

Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 9374 OF 2020

SHWETA SHETTY,
An Adult, A German Citizen with OCI
presently residing at 2A, Giriraj CHS Ltd
Society Ltd, 11 Altamont Road, Mumbai
400026.

...Petitioner**~ VERSUS ~**

- 1. STATE OF MAHARASHTRA**
Through its Chief Secretary
Mantralaya, Mumbai
- 2. MAHALABA RAMPA SHETTY,**
Age: 95 years, Indian Inhabitant,
Residing at 2A, Giriraj Co-op Housing
Society Ltd, 11 Altamont Road,
Mumbai 400 026.
- 3. RENUKA SHETTY,**
An Adult, Indian Inhabitant
Residing at 45/46, Kavi Apartment
RG Thadani Marg, Off Worli Sea Face,
Mumbai – 400018.
- 4. VINATA SHETTY,**
An Adult, Indian Inhabitant
Residing at Manohar Oaks, Little Gibbs

Road, Malabar Hill, 7th floor, Mumbai
400006.

5. **JYOTI SHETTY,**
An Adult, Indian Inhabitant
Residing at Bougainvilla Hermitage,
Nachinola, Aldona, Goa - 403508
6. **DEPUTY COLLECTOR, (G.A.),**
Mumbai City, Old Customs House,
Shahid Bhagat Singh Road, Fort,
Mumbai - 400 001.

...Respondents

WITH

CONTEMPT PETITION (L) NO. 21713 OF 2021

SHWETA SHETTY,
An Adult, A German Citizen with OCI
presently residing at 2A, Giriraj CHS Ltd
Society Ltd, 11 Altamont Road,
Mumbai 400026.

...Petitioner

~ VERSUS ~

1. **RENUKA SHETTY,**
An Adult, Indian Inhabitant
Residing at 45/46, Kavi Apartment
RG Thadani Marg, Off Worli Sea Face,
Mumbai - 400018.
2. **VINATA SHETTY,**
An Adult, Indian Inhabitant
Residing at Manohar Oaks, Little Gibbs
Road, Malabar Hill, 7th floor, Mumbai
400006.

3. **YAMUNA PATIL,**
Age 60 years, Residing at 2A, Giriraj
Cooperative Housing Society Limited,
11, Altamont Road, Mumbai 400 026
4. **PAPIA PATIL,**
Age 40 years, Residing at 2A, Giriraj
Cooperative Housing Society Limited,
11, Altamont Road, Mumbai 400 026

...Respondents

AND

5. **MAHALABA RAMPA SHETTY,**
Age: 95 years, Indian Inhabitant,
Residing at 2A, Giriraj Co-op Housing
Society Ltd, 11 Altamont Road,
Mumbai 400 026.
6. **THE STATION HOUSE OFFICER,**
Gamdevi Police Station, Gamdevi,
Mumbai 400 007
7. **STATE OF MAHARASHTRA**
Through its Chief Secretary
Through the Office of the Public
Pleader, OS, Bombay High Court.

...Proforma
Respondents

APPEARANCES

For the Petitioner	Mr Pradeep Thorat, <i>i/b Manoj Agawal.</i>
For Respondent No. 2	Dr Sujay Kantawala, <i>with Aditya Iyer.</i>
For Respondents Nos. 3, 4 & 5	Ms Aishwarya Kantawala.
For the State	Mr Kedar Dighe, <i>AGP.</i>

**CORAM : G.S.Patel &
Madhav J Jamdar, JJ**

DATED : 25th November 2021

ORAL JUDGMENT (Per GS Patel J):-

1. We have taken up the Writ Petition itself. All Counsel are agreeable that the matter be taken up for final disposal at the stage of admission. We have heard both sides.
2. The Writ Petition challenges an order dated 27th November 2020 passed by the Welfare Tribunal and Deputy Collector (G.A.) Mumbai City on a complaint made to that Tribunal by the 2nd Respondent (“**Mr MR Shetty**” or “**Mr Shetty**”). He is the father of four daughters, the Petitioner and Respondents Nos. 3, 4 and 5. A copy of the complaint is annexed. In this, Mr Shetty says that he does not want his daughter, the Petitioner, Shweta to remain, occupy or reside in Flat No. 2A, Giriraj CHSL, 11 Altamont Road, Mumbai 400026.
3. Before us, there is no controversy about two aspects of the matter. There is no doubt that Mr Shetty is the sole and absolute owner of this flat. There is also no doubt that Shweta has no right of any kind in that flat. Mr Thorat for Shweta fairly accepts and concedes this position. He accepts that Shweta has not canvassed any independent right to the flat at all.
4. The complaint of Mr Shetty, who is today about 94 years old, is that although he is a widower with several age-related health

