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WP-8479-2023.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8479 OF 2023**

Bhausahab Mhatarji Kadve  
Aged 65 years, Indian Inhabitant  
Occ.: Retired, R/o. Room No. B-407  
Jeevan Vihar, Jaideep Nagar,  
Bhandup (East), Mumbai - 400 042

... Petitioner

*Versus*

1. Additional Collector  
The Appellate Authority under the  
Maintenance and Welfare of Parents  
And Senior Citizens Act, 2007,  
Having its office at Administrative  
Building, 9th floor, Govt. Colony,  
Bandra (East), Mumbai - 400 051
2. The Sub-Divisional officer  
And the Sub-Divisional Magistrate  
And Ex-Officio, Senior Citizen,  
Subsistence Authority, Eastern Suburbs  
Mumbai, Suburban District,  
Neelkanth Business Park, A Building,  
Ground Floor, Kirol Road, Vidyavihar West,  
Mumbai-400 086
3. Kalpana Bhausahab Kadve  
Aged 54 years, Indian Inhabitant  
Occ.: Retired, R/o. Room No. B-407  
Jeevan Vihar, Jaideep Nagar, Bhandup (East),  
Mumbai-400 042
4. Kishori Dinesh Pansare  
nee Miss Kishori Bhausahab Kadve

Aged 32 years, Indian Inhabitant.  
Occ.: Service, Kalika Mata CHS Ltd.  
Near Kalika Mata Temple, Kakasaheb  
Gadgil Marg, Dadar (West), Mumbai-400 028

5. Mrs. Sneha Abhijit Gahilot  
Nee Ms. Sneha Bhausahab Kadve  
Aged 29 years, Indian Inhabitant  
Occ.: House-wife, R/o. Jay Chittod,  
Saraswati Colony, Hingoli,  
Dist-Hingoli - 431513 )

6. State of Maharashtra  
Mantralaya, Mumbai - 400032  
Through its Government Pleader ... Respondents

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*Mr. Shashank Thatte a/w Ms. Chaitali Jadhav and Mr. Yuvaraj Takale for  
the Petitioner*

*Mr. Asif Patel, Addl. G.P a/w Mr. S. H. Babar, A.G.P for the Respondent-  
State*

*Ms. Pavitra Manesh for the Respondent Nos. 3 and 4*

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**CORAM : SHARMILA U. DESHMUKH, J.**  
**RESERVED ON : 12<sup>th</sup> FEBRUARY 2026**  
**PRONOUNCED ON : 20<sup>th</sup> FEBRUARY 2026**

**JUDGMENT :**

1 **Rule.** With consent of parties, rule made returnable  
forthwith and taken up for final hearing.

2 By this petition, the challenge is to the order dated 7<sup>th</sup>

December 2022 passed in Appeal No. 6 of 2020 by the Respondent No.1, i.e., the Additional Collector, the Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, "**Senior Citizens Act**"), except the operative relief in Clause No. 3 of the impugned order.

3           The present petition seeks several reliefs in nature of directions to Respondent Nos. 3 to 5 who are private parties and are outside the ambit of Article 227 of the Constitution of India. Respondent No. 3 is the wife of the Petitioner, and Respondent Nos.4 and 5 are the married daughters of the Petitioner. Learned Counsel for Petitioner has confined his submissions to assail the impugned order and have not pressed for the other reliefs and rightly so.

4           Briefly stated, the facts of the case are that on 10<sup>th</sup> December 2019, the Petitioner filed an application under Section 22 of the Senior Citizens Act against the Respondent No. 3, who is the wife of the Petitioner. In the original application before the Respondent No 2, the Respondent Nos.4 and 5, who are the

daughters of the Petitioner, were not arrayed as parties. The application alleges harassment at the hands of the Respondent No. 3, since the solemnisation of marriage on 1<sup>st</sup> June 1990 and sets out various instances of mental and physical cruelty at the hands of the Respondent No. 3 and her relatives.

5           It is pleaded that the residential premises, being Flat No. B-205 in Sweety Apartments, Pune, was purchased by the Petitioner in the name of the Respondent No. 3's mother on 2<sup>nd</sup> March 1995 due to constant pressure and persistence of the Respondent No. 3. It is stated that the said premises was given on a Leave and License basis by the Respondent No. 3's mother since May 1995, and the benefits are utilized by the mother and brother of the Respondent No. 3. By a registered Gift Deed, on 19<sup>th</sup> August 2015, the flat was transferred in the name of the Respondent No. 3, and the expenses of stamp duty and registration were borne by the Petitioner.

