



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5932 OF 2024

Prakash Krishna Gamare & Anr

...Petitioners

Versus

Krishna Ganpat Gamre & Anr

...Respondents

Mr. S.C. Mangle, a/w Tanmay M. Shembavanekar, for the Petitioners.

Ms. Vijayalaxmi Obhan, i/b Pankaj Jadhav, for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : February 9, 2026

Oral Judgement:

1. Rule. Made returnable forthwith, and by consent of the parties, taken up for final hearing.

Context and Factual Background:

2. The challenge in this Petition is to an order dated February 2, 2024 (“***Impugned Order***”) by which the Petitioners (“***the Sons***”) have been directed, in exercise of powers under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (“***the Act***”), to vacate the premises owned by their father, Respondent No. 1 (“***the Father***”), which the Sons currently occupy in Liberty Garden in Malad, which is

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admittedly a slum unit. The Sons are offspring of the Father and his late first wife. Respondent No. 2 is the current wife of the Father.

3. I have heard Mr. Tanmay Shembavanekar, Learned Advocate on behalf of the Sons and Ms. Vijayalaxmi Obhan, Learned Advocate on behalf of the Respondents. With their assistance I have reviewed the material on record.

Contentions of the Sons:

4. Mr. Shembavanekar on behalf of the Sons would submit that a plain reading of the Impugned Order indicates that the Maintenance Tribunal constituted under the Act has squarely held that the Father cannot be awarded maintenance. The Sons contend that the eligibility for grant of maintenance is a foundational jurisdictional fact for purposes of intervention under the Act because it is when a senior citizen is unable to maintain himself that the jurisdiction of the Act would be attracted.

5. He would contend that once it has held that under Section 4 of the Act no maintenance can be awarded, an order for eviction of the Sons is untenable, because such finding undermines the Impugned

Order for eviction as being arbitrary and in conflict with the very scheme and legislative objective of the Act.

6. Mr. Shembavanekar would contend that the maximum maintenance that can be awarded under the Act is capped at Rs. 10,000 per month under Section 9(2) of the Act, while it is a matter of admitted record that the Father has annual taxable income of Rs.4.6 lakhs (nearly Rs. 40,000 per month) as is seen from his tax returns, and that he is a recipient of pension, having retired from a municipal job. Therefore, Mr. Shembavanekar would submit, the finding in the Impugned Order that the Father need not be granted maintenance under the Act is a valid and accurate finding. Such finding has also been embraced and become final, since the Father has not filed any challenge to it for over two years, while the statutory deadline for an appeal is 60 days, with delay being capable of condonation for sufficient cause.

7. Learned Advocate for the Sons would also submit that the Respondents are living in different premises and there is nothing to indicate that the Father would need to live in the premises from which eviction of the Sons has been directed. He would submit that the Father has both physical means in terms of alternate premises where he resides as well as financial means in terms of the pension received by him.

8. Mr. Shembavanekar would fairly state that the property at Liberty Garden is in the name of the Father and the photo pass is in the Father's name. However, he would submit that his contention is that any eviction of the Sons would need to be in legal proceedings in accordance with law, outside the ambit of the Act, which has a specific framework and design in its coverage, into which the Father does not fit as a protectee.

9. Learned Advocate for the Sons would also point to Section 23 of the Act to indicate that only when any transfer of a property has been effected by a senior citizen subject to the condition that the transferee must provide for the basic amenities and physical needs of the transferor, that upon non-compliance with such condition, the transfer is deemed to have been made by fraud or coercion.

10. In support of his contentions, Mr. Shembavanekar would rely upon the judgement rendered by a Division Bench of this Court in ***Jitendra Gorakh Megh***¹; a decision of a Learned Single Judge of this Court in ***Ranjana Rajkumar Makharia***²; and the decision of the Supreme Court in ***Sudesh Chikara***³. To buttress the submission relating to

¹ *Jitendra Gorakh Megh v. Additional Collector & Appellate Tribunal & Anr. – judgement dated December 8, 2025 in Writ Petition (L) No.31614 of 2025*

² *Ranjana Rajkumar Makharia v. Mayadevi Subhkaran Makharia & Ors. – 2020(3) Mh.L.J. 587*

³ *Sudesh Chhikara v. Ramti Devi & Anr. – 2022 DGLS(SC)1569*

Section 23, Learned Advocate would submit that it ought to be pleaded that basic amenities and basic physical needs were meant to be provided to the senior citizen when a transfer of property is effected, for the Maintenance Tribunal to have the jurisdictional basis to grant relief of eviction.

