



J-WP-4949-24

1/9

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4949 OF 2024

Bhimrao S/o Indeshwar Meshram,  
Aged about 65 years, Occu: Retired,  
R/o Plot No.37, Abhaygiri Building,  
Maroti Nagar, Dattawadi, Nagpur,  
Tah. & Distt. Nagpur.

... Petitioner

-VS-

1. Ashish S/o Bhimrao Meshram,  
Aged about 41 years, Occu: Doctor,  
R/o Plot No.37, Maroti Nagar,  
Abhayagiri Building, Dattawadi,  
Nagpur-440023, Tah. & Distt. Nagpur.

2. Sau. Deepali W/o Ashish Meshram,  
Aged about 38 years, Occu: Housewife,  
R/o Plot No.37, Maroti Nagar,  
Abhayagiri Building, Dattawadi,  
Nagpur-440023, Tah. & Distt. Nagpur.

3. Officer, Senior Citizens Welfare Tribunal  
and Sub Divisional Magistrate,  
Nagpur (Rural), Nagpur.

4. Appellate Officer,  
Senior Citizens Welfare Tribunal  
and District Magistrate, Nagpur.

... Respondents

Shri Manish Rajendra Johrapurkar, Advocate for petitioner.

Shri Saurabh Chaudhari, Advocate for respondent No.1.

Shri Abhijit Meshram, Advocate for respondent No.2.

Shri A. S. Fulzele, Additional Government Pleader for respondent Nos.3 & 4.

**CORAM :** NANDESH S. DESHPANDE, J.

**ARGUMENTS WERE HEARD ON :** August 27, 2026

**JUDGMENT PRONOUNCED ON :** September 01, 2026

Judgment :

**Rule.** Rule made returnable forthwith. Heard finally with

the consent of the learned counsel for the parties.

2. The present petition is filed challenging the order passed by the Appellate Officer, Senior Citizens Welfare Tribunal and District Magistrate, Nagpur in Appeal No.4/2022 on 17/08/2022 as also the order dated 18/11/2021 passed by the Officer, Senior Citizens Welfare Tribunal and Sub Divisional Magistrate, Nagpur (Rural) in Maintenance Application No.02/2021.

3. The facts as can be seen from the memo of the petition are as under :

The petitioner herein is the father of respondent No.1 and father-in-law of respondent No.2. Thus, respondent Nos.1 and 2 are husband and wife respectively. Since there was certain disputes amongst them, the petitioner i.e. father preferred an application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the Act of 2007) before the Sub-Divisional Officer. The said application was registered as Maintenance Application Case No.2/2021.

4. In response to the notice issued by the Officer, the respondents herein filed reply. The Sub-Divisional Officer vide order dated 18/11/2021 rejected the application preferred by the applicant

i.e. the petitioner herein. The applicant i.e. the petitioner being aggrieved by the order of rejection, filed appeal under Section 16 of the Act of 2007 before the District Magistrate i.e. the appellate Authority. However, the said Authority also rejected the appeal of the petitioner. Both these orders are impugned in the present petition.

5. I have heard Shri M. R. Johrapurakar, learned counsel for the petitioner, Shri S. A. Choudhary, learned counsel of respondent No.1, Shri Abhijit Meshram, learned counsel for respondent No.2 and Shri A. S. Fulzele, learned Additional Government Pleader for respondent Nos.3 and 4.

6. Learned counsel for the petitioner took me through the order of the first Authority as also the Appellate Authority and submits that both the Authorities have erred in law in rejecting the application of the petitioner on erroneous ground. It is his submission that as can be seen from the application filed by the petitioner that though he had not claimed any maintenance, right of existence in the property which is owned by him exists in him. He therefore submits that both the orders are incorrect and proceed on a factually fragile premise. He further submits that it was an admitted fact on record that the immovable property i.e. Plot No.37 situated at Dattawadi, Nagpur was purchased in the name of the son but the funds were provided by the father i.e.

the petitioner herein. He also submits that thereafter the respondent No.1 has gifted the property in favour of the petitioner by way of a registered deed. It is therefore his submission that findings in the impugned order that the Gift Deed is not registered is actually incorrect.

7. As far as order of the appellate Authority is concerned, he submits that the said order does not take into consideration the fact that the Gift Deed is registered and records totally incorrect finding. It is therefore his submission that both the orders cannot be sustained in law and are liable to be set aside. Learned counsel placed reliance on the order of the Hon'ble Apex Court dated 30/01/2025 in SLP (CIVIL) No.7675/2024 (*Rajeshwar Prasad Roy vs. The State of Bihar and ors.*) and particularly paragraphs 9, 10, and 11 thereof to contend that the order of eviction can be passed under the provisions of the Act of 2007.

