not satisfy the requirements of Sections 4 and 5 of the Act and is therefore not maintainable. Accordingly, the eviction order could not have been passed by the Tribunal and upheld by the Appellate Tribunal, vide the appellate order. The senior citizen has not claimed any maintenance from the Petitioner and the order of eviction is not in furtherance thereof. Eviction, as also held in S. Vanitha (supra) would be an incident of the enforcement of the right to maintenance and protection which should be granted only after adverting to the competing claims of both parties in dispute. This has admittedly not been done in the appellate order or in eviction order (which it confirms).



25. In fact, the senior citizen is financially well-to-do and owns several other immovable properties, both residential and commercial and instead, the record reveals that the Petitioner (if evicted from the subject premises) would not have any other roof over his head. This is not disputed by the senior citizen in the said application who in-fact asserts that the Petitioner has been unemployed for several years. In such circumstances, it was incumbent on the Tribunal and the Appellate Tribunal to have considered these material factors before passing the eviction and appellate orders. This has admittedly not been done. Instead, the eviction order accepts all the averments made in the said application and proceeds to hold that since the subject premises belong to the senior citizen and he needs to reside therein since he travels frequently for medical treatment, the Petitioner is required to be evicted therefrom.

26. The eviction order is thus clearly contrary to the scheme of the Act. In fact, the Tribunal and the Appellate Tribunal have both also lost sight of the fact that the said application is bereft of any allegations of harassment and/or cruelty by the Petitioner, which has not been considered whilst passing the eviction order and the appellate order. There is no finding, let alone any discussion in terms of Section 9 of the Act, that the senior citizen had suffered neglect at the hands of the Petitioner, which was required as per the decision in Ritika Prashant Jasani (supra). Hence, both the appellate order as also the eviction order, cannot be sustained.

27. The decision in Shweta Shetty (supra) is of no assistance to the senior citizen and is easily distinguishable



on its facts. In that case, the daughter who was initially residing in Germany, returned to India and began residing with the senior citizen and refused to vacate his premises, unless she was given 'her share'. Nasir V/s. Govt. of NCT of Delhi and Ors.<sup>11</sup> was a case where the Tribunal permitted the senior citizen, who was admittedly the owner of the property, to occupy one floor and give out the other two floors on rent and recover the income therefrom. This is also distinguishable on facts. Hence, neither decision is of any assistance to the senior citizen.”

34. Mr. Kulkarni, learned Counsel for Respondent No.1, joined the issue by canvassing a submission that the aforesaid Division Bench judgment cannot be read torn out of context and the peculiar facts, in which it was rendered. Attention of the Court was invited to the relevant facts noted by the Division Bench in the said case in paragraph No.18 of the said judgment, including that the senior citizen had never resided in the subject premises; the senior citizen resided in a separate residential flat in another society with his wife, which was not claimed to be unsuitable for the senior citizen; there was a declaration by the senior citizen expressly permitting the Petitioner therein to reside in the subject premises and to conduct business therefrom, for as long as the Petitioner therein desired, without any charges for the occupation; there was no allegation of harassment and/or cruelty made by the senior citizen and the senior citizen appeared to be financially sound and owned

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<sup>11</sup> 2015 SCC Online Del 13060



several other immovable properties, both residential and commercial, and, in contrast, the Petitioner therein, if evicted from the subject premises, would not have any other roof over his head.

35. Mr. Kulkarni would urge, these hard facts weighed with the Division Bench in answering the question framed in the negative. An earnest endeavour was made by Mr. Kulkarni to drive home the point that the Division Bench cannot be said to have laid down an absolute proposition of law that the application for eviction of the children or relative without seeking maintenance is not maintainable under any circumstances whatsoever.

36. At this stage, as noted above, the expansive and wide definition of maintenance, and, obligation of the children and relative, assume critical salience. If a senior citizen is turned out of her home and made to take shelter in the premises of another child / relative, or in an old age home, like the case in hand, can it be said that the obligation of the child / relative who is alleged to have driven the senior citizen out of her home, to maintain the senior citizen is discharged ? Would it still be incumbent upon the senior citizen to first seek maintenance from such child/relative who has allegedly driven her out of her property ?