11. Finally, Mr. Shembavanekar would also draw my attention to Rule 13 of the Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rules, 2010 to contend that the Maintenance Tribunal must positively invite the parties to lead evidence, which was simply not done in the case. Towards this end, he would rely upon the decision of a Learned Single Judge of this Court (Nagpur Bench) in *Sanjay*⁴ to submit that when a stage for recording of evidence has been contemplated in the statute book, a duty is cast on the tribunal to see to it that the parties are positively given an opportunity to lead evidence to substantiate their rival claims.

Contentions of the Father:

12. Ms. Obhan, Learned Advocate on behalf of the Respondents would counter the aforesaid submissions, contending that far from the

⁴ *Sanjay s/o. Krushnaji Sakdeo v. Krushnaji s/o. Sitaram Sakdeo – judgement dated February 8, 2023 in Cr. Writ Petition 779 of 2022, 2023 DGLS (Bom.) 388*

need to qualify for financial maintenance, the Act would also bring within its ambit emotional maintenance of the parent. A plain reading of Section 4 of the Act would also indicate, Ms. Obhan would submit, the entitlement of a senior citizen includes the right to be maintained out of earnings from the property owned by the Senior Citizen. She would submit that the Liberty Garden unit stands in the name of the Father, and he is entitled to be maintained out of the said property. Ms. Obhan would contend that admittedly, the Sons are not occupying the property, and they are exploiting it by earning rent from it.

13. The Learned Advocate would rely on a decision of the Learned Single Judge of the Delhi High Court in *Sunny Paul⁵*; another judgement of a Learned Single Judge of the Delhi High Court in *Nasir⁶*; and the decision of the Supreme Court in *Kamalakant⁷*, to submit that beneficial and welfare statutes should be given a liberal and not literal interpretation with judges being concerned with the colour, content and context of such statutes which will further the remedy and suppress the mischief.

⁵ *Sunny Paul & Anr. V. State of Nct of Delhi & Ors. – judgement dated March 15, 2017 in Writ Petition (C) No.10463 of 2023*

⁶ *Nasir v. Govt. Of Nct of Delhi & Ors – judgement dated October 13, 2015 in Writ Petition (C) No.9717 of 2015*

⁷ *Kamalakant Mishra v. Additional Collector & Ors. – judgement dated September 12, 2025 in SLP (Civil) No.42786 of 2025.*

14. Ms. Obhan would rely on a decision by a Learned Single Judge of this Court in *Dattatreya Shivaji Mane*⁸ to support her contention that eviction of a transferee under Section 23 is permissible to enable enforcement of the entitlement under Section 4 of the Act, to be maintained out of income from the property owned by the senior citizen.

15. Ms. Obhan would submit that the Father finds it difficult to cope with living in the Liberty Garden property because of water problems and therefore is entitled to live elsewhere, earning money from the property that stands in his name. She would submit that a significant portion of the pension is spent in paying rent and indeed cannot be read in isolation but should be read with Section 23 to enable eviction of a relative who fails to maintain the senior citizen.

Analysis and Findings:

16. Having heard the parties and upon examining the record, it is apparent that the family comprising the parties has been in tragic disrepair for long. There are serious claims and counter-claims about the facts being traded between the parties.

⁸ *Mr. Dattatreya Shivaji Mane v. Mrs. Lilabai Shivaji Mane & Ors – judgement dated June 26, 2018 in Writ Petition No.10611 of 2018*

17. Mr. Shembavanekar contends that the Sons have been neglected after the demise of their mother and that the Father is well provided for and cannot be said to be unable to maintain himself. Petitioner No. 1 is said to be sick and unable to maintain himself and is said to be fended for by Petitioner No. 2. The Sons contend that they have lived in the Liberty Garden unit since the time of their grandfather, and it was the Father who left the house on marrying Respondent No. 2. The Sons contend that they were all living in the premises now shown in the cause title as the address of the Father and the Sons left when threatened by Respondent No. 2 with criminal allegations that would be made against them.