ailments of varying degrees of severity, he is being continuously harassed and mistreated by Shweta. She was in Germany for some time. She came to India in 2015 and moved into the flat unannounced. Although she was to stay for a short period, she never left. Mr Shetty was 87 years old when she came into the flat. He has been hospitalised several times. He was in no state of physical or mental health to confront Shweta and perhaps even thought that she might help in his old age. But, he says, his expectations were dashed. Shweta has contributed nothing to the house. Indeed, he goes on to say that she has been rude, aggressive and that her conduct has deteriorated and worsened over time. The specific allegation in paragraph 10 of this complaint is that she began to badger Mr Shetty “for her share of the property” and said that she would leave the flat only after she was given “her share”. He then details from paragraph 11 onwards, her conduct, which he says poses a danger to his safety. He goes on to say that he is so intimidated that he has had to lock himself into his room. Mr Shetty has been dependent on two domestic help for his medication and day to day needs. The two ladies have been with him for the last 26 years. Shweta has been quarrelling with both of them and has made allegations against them. She has caused physical distress to them and damaged the household as well. In paragraph 14 of the Complaint, Mr Shetty details an incident of 19th March 2019. There are further instances that are narrated in the following paragraphs. Finally, in paragraph 19, Mr Shetty says that this harassment at the hands of Shweta continues, that his demands that she vacate have not been accepted, that she continues to demand “her share” in the flat and therefore he seeks a relief from the Tribunal “to evict” Shweta.

5. Shweta was given notice by the Tribunal. She entered a Reply. The roznama annexed to the Petition shows that the matter was listed on four dates. On at least one date, Shweta was present. But in the proceedings, Mr Shetty seems to have been represented by his other daughter, Vinita. The resultant order impugned in this Petition is at Exhibit “A” from pages 38A to 47.

6. Mr Thorat mounts his challenge to this order on distinct grounds. First, he says, that it contains no reasons. We find this to be incorrect. Paragraphs 1 to 6 at page 46 constitute reasons and in particular, paragraph 6 from the second sentence onwards is clearly reasoning by the Tribunal. In our writ jurisdiction, we cannot assess the sufficiency of these reasons once it is seen that there are indeed reasons.

7. Mr Thorat’s next argument is that this order has resulted in what he describes as an eviction of Shweta from the premises. He says this is impermissible under the scheme of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. Section 4 of the 2007 Act reads thus:

“4. Maintenance of parents and senior citizens.—

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be 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.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.”

8. Mr Thorat then says that under Section 5 it is only an application for maintenance that can be entertained by the Tribunal. Mr Shetty’s application was for eviction. It says so. Therefore, according to Mr Thorat, the Tribunal acted without jurisdiction, apart from the fact that it proceeded on a significant procedural illegality.

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:

“2(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.

11. The Division Bench decision of this Court of 13th August 2021 in *Ritika Prashant Jasani v Anjana Niranjana Jasani & Ors*¹ (of the Bench of which which one of us, Jamdar J, was a member) reviewed the case law in question, including the decision of the Supreme Court in *S Vanitha v Deputy Commissioner, Bengaluru Urban District And Ors.*² In *Jasani*'s case, this Division Bench held in paragraphs 22 and 23:

“22. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. **However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S. 2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the**

1 2021 SCC OnLine Bom 1802.

2 AIR 2021 SCC 177.

PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

23. Adverting to the factual situation at hand, on construing the provisions of sub- Section (2) of section 23 of the Senior Citizen Act 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her "shared household" within the meaning of Section 2(s) of the PWDV Act 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few

months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the Appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the Fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act 2007. 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. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act 2005.”

54. At this stage, we may mention that in *Smt. S. Vanitha* (supra), Supreme Court has taken the view **that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure 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 advertent to the competing claims in the dispute.

(Emphasis added)

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.

