



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Special Appeal Writ No. 552/2026

Ramesh Kumar Soni S/o Sampat Raj Soni, Aged About 42 Years,
R/o Subhash Marg, In Front Of Co-Operative Bank, Bilara District
Jodhpur.

----Appellant

Versus

Sampat Raj Soni S/o Bihari Lal Soni, R/o Subhash Marg, In Front
Of Co-Operative Bank, Bilara District Jodhpur.

----Respondent

For Appellant(s) : Mr. R.J. Punia
For Respondent(s) : Mr. Deepak Chandak, AAAG

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SANDEEP SHAH
Order(Oral)

Reportable

05/05/2026

Per: Arun Monga, J.

1. Intra Court appeal herein is directed against an order dated 21.04.2026 passed by the learned Single Judge in S.B. Civil Writ Petition No. 5263/2024, whereby the writ petition filed by the appellant seeking quashing of the eviction order dated 08.02.2024, requiring him to move out of his parental house, passed by learned Magistrate Tribunal and Sub Divisional Officer was dismissed.
2. The respondent (father) filed an application dated 12.04.2023 before the Maintenance Tribunal and Sub-Divisional Officer, Bilara under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, seeking eviction of his son (appellant herein) from the



residential house. In the application, it was alleged that the son was harassing and misbehaving with him, and that his wife was supporting such conduct, thus necessitating eviction from the premises.

2.1 Appellant then filed a reply contending that the property in question is ancestral in nature. It was also asserted that an incident of assault occurred on 10.07.2023 involving the appellant's wife, leading to registration of FIR No. 231/2023 against the respondent. The appellant-son stated that the house is his sole residence, with him occupying the first floor while the respondent-father resides on the ground floor. Notwithstanding, the Tribunal, by order dated 08.02.2024, allowed the eviction application and directed the appellant to vacate the premises within two months.

2.2 Aggrieved thereby, the appellant filed a writ petition which was dismissed vide impugned order dated 21.04.2026.

2.3 Hence, this instant special appeal.

3. The learned counsel for the appellant argues that the learned Single Judge has erred in passing the impugned order, as the statutory scheme under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 only provides for maintenance under Section 4 and the procedure under Section 5, without conferring any power of eviction upon the Tribunal. He further stated that even the Rules of 2010 framed by the State of Rajasthan under Section 32 do not contain any provision enabling eviction, and therefore, the application itself was not maintainable and the order directing eviction is without jurisdiction.

3.1 He further contended that the learned Single Judge failed to appreciate the settled legal position laid down by the Hon'ble Supreme Court in **Smt. Smtola Devi vs. State of U.P.**¹, wherein it has been

1 2025 SCC OnLine SC 669





held that the Tribunal is not empowered to order eviction and that the object of the Act can be achieved by granting maintenance and protection from harassment.

3.2 Lastly, he submitted that the learned Single Judge overlooked material facts, including that the property in question is the appellant's only place of residence and is ancestral in nature, giving him a right in the property by birth. It is also submitted that there exists a prior incident wherein the respondent allegedly assaulted the appellant's wife, leading to registration of an FIR, which reflects on the respondent's conduct. Therefore, the findings regarding the safety of the respondent are perverse and not based on proper appreciation of the record.

4. Heard and perused the material available on record.

5. We are unable to persuade ourselves to take a view other than the one already taken by the learned Single Judge. In order to appreciate the same, relevant extract of the impugned order is reproduced hereinbelow:

"9. Upon consideration of the submissions and perusal of the judgments of the Hon'ble Supreme Court, this Court finds that it is now well settled that the Maintenance Tribunal is empowered to pass eviction orders where necessary for the welfare and protection of senior citizens. Reference may be made to:-

(I) S Vanitha Vs. Deputy Commissioner Bengaluru Urban Disincr & Ors. reported in (2021) 15 SCC 730.

(ii) Urmila Dixit V. Sunil Sharan Dixit reported in (2025 2 SCC 787).

(iii) Samtola Devi vs. State of Uttar Pradesh reported in 2025 SCC OnLine SC 669.

(iv) Rajeshwar Prasad Roy vs. The State of Bihar & Ors. passed in Civil Appeal No.7675/2024.

10. As regards the reliance placed by the petitioner on "Samtola Devi" (supra), it is noteworthy that even in that case, the Hon'ble Supreme Court recognized the power of eviction but clarified that such power is discretionary and not mandatory in every case. In that matter, the eviction order was set aside due to the pendency of a civil dispute concerning the property.

