

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). OF 2025
(ARISING FROM SLP(CIVIL) NO(S). 7675 OF 2024)
RAJESWAR PRASAD ROY ...APPELLANT(S)

VERSUS
THE STATE OF BIHAR
& ORS. ... RESPONDENT(S)

ORDER

1. Leave granted.
2. The present appeal assails the order dated 03.01.2024 passed by the High Court of Judicature at Patna in Letters Patent Appeal No. 907 of 2023, stemming from Civil Writ Jurisdiction Case no. 7851 of 2022. The High Court thereby allowed the appeal filed by Respondent nos. 8 and 9 and set aside the order passed by Single judge dated 20.07.2023. Effectively the High Court has set aside the eviction order passed against Respondent Nos. 8 and 9.
3. Brief facts leading to this appeal are summarised as follows:

3.1 The Appellant, a retired Junior Engineer who was employed with the Bihar State Housing Board was handed over the possession of property number G/626, Lohia Nagar, Kankarbagh, in Patna by virtue of the Plot possession Report issued on 28.01.1982, during his employment. Subsequently by the Deed of lease in perpetuity dated 20.07.1992, the property was transferred to Appellant by the Bihar State Housing Board. On 30.04.2009, the Appellant superannuated from service and started earning monthly pension of Rs.4,789/-. To supplement his income, he constructed 20 rooms on the subject property, renting them out at rates between Rs. 500/- and Rs. 1000/- per room per day. He is presently residing with his wife in a rental flat at Kankarbagh in Patna which is his permanent residence. They are sustaining themselves from the rental income from subject property which is being run in the name of 'Preeti Rest House'. They have three sons.

3.2 Respondent nos. 8 Ravi Shankar and 9 Minu Kumari are Appellant's third son and daughter-in-law, respectively. They got married on

14.06.2018 and briefly resided at the Appellant's residence. Later they stayed at parental house of Respondent No. 9 at Bazar Samity in Patna while they used to visit Appellant at regular intervals. The Appellant contends that in 2021, Respondent no. 9, his daughter-in-law started creating discord in the relationship between Respondent no. 8 and him, allegedly instigating Respondent no. 8 to seize Appellant's properties, including the subject property.

3.3 The Appellant claims that Respondent no. 8 initially requested access to one room in the subject property temporarily on the assurance that he will seek alternative accommodation. Subsequently Respondent no. 9 also started living in this room along with their child aged 4 years. She allegedly encroached upon two additional rooms in the subject property by breaking the lock, coupled with threats of false implication in criminal cases to Appellant. The Appellant further alleges that she created obstacles for other people staying at Rest house. Currently Respondent No. 8 and 9 are occupying three rooms at the subject property.

3.4 Aggrieved by this situation, Appellant lodged a complaint against Respondent Nos. 8 and 9 at Kankarbagh police station at Patna. Allegedly as a counterblast, Respondent No. 8 filed complaint against the Appellant, his family members and the staff working at Rest house stating that Appellant has thrown his wife and daughter from home and his family is pressuring him to leave his wife because she belongs to other caste. Further, on 08.12.2021, he filed civil suit for partition seeking partition of subject property claiming that it is an ancestral property. However, Appellant states that he has not received any notice in the said suit.

- 4 Considering the above circumstances, on 11.12.2021 the Appellant filed application under Maintenance and Welfare of Parents and Senior Citizens Act, 2007¹ (“Act”)² with prayer to remove the illegal encroachment on the subject property by Respondent Nos. 8 and 9 and to protect him and

¹ The Act

² The DV Act

his wife from mental and physical harassment. The Chairman, Tribunal-cum-Sub-Divisional Officer, Patna Sadar (“Maintenance Tribunal”) on 16.04.2022 ruled in favour of Appellant, and ordered the eviction of Respondent Nos. 8 and 9 from the subject property. The Respondent Nos. 8 and 9 challenged the eviction order by filing a writ petition before the High Court. Additionally, Respondent No. 9 filed a case against Appellant and his family members under Domestic Violence Act, 2005.

- 5 The Single Judge of the Patna High Court dismissed the writ petition by order dated 20.07.2023. The Single Judge held that Respondent No. 8 was given one room in the aforesaid Preeti Guest House for a few days. However instead of vacating the same, the Respondent No. 8 had also called his wife and child to live in this property and they further grabbed two more rooms without the consent of Appellant. The court reasoned that the Act aims to provide simple, speedy, and inexpensive mechanisms for the protection of life and property of older persons. It

emphasized how the need to protect the maintenance and welfare of parents and senior citizens is guaranteed and recognized under the Constitution of India as well. Normal life includes the right to live peacefully in one's own property and not be prevented from its use. The Court further emphasised that removal of a person with no right in the premises is not eviction.