6           Another premises bearing Flat No.210 was purchased on 27<sup>th</sup> May 1999 at Bhayandar out of funds which were deposited

by the Petitioner in the account of Respondent No. 3, which flat came to be sold on 24<sup>th</sup> August 2005, and the entire amount was deposited in the account of Respondent No. 3. Out of sale proceeds the residential premises was purchased at Friends Colony, Bhandup in the name of Respondent No. 3. It is claimed that the monthly compensation received from these two flats is being utilized by the Respondent No. 3. The Respondent No. 3 has handed over possession of the gold jewellery bought out of earnings of the Petitioner to the elder daughter. It is pleaded that false police complaints have been filed by the Respondent No. 3 against the Petitioner.

7           It is further claimed that the Respondent No. 3 had assaulted the Petitioner in the year 2015 and have attempted to poison the Petitioner. The Petitioner was diagnosed with cancer but did not receive any financial assistance from the Respondent No. 3 and the daughters. The entire marriage expenses of the daughters have been borne by the Petitioner. With these pleadings, the relief sought by the Petitioner before the Senior Citizens Tribunal was protection, injunction against Respondent

No. 3 from creating third party rights in respect of the two flats at Pune and Bhandup, as these properties have been purchased by the Petitioner in the name of Respondent No. 3, for transfer of both flats in name of Petitioner, eviction of tenants, for payment of entire rent received from both the flats since date of purchase and compensation and litigation expenses. The Petitioner also sought injunction against the Respondent Nos. 3 to 5 from obstructing the sale of Jeevan Vihar, Bhandup flat which stood in name of the Petitioner.

8           Vide order dated 31<sup>st</sup> December 2019, the Respondent No.2, Sub-Divisional Officer, rejected the application, observing that under Senior Citizens Act, relief which can be granted is of maintenance and the Petitioner was receiving pension. It held that the complaint against the wife or about ownership of property is not within the purview of the Senior Citizens Tribunal and is in the nature of domestic violence, for which an appropriate application be filed before the appropriate forum, and disposed of the application.

9           As against this, an appeal came to be filed before the Respondent No.1, the Appellate Authority. Vide the impugned order dated 7<sup>th</sup> December 2022, the Appellate Authority considered the reliefs which could be granted under Senior Citizens Act. It observed that the Petitioner himself has stated that he has never made any request for maintenance. It further observed that the Respondent Nos. 4 and 5, who were the daughters, were not impleaded in the original proceedings, and it is at the final stages of hearing that an application was made to implead the Respondent Nos. 4 and 5, which came to be allowed. The Appellate Authority considered the provisions of Section 23 of the Senior Citizens Act, and noted that the property at Pune had firstly been purchased in the name of mother of the Respondent No. 3, which later on came to be transferred in the name of the Respondent No. 3 by way of Gift Deed, and that the property at Bhandup has been purchased in the name of Respondent No. 3. It noted that it is not a transfer by the Petitioner by way of gift or otherwise, on the condition of the transferee providing the basic amenities. It noted that if there is any objection with regard to the validity/legality of the registered documents, then the appropriate forum is the Civil

Court. With these findings, the appeal came to be partially allowed. Vide clause (3) of the impugned order, the Authority restrained the Respondent Nos.3 to 5 from creating any obstacles in the execution of the sale of the Bhandup flat, which is the ownership flat of the Petitioner, as per the registered document.

10            Learned counsel appearing for the Petitioner would submit that the Appellate Authority has failed to take into consideration the provisions of Section 3 of the Senior Citizens Act, which gives an overriding effect to the enactment. He submits that the Petitioner is a senior citizen suffering from various ailments and has suffered cruelty and threat to life from the Respondent No. 3, which constitutes violation of Article 21. He would further submit that the Petitioner is in dire financial need and desires to sell the Bhandup flat to shift to Aurangabad, which has been obstructed by Respondent No. 3. He would submit that though the Petitioner has paid for the purchase of the flat at Pune and the flat at Friends Colony, Bhandup, Respondent No. 3 has usurped the Petitioner's hard-earned assets. He would point out the pleadings in the application to contend that the flats at Pune and Friends

Colony, Bhandup, have been purchased out of the funds of the Petitioner. He would submit that the Respondent No. 3 has attempted to administer poison to the Petitioner, for which, FIR has been lodged with the Kanjur Marg Police Station. He would submit that the Jeevan Vihar flat at Bhandup is the ownership flat of the Petitioner, possession of which has been protected by the impugned order. He submits that despite the Petitioner's physical ailments, the Respondent Nos.3 to 5 have failed to make any financial arrangements and have committed cruelty by theft of life-saving medical equipment. He would further submit that the Respondents are making false allegations of Petitioner's mental illness, whereas the Petitioner is a retired Gazetted Officer. He submits that the alleged Gift Deed from the Respondent No. 3's mother to Respondent No. 3 is an arrangement to deprive the Petitioner of his property. He submits that the Respondent No.4, who is the elder daughter, is in collusion with the Respondent No. 3, and it is only the Respondent No.5, the younger daughter, who is supporting the Petitioner, as a result of which the Petitioner has gifted the Jeevan Vihar flat at Bhandup to the Respondent No. 5. In support, he relies upon the following decisions:

**(i) Nayana Sudhir Shah & Ors. vs. Sudhir Premji Shah &**

**Ors.<sup>1</sup>**

**(ii) Ramkrishna Pandey S/o Late Shivprasad Pandey & Anr.**

**vs. State of Chhattisgarh, Through Collector & Ors.<sup>2</sup>**

**(iii) Sri Venkataiah vs. The State of Karnataka<sup>3</sup>**

**(iv) Urmila Dixit vs. Sunil Sharan Dixit & Ors.<sup>4</sup>**

11 *Per contra*, learned counsel appearing for the Respondent Nos. 3 and 4 submits that the application itself was not maintainable before the Respondent No. 2, Sub-Divisional Officer, as the Petitioner had impleaded only his wife, i.e., Respondent No. 3. She would further submit that the reliefs sought in the application are beyond the purview of the Senior Citizens Act. She submits that it is only during the hearing of the appeal that the Petitioner filed an application for impleading the Respondent Nos. 4 and 5, who are the daughters, which came to be allowed, though not maintainable. She submits that the authorities have rightly held that the reliefs which are sought by the Petitioner, do not fall within the ambit of Section 23 and that no maintenance has been

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1 Civil WP No.7982/2018 dated 19/05/2020

2 WA No.103/2026 dated 03/02/2026

3 WP No.13313/2025 dated 02/02/2026

4 Civil Appeal No.10927/2024 dated 02/01/2025

claimed. She submits that the Respondent Nos. 3 and 4 have no objection to clause (3) of the impugned order, as the flat at Jeevan Vihar, Bhandup, is the ownership flat of the Petitioner. As far as the other two flats are concerned, the said properties stand in the name of the Respondent No. 3, and no injunction order can be passed in respect of those two flats.

12 I have considered the submissions and perused the record.

13 The stated object of the Senior Citizens Act is to make more effective provision for the maintenance and welfare of the parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith. Section 4 governs the maintenance of parents and senior citizens and provides that a senior citizen including parent who is unable to maintain himself from his own earnings or out of the property owned by him, is entitled to make an application under Section 5, in case of a parent or grandparent against one or more of his children not being a minor and a childless senior citizen, against such of his

relative referred to in clause (g) of Section 2. Clause (g) of Section 2 defines a "relative" to mean 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. The Respondent No. 3 is the wife of the Petitioner, and as the Petitioner is not childless, Respondent No. 3 would not fall within the definition of "relative" for claiming maintenance. The statutory provisions indicate that for purpose of claiming maintenance, it is only the children or relative falling within the definition of Section 2(g), who can be impleaded. In the present case, there is no claim for maintenance.

14           The position, however, is different in the case of Section 23, which finds place in Chapter V of the Senior Citizens Act and governs the protection of the life and property of senior citizens. The said provision provides for a transfer of property to be declared void in certain circumstances. Section 23 provides that where any senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor, on which the transferee has defaulted, the

transfer of the property shall be deemed to have been made by fraud, or coercion, or under undue influence and shall, at the option of the transferor, be declared void by the Tribunal. The provisions of Section 23 do not use the expression "children" "grandchildren" or "relative" but uses the expression "transferee" which will include every person to whom the senior citizen has transferred his property. The restrictions which are applied to a claim for maintenance do not find place in Section 23 which uses the wide term "transferee." The application, if seeking relief in terms of Section 23 of Senior Citizens Act would be maintainable against the wife provided that there is transfer of property in favour of transferee by the senior citizen.

15           The *sine qua non* for invocation of Section 23 of Senior Citizens Act is that the ownership property of a senior citizen has been transferred, in any manner whatsoever, subject to the condition of providing basic amenities and physical needs, and that there is a failure or default in fulfilling such assurance. In the present case, what the Petitioner seeks, under the guise of injunctive reliefs, is in substance a declaration of ownership in

respect of the two properties, which relief is clearly outside the ambit of the Senior Citizens Act. No statutory provision has been demonstrated which empowers the Senior Citizens Tribunal to order transfer of property which is not the ownership property of the senior citizen in the first place. It is the Petitioner's own case that, insofar as the property at Pune is concerned, the registered sale document was in the name of the mother of the Respondent No. 3, which flat has been gifted to the Respondent No. 3 by her mother and the registered sale document in respect of flat at Friends Colony, Bhandup, is in the name of the Respondent No. 3. The admitted position is that the registered documents in respect of the said two properties stand in the name of the Respondent No. 3, one by way of a Gift Deed from the Respondent No. 3's mother and the other under the sole ownership of the Respondent No. 3. Therefore, there is no case of application of Section 23 of the Senior Citizens Act.

