

**Case :-** MATTERS UNDER ARTICLE 227 No. - 612 of 2024

**Petitioner :-** Onkar Nath Gaur and another  
**Respondent :-** District Magistrate/President Appellate Tribunal Lko. and 2 others

**Counsel for Petitioner :-** Arvind Kumar Srivastava,Anurag Narain Srivastava  
**Counsel for Respondent :-** C.S.C.,Abhinav Pankaj,Avinash Pandey,Indra Prakash,Mahendra Pratap Pandey,Vijay Krishna Dwivedi

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**Hon'ble Attau Rahman Masoodi, J.**

**Hon’ble Jaspreet Singh, J.**

**Hon’ble Subhash Vidyarthi, J.**

**(Per: Jaspreet Singh, J.)**

This judgment has been divided into segments to facilitate analysis.

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## **A. Introduction**

1. Questions of seminal importance arising from The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act of 2007”) are the subject matter of consideration of this Full Bench.

2. More often than not, matters are coming up before the courts arising out of the Act of 2007 where the issue is in respect of the powers of the Maintenance Tribunal or/and Appellate Tribunal to pass an order of eviction of children, relative or any third person from the property of the senior citizen/the parent.

3. There were divergent views amongst the learned Single Judges of this Court. However, what assumed significance was the fact that there were contrary Division Bench decisions as well. In one such matter i.e., petition bearing No. 612 (A-227) of 2024 (Onkar Nath Gaur and Another Vs. D.M/President, Appellate Tribunal, Lucknow and 2 others), the learned Single Judge noticed the dichotomy in the decisions of the Division Benches wherein one view expressed was that under the Act of 2007, the Maintenance Tribunal and the Appellate Tribunal do not have the power to order eviction or dispossession. This view was expressed in **Ms. Swaraj Varun and Another Vs. State of U.P. and Another; 2020 (11) ADJ 646 (DB)** and **Bipraji Singh Vs. State of U.P. and others; 2021 SCC OnLine All. 964**.

4. However, a later Division Bench took the view that an order of eviction can be passed in certain cases and circumstances in **Shivani Verma Vs. State of U.P. and others; 2023 (6) ADJ 496 (DB)** wherein the Court went on to overrule two other decisions of learned Single Judges of this Court in **Abhishek Tiwari v. State of U.P., 2022 SCC OnLine All 367** and **Khushboo Shukla Vs. District Magistrate, Lucknow and others 2021**

**SCC OnLine All 794.** However, the Division Bench in **Shivani Verma (Supra)** did not notice the earlier two Division Bench cases of **Ms. Swaraj Varun (Supra)** and **Bipraji Singh (Supra)**.

5. Thus, noticing the schism in the views expressed by the Division Benches and the variance in views expressed by several single Judges in their respective decisions without considering the impact of the Division Bench judgments and noticing the importance of the questions involved, the learned Single Judge vide his order dated 15<sup>th</sup> February, 2024 framed four questions and referred the matter to be answered by a Larger Bench for an authoritative pronouncement.

6. It is in the aforesaid backdrop that the following questions have been referred for consideration of this Full Bench:-

*“(i) What is the true scope and powers of the maintenance Tribunal constituted under Section 7 of the Act of 2007 which is contained in Chapter-II of the Act of 2007 and whether the Tribunal in exercise of its power in context with Sections 7, 8 and 9 of the Act of 2007 would be empowered to pass an order of eviction while deciding an application preferred before it in terms of Section 5 of the Act of 2007?*

*(ii) What would be the true scope and power of the District Magistrate who exercises power as an Appellate Tribunal in terms of Sections 15 and 16 of the Act of 2016 [sic] and whether in exercise of such powers the Appellate Tribunal can pass an order of eviction?*

*(iii) What is the true scope of Section 21 of the Act of 2007 which deals with protection of life and property of senior citizen which is contained in Chapter-V of the Act of 2007 and to what extent the Authority can pass an order for adjudging certain transfers as void in terms of Section 23 of the Act of 2007 vis-a-vis the duties and powers of the District Magistrate conferred under Rules 21 and 22 of Rules of 2014 and in this context whether the orders for eviction can be passed?*

*(iv) Whether the Division Bench in Ms. Swarj Verma (Supra) (sic) and Bipraji Singh (Supra) lays down correct law or whether the law laid down by the Division Bench in Shivani Verma (Supra) lays down the correct law?”*

7. Looking into the gravity of the questions referred to this Full Bench and its ramifications, this Court apart from hearing the learned counsel for the parties had also invited the members of the Bar to address the Court on the issues before it.

8. Sri Anurag Narain Srivastava, learned counsel appearing for the writ petitioners canvassed the proposition that under the Act of 2007, the Authorities have the right to pass an order of eviction in befitting cases. This proposition is also supported by the learned Standing Counsel Sri Nishant Shukla. Another member of the Bar namely Sri Abhinav Pankaj, Advocate also supported the aforesaid proposition as canvassed by the learned counsel for the writ-petitioners and the State.

9. On the other hand Sri Apoorva Tiwari, learned member of the Oudh Bar Association and Sri Sudhanshu Chauhan, learned counsel who usually appears for the Union of India canvassed the proposition that under the Act of 2007, there is no specific power conferred on the Authorities to pass any order of eviction. The Rules framed under the Act also do not confer any such power and in absence of any source of power, the Tribunal being an Authority of limited jurisdiction cannot exercise such powers to order an eviction.

**B. Submissions on Behalf of the Petitioners:-**

10. Sri Anurag Narain Srivastava, learned counsel for the petitioners submitted that as the title of the Act of 2007 suggests the Act was primarily promulgated not only for the maintenance but also for the welfare of the parents and senior citizens and in order to fulfill the objects of the Act as well as to create a robust system for providing maintenance and welfare for the

parents and senior citizens, the Authorities under the Act of 2007 are conferred with ample powers to pass such orders as may be necessary and required to protect the right of residence of the parents and senior citizens and to enable them to live with dignity and peace. The Authorities in order to achieve this laudable objects of the Act of 2007, are empowered to pass appropriate orders including an order of eviction of children or relatives, as the case may be, if the same is inevitable for making the relief granted to such senior citizen/parent more relevant and meaningful.

11. It was further submitted that the scheme of the Act of 2007 is such that the forum of appeal is provided only for the senior citizen or the parent and it does not give a right to the children or the respondent in the complaint before the Maintenance Tribunal to avail such a forum of appeal. However, the Appellate Tribunal while exercising the powers of appeal can pass appropriate orders including an order of eviction to ensure that the maintenance which had been claimed by the parent/senior citizen is given a meaningful expression since the term maintenance as defined in the Act of 2007 is expansive and it inter alia includes a right of residence. Hence, a restrictive meaning should not be ascribed and in order to ensure that the senior citizen/parent who has a right of residence accruing under the Act, can reside with dignity then it necessarily requires that the Appellate Tribunal is clothed with the power to remove any such obstruction which may create an impediment for a senior citizen/parent to live in a dignified, peaceful and respectable manner.

12. It was further urged that Rule 21 as framed under the Uttar Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2014 (hereinafter referred to as the Rules of 2014) confers powers on the District

Magistrate to issue such directions as may not be inconsistent with the Act and the District Magistrate who is the Appellate Authority can pass such orders as may be necessary including the power to pass an order of eviction.

13. The learned counsel for the petitioners further submitted that the Apex Court in **S. Vanitha Vs. Deputy Commissioner, Bengaluru; 2021 (15) SCC 730** while considering the interplay between the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “Act of 2005) and considering the Act of 2007 held that the two Acts and their provisions have to be harmoniously construed and in certain circumstances, the power of eviction which lies in the hands of the Tribunal, can be exercised by it.

14. Learned counsel for the petitioner further submitted that where the attitude, behaviour and actions of children/relatives are not conducive viz. a viz. their parents/senior citizens, then in such circumstances, the senior citizen/parent may experience trauma and face a difficult situation and due to pressure and emotional dependence it may be hard for the parent/senior citizens to exclude or oust such children/relative while silently braving the emotional and physical trauma. In such circumstances, the Act of 2007 comes to the aid of such traumatized/neglected parent/senior citizen and in proceedings under the Act of 2007, if circumstances so warrant, then in the given circumstances the Authorities in deserving cases can pass appropriate orders, including an order of eviction for the benefit and welfare of the parent/senior citizen.

15. It was further submitted that where the property in question belongs to the senior citizen and in cases where the senior citizen/parent is mistreated by their children/relatives then it cannot be said that they lose their right to seek

eviction of their children/relatives as the status of such children/relatives is nothing more than that of a licensee and the parent/senior citizen in capacity of the owner/licensor can seek the removal/eviction of the children who really speaking do not have any independent right to retain or remain in the said property against the wish of the parent/the senior citizen.

16. The learned counsel for the petitioners also submitted that in the Division Bench decision of **Swaraj Varun (Supra)**, the Court did not consider the scope of a residence order while the word maintenance as defined in the Act includes the right of residence and such an order of residence can be passed by the Maintenance Tribunal. It was also urged that the said decision does not consider the object of Chapter V of the Act of 2007 nor the scope of how a residence order, if claimed by a senior citizen/parent, can be made effective and meaningful especially in light of Rules 21 and 24 of the Rules of 2014.

17. Moreover, it was pointed out that the Division Bench in **Bipraji Singh (Supra)** did not consider the decision of the Apex Court in **S. Vanitha (Supra)** and for the aforesaid reasons it cannot be pressed into service to deny a right of eviction, especially when the entire scheme of the Act was not considered in the correct perspective in the said decision.

18. It was lastly urged that the later Division Bench decision of this Court in **Shivani Verma (Supra)** noticed the entire scheme of the Act and the Rules including the word ‘maintenance’ which includes the right of residence. It also noticed the impact and import of the decision of the Apex Court in **S. Vanitha (Supra)** and thus after taking an over all view, it has rightly concluded that to provide the right of residence/maintenance to the

senior citizen/parent, if an order of eviction is required, then the same can be validly passed.

**C. Submissions on Behalf of the State of U.P.:-**

19. Sri Nishant Shukla, learned Standing Counsel for the State has provided a copy of the Comprehensive Action Plan framed by the Ministry of Social Welfare of the State of U.P., for the record and has referred to various provisions of the Act of 2007 and the Rules of 2014 to submit that the Scheme of the Act is such that it recognizes the dual need of maintenance and protection of senior citizens/ parents and it also includes the element of avoidance of harassment for such class. It emphasizes that in order to avoid harassment of a senior citizen/parent and to provide meaningful maintenance and protection to a senior citizen/parent for their dignified living, an order of eviction if required in a befitting case, it can be ordered by the Tribunal as well as the District Magistrate as explained by a Division Bench of this Court in **Shivani Verma (Supra)**.

20. It is urged that while the District Magistrate in order to protect a senior citizen or his property apart from resolving any dispute relating to maintenance or in the case where a right of usage of such property of the senior citizen/parent is involved then in order to provide the necessary relief to such parent/ the senior citizen, an order of eviction can be passed and this would be a power implicit with the Maintenance Tribunal and District Magistrate as the case may be.