18. On the other hand, Ms. Obhan would submit that there is nothing in the record to prove such allegations. However, it is also apparent from the submissions of Ms. Obhan that the family also has property back in the village, with fruit-bearing trees, and the parties have a conflict about possession of such property too. She would submit that the Sons are asserting their rights over such property too and causing distress to the Father.

19. The Impugned Order does note such contentions from both sides. It appears that the Sons had also offered to give up the Liberty

Garden unit provided they are compensated for the renovations effected by them and the persons who have been permitted to stay on the premises be given permission to stay. The Maintenance Tribunal has held these to be matters of family issues, and has focussed on whether the operation of the Act would justify grant of relief.

20. Whether the summary jurisdiction for remedial action provided for in the Act has been well and validly exercised is the question that this Court must consider. If not validly exercised, whether the factual matrix makes out a case for an equitable intervention in exercise of the writ jurisdiction, is also something that has to be examined and addressed.

21. In this context, it is also necessary to deal with the contention that the Maintenance Tribunal must give a positive invitation to lead evidence and allow examination of witnesses and cross-examination as is contended by the Sons.

Section 4:

22. Before making such analysis, it would be appropriate to extract relevant provisions of the Act. Section 4 is extracted and dealt with, below:

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 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.

[Emphasis Supplied]

23. Indeed, under Section 4, the jurisdictional fact necessary to be demonstrated is that the senior citizen should be unable to maintain himself from his own earnings and earnings out of the property owned by him. A plain reading of this provision would show that the intent of protective coverage under Section 4 is the inability of a senior citizen to maintain himself out of his earnings and out of the property owned by him. The reference to property is not just the property from which eviction has been sought by the senior citizen but also other properties owned by the senior citizen.

24. Section 4(1) of the Act creates an entitlement in a senior citizen to make an application under Section 5 of the Act. Section 4(2) creates an obligation on the offspring of the senior citizen to maintain the senior citizen parent by providing for the needs to lead a normal life.

25. These two elements of Section 4 do not operate in a vacuum. Such entitlement and such obligation would apply where the senior citizen makes out a case of inability to maintain himself out of his earnings and earnings from his property. It is in this context that the contents of Paragraph 6 in the analysis contained in the Impugned Order gain significance.

26. The Maintenance Tribunal has positively reached a conclusion that it would not be appropriate to grant maintenance to the Father – for doing so, the Maintenance Tribunal has noticed the income of the Father from pension. The Maintenance Tribunal has pointed out that the Father has not set out his expenses and needs for maintaining a normal life. The income from pension is also not set out by the Father.

27. Therefore, the Impugned Order sets out to focus solely on the entitlement of the Father in his capacity as the senior citizen under Section 4 of the Act, but loses sight of the fact that the jurisdictional fact necessary for such entitlement, and for the remedy of enforcement of such entitlement to be granted, is the proven inability of the senior citizen to maintain himself. Therefore, when the Maintenance Tribunal has positively stated that there is a need to take a holistic reading of Section 4, Section 5 and Section 23, it ought to have considered that in its own analysis, it had returned a finding that the Father is not entitled to be maintained.

28. This approach, then actually shuns the holistic reading of Section 4, Section 5 and Section 23 that multiple judgements cited by both sides require the Maintenance Tribunal to adopt. I cannot lose sight of the fact that submissions on behalf of the Father make it clear

that there are other properties of the senior citizen located elsewhere over which the parties are in conflict. The dysfunctional relationship between the parties is writ large on the face of the record. It is in this backdrop, that one must examine the analysis made by the Maintenance Tribunal.

Section 5:

29. The ingredients of Section 5 must also be noticed, and the provisions are extracted below:

5. *Application for maintenance.*

(1) *An application for maintenance under section 4, may be made*

- (a) *by a senior citizen or a parent, as the case may be; or*
- (b) *if he is incapable, by any other person or organisation authorised by him; or*
- (c) *the Tribunal may take cognizance suo motu.*

Explanation. For the purposes of this section “organisation” means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or any other law for the time being in force.