13. There is also a recent decision of learned Single Judge of this Court (GS Kulkarni J) in *Ashish Vinod Dalal and Ors v Vinod Ramanlal Dalal and Ors*,³ which observes in paragraphs 14 and 15:

“14. Before parting and having noticed that this is a case where the old parents are suffering at the hands of petitioner no.1 the only son and petitioner no.2 – daughter-in-law, it appears that there is certainly some element of truth in the popular saying that “Daughters are daughters forever and sons are sons till they are married” albeit there would surely be exemplary exceptions. Be that as it may, the present case is a sad story of desperate parents who intend to be in peace at such advanced stage in life. Whether such bare minimum expectations and requirement should also be deprived to them by an affluent son, is a thought which the petitioners need to ponder on. Petitioner no.1 appears to be totally blinded in discharging his obligations to cater to his old and needy parents and on the contrary has dragged them into litigation. The vehemence with which arguments were advanced by the learned Counsel for the petitioners also bears testimony to the approach of the petitioners. **It is painful to conceive that whatever are the relations between the son and the parents, should the son disown his old aged parents for material gains? This has become more clear from what Mr. Khandeparkar has said, that recently father was required to be hospitalized. In the entire vehemence of the submissions advanced on the flat, not a whisper was uttered on behalf of the petitioners on any attention the petitioners would like to provide to the father’s medical need.** I am certainly wrong in presuming such expectations from petitioner nos. 1 and 2 considering their relations with the parents.

15. Lastly, the contention as urged on behalf of the petitioners relying on the decision in *Ritika Prashant*

3 2021 SCC Online Bom 2976

Jasani's case needs to be out rightly rejected, inasmuch as, the question which fell for consideration of the Court in such case was as to whether the tribunal under the Senior Citizens Act could evict a person from the tenement in which he has ownership rights. In the said case the property/ flat in question was the ancestral property having joint rights and it is in such context the right to reside in a shared household under the D.V. Act was examined by the Court. **In the present case admittedly the property/flat in question is not an ancestral property on which the petitioner no.1 can lay any claim. It was the property of the father (respondent no.1) who had gifted it to his daughters within his own legal rights.** Moreover, paragraph 23 of the decision in *Ritika Prashant Jasani*'s case goes completely contrary to the contention as urged on behalf of the petitioners, wherein the Division Bench has observed thus:

“23. At this stage, we may mention that in *Smt. S. Vanitha* (supra), Supreme Court has taken the view that the Tribunal under the 2007 Act may have the authority to order an eviction if it is necessary and expedient to ensure 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 advertng to the competing claims in the dispute.”

(Emphasis added)

14. We are not only bound by the decision of the Division Bench of this Court in *Jasani's case* and by the decision of the Supreme

Court in *S Vanitha* but we are also entirely in agreement with the observations of Kulkarni J in *Ashish Vinod Dalal*.

15. We note, in particular, the anguish expressed by Kulkarni J in *Ashish Vinod Dalal*. That is also our view. Indeed, it is our experience that in this city, and particularly or most especially amongst the wealthy of this city, senior citizens and elderly parents are being subjected to all kinds of harassment and deprivation in their twilight years. In case after case, we have complaints from senior citizens that their own sons and daughters are harassing them. In every case, the harassment is an attempt to somehow grab the senior citizen's property in his or her lifetime without thought spared to the mental or physical health well-being or happiness of these seniors. The present case is no different. Mr Shetty says Shweta demands 'her share'. What is her 'share' while he is alive? She has none. He may indeed give his flat and all wealth away inter vivos. That is his choice. She cannot prevent him from doing so. So long as he is alive, Shweta has no 'share' in his property.

16. We are of the considered view that this is not an isolated experience at all. It is, in fact, a widely noticed trend and it is to address this evil — we will not even call it mischief — that the 2007 Act was brought into force. The statement of objects and reasons says this:

“1. Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed

women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizen and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for :-

(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting-up of old age homes in every district.

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

17. It is with this in mind that we turned to Mr Thorat’s next argument— that of a procedural irregularity or illegality.

18. He points out that under Section 8 of the 2007 Act, this is a summary procedure but, he submits, Shweta should have been allowed to lead evidence. Somewhat puzzled by this, we inquired of him what evidence she could possibly lead and in support of what contention, once she accepted that she had no legal or legally enforceable right or title to any part of the flat? We found no cogent answer to our query. We do not believe that it is the statutory intent that the harassment to a senior citizen should continue while the Tribunal is flooded or inundated with some evidence or the other only to prolong or delay matters. The one thing that senior citizens do not have the benefit or luxury of is time. It is not on their side, and every day's delay before a Tribunal like this hurts senior citizens exponentially more than the younger generation. We do not think it is possible to accept a broad proposition of the breadth that Mr Thorat canvasses. It might have been different had Shweta been able to canvass some legal right to the flat, whether as a shared household, a right to maintenance of a married woman or an ownership right derived from ancestral property. She lays claim to none of these. What evidence she could possibly lead and on what aspect of the matter remained unclear to the end. Simply saying evidence is of no use at all.