21. It has further been submitted that the Apex Court in **S. Vanitha (Supra)** had recognized the power of the Tribunal to pass an eviction order in compelling circumstances and the only caveat which is required to be



exercised is that the Tribunal or the District Magistrate, as the case may be, must be satisfied and must record reasons relating to the existence of compelling circumstances which requires passing of such an order by recording its satisfaction that in case if such an order is not passed then it would deprive the senior citizen of his right to enjoy his property with dignity and peace.

22. It was also submitted that Section 23 of the Act of 2007 clearly recognizes the power vested with the Tribunal to declare a document of transfer executed by a senior citizen as void and this also reflects the pervasive power conferred on the Tribunal, then, as a concomitant, the Tribunal can pass even an order to restore possession including to evict a person, failing which the Tribunal will fall short of its obligation to provide a complete relief and benefit to the senior citizen/parent under the Act of 2007. Any other meaning ascribed would amount to defeating the object of the Act of 2007, which would not be justified in law. Hence, it cannot be said that the Maintenance Tribunal or the District Magistrate, as the case may be, is not empowered to order eviction of the children/relative under the Act of 2007.

**D. Submissions on Behalf of the Union of India:-**

23. Sri Sudhanshu Chauhan, learned counsel appearing for the Union has submitted that even prior to the promulgation of the Act of 2007, there were certain Acts and provisions in law for providing maintenance to parents, namely the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the Act of 1956) and in the Criminal Procedure Code, the provisions for maintenance is provided under Section 125 Cr.P.C., which also finds reflection in Section 144 of the Bhartiya Nagrik Suraksha Sanhita

(hereinafter referred to as “The BNSS”) which are of general nature and not confined to parents or senior citizens alone.

24. It was further submitted that under the Act of 1956, a person (though confined to Hindus as defined in the Act) is bound to maintain his or her legitimate or illegitimate children and his infirm or aged parents. While the provisions of Section 125 Cr.P.C. and now Section 144 of BNSS do not define the term ‘maintenance’ or ‘parents’ but the said provision uses the terminology of providing maintenance inter alia to father or mother who is unable to maintain himself/herself and in such cases, monthly allowance for interim maintenance and expenses for the proceedings can be awarded by the Magistrate concerned.

25. It was urged that Section 125 Cr.P.C is a general provision available to all citizens irrespective of their religious orientation, however, in contradistinction, the Act of 1956 is available only to Hindus as defined in the Act of 1956. Despite the availability of provisions in law for maintenance, an emergent need to address certain pressing issues for providing care for the elderly was felt. Noticing a gradual shift in the societal composition leading the older generation to spend most of their later years in recluse which exposed them to emotional neglect and in many cases, it gave rise to maltreatment by resorting to physical, financial and emotional neglect and abuse.

26. These issues were becoming a challenge for the society, hence, in order to address such concerns, the Act of 2007 came into being. It provides for creation of a Maintenance Tribunal which is required to consider the issue of maintenance as defined in Section 2 (b) of the Act of 2007 but such a

Tribunal has not been vested with any power to pass an order of eviction.

27. It has also been submitted by Sri Chauhan that this issue was also under consideration before the Parliament and during the debate on the said bill which later came into being as the Act of 2007, it was observed that the matter relating to protection of life and property of a senior citizen/parent, basically pertains to law and order and this is State subject, hence, it was left open for the respective State Governments to examine the issue and if they deemed appropriate they could have legislated on the aforesaid aspect while framing the Rules. Therefore, the issue of eviction from a property was consciously left out from being incorporated in the Act by the Parliament and in the instant case even the State Government has not incorporated or provided for any such powers to either the Maintenance Tribunal/Appellate Tribunal or the District Magistrate, as the case may be.

28. It was next urged that Section 23 is a stand alone provision and in order to invoke the same, the necessary conditions as engrafted in the said Section have to be first ascertained. If the said conditions do exist, only then the Tribunal in a befitting case may pass an order as envisaged in the said Section and as a concomitant a limited order of restoring possession to the senior citizen/parent may be passed, however, it cannot be said that the Tribunal as a matter of course, has been vested with powers to order an eviction of children/relative or a third party.

29. It was further submitted that looking into the provisions of the Act of 2007, it would indicate that the Appellate Authority constituted in terms of Section 15 and 16 of the Act of 2007 has distinct and limited powers which is confined only to assess the validity of the orders passed by the Maintenance

Tribunal. Even though the District Magistrate has been designated as an Appellate Authority, the powers of a District Magistrate while it acts as an Appellate Authority under the Act of 2007 are different than the powers which a District Magistrate exercises as an authority appointed by the State Government for ensuring that the intent and purpose of the Act is achieved. This can clearly be discerned from the language of Sections 15 and 16 which relate to the powers exercised as an Appellate Authority which is in contradistinction to the language used in Section 22 of the Act of 2007 as well as the Rules made by the State Government in exercise of powers under Section 32 of the Act of 2007.

30. In this view, it was urged that the District Magistrate does not appear to have been conferred with powers to pass an order of eviction unless it is held that the power of eviction has been conferred upon the District Magistrate in furtherance of the comprehensive action plan as referred to in Section 22 of the Act of 2007 or the Rules framed by the State Government in exercise of its rule making power. It was also submitted that the power of eviction is neither conferred on the Maintenance Tribunal nor on the Appellate Authority, which exercises powers under Section 16 of the Act of 2007. Besides, the aforesaid, the District Magistrate has not been conferred with any adjudicatory powers. Clearly, the State Government has not conferred any power of eviction on the Tribunal or the District Magistrate in the Act nor in the Rules and moreover no such powers can be deciphered from the comprehensive action plan framed by the State Government under Section 22 (2) of the Act of 2007. Hence, inferring that the power to pass an order of eviction has been vested in the Maintenance Tribunal or Appellate Tribunal or the District Magistrate, as implicit powers to further the objects of the Act

of 2007 may not be an appropriate conclusion.

**E. Submissions on Behalf of the Members of the Bar:-**

31. Sri Apoorva Tiwari, learned counsel and member of the Bar assisted the Court and he submitted that a Tribunal constituted under a particular Act is bound to exercise its duties within the four corners of the Act itself. The Tribunal as created by the Act of 2007 does not partake or assume the nature or the role of a Court of Law which are constituted either under Article 214 (for the High Courts) or Article 124 (for the Supreme Court) of the Constitution of India or civil courts constituted under the Bengal, Agra and Assam Act, 1887 or under the Civil Courts Act of the respective State.

32. A Tribunal does not possess inherent powers, which otherwise may be available with a court constituted under the Constitution of India or under any Act which specifically confers such powers upon a court or Tribunal. It was further submitted that the Act of 2007, does not confer any power of eviction either on the Tribunal or the Appellate Authority.

33. Since the Act of 2007 is a special Act, hence, its provisions have to be construed by taking aid of the provisions in the Act itself and external aids may not be borrowed for the said purpose. While considering any provision of the Act of 2007, the definition given in the Act itself can be looked into and it would not be appropriate to ascribe a particular meaning or import some powers for the purposes of the Act of 2007 by borrowing it from any other Act or Rules.

34. It was urged that apart from Section 23 of the Act of 2007 (though for a limited purpose), there is no indication that the Tribunal constituted under the Act of 2007 has been conferred with powers to order eviction. Since the

provision of appeal has been couched in a restrictive language permitting an appeal under the Act of 2007 only at the behest of the Senior Citizen/parent and not at the behest of an 'aggrieved party' hence, the Appellate Authority would also exercise restrictive powers i.e. to say, it cannot exercise powers and pass such orders which the Tribunal in the first instance has not been conferred or entitled to pass.

35. In case where relief has been claimed by a senior citizen/the parent in terms of Section 23 of the Act of 2007 which if dismissed by the Tribunal and is appealed only in such a case when the Appellate Authority comes to the conclusion that the order of the Tribunal relating to the relief in Section 23 has been unjustly denied, it may then, while allowing the appeal pass such order of restoring the possession in a limited scenario, but not otherwise.

36. It was further urged that the Act of 2007 is a socio beneficial Act for the parents and senior citizens, hence the provisions have to be construed in a manner as expressed in the Act itself. In case any power which has not been conferred by the Act or the Rules framed thereunder then it may not necessarily permit the Constitutional Court to take recourse to powers of interpretation to read such powers into the Act which was left out by the legislature itself while promulgating the special law.

37. It was further urged that it is true that beneficial welfare legislation deserves liberal interpretation but at the same time it is to be seen that liberal interpretation may not give rise to any anomalous situation, as such an interpretation would not be desirable. It was submitted that if an Act confers powers to do certain acts in a particular manner then such acts have to be done in that manner alone and not otherwise.

38. Since the power of eviction has not been specifically provided in the Act of 2007 nor in the Rules of 2014, hence, such powers cannot be exercised either by the Tribunal, Appellate Tribunal or the District Magistrate. Thus the view expressed by the Division Bench in **Shivani Verma (Supra)** may not be in consonance with the provisions of the Act of 2007 and the Rules of 2014.

39. It was also submitted that even though Section 27 of the Act of 2007 bars the jurisdiction of the Civil Courts but that is to be read in context with the provisions of the Act of 2007, i.e. to say, only such matters which are squarely covered and governed by the Act of 2007, to that extent, the jurisdiction of the Civil Courts would be barred and not as a whole. This also is indicative of the fact that the Tribunal and the Appellate Authority constituted under the Act are Tribunals of limited jurisdiction which exercises powers within the framework of the Act of 2007 and the Rules of 2014 and not beyond it.

#### **F. Discussions and Analysis:-**

40. Having noticed the four questions referred to this Court, it would reveal that the first two questions relate to Chapter II of the Act of 2007, hence, it will be appropriate to take them for consideration together.

##### **F.1. Question Nos. (i) and (ii)**

41. For the sake of convenience, the questions no. **(i) and (ii)** are being reproduced hereinafter:-

*“(i) What is the true scope and powers of the maintenance Tribunal constituted under Section 7 of the Act of 2007 which is contained in Chapter-II of the Act of 2007 and whether the Tribunal in exercise of its power in context with Sections 7, 8 and 9 of the Act of 2007 would be empowered to pass an order of eviction while deciding an application preferred before it in terms of Section 5 of the Act of*

2007?

(ii) *What would be the true scope and power of the District Magistrate who exercises power as an Appellate Tribunal in terms of Sections 15 and 16 of the Act of 2016 (sic) and whether in exercise of such powers the Appellate Tribunal can pass an order of eviction?.*”

42. In order to answer the aforesaid questions, it will be of prime importance to first examine the Scheme of the Act of 2007 and the Rules of 2014 to get a clear concept and picture to enable the Court to reach to a conclusive answer to the questions referred to it.

43. To begin with, the statements, objects and reasons of the Act of 2007 are being reproduced hereinafer:-

**“Statement of Objects and Reasons.**—Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of children or their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for—

(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives.