16           The Petitioner's claim for ownership right in the properties is premised on the ground that the consideration in respect of the said two premises was paid by him, in which case the

remedy of the Petitioner is to approach the Civil Court for seeking declaration of his right, title, and interest in these properties. The reliefs which can be granted under the provisions of the Senior Citizens Act are relief for maintenance, which has not been sought, and the relief of the transfer being declared void by the Tribunal, which is also not the relief sought in the present case. The relief of injunction against the Respondent No. 3 *qua* the flat at Pune and the room at Bhandup would entail an inquiry into the ownership rights of the two premises, which is outside the purview of the Senior Citizens Act.

17           The reliance on Section 3 of the Senior Citizens Act is misplaced, as the same gives an overriding effect to the Senior Citizens Act, in event of any conflict between the Senior Citizens Act and the other enactments. In the present case, there is no conflict which is demonstrated between the Senior Citizens Act and other enactment to press into service the provisions of Section 3.

18           Now dealing with the decisions relied upon by the Petitioner:

In the case of ***Nayana Sudhir Shah & Ors. vs. Sudhir Premji Shah & Ors. (supra)***, the Petitioner had impleaded his wife and major children claiming that the self-acquired properties of the Respondent No.1 therein, have been fraudulently dealt with by the Petitioners therein, dispossessing the Respondent No. 1 of his business property and fraudulently registered tenancy agreement and leave and license agreement. The learned Single Judge considered the provisions of the Senior Citizens Act and the admitted position on record that the subject properties involved therein were the self-acquired properties of the Respondent No.1, who had exclusive rights in the said property and that the subject property was occupied by the Petitioners. It is in this factual scenario that the learned Single Judge upheld the order passed by the Tribunal declaring the Power of Attorney, the Deed of Partnership, Agreements, etc., as void. The decision is clearly distinguishable in facts, as, in the present case, the registered document in respect of the subject properties stands in the name of the Respondent No. 3, and therefore, there is no case of a fraudulent transfer of the properties herein.

19            In ***Ramkrishna Pandey S/o Late Shivprasad Pandey & Anr. vs. State of Chhattisgarh, Through Collector & Ors. (supra)***, the Respondents therein had filed an application under Sections 5 and 23 of the Senior Citizens Act against the nephew of the Respondent No. 2 and the daughter of Respondent Nos. 2 and 3 for claiming maintenance and for declaration that the Gift Deed executed in favour of the nephew be declared as void. The facts therein are completely different, and there is no quarrel with the proposition of law which has been laid down in the said case. However, it is the applicability of the said decision to the present case, which is doubtful as the facts are clearly distinguishable.

20            The next decision of ***Sri Venkataiah vs. The State of Karnataka (supra)*** arose out of a claim seeking annulment of Gift Deed, which came to be dismissed. The Petitioner therein was the father of Respondent No.5 and grandfather of Respondent No. 6 and was the absolute owner of the agricultural land. It was his specific case that his daughters had assured him that they would take care of his maintenance, well-being and daily needs and had fraudulently procured the Gift Deed and thereafter defaulted on

their assurances. In the facts of that case, the Hon'ble Court considered the provisions of Section 23 of the Senior Citizens Act and examined the validity of the orders which rejected the application on the ground that the Gift Deed did not contain a specific clause regarding maintenance of the Petitioner. The facts make it clear that the decision is inapplicable to the present case.

21           Insofar as the decision in the case of ***Urmila Dixit vs. Sunil Sharan Dixit & Ors. (supra)*** is concerned, the appellant before the Hon'ble Apex Court was the mother of the Respondent, and was the owner of the subject property. The property was gifted by the appellant therein in favour of her son, and in the Gift Deed, it was stated that the son shall maintain the appellant therein. As subsequently, a dispute arose, an application was filed for setting aside the Gift Deed in question, which came to be annulled. In these facts, the Hon'ble Apex Court considered the provisions of Section 23 of the Senior Citizens Act and held that the Tribunal is empowered to order eviction where such a course is necessary in furtherance of the objects of the Act. It was observed that the provision enables senior citizens to secure their rights

expeditiously in cases where property has been transferred subject to the condition that the transferee shall maintain them. The said decision is distinguishable on facts and is inapplicable in the present case.

22           The Respondent No.1 has rightly considered the provisions of Section 23 of the Senior Citizens Act, as well as the facts of the case, to come to a finding that the properties at Pune and Friends Colony, Bhandup, have not been transferred by the Petitioner but, in fact, have been purchased in the name of the Respondent No. 3, and in the event of any objection to the validity of the registered documents, the appropriate forum is the Civil Court.

23           In light of the above discussion, I do not find any reason to interfere with the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India. Resultantly, the petition fails and stands dismissed. Rule stands discharged.

**SHARMILA U. DESHMUKH, J.**