- 6 On the issue of power of the Tribunal authorised under the Act with respect to order of eviction, the Court held that Civil Courts are precluded from entertaining matters where jurisdiction is vested under the Act. It placed reliance on *S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District & Others*³ to hold that such Tribunal may have authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent, and eviction would be an incident of the enforcement of the right to maintenance and protection. Therefore, the Single Judge dismissed the writ petition,

³ (2021) 15 SCC 730.

finding no infirmity or illegality in the Tribunal's order.

- 7 The Respondents preferred Letters Patent Appeal before the Division Bench. In this Letters Patent Appeal numbered as LPA No. 907 of 2023, the Division Bench of the High Court overturned the decision of the Single Judge and allowed the Respondents' appeal by the impugned order, primarily on the ground that the Maintenance Tribunal could not have ordered the eviction of the Respondents in the absence of a specific claim of maintenance under S. 23(1) of the Act. The appropriate remedy was not eviction but imposing a fair rental obligation on the son for the occupied rooms. Thus, it set aside the eviction order, remanded the case for the determination of reasonable rent, and allowed the Appellant the option to pursue eviction through Civil Court. It also set aside observations made by the Single Judge about the sustainability of the title suit and the efficacy of a petition under the DV Act.

- 8 The High court acknowledged the Tribunal's authority to order eviction to ensure the maintenance and protection of senior citizens but stated this authority should be cautiously exercised and only when necessary for the senior citizens' welfare.
- 9 We have heard the counsels for both sides and perused the record. After due consideration of facts and circumstances, we are of the opinion that, both the Maintenance Tribunal and Single Judge of the High Court were right in passing the order of eviction against Respondent Nos. 8 and 9. It is well established from the Plot Possession Report issued on 28.01.1982 by Bihar State Housing Board that the subject property is Appellant's self-acquired property and not an ancestral property. Respondent Nos. 8 and 9 have continuously claimed before all judicial forums that they have legitimate claim over the subject property for it is an ancestral property. They are at liberty to pursue their claim through appropriate legal remedy however we hereby affirm the factual finding of the Maintenance Tribunal. Both, the Single judge and

the Division Bench of the High court have concurred with Tribunal's finding on facts. Further, we must note that behaviour of Respondent Nos. 8 and 9 towards the Appellant is getting worse day by day as evidenced from multiple proceedings including criminal complaints lodged by them against the Appellant.

- 10 As far as the authority of Tribunal under the Act to order eviction is concerned, this court in ***S Vanitha v Deputy Commissioner Bengaluru Urban Disincr & Ors***⁴, specifically held that the Tribunal under the Act has the authority to order eviction to ensure the maintenance and protection of the senior citizens. This case involved a similar challenge to the order of eviction by daughter-in-law. The relevant paragraph (Para 25) from the case is extracted below:

“**25.** The substance of sub-section (2) of Section 23, as submitted by the second and third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction

⁴ (2021) 15 SCC 730.

of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. ***The Tribunal under the Senior Citizens Act, 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of 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.*** It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law i.e. the appellant. The land, where the house has been constructed, was originally purchased by the son of the applicants who are seeking eviction of their daughter-in-law. The son had purchased the property a few months before his marriage to the appellant. He had subsequently transferred the property by a registered sale deed to his father and the fact that it was for the same consideration after the lapse of several years is of significance. The father, in

turn, executed a gift deed in favour of his spouse. The appellant has asserted that she had been living in the house, as her matrimonial residence, until the application was filed. Her spouse has (according to her) deserted her and their minor daughter and left them in the lurch. The electricity to the premises was disconnected for non-payment of dues. Their daughter has sought admission to an engineering degree course however her father, fourth respondent has not provided any financial support. The transfers which took place cannot be viewed in isolation from the context of the ongoing matrimonial dispute which has taken place. The issue is whether the appellant as the daughter-in-law and the minor daughter could have been ousted in the above manner.

- 11 Furthermore, the counsels for Appellant have rightly pointed out Rule 21 (2) (i) of the Bihar Senior Citizens Rules, 2012 which specifically provides that it is the duty of the District Magistrate to ensure that the life and property of the senior citizens are protected and they are able to live with security and dignity. The present Appellant is 75 year old. It shall be a defeat of the purpose of the Act if Appellant is not granted the benefit of eviction against his son and daughter-in-law who have not only encroached his self-acquired property but also

threatened him of false criminal complaints, abusing and creating hurdles in running of the Rest House and thereby causing mental and physical harassments to old parents.

- 12 The Appeal is accordingly allowed. The Impugned order of the Division Bench dated 03.01.2024 is set aside and that of the Maintenance Tribunal dated 16.04.2022 is restored. Further, considering the facts and circumstances of the case, we grant time till 31st May, 2025 to respondents (8 and 9) to vacate the premises in question and hand over vacant and peaceful possession to the appellant.
- 13 Pending applications, if any, shall stand disposed of.

..... **.J.**
[VIKRAM NATH]

..... **.J.**
[SANDEEP MEHTA]

NEW DELHI;
JANUARY 30, 2025.