44. Noticing the objects and reasons of the Act it reveals that the Act was promulgated to cast an obligation on the children/such persons who would inherit the property of their parent/senior citizen or their relatives to ensure



that such parent/senior citizen/relatives are maintained and they are not neglected in their twilight years.

45. The Act also envisages recognition by the State of a larger responsibility of ensuring that the older populace is not left destitute and adequate measures are taken inter alia to set up old age homes and to provide for maintenance and upkeep of it for the benefit of indigent elderly persons in an institutionalized manner. The Act of 2007 also envisions creation of an environment for providing better medical facilities to the senior citizens as well as for the protection of their life and property.

46. It will now be appropriate to take a birds eye view of the structure of the Act of 2007. The Act of 2007 would reveal that it has been engrafted in seven Chapters. Each chapter has a nomenclature and the content of each chapter deals with different facets of maintenance and welfare for the parents and senior citizens under the broad umbrella of the Act of 2007, as a whole.

47. The legislature while drafting this Act has conveniently divided it into chapters only. Generally, division of an Act into parts and chapters largely depends on the length of the Act and the subject matter to be dealt with therein, although there is no hard and fast rule relating to this style of drafting a legislation, however, what can be ascertained is where the subject matter of one group of sections is so different from the subject matter of another group, although it forms an integral part of the main Act, then in such a case the Act can be divided into Chapters. The idea conveyed is that it can be conveniently dealt with as separate units of one composite whole when the subject matter is closely linked and requires only separate heading for convenience of classification and reference. (See **T.K. Vishavanathan**

**Legislative Drafting: Shaping the Law for the new Millennium, Indian Law Institute, IInd Edition, 2007).**

48. Noticing the legislative drafting, it would reveal that in the Act of 2007, the first chapter is titled 'Preliminary' and it comprises of three sections. Section 1 introduces the extent and applicability of the Act from the date of its commencement. Section 2 refers to certain terms and words used in the Act which has been defined and more particularly the words 'Children', 'Maintenance', 'Parent', 'Property', 'Senior Citizen', 'Tribunal' and 'Welfare' need to be noticed, hence, the definitions of the above mentioned terms are being reproduced hereinafter.

***“2. Definitions***

*(a) “children” includes son, daughter, grandson and grand-daughter but does not include a minor;*

*(b) “maintenance” includes provision for food, clothing, residence and medical attendance and treatment;*

*(d) “parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;*

*(e) “prescribed” means prescribed by rules made by the State Government under this Act;*

*(f) “property” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property;*

*(g) “relative” means 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;*

*(h) “senior citizen” means any person being a citizen of India, who has attained the age of sixty years or above;*

*(j) “Tribunal” means the Maintenance Tribunal constituted under Section 7;*

*(k) “welfare” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.*

49. Section 3 gives an overriding effect to this Act and it reads as under:-

***“3. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”***

50. The next Chapter II has a caption ‘Maintenance of Parents and Senior Citizens’. In this Chapter, Section 4 categorically indicates that a senior citizen including a parent who is unable to maintain himself from his own earnings or out of the property owned by him shall be entitled to make an application under Section 5 of the Act. Reference be made to Sections 4 and 5 of the Act of 2007 which read as under:-

**“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) 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 senior 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 the proportion in which they would inherit his property.*

**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 sub-section (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) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.*

*(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.*

*(8) If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:*

*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."*

51. It will be relevant to notice that despite the fact that the word 'parent' and 'senior citizen' are both defined in Section 2(d) and (h) respectively yet in Section 4 it indicates that both the senior citizens as well as parents are entitled for maintenance provided that they are unable to maintain themselves from their own earnings or the property owned by them.

52. Sub Section (2) and (3) of Section 4 cast an obligation on the children or the relative to maintain a senior citizen/parent to the extent that the need of such senior citizen can be met to help them to lead a normal life.

53. Significantly, the word parent as defined in Section 2 (d) includes both mother and father in their widest connotation and in terms of sub section (3), it would be an obligation to maintain both i.e. mother and father, as the case may be.

54. Section 5 allows an application for maintenance to be made not only by a senior citizen/parent, as the case may be, but in case if they are incapable then any person on their behalf or even an Organization authorized by them can invoke the jurisdiction of the Tribunal for their benefit.

55. The Act gives the widest amplitude to a person entitled to invoke the jurisdiction of the Tribunal, so much so, that the Tribunal itself has been conferred with the power to take suo-motu cognizance. This indicates that the entire endeavour is to ensure that any senior citizen/parents who are unable to maintain himself/herself may approach the Tribunal by themselves or through an organization working towards welfare which may include welfare societies/non-governmental organizations or even if such an issue comes to the knowledge of a Tribunal concerned, it can take suo moto cognizance thereof so that the benefits of the Act can reach out to the maximum and to the farthest extent possible.

56. The concept of 'locus standi' as applicable in traditional litigation has been diluted for the benefit of the Senior Citizen/Parent. Even though the legislature has conferred power on the Tribunal to exercise suo moto powers for initiation of an application or invoking the powers of the Maintenance Tribunal to start the proceedings, yet the legislature in its wisdom has conspicuously refrained from conferring any inherent power or any specific power other than what has been mentioned in the Act, upon the Maintenance

Tribunal / Appellate Tribunal.

57. The Tribunal has been conferred with the power to provide for monthly allowance for the maintenance, as an interim measure, while the application is under consideration. Section 4 of the Act indicates that upon receipt of an application for maintenance, it is required to hold an inquiry for determining the amount of maintenance to be paid/awarded in context with the need of the individual before the Tribunal and it may even be a combination of different nature of 'maintenance' as defined under the Act both in terms of monetary and non-monetary benefits. This can be done after allowing an opportunity to the respondent in the application and once the Tribunal finds that essential ingredients of Section 4 are established, it is then required to pass a maintenance order. After an order under Section 4 is passed and thereafter in case of any failure or breach on the part of the children or the relative, as the case may be, against whom an order of maintenance has been passed by the Tribunal, such respondent can be hauled up for breach/non-compliance of the order by issuing a warrant/levy of fine and also imposing a sentence of imprisonment which may extend to a period of one month or till the payment is made whichever is earlier and this is clear from bare reading of Section 5 (8) of the Act of 2007.

58. Section 7 relates to the constitution of the Maintenance Tribunal which is to be constituted by the State Government and sub Section (2) clearly states that the Presiding Officer of such a Tribunal shall not be an officer below the rank of a Sub Divisional Officer. The procedure to be followed for holding an inquiry in terms of Section 8 of the Act of 2007 would be summary in nature.

59. For better appreciation, Sections 7 and 8 are being reproduced

hereinafter:-

**“7. Constitution of Maintenance Tribunal.—** (1) *The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under Section 5.*

*(2) The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.*

*(3) Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.”*

**“8. Summary procedure in case of inquiry.---**(1) *In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.*

*(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.*

*(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the, purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.”*

60. Section 9 of the Act of 2007 relates to the order of maintenance which is required to be passed, however, what is relevant to note that sub Section (2) of Section 9 provides the maximum quantum of maintenance which can be ordered by the Tribunal shall not exceed Rs. 10,000/- per month (this is of course subject to any limit that may be prescribed by the State Government which in the State of U.P. as of now is Rs. 10,000/-).

61. Section 10 of the Act of 2007 permits the Tribunal to alter its order made under Section 9 which may either be on account of any change in the circumstances or on account of any decision which may be rendered by a Competent Civil Court.

62. Section 11 of the Act of 2007 speaks of enforcement of an order of maintenance while Section 12 states that a person whether a senior citizen or a parent can claim maintenance in terms of any provision contained in any other law such as in terms of Chapter IX of the Cr.P.C. (and now in terms of Chapter X, Sections 144 to 147 of Bhartiya Nagarik Suraksha Sanhita, 2023) (hereinafter referred to as BNSS of 2023) or under the Act of 2007 but not under both.

63. Sections 13 and 14 of the Act of 2007 empower the Tribunal to get the amount deposited from the children or relative, against whom a maintenance order has been passed, with the Tribunal and it can also direct payment of simple interest which may range between 5% to 18 % per annum.

64. An order of maintenance passed in Section 9 has been made appealable to an Appellate Tribunal which is to be presided over by an officer not below the rank of a District Magistrate. However, what is important to note is that an appeal in terms of Section 16 to an Appellate Tribunal as provided in the Act of 2007 is only at the behest of a senior citizen or a parent. This is a restrictive right and available only to the senior citizen/parent. This is in contradistinction to a right of appeal, which is generally conferred to an 'aggrieved person' in a traditional and adversarial litigation.

65. This necessarily indicates that a senior citizen or a parent, as the case may be, can approach the Appellate Tribunal where :-

**(i)** their application for maintenance is rejected,

**(ii)** in case it is partly allowed and the senior citizen/ the parent is aggrieved that an incomplete relief or no relief, has been granted by the Maintenance Tribunal.



66. In order to make it convenient and friendly for the senior citizen / parent, they are entitled to invoke the good offices offered by Maintenance Officer to represent the senior citizen / parent, as the case may be before the Tribunal or the Appellate Tribunal, as the case may be.

67. Taking note of the various provisions of Chapter II of the Act of 2007, now it will be apposite to refer to the language imported by the legislature while engrafting Section 9 of the Act of 2007 which is reproduced hereinafter:-

***“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.”***

68. From the above quoted provision, it would be clear that the Maintenance Tribunal constituted under Section 7 of the Act of 2007 can only pass a maintenance order not exceeding a sum of Rs. 10,000/-.

69. The word ‘maintenance’ as defined in Section 2 (b) of the Act of 2007 clearly states and takes within its ambit the power to issue a maintenance order which takes within its fold inter alia provisions for food, clothing, residence and medical attendance and treatment. This assumes significance for the reason that being a social welfare legislation, the Act recognizes that the need of senior citizens/parents relating to food, clothing, residence and medical attendance or treatment which cannot be a one-time measure rather it may be a re-occurring or a variable need. Hence, the legislature has consciously used the word ‘provision’. It is also to be kept in mind that the

provision which is to be made for food, clothing, residence, medical attendance and treatment, together as per the current prescribed limit is not to exceed Rs. 10,000/- a month and can be varied at any stage, without breaching the ceiling of ten thousand rupees.

70. Here, it will be relevant to notice that the word 'maintenance' is not defined in Chapter IX of Cr.P.C., relating to Section 125 Cr.P.C. or in Chapter X in terms of Section 144 of BNSS of 2023. However, the fact remains that in terms of the aforesaid provisions it is only monetary sum that can be awarded by the Magistrate and it does not refer to provide or make provision for grant of any non-monetary needs of the person. This indicates that even though under the general law which is applicable to inter alia a parent and not necessarily being a senior citizen but such parent can get a higher maintenance under the Cr.P.C. or BNSS than that can be awarded under the Act of 2007 as in the Act of 2007, the maintenance order cannot exceed Rs. 10,000/- per month (as per current limit) which is inclusive of all types of maintenance, both monetary and non monetary.