19. Mr Thorat attempted to expand this argument by saying that the complaint was not by Mr Shetty at all but was put up by one or more of his other daughters. But that is surely immaterial and entirely irrelevant. Even if this be the case, what of it? This would certainly not give Shweta any right or title in the flat, and that is the fundamental aspect with which we are concerned.

20. As it happens Mr Shetty joined the hearing online. Not only did we conduct this entire hearing in camera and allowed Mr Shetty and Vinita, who is a party, to be present online, but we later asked even the Advocates in the matter and others online to remove themselves so that we could speak Mr Shetty alone ourselves. Vinita was not present when we spoke with Mr Shetty. He converses in Hindi. Next to him was one of his attendants. She has been there throughout. He is certainly of advanced years. For his age, he seems reasonably fit. His voice is steady and strong and he is quite clear-eyed. He was completely unambiguous and indeed emphatic in his statement to us that he did not want Shweta in his house for one minute longer. He repeatedly asked that she be made to leave his flat and that he be left in peace.

21. In a Writ Petition, this is perhaps an extraordinary step, more common to a regular Civil Court. But we are mindful of the fact that we are not dealing only with a statutory authority or Tribunal. These are actual lives and our concerned is with the life, well-being and health of a a senior, one most perhaps in need of our protection and of the protection of this statute.

22. We return to Mr Thorat's first argument that the Act does not contemplate the removal of any person from immovable property. We believe this proposition to be incorrect, and so held to be even by *S Vanitha* and *Jasani*. Our attention is drawn to the decision of 26th June 2018 of a learned Single Judge of this Court (RD Dhanuka J) in *Dattatrey Shivaji Mane v Lilabai Shivaji Mane*.⁴

⁴ 2018 SCC OnLine Bom 2246 : (2018) 6 Mah LJ 681 : AIR 2018 Bom 229 : (2019) 2 Bom CR 181

We note the submission that was made before the Court and which is reproduced in paragraph 14 and the finding that was returned on this in paragraphs 22, 24, 25 and 31 of that decision:

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

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

24. In so far as the submission of the learned counsel for the petitioner that under Section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High

Court in the case of *Sunny Paul & Anr. Vs. State Nct of Delhi & Ors.*(supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under Section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.

25. If the argument of the learned counsel for the petitioner is accepted by this Court then no senior citizen who has been meted out with harassment and mental torture will be able to recover possession of his/her property from the children or grand children during his/her lifetime. The said Act is enacted for the benefit a and protection of senior citizen from his children or grand children. The principles of law laid down by the Delhi High Court in the case of *Sunny Paul & Anr. Vs. State Nct of Delhi & Ors.* (supra) would squarely apply to the facts of this case. I respectfully agree with the views expressed by the Delhi High Court in the said judgment.

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

causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.”

23. 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 *Sunny Paul v State of NCT of Delhi*,⁵ a most careful and elaborate judgment that includes what appears to us to be a comprehensive overview of the jurisprudence. That decision dismissed an appeal from an order of a learned single Judge upholding the decision of the tribunal. Mr Thorat’s efforts to contend that this result was only because there are special rules in Delhi that permit eviction does not commend itself to us at all. The Rules cannot, axiomatically, confer a power that does not extend in the statute itself. At best, the Rules may provide a procedure or may clarify, but cannot confer a substantive legal right beyond that which the Act contemplates. Therefore, the argument defeats itself: if the Delhi rules provide for eviction of a person with no right in the property to protect the interests and welfare of a senior citizen, this necessarily means that the right to order a removal of a claimant exists in the statute itself.

24. We are not inclined to interfere with the impugned order.

25. We reject the Writ Petition.

26. By our previous order dated 18th November 2021, we required Shweta Shetty and the other three daughters to stay away from the flat until today. The order of 18th November 2021 to the

5 2018 SCC OnLine Del 11640 : (2018) 253 DLT 410 (DB).

extent that it prevents the other three daughters from entering the flat will now stand vacated.

27. Mr Thorat states that despite permission granted in our previous order of 18th November 2021, the Petitioner has not removed her personal belongings. She will be entitled to visit the flat alone on Saturday, 27th November 2021 at 6.00 pm. She will collect her belongings and only her personal belongings. She will not remove any other item from the flat. We expect all members of this family to conduct themselves with restraint at that time.

28. We have not examined the correctness or otherwise of the rival allegations made before the Tribunal by Mr Shetty against Shweta Shetty or vice versa.

29. Mr Thorat asks for a continuation of the interim order. In the facts and circumstances of the case, we are not inclined to continue that order for even a day longer.

30. In view of the rejection of the Writ Petition, nothing survives in the Contempt Petition. It, too, is dismissed.

31. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)