(2) *The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the*

interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) *On receipt of an application for maintenance under subsection (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.*

(4) *An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:*

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

(5) *An application for maintenance under sub-section (1) may be filed against one or more persons:*

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6) to (8) *****

[Emphasis Supplied]

30. A plain reading of the foregoing would indicate that Section 5 provides for how the entitlement to make an application under Section 4 would operate. The senior citizen may make an application himself or through someone, and even the Maintenance Tribunal (essentially, civil

servants discharging the executive function of the State) may take cognisance of a situation on its own motion. Monthly maintenance may be provided as interim relief. The proceedings are expected to be disposed of in three months.

Section 9:

31. Under Section 9 of the Act, extracted below, it would be seen that the statutory cap on the maintenance amount is Rs. 10,000 per month, which again underlines the pecuniary threshold for matters that would be dealt with under the Act. Section 9 is extracted below:

9. *Order for maintenance.*

(1) *If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.*

(2) *The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.*

[Emphasis Supplied]

Section 23:

32. Having extracted and analysed Sections 4,5 and 9, it would be instructive to examine Section 23 of the Act:

23. *Transfer of property to be void in certain circumstances.*

(1) *Where any senior citizen* who, after the commencement of this Act, *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* and such *transferee refuses or fails to provide such amenities and physical needs*, the *said transfer of 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.*

(2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred*, the right to receive maintenance may be enforced against the transferee *if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*

(3) *If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.*

[Emphasis Supplied]

33. Section 23 provides for a serious and drastic measure – of declaring void, a transfer of property made after the commencement of the Act. Again, the jurisdictional fact necessary for attracting the provisions of Section 23 must be noticed. There ought to be a transfer, and such transfer ought to be accompanied by a condition imposed to maintain the senior citizen.

34. In my opinion, this provision is widely worded and must be expansively construed in a manner that furthers the remedy and suppresses the mischief. It would not always be possible to discern from a factual matrix that there is an explicit transfer deed that also documents maintenance as a condition. The Maintenance Tribunal must construe this provision beneficially and in furtherance of the wider legislative intent and purpose, namely, of giving a remedy to a senior citizen who is unable to maintain himself.

35. If a transfer of property is undocumented, the condition and expectation that the senior citizen is to be maintained, too could be undocumented. What kind of transfer took place; what conditions of transfer can be reasonably inferred; whether the transfer was of title or of possession; are all facets to be answered in the facts and circumstances of each case. These would be a matter of circumstantial

evidence, without losing sight of the fact that the procedure of adjudication is summary in nature, expected to be completed within 90 days as required in Section 5.

36. Necessarily, the approach to Section 23 has to be through an application under Section 4 read with Section 5; and Courts have repeatedly declared that the three provisions must be holistically and conjointly read in harmony. By necessary implication, the jurisdictional fact for falling within the ambit of Section 4 is a requirement to be met for purposes of Section 23. Therefore, each and every case of conflict between a senior citizen and his offspring would not be covered by the remedial jurisdiction of the Act – it would be necessary for the parties to fall within the ambit and scope of the legislative intent and coverage of the Act, and with it, comes the necessary ingredient of demonstrating the inability to maintain oneself – indeed with the civil standard of preponderance of probability in the summary nature of the adjudication within 90 days.

Application to Facts:

37. Therefore, when one applies the above analysis to the facts of the case, unmistakably, the Maintenance Tribunal has returned a finding that it would not be appropriate to grant maintenance to the Father. Towards this end, the Maintenance Tribunal has found that the Father has not provided details of his income and of his financial needs and expenditure. Indeed, one can take a view that the needs for a normal life are not just financial needs but also emotional needs, but that would be a declaration of the law in aid of a factual matrix where there is harassment and disharmony in a shared living space, necessitating the remedies. In the instant case, there is hardly any scope for analysis of whether maintenance of emotional needs is relevant inasmuch as the parties have separated and lived separately for long, and the property that the Sons have been asked to vacate is not the property in which the senior citizen lives.

38. In the instant case, the Sons live in the property that stands in the name of the Father and the Father lives elsewhere. The Sons claim to have left the joint residence and moved into the Liberty Garden unit. The application by the Father was for maintenance without providing quantitative and empirical evidence even in a summary nature. The Sons have brought to bear that the Father earns about Rs. 40,000 per month while the maximum maintenance that the Act

envises is Rs. 10,000 per month. All of these facets, coupled with the Maintenance Tribunal positively holding that it would be inappropriate to grant maintenance, undermine the case for an intervention for vacating a residential unit that the Father is in fact not living in. The objective of directing a relative to vacate the premises to enable maintaining the emotional needs and peace expected in normal life would presuppose the family living under one roof, with the need to remove the relative to enable the senior citizen's peace. A situation where the parties have been in conflict for long and one desires the other to be removed from a property where they do not reside jointly, or worse, where neither resides (the Father alleges that even the Sons do not live there) is not a matter that would fall within the ambit and scope of remedial intervention under the Act.