71. Section 9 (i), empowers the Tribunal to pass a maintenance order after holding an inquiry for determining the amount of maintenance to be awarded and this amount/monthly allowance is determined after taking note of the specific need and circumstances of such senior citizen/ parent. This is primarily a need based remedy for a senior citizen/parent, which in a robust manner is granted, considering their need for food, clothing, residence and medical attendance and treatment, as the case may be, but not exceeding Rs. 10,000/- a month.

72. The provisions of the Act contained in Chapter II do not in any manner

indicate that any power of eviction has been conferred on the Tribunal while it exercises the powers to hold an inquiry for determining the amount of maintenance (see Section 5 (3) of the Act of 2007).

73. The provisions of Chapter II of the Act of 2007 also do not confer any finality to the orders passed by a Maintenance Tribunal, as an order of the Maintenance Tribunal is passed in summary proceedings and it can be altered or cancelled or varied by the Maintenance Tribunal as per Section 10 of the Act. Noticeably, the Tribunal has not been conferred with the power of review. This alteration/cancellation/variation in the order can be done if there is a decision to the contrary either by the Appellate Tribunal or from a Competent Court of civil jurisdiction. Hence, the order of Maintenance Tribunal is clearly subject to the order passed by the Appellate Tribunal and Court of competent civil jurisdiction. Nevertheless, there is no trace of any source of power conferred on the Maintenance Tribunal under the Act of 2007 or under the Rules of 2014 to grant or pass any order of eviction.

74. Now, the same Chapter II of the Act of 2007 in Section 16 provides for an appeal to the Appellate Tribunal. Section 16 for the sake of convenience is reproduced hereinafter:-

***“16. Appeals.—(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:***

*Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:*

*Provided further that the Appellate Tribunal may, entertain the appeals after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.*

*(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.*

*(3) The Appellate Tribunal may call for the record of proceedings*

*from the Tribunal against whose order the appeal is preferred.*

*(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.*

*(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final: Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.*

*(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.*

*(7) A copy of every order made under sub-section (5) shall be sent to both parties free of cost.”*

75. The aforesaid Section reveals that the Appellate Tribunal has been empowered to entertain an appeal at the behest of a parent or a senior citizen and the first proviso contained therein indicates that if an appeal is filed by an aggrieved senior citizen/parent, that by itself will not permit the children/the relative, who is a respondent in the application, to not pay the amount of maintenance as ordered by the Maintenance Tribunal.

76. The Appellate Tribunal, needless to say, is required to exercise its appellate jurisdiction as prescribed in law within the four corners of the Act of 2007 and Rules of 2014. In case if the application of the senior citizen/parent is rejected as a whole or if partly allowed then the Appellate Tribunal will determine the correctness of the order passed by the Maintenance Tribunal and while doing so, it will consider whether the senior citizen/ parent is unable to maintain himself from his own earnings or from the property owned by him and if so, then it will award the maintenance after noticing why it was turned down by the Maintenance Tribunal. In a case where a partial relief has been granted by the Maintenance Tribunal then necessarily the Appellate Tribunal would determine and make an appropriate provision which may include enhancing the quantum of maintenance, subject to the ceiling of Rs. 10,000/- as prescribed by the Act of 2007.

77. From the reading of entire Section 16 of the Act of 2007, it does not indicate that any special power is conferred on the Appellate Tribunal to pass any order of eviction. The power of appeal to be exercised by the Appellate Tribunal is necessary to scrutinize the correctness of the order of Maintenance Tribunal. In the Act of 2007, if the Maintenance Tribunal is not empowered to pass an order of eviction then as a fortiori, the Appellate Tribunal also cannot pass any order of eviction. Significantly, there is no such indication in the Act of 2007, or even in the Rules, 14, 15 and 16 of the Rules of 2014 which may lead or give a hint of conferring such powers to order eviction upon the Appellate Tribunal.

78. At this juncture, it will be relevant to mention that the Rules framed by the State of Punjab under the Act of 2007 known as “The Punjab Maintenance and Welfare of Parents and Senior Citizens Rules 2012” and notified on 27.11.2014, has a provision for eviction and the relevant rule reads as under:-

***“3 (1). Procedure for eviction from property/residential building of Senior Citizens/parent:***

*(i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Department/Agencies i.e. Social security, Sub Divisional Magistrate, Police Department, NGOs/Social Worker, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate of the concerned district for further action.*

*(ii) The District Magistrate shall immediately forward such complaints/applications to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case through revenue department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.*

*(iii) The Sub Divisional Magistrates shall submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application,*

*Til If the District magistrate is of opinion that any son or daughter or legal heir of a senior citizens/ parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior Citizens act 2007, and that they should be evicted, the District*

*Magistrate shall issue in the manner hereinafter provided notice in writing calling upon all persons concerned to show cause as to why an order of eviction*

*should not be issued against them/him/her.*

*(v) The Notice shall:-*

*(a) Specify the ground on which the order of eviction is proposed to be made; and*

*(b) Require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.*

*(c) The District magistrate shall cause the notice to be served by having it affixed on the outer door or at some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given/served to all persons concerned.”*

79. In the same vein, the Union Territory of Chandigarh has formulated its Rules known as Chandigarh Maintenance of Parents and Senior Citizens, Rules, 2009 wherein in Rule 3 (1) powers have been conferred relating to eviction from the property/residential building of senior citizen /parent and the same reads as under:-

***“3 (1) Procedure for eviction from property/residential building of Senior Citizen/Parent:-***

*(1) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of senior citizens by different Departments i.e. Social Welfare, Sub Divisional Magistrates, Police Department, NGOs/Social Workers, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate, Union Territory, Chandigarh for further action.*

*(ii) The District Magistrate, Union Territory, Chandigarh shall immediately forward such complaints/applications to the concerned Sub-Divisional Magistrates for verification of the title of the property and facts of the case through Revenue Department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.*

*(iii) The Sub-Divisional Magistrates shall immediately submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.*

*(iv) If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and that they should be evicted, the District Magistrate-cum-Estate Officer shall issue in the manner hereinafter*

*provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.*

*(v) The notice shall-*

*(a) specify the grounds on which the order of eviction is proposed to be made; and*

*(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof.*

*(c) The District Magistrate shall cause the notice to be served by having it affixed on the outer door or at some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.”*

80. From the aforesaid, it can safely be inferred that as far as the Act of 2007 and the Rules of 2014 are concerned they do not confer any such power of eviction, however, if the power of eviction was to be conferred, then the same is to be done by the legislature specifically while enacting the Rules. Significantly, in State of U.P., the Government though has framed the Rules of 2014 but conspicuously it has not conferred any such power either on the Maintenance Tribunal and/or Appellate Tribunal.

81. Now, at this stage, it will be relevant to notice certain decisions of this Court and the reasoning given therein to hold that the Maintenance Tribunal / Appellate Tribunal under the Act of 2007 did not have the power to pass an order of eviction.

82. In **Swaraj Varun (Supra)**, the Division Bench of this Court held as under:-

*“28. In light of the above discussion, considering the object and purpose of the Act, we are of the considered opinion that the prayer for eviction or dispossession of the respondent No. 5 and her two sons from the house-in-question could not have been granted by the District Magistrate in exercise of the powers conferred on him under Rule 21 of the Rules, 2014. The issue of eviction or dispossession of respondent No. 5 from the house-in-question which is stated to be her matrimonial house*

*can only be examined by a Civil Court in a proper proceeding. The bar under Section 27 of the Senior Citizens Act, 2007 will not be attracted in the instant case. Even otherwise, any such objection, if taken, has to be examined by the competent court in the suit proceeding”.*

83. In **Bipraji Singh (Supra)**, another Division Bench of this Court echoed the same sentiment as expressed in **Swaraj Varun (Supra)** but with additional reasons which are noticed as under:-

*“24. The scheme of the Act would go to show that in respect of maintenance of the senior citizens under Chapter II of the Act of 2007, adjudicatory mechanism has been placed under the Act of 2007. For the purpose of maintenance of senior citizens, a Maintenance Tribunal has been constituted under Section 7 to adjudicate upon the issue with regard to maintenance of senior citizens and parents and the aforesaid Tribunal has been conferred with the power of civil court under Section 8 of the Act for the purpose of determination of the issues before the Maintenance Tribunal. It is further to be seen that adjudicatory mechanism has been provided under Chapter II of the Act of 2007, for which the Tribunal is the authority to adjudicate the dispute.*

*25. In so far as the power conferred under Rule 21 to the District Magistrate is concerned, the said power is limited to the protection of the life and property of the senior citizens. No such power has been conferred on the District Magistrate to be part of adjudicatory mechanism under the act and the power of the District Magistrate are executive in nature and he is only required to protect the property of the senior citizens, where from the records or otherwise, it can be found that the title of the property or rights to the property is vested in the senior citizen. The proceedings before the District Magistrate are summary in nature and only limited inquiry can be made by the District Magistrate for the purpose of carrying out the object of Rule 21, to find out whether the property belongs to senior citizens or not or the senior citizen has any right in the property in question. Rule does not in any manner permit the District Magistrate to consider the disputed claim of the parties in respect of title or rights to the property. The “protection” of property must therefore be understood to mean where a senior citizen retains a property in his name or possession for his welfare and well being.*

*26. The adjudicatory mechanism under the present constitutional frame work is provided to the ordinary courts of law and executive is not conferred with powers to determine the rights of the parties in respect of property. Where ever the power has been conferred on the executive to adjudicate the rights of the parties under any law, the power has been well defined and the jurisdiction of executive authority under the relevant law is also prescribed. In the Act of 2007, no power have been prescribed of any adjudicatory mechanism being conferred on the District Magistrate for deciding the disputed question of title, right and interest in the property.*

*27. It is also to be seen that the dispute in respect title or right to property would require leading of evidence and recording of finding on the basis of evidence led with regard to the right and ownership of the*



property. The said powers under the constitutional framework is to be exercised by the ordinary courts of law and such a mechanism without there being any provisions in the Act of 2007, cannot be permitted to be conferred on the District Magistrate in the garb of Rule 21 which is limited to protection of property of the senior citizens.

28. Under section 23, the transfer of property in certain circumstances have been declared to be void and the senior citizen is permitted to approach the tribunal for declaration of the transfer is void or for maintenance as the case may be. In respect of the protection of the property and rights of the senior citizen arising out of the property under section 23, the adjudicatory mechanism has been conferred on the maintenance Tribunal constituted under chapter 2 of the Act of 2007.

29. Under the scheme of the above-mentioned act, wherever the adjudication of the right of a senior citizen is required, the power has been conferred under the aforesaid act on the tribunal. The tribunal has also been conferred with the powers of the civil court under Section 8 of the Act of 2007. The orders passed by the tribunal under the act is subjected to an appeal under Section 16 of the Act of 2007. It is to be seen that the adjudicatory mechanism in place under the aforesaid act for the purpose of maintenance of senior citizen and for protection of the rights conferred under Section 23 of the Act of 2007, indicate that the power of the District Magistrate under the aforesaid act for protection of the property & life of the senior citizen is san of any adjudication at the behest of the District Magistrate in respect of any disputed claim to the property or the rights of the senior citizen.