37. A purposive interpretation of the provisions of the Senior Citizens Act, 2007 would provide a legitimate answer. In a situation of the present nature, the senior citizen can be said to be enforcing her right to lead a normal life,



which obligation is correspondingly and statutorily cast on the child/relative. Definition of maintenance, which includes residence; has both positive and negative connotations. In the positive form, there is an obligation on the child / relative to provide residence to the parent/senior citizen in case the parent/senior citizen does not hold the property as defined under section 2(f) of the Senior Citizens Act, 2007. In the negative sense, there is an obligation on the child/relative not to dispossess a senior citizen of her own residence and when a senior citizen approaches the Tribunal seeking eviction of the child / relative, who has allegedly dispossessed the senior citizen forcibly or by making the life of the senior citizen miserable by acts of omission or commission, the prayer still partakes the character of enforcing the obligation of the child / relative to allow the senior citizen to lead a normal life.

38. Mr. Kulkarni was justified in advancing a submission that the issue has been dealt with by the two Division Bench judgments of this Court in the cases of **Shweta Shetty (supra)** and **Dinesh Bhanudas Chanddanshive (supra)**.

39. In the case of **Shweta Shetty (supra)**, a Division Bench of this Court repelled an identical challenge to the order of the Maintenance Tribunal. In that case, senior citizen was seeking to evict from his flat, one of the daughters, who had forced herself upon the senior citizen. A submission was canvassed on behalf of the daughter that, it was impermissible under the



scheme of the Senior Citizens Act, 2007 to seek eviction of a person for, under Section 5, only an application for maintenance could be entertained by the Tribunal, and, thus, the Tribunal had acted without jurisdiction in directing eviction of the daughter.

40. The Division Bench negated the challenge, after adverting to the Division Bench judgment of this Court in the case of **Ritika Prashant Jasani (supra)**, in the following terms :

“9. As to the jurisdictional question we do not believe the point is well taken. The definition of maintenance in clause 2(b) reads thus :

“(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;”

10. Clearly it includes residence; and this means residence of the senior citizen.

12. In Jasani, therefore, the claim of the appellant was that the house was a ‘shared household’, i.e. that she had a legally definable right in the property itself. That is not the case before us at all, where Shweta accepts that she has no right in the flat in question. The mere use of the word ‘eviction’ is not by itself determinative. To constitute eviction, or to invoke any prohibition against eviction, it must be shown that some legally enforceable civil right of the appellant in the property itself has been determined and that the appellant has been denied that right. Removal of a person with no right in the premises is not eviction so as to attract any such prohibition. After all, as Jasani notes, the statutory intent is to protect senior citizens. It is not to foist on senior citizens an



imaginary claim over their own property where the claimant has no such right to begin with. The statutory intent is not to limit the rights of senior citizens, but exactly the reverse.”

(emphasis supplied)

41. The Division Bench in the case of **Shweta Shetty (supra)**, also adverted to other judgment of a learned Single Judge of this Court in the case of **Dattatrey Shivaji Mane V/s. Lilabai Shivaji Mane**<sup>12</sup>, wherein it was enunciated that Section 4 of the Senior Citizens Act, 2007 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), (d) and (f) of the said Act, 2007 and the mother cannot be restrained from recovering exclusive possession from her son or other family members for the purpose of generating income from the said premises or to lead a normal life.

42. In the case of **Sunny Paul V/s. State of NCT of Delhi**<sup>13</sup>, a Division Bench of the Delhi High Court has enunciated that, the Senior Citizens Act, 2007 being a social legislation and the same requires to be given liberal interpretation to achieve the mandate of the Act of 2007 i.e. for the welfare of the parents and senior citizens and for the protection of their life and property, there is no doubt that the Tribunal does have the jurisdiction to direct vacation by the children of any property in which the senior citizen has a right of residence/possession.

43. In **Shweta Shetty (supra)**, the Division Bench also followed the

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Division Bench judgment of the Delhi High Court in the case of **Sunny Paul (supra)**, and observed with reference to the enunciation of law in **Dattatrey Shivaji Mane (supra)** and **Sunny Paul (supra)**, as under :

“We entirely endorse the views of the learned Single Judge and accept them as our own. We are also fully in agreement with the views of the Division Bench of the Delhi High Court in the case of Sunny Paul (supra), a most careful and elaborate judgment that includes what appears to us to be a comprehensive overview of the jurisprudence.”