Case Law Considered:

39. I have carefully examined the case law cited by each side. Each contains an unexceptional declaration of the law that was rendered in the facts of the respective cases. The decision in ***Dattatray Shivaji Mane*** is factually distinguishable inasmuch as it was a case of a 73-year old mother with demonstrated inability to maintain herself, seeking to

live in peace for which the offspring was directed to leave the house. That is far from the facts involved in the instant case, where the Father does not live in the house from which he wants the Sons vacated and in which he claims the Sons themselves do not live.

40. The case law on Section 23 relied upon by each side too does not point to significant relevance inasmuch as in the matter in hand there has been no transfer by the Father to the Sons for any attendant condition to have been imposed. The property is in the name of the Father and his claim is that the Sons ought to be removed from it. Indeed, other civil remedies may be available to the Father, but the sole question for purposes of this judgment is whether the provisions of the Act are available in the peculiar and specific factual matrix involved in this case.

41. The declaration of the law by the Supreme Court in *Kamalakant* is but a well-known principle that when interpreting a beneficial legislation, it must be read purposively and not literally – it must not be read like interpreting fiscal statute. The Supreme Court found fault with the impugned decision in that case, which had been distracted by the fact that the person against whom relief was claimed by a senior citizen was also a senior citizen. This is not relevant in the

instant case. The Sons' contention that they are themselves unemployed and one is totally dependent on the other for caregiving and upkeep is not relevant for the analysis of the matter in hand.

42. A word about the Sons' demand that the right to lead evidence under Rule 13 of the Rules is not just an entitlement to seek to lead evidence, but also a right to be positively invited to lead evidence, does not inspire confidence, but I refrain from pronouncing upon how to interpret that provision since it is not necessary to interpret the same in view of the decision taken in this judgement. Suffice it to say, the jurisdiction of the Maintenance Tribunal is not just summary in nature but also subject to an indicative timeline of ninety days. Interpreting any procedural provision under the Act must never lose sight of this integral feature of the jurisdiction created in the Act.

Conclusion and Directions:

43. In the result, in my opinion, the Sons have indeed made out a case for exercise of intervention by this Court in exercise of its writ jurisdiction to ***quash*** and ***set aside*** the Impugned Order, particularly in view of the jurisdictional fact having been answered against the Father, which has not been challenged.

44. Every conflict between a senior citizen and his offspring would not attract the jurisdiction of the Act. Whether the factual matrix in a given case brings out the jurisdictional facts necessary for the intervention envisaged in the Act is a question that must necessarily be answered in each case. If the answer to the same in a given case is one where the jurisdictional fact is not made out, it would necessarily follow that the absence of a jurisdictional fact would lead to the remedies under the Act not being available – of course, making it clear that other remedies available in law would, in no manner, be eroded by such finding.

45. Needless to say, it would always be open to all parties to initiate appropriate proceedings in an appropriate forum in accordance with law, to assert their perceived rights. The analysis in this judgement, being a decision in the writ jurisdiction, and that too on the findings returned on jurisdictional facts, is not an expression of an opinion on merits and facts but an expression of an opinion on the exercise of jurisdiction vested in the Maintenance Tribunal, and whether it was validly exercised.

46. In the peculiar facts of the case, considering the extraordinary jurisdiction of this Court, liberty is granted to the Father

to make a fresh application ***but subject to*** the condition that he ought to demonstrate how he fits within the ambit and scope of Section 4, and provide empirical evidence for the same. Should such an application be made with attendant evidence to support the same, the Sons shall be entitled to provide their response and evidence, and meet the foundational element of whether the jurisdiction of the Act is at all available to the Father, and if available, what remedies would be appropriate in the facts of the case.

47. With the aforesaid directions, the Petition is finally ***disposed of.*** Rule is made absolute in the aforesaid terms. No costs.

48. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]