30. The District Magistrate under Rule 21 of Rules of 2014 is not an adjudicatory forum in respect of serious dispute of title between the senior citizen and the third party. The provisions contained in the Act of 2007 and the rules framed thereunder merely provide for protection of the rights of the senior citizen over the property with the object of maintenance of such property. The act does not intend to create any new forum for adjudication or determination of the property dispute or rights in the property between individuals. The powers of the District Magistrate under the Rules of 2014 would require the District Magistrate to ascertain that the applicant before the aforesaid authority is a senior citizen and further the property in respect of which the protection is being sought is in the ownership of the senior citizen or the senior citizen has any right, interest or title in the property in dispute. The right or title or interest in the property as claimed by the senior citizen should be an existing right which is without any cloud on the title, interest or right of the senior citizen in the aforesaid property. Where there are serious dispute with regard to the title, interest or right of the senior citizen to the property in question and the aforesaid dispute can only be resolved by leading evidence and further by recording a finding in respect of title of the property, the district magistrate in such circumstances would not have the authority to consider upon the rival claims of the parties specifically in the case where the dispute with regard to the property is with the third party who is neither the relative nor the children of the senior citizen.

31. It is further to be seen that under the Act of 2007, no adjudicatory powers have been conferred on the District Magistrate and under section 22 of the Act of 2007 a direction was issued to the state government to prescribe a comprehensive action plan for providing protection to life and property of the senior citizen. The State

*government while exercising the powers under section 32 of the Act of 2007 has framed the Rules of 2014 where under the District Magistrate has been conferred with the powers to protect the property & life of the senior citizen. It is for the legislature to confer adjudicatory powers on any authority and we have already observed that such power of adjudication, in respect of disputed claim to property is neither intended to be conferred upon the District Magistrate nor has actually been conferred upon the District Magistrate. We are therefore inclined to read down Rule 21 in light of the statutory scheme and clarify that the power vested in the District Magistrate vide Rule 21 does not extend to potential claims in respect of property where title, interest or possession needs determination/adjudication. For the aforesaid purpose the District Magistrate can make a summary enquiry as regard to the title, interest of the senior citizen in the property in question however the intrinsic question of title or right which requires evidence and adjudication could not be gone into by the District Magistrate under the aforesaid Rule of 2014."*

84. On the other hand, in **Shivani Verma (Supra)**, another Division Bench while considering the provisions of the Act but not considering the earlier decisions of two Division Benches in **Swaraj Varun (Supra)** and **Bipraji Singh (Supra)**, while holding that eviction orders can be passed, it recorded its conclusion in para 67 as under:-

*"67. Conclusion:*

*Chapter II and Chapter V of the Act 2007, read with, Rules 2014, operate in different areas and for different purpose, inter alia, pertaining to the property of the senior citizen.*

*Chapter II is confined to order of maintenance to be passed by the Tribunal, which includes, provision for residence either for the senior citizen or parent against children/relatives, but not against minor children or third party.*

*The Tribunal under Chapter II of the Act 2007, read with, Rules 2014, has sole jurisdiction to order maintenance, inter alia, in regard to provision of residence against children/relative. The premises/property sought for maintenance (residence) by the senior citizen, Tribunal alone would have jurisdiction. Tribunal while allowing the application of maintenance in respect of residence can order eviction from the said residential property against children/relatives of the senior citizen.*

*Chapter V is confined to protection of life and property of the senior citizen alone. Protection of property would also include eviction of the occupant from the tangible property. The power is conferred on the District Magistrate. The occupant could be children/ relatives or third party.*

*District Magistrate under Chapter V, however, would lack jurisdiction*

in respect of property, i.e., maintenance for provision for residence, to order eviction of children/relatives from such property. Though, District Magistrate would have power in respect of any other kind of property of the senior citizen, including, order of eviction therefrom.

Daughter-in-law, being relative of the senior citizen, can be evicted from the residence sought by the senior citizen for maintenance to satisfy his needs for leading a normal life. But such an order of eviction by the Tribunal is subject to the order passed by the competent Magistrate/civil court in respect of shared household under the Protection of Women from Domestic Violence Act 2005<sup>7</sup>. The interest of the senior citizen and the daughter-in-law would have to be adjusted by the Tribunal having regard to their competing needs. Daughter-in-law cannot be evicted from the 'shared household' in possession or owned by the senior citizen<sup>8</sup>, though, suitable adjustment can be made by the Tribunal.

In view of law that has been held hereinabove, *Abhishek Tiwari (Supra)* and *Khusbool Shukla (Supra)*, is overruled. The decision rendered in any other matter which is in contradiction to the law enunciated hereinabove shall also stand overruled.”

85. The premise upon which the Court in **Shivani Verma (Supra)** proceeded was that the Maintenance Tribunal has the power to order grant of a residence order and the Tribunal while dealing with the case of a maintenance in which a residence order is passed then an eviction order in such a case can be passed whereas a District Magistrate in terms of Chapter V can pass an order of eviction relating to any other property of the senior citizen/parent except which is not covered by grant of a maintenance order relating to residence. For clarity in this regard, paragraphs 65 and 66 of **Shivani Verma (Supra)** are being reproduced hereinafter:-

“ 65. It follows that Tribunal has power to deal only with a particular kind of property (residence) sought for maintenance but lacks powers to adjudicate upon any other kind of property of the senior citizen. Such power is vested with the District Magistrate under Chapter V to protect any kind of property, movable or immovable, tangible or intangible against any person, i.e., children/relative or third party, but would not include the property sought by the senior citizen for residence towards maintenance from his children/relatives. Any other interpretation would be conferring power upon the District Magistrate to deal and adjudicate upon property sought by the senior citizen for provision of maintenance, merely for the reason that the power of

*eviction has to be read exclusively into the expression 'protection' of the property of senior citizen. Tribunal has a limited power while adjudicating the issue of property required only for the maintenance of the senior citizen.*

*66. Tribunal can be approached by senior citizen or parent, as the case may be, for maintenance. Whereas, senior citizen alone can approach the District Magistrate for protection of his life and property of any kind, other than the property (residence) involved in proceedings before the Tribunal."*

86. However, this Court is of the opinion that the word 'property' defined in the Act of 2007 cannot be given different meaning in different sections and chapters of the same Act as tried to be done by the Court in **Shivani Verma (Supra)**. The very fact that a parent/senior citizen is unable to maintain from his own property (the language used in Section 4 of the Act) implies that if he is seeking a maintenance order of residence then perhaps he must not be possessing any residential property of his own nor he is able to maintain himself from his own property (which would include his assets and financial resources).

87. The Maintenance Tribunal while passing a 'residence order' can either direct the respondent, in complaint, to arrange for residence for the senior citizen/parent or provide some monetary assistance to enable the senior citizen/parent to be placed in an old age home in terms of Section 19 or in a rented accommodation, with rent to be paid by the respondent of the complaint or even directing the respondent of the complaint to permit the senior citizen/parent to reside along with the respondent of the complaint but then it cannot order the eviction of the respondent of the complaint and at best may make such directions which may minimize the conflict, if any. Having said that, it is also to be kept in mind that the word 'residence' used in Section 2 (b) of the Act of 2007 is differently defined than the reference to the word 'residence order' as used in Section 17 and 19 of the Act of The

Protection of Women from Domestic Violence Act, 2005.

88. Moreover, the word ‘property’ as defined in the Act of 2007 is of very wide amplitude and to say that property other than one covered under ‘residence order’ can be taken into notice by the District Magistrate for ordering eviction may give rise to an apparent anomaly, as the District Magistrate under the Act of 2007 in terms of Chapter V has not been conferred with any adjudicatory functions. This has been explained in detail by this Court in the later part of this opinion while dealing with **question no. (iii)**. Hence, the same be taken into account towards supplementing reasons in respect of the issue considered here relating to the power of Maintenance Tribunal/Appellate Tribunal to grant an order of eviction. Nevertheless, the fact remains that the Division Bench in **Shivani Verma (Supra)** tried to ascribe powers to the Maintenance Tribunal and the District Magistrate in different situations by reading something into the Act which was not provided and by stretching its power to interpret with aid of the tool of purposive interpretation which creates an anomaly while considering the word property and the powers and functions of the Maintenance Tribunal and the District Magistrate.

89. The decision in **Shivani Verma (Supra)** was followed by another Division Bench in **Dinesh Ahuja @ Chinu Vs. District Magistrate; 2024 (6) AWC 6058 All**, wherein it was held as under:-

90. *“29. In fact the Supreme Court observed in summation point 24(ii) and 24(iv) that the daughter-in-law (in that case) may not be evicted summarily during pendency of her proceedings under the Protection of Women From Domestic Violence Act, 2005. Thus, it appears to us the Supreme Court itself was cognizant that the summary eviction proceeding may otherwise arise and be concluded under the Act and the Rules framed thereunder. However, it reasoned that such proceeding may not be concluded and made final during the pendency of another proceedings under another special Act. To that*

*extent, discussion exists in the decision of the Supreme Court itself that Protection of Women From Domestic Violence Act, 2005 and the protections thereunder are not to be trifled or ignored.*

91. **30.** *In view of that reason offered by us, we find ourselves in respectful disagreement with the decision of the Patna High Court in Ravi Shankar (Supra) and the decision of the Punjab and Haryana High Court in Simrat Randhawa (Supra). The decision of the learned single judge of this Court in Krishna Kumar (Supra) is distinguishable, that being referable to proceedings under Chapter II of the Act and not Chapter V of the Act, as is the present case.*

92. **31.** *As to the third objection raised by learned counsel for the petitioner based on the decision of the Supreme Court in Sau Rajani (Supra), we find the same has no application in the present case. While the jurisdiction of the Civil Courts may survive summary proceedings for eviction under Chapter V of the Act read with the Rules framed thereunder, read with the CAP, that summary proceeding may remain subject to the out come of any civil suit wherein larger issues and other rights may be involved.*

**32.** *At present, we make it clear that we are not proposing to rule as to the exact extent and nature of proceedings to which the summary eviction proceedings under Chapter V of the Act may remain subject to. However, solely to deal with the objections raised on the strength of plenary jurisdiction of the Civil Courts, we provide that the summary eviction under the Act would remain subject to final out come of O.S. No. 837 of 2020 (Dinesh Ahuja v. Indrajeet Ahuja) pending in the Court of Civil Judge (Senior Division), Meerut. In those proceedings larger and other rights of the parties may be contested and decided. Any other construction made would defeat the entire object and purpose of the special welfare law, namely, the Act and the Rules framed thereunder.”*

**93. In Om Prakash Manchanda Vs. District Magistrate/Collector, (2019) 132**

**ALR 566**, a learned Single Judge of this Court has held as under:-

*“26. Thus, from the aforesaid discussion, it is evident that the Senior Citizens Act, 2007 has been enacted in order to provide speedy remedy to the aged parents as against the atrocities of their near and dear ones including their children. If the parent is aged and old and incapacitated to maintain himself/herself, the son or the relative may be held liable to maintain his/her parent. The maintenance can be fixed by the Tribunal after making a summary enquiry and effective measures can be taken to ensure that the same is paid and the senior citizen gets sufficient money to meet his daily need and medical expenses so that he may live his life with dignity. Further, in case of any harassment by son or relative living in the house of the senior citizen, who subject him (the senior citizen) to mental cruelty or physical torture, he (the son or relative of the senior citizen) would make himself liable to eviction under Section 23 of the Senior Citizens Act 2007, despite the fact that the property in which he is living has*

*been transferred in his name by such senior citizen. The reason being that the transfer made with the condition to maintain the transferor shall be deemed to be void in case of any such condition. The word 'transfer' used in Section 23 would not only mean to include actual transfer rather it would be given a liberal consideration so as to include the "transfer of possession" to son or relative. The son or relative living in the property of the senior citizen would be only a licensee who has been allowed to occupy the same out of parental love. And such a licensee of the senior citizen would be subjected to the proceedings under Section 23 of the Senior Citizens Act, 2007 if a case of mental torture or physical assault is found."*

The observations made by the Court in **Om Prakash Manchanda (Supra)** emanates from a dispute which relates to a joint family property and included a partnership dispute. The provisions of the Act of 2007 were invoked by the father at the behest of his two sons against his third son and needless to say that the disputes were already engaging the attention of the regular courts, hence, the said order passed in view of its own facts and the case does not shed much light over the issue which is under consideration of this Full Bench.