11. In view of the settled legal position, the contention that the learned Maintenance Tribunal lacks jurisdiction to order eviction under the Act of 2007 and the Rules of 2010 is devoid of merit. and is rejected. This Court further finds that the respondent has established his ownership over the subject property through family settlement. The continuous disputes and





pending criminal proceedings between the parties is also established indicating that the sole respondent may not feel safe while living with petitioner. The purpose of the Maintenance Act would be defeated if old parents are not protected by continuous mental and physical harassment at the ends of their sons/ daughters.

12. Accordingly, this Court finds no illegality or jurisdictional error in the order dated 08.02.2024 passed by the learned Maintenance Tribunal, Bilara in Case No. 01/2023 (Sampat Raj Soni vs. Ramesh Kumar Soni). The said order is hereby upheld.

13. Consequently, the present writ petition, along with all pending applications, stands dismissed."

6. Upon perusal of the reasoning assigned by the learned Single Judge in the impugned judgment and the material available on record, we find no legal infirmity or irregularity warranting our interference. Strictly speaking, the Single Judge's order requires no further reinforcement, clarification, or addition from us.

7. Though we are in respectful agreement with the view taken by the learned Single Judge and suffice it would just be that we add no more other observe that we reiterate the same, but having heard and perused the file we may as well record a brief discussion in the succeeding part.

8. Learned Single Judge has rightly rested the dismissal of the writ petition on three firm foundations viz. (i) the Maintenance Tribunal having the jurisdiction to pass eviction orders under the Act of 2007; (ii) the established ownership of the respondent-father over the subject property, and; (iii). the demonstrated hostility of the environment owing to pending criminal proceedings between the parties. We have no reservation to observe that all three pillars of the reasoning are equally affirmed by us.

9. No doubt, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 does not explicitly use the word "eviction," but Hon'ble the Supreme Court (already cited in the impugned order) through series of judgments has held that Tribunals under the Act carry



an implicit power to pass eviction orders, and that denying this power would defeat the very purpose of the Act, which is to provide speedy, simple and inexpensive remedies to senior citizens. Where eviction is sought under Section 23, the twin conditions of a conditional transfer and breach of the maintenance obligation must both be satisfied.

10. Once the Maintenance Tribunal possesses the power to order eviction where necessary for the protection of a senior citizen, and that proof of ownership coupled with demonstrated harassment suffices to invoke that power. As noted, this is now a settled position of law. The power is however discretionary and not mandatory in every case, the Tribunal must be satisfied on facts that eviction is necessary and expedient for the protection of the senior citizen.

11. Pertinently, three distinct aspects may be noted in rejecting the appellant's challenge discussed hereinafter.

11.1 First, on the discretionary dimension, the learned Single Judge independently examined whether, even assuming the Tribunal had the power to pass an eviction order, such an order was warranted on the facts, and answered that question in the affirmative.

11.2. Second, on the appellant's claim of ancestral property, the said defence is/was not available to be urged in the present proceedings or before the writ court. No civil suit or appropriate proceeding has been instituted by the appellant for enforcement of any right in the property, and in the absence of such a proceeding, the character of the property as ancestral or otherwise can/could not be gone into at this stage.

11.3. Third, and most significantly, the bare facts themselves are a telling tale of the ground reality. An FIR had been registered at the instance of the appellant son against none other than his father alleging



assault, which is a clear pointer that hostilities between the two have reached their lowest point.

12. In the premise, if protection orders are/were not passed in favour of the senior citizen father the result may be rather undesirable and not in the interest of either side. Compelling the two parties to continue residing in the same premises while simultaneously appearing as opposite parties in criminal proceedings would serve the interest of neither.

13. The protective purpose of the Maintenance and Welfare of Parents and Senior Citizens Act, cannot be defeated by permitting a son to assert a claim over his senior citizen father's property while simultaneously engaging in harassment of his father. At the cost of repetition, the existence of active criminal hostilities between the parties is itself a relevant and weighty circumstance justifying the exercise of the Tribunal's protective jurisdiction in favour of the senior citizen.

14. Accordingly, taking a wholesome view of the matter, the appeal being bereft of merit and stands dismissed.

15. All pending applications also stand disposed of.

(SANDEEP SHAH),J

(ARUN MONGA),J

88-Anshul/-