44. In the case of **Dinesh Bhanudas Chandanshive (supra)**, which again arose out of the struggle of a mother, who was illegally ousted from her own abode, to take back the same from her son, the Division Bench after following the decision in the case of **Shweta Shetty (supra)**, rejected the challenge to the order passed by the Maintenance Tribunal on the ground that the Tribunal had no jurisdiction to order eviction. It was, inter alia, expounded that, during the lifetime of the parents, children cannot assert any legal right whatsoever in respect of the property of their parents claiming exclusive ownership or possession of the parents property. The mother certainly deserves to be maintained from her own tenement. The Petitioner has no legal right whatsoever to oust the mother from her tenement so as to make her roofless and/or deprive maintenance from her tenement.

45. At this stage, the decision in the case of **Smt. S. Vanitha (supra)**,



deserves to be consulted. The Supreme Court in the said case has illuminatingly postulated the path to be traversed where two enactments, namely, the Senior Citizens Act, 2007 and the Protection of Women from Domestic Violence Act, 2005, both having non-obstante clauses compete for operation. It was enunciated that the Tribunal must adopt a harmonious construction. In paragraph No.17 of the said judgment, the Supreme Court postulated that the Tribunal 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 the enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute.

46. It is in the aforesaid context, in the case of **Samtola Devi (supra)**, on which reliance was placed by Mr. Dubey, it was enunciated that the provisions of the Act, nowhere specifically provides for drawing proceedings for eviction of persons from any premises owned or belonging to such a senior citizen. It is only on account of the observations made by the Supreme Court in **S. Vanitha (supra)**, that the Tribunal under the Senior Citizens Act, may also order eviction if it is necessary and expedient to ensure the protection of the senior citizens. It must be noted that the decision in **Samtola Devi (supra)**, also turned on the peculiar facts of the said case.

47. The matter can be looked at from the two other perspectives, especially



where the allegation is that the senior citizen has been driven out of her own home/property. First, under the provisions of Section 23 of the Act, 2007, the Tribunal is conferred with the authority to declare a transfer, made by the senior citizen in favour of the transferee, void if the transferee refuses or fails to provide basic amenities and physical needs to the transferor, post transfer. In a sense, the power is drastic in nature. The Tribunal is empowered to declare a registered instrument inter vivos void, and, resultantly, put the transferor – senior citizen in possession of the property for failure of the condition subsequent; express or implied.

48. Indeed, the said measure falls under the Chapter of Protection of life and property of senior citizen. However, if the provisions of the Act, are read as a whole, chapter by chapter, section by section; and word by word; which is the standard rule of interpretation (**Reserve Bank of India V/s. Peerless General Finance and Investment Co. Ltd. and Ors.**)<sup>14</sup>, then if the Tribunal is empowered to declare a transfer, which has already been effected by instruments inter vivos void, a *fortiori*, the Tribunal in exercise of its power to enforce the right of maintenance of the senior citizen and the corresponding obligation of the child / relative, would have the authority to order eviction of the child / relative who has unlawfully dispossessed the senior citizen or created an atmosphere which forces the senior citizen to take shelter

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elsewhere than her own home.

49. Second, under the provisions of the Act, the Tribunal can award maintenance not exceeding Rs.10,000/- per month. In a metropolis like Mumbai, where the property commands premium, for a senior citizen, who is dispossessed of her own premises, an award of maintenance of the maximum amount of Rs.10,000/- per month can hardly be a solace. The said amount would hardly be sufficient to have a roof over the head of the senior citizen.

50. Thus, the submission premised on the impression that the maintenance under the Senior Citizens Act, 2007 can be measured only in monetary terms, is fallacious and does not merit countenance.