94. The Division Bench in **Randhir Singh Vs. District Magistrate, Faizabad and others; (2020) 146 RD 178 (DB)** has held as under:-

*" (28) While passing the impugned order, the District Magistrate has gone through the enquiry report submitted by the Sub-Divisional Magistrate and on finding that the petitioner inspite of having five rooms in the house, is living with his elder daughter-in-law on his own sweet will; the matrimonial dispute between petitioner's son and respondent No.3 is pending; and the petitioner has not produced any evidence which could establish that the respondent No.3 has restrained the petitioner from living in other five rooms of the house in question. In the backdrop of the aforesaid fact, the District Magistrate has recorded specific findings of fact on the basis of cogent material on record and the judgment relied by the learned Counsel for the petitioner is not applicable under the facts and circumstances of the case.*

*(29) From the perusal of the impugned order, it reflects that the District Magistrate, on the basis of enquiry report submitted by the Sub-Divisional Magistrate, has recorded specific finding that there is no evidence on record, which establishes that the respondent No.3 is trying to restrain the petitioner from living in other five rooms of the house in question. In fact the petitioner is residing with his elder daughter-in-law on his own sweet-will at Faizabad. In order to*

*protect the interest of the petitioner being a senior citizen, the District Magistrate in its order has specifically directed the concerned police station to see both the parties from time to time and it is also expected from the parties that they live in congenial atmosphere without interfering in the peaceful life of each other. (30) On due consideration, we are of view that the findings recorded by the District Magistrate appears to be sound and reasonable and there is no illegality or infirmity in the impugned order.”*

The aforesaid decision would reveal that in the said case, directions were given to the District Magistrate to ensure that both the parties live in a congenial atmosphere without interfering in the peaceful life of each other, however, the said decision actually does not state whether any power of eviction has been conferred on the Maintenance Tribunal/Appellate Tribunal, hence, the said decision also does not throw much light on the issue before this Full Bench and thereafter is not of much assistance.

95. It is relevant to state that after the hearing was concluded, the learned counsel for the parties had brought to notice of this Court, a decision of the Apex Court in **Urmila Dixit Vs. Sunil Saran Dixit and others; 2025 (2) SCC 787** wherein the Apex Court held as under:-

*“13. The Preamble of the Act states that it is intended towards more effective provisions for maintenance and welfare of parents and senior citizens, guaranteed and recognised under the Constitution.*

*14. Therefore, it is apparent, that the Act is a beneficial piece of legislation, aimed at securing the rights of senior citizens, in view of the challenges faced by them. It is in this backdrop that the Act must be interpreted and a construction that advances the remedies of the Act must be adopted.*

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*23. The appellant has submitted before us that such an undertaking stands grossly unfulfilled, and in her petition under Section 23, it has been averred that there is a breakdown of peaceful relations inter se the parties. In such a situation, the two conditions mentioned in Sudesh [Sudesh Chhikara v. Ramti Devi, (2024) 14 SCC 225 : 2022 SCC OnLine SC 1684] must be appropriately interpreted to further the beneficial nature of the legislation and not strictly which would render otiose the intent of the legislature. Therefore, the Single Judge of the High Court and the tribunals below had rightly held the gift deed to be cancelled since the conditions for the well-being of the senior citizens were not complied with. We are unable to agree with the view taken by the Division Bench, because it takes a strict view of a beneficial legislation.*



*24. Before parting with the case at hand, we must clarify the observations made vide the impugned order [Sunil Sharan Dixit v. Urmila Dixit, 2022 SCC OnLine MP 3776] qua the competency of the Tribunal to hand over possession of the property. In S. Vanitha [S. Vanitha v. Commr., (2021) 15 SCC 730] , this Court observed that Tribunals under the Act may order eviction if it is necessary and expedient to ensure the protection of the senior citizen. Therefore, it cannot be said that the Tribunals constituted under the Act, while exercising jurisdiction under Section 23, cannot order possession to be transferred. This would defeat the purpose and object of the Act, which is to provide speedy, simple and inexpensive remedies for the elderly.*

*25. Another observation of the High Court that must be clarified, is Section 23 being a stand-alone provision of the Act. In our considered view, the relief available to senior citizens under Section 23 is intrinsically linked with the Statement of Objects and Reasons of the Act, that elderly citizens of our country, in some cases, are not being looked after. It is directly in furtherance of the objectives of the Act and empowers senior citizens to secure their rights promptly when they transfer a property subject to the condition of being maintained by the transferee.*

*26. In view of the above, the impugned judgment and order [Sunil Sharan Dixit v. Urmila Dixit, 2022 SCC OnLine MP 3776] with the particulars as described in para 1 of this judgment, is set aside. Consequently, the gift deed dated 7-9-2019 is quashed. In the attending facts and circumstances of this case, the appeal is allowed. Possession of the premises shall be restored to the appellant by 28-2-2025.”*

Apparently, in **Urmila Dixit (Supra)**, the Apex Court made the above observations in context of Section 23 of the Act as in the said case the issue of cancellation of a gift deed was involved alongwith its consequences. This has been noticed by this Court while dealing with issue no. (iii) in the later part of the opinion.

96. Then another decision of the Apex Court was rendered in the case of **Samtola Devi Vs. State of U.P., 2025 SCC Online SC 669** which throws some light on the subject and was noticed by this Court wherein it was held as under:-

*“30. The Senior Citizens Act vide Chapter-II provides for maintenance of parents and senior citizens. It inter alia provides a senior citizen or a parent who is unable to maintain himself from his own earning or the property owned by him shall be entitled to make an application against his parent or grand parent or against one or more of his children (not a minor) or where the senior citizen is issueless against specified relatives to fulfil his needs to enable him to lead a normal life. The Tribunal constituted under the Act on such an application may provide for the monthly allowance for the maintenance and*

*expenses and in the event they fail to comply with the order, the Tribunal may for breach of the order issue a warrant for levying fines and may sentence such person to imprisonment for a term which may extend to one month or until payment is made whichever is earlier.*

*31. The provisions of the Senior Citizens Act, nowhere specifically provides for drawing proceedings for eviction of persons from any premises owned or belonging to such a senior person. It is only on account of the observations made by this Court in S. Vanitha v. Commissioner, Bengaluru Urban District<sup>5</sup> that the Tribunal under the Senior Citizens Act may also order eviction if it is necessary and expedient to ensure the protection of the senior citizens. The Tribunal thus had acquired jurisdiction to pass orders of eviction while exercising jurisdiction under Section 23 of the Senior Citizen Act which otherwise provide for treating the sale of the property to be void if it is against the interest of the senior citizen.*

*32. The aforesaid decision was followed by this Court in Urmila Dixit (Supra). However, even in the aforesaid case the court has only held that in a given case, the Tribunal “may order” eviction but it is not necessary and mandatory to pass an order of eviction in every case. The Appellate Tribunal has not recorded any reason necessitating the eviction of Krishna Kumar or that in the facts and circumstances of the case, it is expedient to order eviction so as to ensure the protection of the senior citizen.*

*33. In our opinion, the Appellate Tribunal was, therefore, not justified in ordering for his eviction merely for the reason that the property belongs to Kallu Mal, completely ignoring the fact that the claim of Krishna Kumar regarding 1/6th share and the cancellation of gifts and sale deeds is pending adjudication before the civil court.*

*34. In our opinion, in the facts and circumstances of the case, there was no necessity for the extreme step for ordering the eviction of Krishna Kumar from a portion of the house rather the purpose could have been served by ordering maintenance as provided under Section 4/5 of the Senior Citizens Act and by restraining him from harassing the parents and interfering in their day-to-day life.”*

*35. In the light of the above situation, the High Court appears to be well within its jurisdiction to set aside the eviction order passed by the Tribunal and to maintain the other conditions imposed by the Tribunal.”*

The Apex Court noticed that the Maintenance Tribunal/Appellate Tribunal does not have the power to order eviction and this decision also referred to the observations of the Apex Court in **Urmila Dixit (Supra)**.

97. Thereafter another decision of the Apex Court came in **Rajeshwar Prasad Rao Vs. State of Bihar: 2025 Live Law (SC) 418** where the right to issue an order of eviction in certain circumstances has been recognized and the relevant portion reads as under:-

*“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 Disinc & Ors*<sup>4</sup>, 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. SLP(CIVIL) NO.7675/2024 Page 10 of 12 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 SLP(CIVIL) NO.7675/2024 Page 11 of 12 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 SLP(CIVIL) NO.7675/2024 Page 12 of 12

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

However, with utmost respect, the said decision of the Apex Court is based on its own facts emerging from the State of Bihar, whereas the case of **Samtola Devi (Supra)** arises from the State of U.P. wherein, the learned Single Judge of the High Court (**in Krishna Kumar Vs. State of U.P.; 2023 SCC OnLine All 645**) had held that Tribunal under Chapter II could not order an eviction simplicitor. Even though the said cases have been decided on its own facts and they do not conclusively hold whether the Maintenance Tribunal, Appellate Tribunal or the Authority under the Act of 2007 have powers to order an eviction or not but **Samtola Devi (Supra)** is the closest decision of the Apex Court which holds that the Maintenance Tribunal/Appellate Tribunal do not have powers to order eviction.