8. Per contra, Shri S. A. Choudhary, learned counsel appearing for respondent No.1 and Shri Abhijeet Meshram, learned counsel appearing for respondent No.2 counter the said argument. It is their submission that both the Authorities have concurrently recorded a finding that the petitioner father is in receipt of regular pension as also the family pension of his deceased wife who was also a government servant. It is their submission that the provisions of the Act of 2007

would not be invoked when the senior citizen is able to maintain himself. As far as registration of Gift Deed is concerned, they however admit that Gift Deed is registered but submit that a suit for cancellation of said Gift Deed is already filed which is pending before the competent Court of Law. They therefore support the impugned orders.

9. In support of his contention, learned counsel Shri Choudhary placed reliance on the judgment of this Court in Writ Petition (L) No.31614/2025 dated 08/12/2025 (*Jitendra Gorakh Megh vs. Additonal Collector & Appellate Tribunal, Mumbai Suburban District and anr.*) and more particularly paragraph 24 thereof which is reproduced as under :

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

*confirms).*”

10. As can be seen from the record of the matter though there was an attempt of mediation, however the same unfortunately cannot be fructified. Furthermore on 20/08/2026 this Court recorded in its order the proposal submitted by respondent No.1 that it is agreeable to the said respondent if his father i.e. the petitioner herein resides on the ground floor of the building while the respondents will shift to the first floor. The said proposal was also rejected by the petitioner.

11. In that view of the matter, I have gone through the record and appreciated the contention canvassed by the learned counsel for the respective parties. The Competent Authority under The Act of 2007 while rejecting the application filed by the petitioner herein has recorded a finding that the entire object of enacting the Senior Citizens Act is to provide for welfare and maintenance of senior citizens. It has therefore proceeded to observe that since the petitioner herein is regularly receiving pension as also family pension of deceased wife, the provisions of Act of 2007 cannot be invoked to order eviction of respondent No.1 from plot No.37 situated at Dattawadi, Nagpur. The appellate Authority in appeal has concurred with the said finding.

12. Even though a factually incorrect finding has been recorded

by the appellate Authority of non registration of Gift Deed, the fact remains that the petitioner is not a person ‘ who is unable to maintain himself’. Furthermore, the appellate Authority has rightly recorded that the validity or otherwise of the Gift-Deed is an issue which could not be within the scope and ambit of the appellate Authority. Thus, there is no perversity or otherwise and a concurrent finding of fact has been recorded by the Authorities below.

13. It would be worthwhile to mention that The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought on the statute book to provide for appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens. It also provides for institutionalization of a suitable mechanism for protection of life and property of older persons. These were the objects amongst others for which the Act was brought on the statute book. Section 4 is a section which provides for entitlement of the senior citizens to make an application under Section 5 which contemplates “ *A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him* ”. It is thus obvious that only such senior citizen who is unable to maintain himself from his own earning or out of the property owned by him is entitled to make an application under Section 5 of the Act of 2007.

14. It, therefore, follows as a necessary corollary that a person like the petitioner, who admittedly receives a regular pension as well as a family pension of the deceased wife, would not fall within the meaning of Section 4 of the Act of 2007 so as to make him entitled to make an application under Section 5 of the said Act.

15. There has been allegations and counter allegations by the petitioner as also the respondents. However, it is an admitted position that the petitioner is having sufficient earning to maintain himself. Thus, the findings, in my view, cannot be questioned. However, the fact remains that the Sale Deed of the immovable property bearing Plot No.37 was registered in the name of the son. It is however the contention of the petitioner that even though the petitioner is not the registered owner, the funds have been provided by him. Counsel for the respondent No.1 seriously disputed this and states that respondent No.1 started practicing as a Doctor in 2009 and the Sale Deed was executed on 16/09/2011. He also takes me through the payment of schedule in the said Sale Deed which shows that the entire consideration was passed by way of cheque drawn by respondent No.1 and his deceased mother. Be that as it may. It is an admitted fact on record that of the same property a Gift Deed was executed on 28/01/2020 by the respondent No.1 in the name of the petitioner. There are various proceedings pending initiated by both the parties

which would not be germane for deciding the present petition.

16. In that view of the matter, without observing anything about pending civil suit between the parties, I find no perversity in the orders passed by the Courts below.

It is thus clear that a senior citizen like the petitioner cannot claim any maintenance from the respondents and the order of eviction in pursuance thereof. The eviction (as it is claimed in the matter) would be an incident of enforcement of the right to maintenance and protection which should be granted only after adverting to competent claims of both parties to the suit.

18. In the present case both the Authorities have applied their mind and recorded a finding based on available material on record. Such finding cannot be termed to be perverse warranting interference in writ jurisdiction.

The petition being meritless warrants rejection and is accordingly rejected.

Rule stands discharged. No order as to costs.

(NANDESH S. DESHPANDE J.)

Asmita