51. In the light of the aforesaid consideration, this Court must revert to the decision in the case of **Jitendra Gorakh Megh (supra)**. From the perusal of the said judgment, in its entirety, it becomes abundantly clear that the peculiar facts of the said case, highlighted above, were taken into account by the Division Bench. In the respectful understanding of this Court, in the backdrop of those facts, especially the sound financial position of the senior citizen who was found to have a number of properties, no allegation of cruelty and/or harassment at the hands of the Petitioner therein, and the said application having been filed as a counter-blast to the suit instituted by the Petitioner therein, the Division Bench ruled that, such an application without seeking maintenance was not maintainable.



52. I am, thus, of the considered view that it cannot be laid down as an immutable and absolute rule of law that the application for eviction simplicitor sans the prayer for monetary maintenance is not maintainable, even when the senior citizen claims that she has been dispossessed of her property or she requires the property to generate income out of the said property to lead a normal life. To hold otherwise, would amount to defeating the very objective of the Act, 2007.

53. In the light of the aforesaid legal position, reverting to the facts of the case, it is distressing to note that the Respondent No.1 has been forced to take shelter in a facility meant for the senior citizen. The submission on behalf of the Petitioner that the Petitioner No.1 has contributed some part of the consideration, in cash, when the Respondent No.1 had acquired the subject flat, is required to be stated to be repelled. In the circumstances of the case, the said assertion appears to be self-serving one. On the basis of the material on record, an inference becomes inescapable that the subject flat is the property of the senior citizen within the meaning of Section 2(f) of the Act, 2007.

54. Conversely, there is no competing claim of the Petitioner. It must be noted that, after the order of eviction came to be passed, the Petitioner No.2 who is the wife of Petitioner No.1 and daughter in law of the Respondent No.1 – senior citizen, has instituted a proceeding under the Protection of Women



from Domestic Violence Act, 2005. The said proceeding is instituted by way of a desparate attempt to obviate the inevitable consequences.

55. In the application before the Maintenance Tribunal, the Respondent No.1 has given a vivid account of the manner in which the Petitioners had harassed her and subjected her to illtreatment. A positive case of neglect and refusal on the part of the Petitioner No.1 to maintain Respondent No.1 was pleaded. Various acts of harassment with reference to the incidents were highlighted. Even an apprehension of safety of the life of Respondent No.1 at the hands of the Petitioners was expressed.

56. Before this Court as well, an endeavour was made on behalf of the Petitioners that, since the Respondent No.1 was suffering from depression, there were quarrels between the Petitioners and Respondent No.1. Reliance was sought to be placed on certain prescriptions and medical record. If that was the case, then the need of the senior citizen to be cared for her physical and mental health increases substantially and correspondingly, the obligation on the Petitioner No.1 to provide adequate care and treatment for her mother becomes even more pronounced. Certainly, that could not have been ruse as oust the Respondent No.1 from her abode.

57. Lastly, the case at hand is that of a widowed woman, which the Parliament has recognized in the Statement of Objects and Reasons, as most vulnerable class of senior citizens, who required the protection of the



provisions of the Senior Citizens Act, 2007. In the view of this Court, the provisions of the Senior Citizens Act, 2007 find that the practical application in a case of the present nature.

58. In the totality of the circumstances, in the considered view of this court, the application filed by Respondent No.1 before the Maintenance Tribunal was towards the enforcement of her right of maintenance and the obligation of the Petitioners to allow the Respondent No.1 to lead a normal life. If at all the Petitioners claim any semblance of right, title and interest in the subject flat, it would be for the Petitioners to work out their remedies and not for the senior citizen to run from pillar to post to retrieve her property.

59. For the foregoing reasons, the Writ Petition deserves to be dismissed.

60. Before parting, the Court appreciates the able assistance rendered by Mr. Kulkarni, who was appointed to espouse the cause of Respondent No.1.

61. Hence, the following order :

**ORDER**

- (i) The Writ Petition stands dismissed with costs.
- (ii) Rule discharged.

**( N.J.JAMADAR, J. )**

61. At this stage, learned Counsel for the Petitioners seeks continuation of



the ad-interim relief.

62. As the order is of eviction, the ad-interim relief shall continue to operate for a period of three weeks subject to the Petitioners filing an undertaking, not to create any third party rights and part with possession of the subject flat, within a period of one week from today.

**( N.J.JAMADAR, J. )**