98. In light of the above discussions, this Court finds that the Maintenance Tribunal which is manned by an officer not below the rank of the Sub Divisional Officer or the Appellate Tribunal which is manned by an officer not below the rank of District Magistrate, while discharging their respective duties as a Maintenance Tribunal or an Appellate Tribunal cannot go beyond the jurisdiction and powers conferred in terms of Chapter II. Moreover, in absence of any such power of eviction being expressly conferred on the Maintenance Tribunal / Appellate Tribunal either by the Act of 2007 or by the Rules of 2014 then such powers cannot be imbibed nor such a power can be exercised under inherent powers, moreso, when the Tribunals have not been conferred with inherent powers unlike the civil courts who have been conferred with inherent powers as seen from Section 151 of the Code of Civil Procedure.

99. For the aforesaid reasons, this Court is of the clear view that no such power of eviction has been conferred either on the Maintenance Tribunal or the Appellate Tribunal in the Act of 2007 or in terms of Rules of 2014, hence, no order of eviction can be passed by the Maintenance Tribunal or the Appellate Tribunal in exercise of its powers in terms of Section 7, 8 and 9 of the Act of 2007.

100. Thus, the questions nos. **(i) and (ii)** are answered accordingly.

101. Now, before proceeding to deal with the third question as framed, it will be apposite to note Section 20 of the Act which is a part of Chapter IV, to understand the scheme of the Act as a whole and for that purpose Section 20 is being reproduced hereinafter:-

#### ***Chapter IV***

***“20. Medical support for senior citizens.— The State Government shall ensure that -***

*(i) the Government hospitals or hospitals funded fully or partially by the Government shall provide*

*beds for all senior citizens as far as possible;*

*(ii) separate queues be arranged for senior citizens;*

*(iii') facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens;*

*(iv) research activities for chronic elderly diseases and ageing is expanded;*

*(v) there are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.”*

102. The aforesaid provision reveals that Chapter IV of the Act of 2007 comprises of a single Section 20 and it provides for making provisions for medical care and attention for senior citizens and takes within its fold obligation of the State to ensure user friendly, need based facilities for geriatric patients in Government Hospitals. The import of Section 20 in the overall scheme has been noticed in later part of this opinion while dealing with question no. (iii).

## F.2 Question No. (iii):-

103. Now, its time to consider question no. (iii) which is being reproduced for the purpose of recapitulation:-

*(iii) What is the true scope of Section 21 of the Act of 2007 which deals with protection of life and property of senior citizen which is contained in Chapter-V of the Act of 2007 and to what extent the Authority can pass an order for adjudging certain transfers as void in terms of Section 23 of the Act of 2007 vis-a-vis the duties and powers of the District Magistrate conferred under Rules 21 and 22 of Rules of 2014 and in this context whether the orders for eviction can be passed?*

104. Chapter V of the Act of 2007 is titled '**protection of life and property of senior citizens**' and it takes within its fold Sections 21 to Section 23. It will be relevant to reproduce Section 21 of the Act which reads as under:-

*"21. Measures for publicity, awareness, etc., for welfare of senior citizens.-The State Government shall, take all measures to ensure that-*

*(i) the provisions of this Act are given wide publicity through public media a including the television, radio and the print, at regular intervals;*

*(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;*

*(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted."*

105. What is significant to note is that Section 21 directs the State Government to take all measures to ensure that :-

**(i)** the provisions of the Act of 2007 are given wide publicity through public media including television, radio and print at regular intervals;

**(ii)** the Central and the State Government Officers including the Police Officers and the members of the judicial service are given periodic sensitization and awareness training on the issue relating to this Act and ;

**(iii)** effective coordination between services provided by the concerned

Ministries or Departments dealing with law, home affairs, health and welfare to address the issue relating to the welfare of the senior citizens and periodical review of the same be conducted.

106. Section 21 primarily casts an obligation on the State to ensure that all its executive arms work in coordination so that the laudable object of the Act is achieved and a friendly and convenient ecosystem for the elderly comes in place.

107. This Chapter V and moreso Section 21 and Section 22 of the Act of 2007 read with Rule 21 and Rule 22 express the intention of the Act that the senior citizens are to be given primacy as far as their needs vis-a-vis their interaction with the Government interface is concerned whether it be relating to their medical needs, the need for shelter, maintenance, their right to live with dignity and to ensure that they are not harassed while pursuing their day to day issues with the various instrumentalities of the Government. To achieve such an ecosystem, it is first necessary to ensure that the actual beneficiaries of the Act i.e. elderly populace and the care givers are well informed and sensitized with the aims and objects of the Act so that the instrumentalities of the State, in their dealing with the problems and issues of the elderly, may coordinate amongst themselves so that a robust system is put in place for timely attention and alleviation of the predicament faced by the senior citizens.

108. Section 22 of the Act of 2007 is apparently an enabling section which directs the State Government to confer the powers to implement the provisions of the Act and to ensure its smooth adherence by an officer not below the rank of a District Magistrate. The District Magistrate, under the

Act can further delegate the duties to such officer who would carry out and perform all or any of the duties so conferred under the Act within local limits as may be prescribed. Sub Section (2) of Section 22 obligates the State Government to provide a comprehensive action plan for the protection of life and property of senior citizens.

109. In furtherance of Section 21 and to have a clear picture of what the State has understood regarding the duties and powers which were proposed to be conferred upon the District Magistrate finds reflection in Rule 21 framed under the Rules of 2014 which reads as under:-

***“21. Duties and Power of the District Magistrate.—(1) The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.***

***(2) It shall be the duty of the District Magistrate to:***

***(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;***

***(ii) oversee and monitor the work of Maintenance Tribunals and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, and execution of Tribunals' orders;***

***(iii) oversee and monitor the working of old age homes in the district so as to ensure that they conform to the standards laid down in these rules and any other guidelines and orders of the Government;***

***(iv) ensure regular and wide publicity of the provisions of the Act, and Central and State Governments, programmes for the welfare of senior citizens;***

***(v) encourage and co-ordinate with panchayats, municipalities, Nehru Yuva Kendras, educational institutions and especially their National Service Scheme Units, Organisations, specialists, experts, activists, etc. working in the district so that their resources and efforts are effectively pooled for the welfare of senior citizens of the district;***

***(vi) ensure provision of timely assistance and relief to senior citizens in the event of natural calamities and other emergencies;***

***(vii) ensure periodic sensitisation of officers of various Departments and Local Bodies concerned with welfare of senior citizens, towards the needs of such citizens, and the duty of the officers towards the***

***(viii) review the progress of investigation and trial of cases relating to senior citizens in the district, except in cities having a Divisional Inspector General of Police. Latter;***



*(ix) ensure that adequate number of prescribed application forms for maintenance are available in officers of common contact for citizens like Panchayats, Block Development Offices, Tahsildar Offices, District Social Welfare Offices, Collectorate, Police Station etc.;*

*(x) promote establishment of dedicated helplines for senior citizens at district headquarters, to begin with; and*

*(xi) perform such other functions as the Government, may by order, assign to the District Magistrate in this behalf, from time to time.*

*(3) With a view to performing the duties mentioned in sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with the Act; these rules, and general guidelines of the Government, as may be necessary, to any concerned Government or statutory agency or body working in the district, and especially to the following:*

*(a) Officers of the State Government in the Police, Health and Publicity Departments, and the Department dealing with welfare of senior citizens;*

*(b) Maintenance Tribunals and Conciliation Officers;*

*(c) Panchayats and Municipalities; and*

*(d) Educational Institution.”*

110. Rule 21 (2) (i) of the Rules of 2014 as quoted above reveals that a duty is cast on the District Magistrate to ensure that life and property of senior citizens are protected and they are able to live with security and dignity. If Rule 21 (2) as extracted above is seen in context with the other obligations which are mentioned in Rule 21 (2) (ii) to (xi), it shows that the District Magistrate can even review the progress of the investigation and trial of cases relating to senior citizens in the district except in cities which have a Director Inspector General of Police. The duties so conferred and envisioned in Rule 21 are relating to all such obligations, which are relatable to the various challenges faced by the senior citizens, while interacting with different Government interface, in their day to day lives. The endeavour is to make the interaction experience of a senior citizen with the Government Organizations less stressful and more friendly and convenient and the District Magistrate being the Nodal Officer is required to synchronise and oversee what is required to be achieved in terms of Section 21 of the Act of 2007.

111. The duties as enumerated in Rule 21 would indicate that they are an elaboration of the object sought to be achieved. Section 19 to Section 22 read with Rule 21 and 22 framed under the Act would clearly indicate that it envisages creation of a safe eco system for the senior citizens where they can live without stress or fear of neglect and harrassment at the hands of their children/relatives or even third parties and yet have the comfort of realizing that their needs would be respected and understood. In case of need, the Authorities would respond apporpriately, implicitly recognizing the frailty which comes with age for a senior citizen/parent.

112. Actually, in a manner, its a test to measure how well a society has developed and progressed and one of the indices, inter alia, how the Society and the State takes care of its senior citizens and this Act is a beacon for the State to move in a positive direction to provide for the benefits to the senior citizen/parent under the Act.

113. A reading Sections 21 and 22 with Rules 21 and 22 reveals that the Legislature has put Rule 22 in Chapter VI of the Rules with the nomenclature **‘Protection of Life & Property of Senior Citizens’** whereas the phrase protection of life and property of senior citizens is the nomenclature of Chapter V of the Act and it also finds place in Rule 21 (2) (i) which relates to duties of the District Magistrate. Rule 22 reads **“action plan for the protection of life and property of senior citizens”**. This word ‘action plan’ as used in Rule 22 is referrable to Section 22 (2) of the Act of 2007 obligating the Government to prescribe a comprehensive action plan.

114. It will be gainful to take a glance at Rule 22 of 2014 and the same reads as under:-

## **22. Action plan for the protection of life and property of Senior Citizens**

*(1) The District Superintendent of Police and in the case of cities having Divisional Inspector General of Police, such Divisional Inspector General of Police shall take all necessary steps, subject to such guidelines as the Government may issue from time to time for the protection of life any property of senior citizens.*

*(2) Without prejudice to the generality of sub-rule (1)*

*(i) each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (le without there being any member in their household who is not a senior citizen);*

*(li) a representative of the police station together as far as possible, with a social worker or volunteer, shall visit such senior citizens at regular intervals of at least once a month, and shall, in addition, visit them as quickly as possible on receipt of a request of assistance from them,*

*(iii) complaints/ problems of senior citizens shall be promptly attended to, by the local police;*

*(iv) one or more Volunteer Committee (s) shall be formed for each Police Station which shall ensure regular contact between the senior citizens, especially those living by themselves, on the one hand, and the police and the district administration on the other,*

*(v) the District Superintendent of police or, the Divisional Inspector General of Police as the case may be, shall cause to be publicized widely in the media and through the Police Station, at regular intervals, the steps being taken for the protection of life and property of senior citizens;*

*(vi) each Police Station shall maintain a separte register containing all important particulars relating to offences committed against Senior Citizens as in Annexure IV*

*(vii) The Register referred to in clause (vi) shall be kept available for public inspection, and every officer inspecting a Police Station shall invariably review the status as entered in the register;*

*(viii) The Police Station shall send a monthly report of such crimes to the, District Superintendent of police by the 10th of every month;*

*(ix) list of Do's and Don'ts to be follwed by senior citizens, in the interest of their safety, will be widely publicized;*

*(x) antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens;*

*(xi) community policing for the security of senior citizens will be undertaken in conjunction with citizens living in the neighbourhood, Residents' Welfare Association, Youth Volunteers, Non-Government Organizations, etc,*

*(xii) the District Superintendent of police shall submit to the Director General of Police and to the District Magistrate, a monthly report by the 20th of every month, about the status of crimes agarnist senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month, as in Annexure Vi*

*(xiii) the District Magistrate shall cause the report to be placed before the District-level Committee constituted under rule 24;*

*(xiv) The Director General of police shall cause the reports submitted under clause (xii) to be compiled, once a quarter, and shall submit them to the Government every quarter as well as every year for, inter-alia, being placed before the State Council of Senior Citizens constituted under rule 23.”*

115. Rule 22(2) (i) to (x) which has been extracted above reveals that directions mentioned therein, for each police station, to maintain an up to date list of senior citizens living within their jurisdiction and focussing on those who are living by themselves. It also directs for a representative of the police station along with a social worker or volunteer to visit such senior citizens at regular intervals at least once a month. In case where a request is made by a senior citizen then attend to the complaint and problem as expressed by such a senior citizens with promptitude. Further, elaborations made therein would reveal that the work of the police which was traditionally perceived as a law enforcement agency alone is sought to be given a face lift by reinforcing the Police Authorities to function, behave and work as a friend of the public with special emphasis for senior citizens.

116. Having said that, this Court does not find that there is any indication in any provision or rule which creates or confers special powers to take such action and pass an order of eviction against any third party or a person who may be living with the senior citizen or in the premises belonging to the senior citizen. The duties as provided in Rule 21 and Rule 22 is primarily for strengthening and securing the social fabric to provide a protected stress free environment for the senior citizen and certainly not to create a forum or conferring special powers to evict any person irrespective of the right and obligation of such a party whose presence or possession may be adverse to that of a senior citizen.

117. In other words, the law of the land as applicable to the citizens of this country is to be followed uniformly except that the senior citizen, who are part of a preferred segment, are to be given priority only as per the terms of the Act of 2007. In terms of Rule 22, while the police is required to perform its duties and functions and where they are dealing with the case relating to senior citizens, they must be cautious to look into the problems and complaints with sensitivity and expedition and act accordingly. It will be worthwhile to recall that Section 19 (ii) inter alia provides for the judicial officers to be sensitized too, so that in course of discharge of their judicial functions, if they come across matters relating to a senior citizen, they should be sensitive enough to accord appropriate priority as required keeping the intent of the Act of 2007 in mind. Similar is the situation where a senior citizen who goes for his treatment to a hospital, then in terms of Section 20, necessary facilities on priority be given with need based attention and sensitivity, to the senior citizens.

118. It is in this context that Rule 22 which is titled “protection of life and property of senior citizens” has been placed in Chapter VI of the Rules of 2014 and an obligation has been placed on the Police Authorities to ensure that preventive measures are taken for the benefit and protection of senior citizens and the entire Rule 22 does not in any manner indicate or reflect any obligation imposed on the Police Authorities to carry out any remedial exercise beyond the already established framework of the forums created by law governing the citizens as a whole.

119. At this stage, it will be relevant to ascertain what the word protection means. Simply put, the word ‘**protect**’ means to cover, shield or defend from injury, harm or danger of any kind. The word ‘**protection**’ is defined in the

**Black's Law Dictionary Xth Edition** is as under:-

*“protection, n. (14c) 1. The act of protecting. 2. PROTECTION-ISM. 3. COVERAGE (1). 4. A document given by a notary public to sailors and other persons who travel abroad, certifying that the bearer is a U.S. citizen. - - protect, vb.”*

The word ‘**protective order**’ is also defined in the **Black's Law Dictionary Xth Edition** as under:-

*“protective order. 1. A court order prohibiting or restricting a party from engaging in conduct (esp. a legal procedure such as discovery) that unduly annoys or burdens the opposing party or a third-party witness. [Cases: Federal Civil Procedure 1271; Pretrial Procedure 41. C.J.S. Discovery §§ 12, 47.]*

*2. RESTRAINING ORDER (1).*

*emergency protective order. A temporary protective order granted on an expedited basis, usu. after an ex parte hearing (without notice to the other side), most commonly to provide injunctive relief from an abuser in a domestic-violence case; esp., a short-term restraining order that is issued at the request of a law-enforcement officer in response to a domestic-violence complaint from a victim who is in immediate danger. A victim of domestic violence can obtain an EPO only through a law-enforcement officer. There is no notice requirement, but the abuser must be served with the order. The duration of an EPO varies from three to seven days, depending on state law. - Abbr. EPO. Cf. TEMPORARY RESTRAINING ORDER.*

*permanent protective order. A protective order of indefinite duration granted after a hearing with notice to both sides; esp., a court order that pro-hibits an abuser from contacting or approaching the protected person for a long period, usu. years. Despite the name, permanent orders often have expiration dates set by state law. An order may also require the abuser to perform certain acts such as attending counseling or providing finan-cial support for the protected person. Abbr. PPO”*

120. Thus, the word protect implies protection/a cover/ a shield and in this case for a specified class which would be referrable to the protection for senior citizens. Nevertheless, the word protect and the word protection, being its verb implies the act of protecting the life and property of senior citizens. This necessarily implies an anticipated move or an action done in pre-emption of an eventuality to ensure that the chance for such an eventuality is minimized. Apparently, it is all a preventive act and is in contradistinction to a remedial or a reactive action which may be necessary, once an eventuality

occurs.

121. It will be relevant to notice that, comprehensive action plan, which is envisaged in Section 22 (2) of the Act, has been prepared by the State Government vide its Government Order dated 21st March, 2016 bearing No. 8/2016/727/26-02-2016. If the policy or the action plan of the State Government is seen, it would reveal that it envisages creation of a framework for providing effective and appropriate ecosystem inter alia for physical and mental health, economic security, shelter, welfare and for providing essential needs for a senior citizen as well as to protect them from being harassed and exploited and such protection and facilities are to be given across the State both in rural and urban areas.

122. The Action Plan details, setting up of old age homes at different levels, for providing health care at various levels i.e. to say at Commissionerate, District Level, Primary Health Centers, Community Health Centers and Sub Stations so that medical facilities is made available to the senior citizen at all levels. It also mentions about providing facilities for aging and geriatric health and the State in furtherance thereof has created a department at King George's Medical University, Lucknow called 'Center for Advance Research in Aging and Geriatric Mental Health' where senior citizens suffering from dementia and alzheimer are treated.

123. In order to secure the senior citizens economically, certain welfare schemes such as Senior Citizens Pension Scheme has been introduced. Now, more importantly, Clause 2.4 of the Action Plan dated 21st March, 2016 relates to the protection of life and property of the senior citizens for which the following provisions have been made which are being reproduced

hereinafter:-

## "2.10 अन्य विविध कार्य

2.10.1 सरकारी अधिकारियों कर्मचारियों एवं जन-सुविधा से सम्बन्धित सभी संस्थानों में कार्यरत व्यक्तियों के लिए यह आवश्यक होगा कि वे वरिष्ठ नागरिकों की समस्याओं व परिवादों को प्राथमिकता दें। सम्पत्ति के हस्तान्तरण, नामान्तरण, सम्पत्ति कर इत्यादि के मामलों में वरिष्ठ नागरिकों के कार्य को त्वरित गति से निपटाया जायेगा और यह सुनिश्चित किया जाएगा कि उन्हें ऐसे कार्यों के लिए परेशान नहीं किया जाए।

2.10.2 तहसील दिवस/थाना दिवस आदि में वरिष्ठ नागरिकों से प्राप्त प्रार्थना पत्रों/शिकायतों का निस्तारण प्राथमिकता पर किया जायेगा एवं इसकी अलग से समीक्षा संबंधित जनपद स्तरीय अधिकारियों द्वारा की जायेगी।

2.10.3 सरकार यह सुनिश्चित करेगी कि उसकी नीतियों एवं कार्यक्रमों में वरिष्ठ नागरिकों के प्रति सहयोगात्मक एवं संवेदनशील दृष्टिकोण परिलक्षित हो, यथा-प्रशासन द्वारा वरिष्ठ नागरिकों को परिचय पत्र जारी करना, यात्रा के सभी साधनों में रियायती दर पर यात्रा की सुविधा देना, समस्त सार्वजनिक वाहनों में उनके लिए सीट आरक्षित करना आदि कार्य किये जायेगे।

2.10.4 उत्तर प्रदेश परिवहन निगम की बसों में वरिष्ठ जनों के लिए 02 सीटों के लिए आरक्षण की सुविधा प्रदान की गयी है। उत्तर प्रदेश के वरिष्ठ नागरिकों को उत्तर प्रदेश परिवहन निगम की बसों में किराये में छूट प्रदान करने संबंधी निर्देश यथासमय नियमानुसार निर्गत किये जायेंगे तथा यह ध्यान रखा जायेगा कि प्रदत्त छूट के वित्तीय व्ययभार की प्रतिपूर्ति समाज कल्याण विभाग द्वारा उत्तर प्रदेश परिवहन निगम को की जाय।

2.10.5 सभी सरकारी कार्यालयों/भवनों के निर्माण में वरिष्ठ नागरिकों के सुगमता पूर्वक गमन हेतु रैम्प होना अनिवार्य होगा। पूर्व से निर्मित भवनों का पुनरावलोकन कर उनमें भी रैम्प की व्यवस्था की जायेगी, जिससे वरिष्ठ नागरिकों को वहां आने-जाने परेशानी का सामना न करना पड़े।

2.10.6 वरिष्ठ नागरिकों की देख-भाल हेतु सामुदायिक स्तर पर सामुदायिक कार्यकर्ताओं को प्रशिक्षित एवं प्रोत्साहित किया जायेगा जिससे असहाय हो चुके वरिष्ठ नागरिकों की समुदाय द्वारा उचित देखभाल सुनिश्चित होगी।

2.10.7 राज्य की आपदा से निपटने की तैयारी की सामुदायिक स्तर की कार्य योजना में वरिष्ठ नागरिकों की भागीदारी को सुनिश्चित किया जायेगा, जिससे न सिर्फ उनके अनुभवों का लाभ मिलेगा अपितु आपदा की स्थिति में वरिष्ठ नागरिकों की विशिष्ट परिस्थितियों के अनुरूप बचाव एवं राहत कार्य में उनको प्राथमिकता पूर्वक सुविधा उपलब्ध कराना सुनिश्चित हो सकेगा।

2.10.8 वरिष्ठ नागरिकों द्वारा धोखाधड़ी व अन्यायपूर्ण लेन-देन आदि की प्राप्त होने वाली शिकायतें प्राथमिकता के आधार पर दर्ज करते हुए उनका त्वरित एवं प्रभावी ढंग से निष्पादन सुनिश्चित कराया जायेगा।"

124. Additionally, in order to give an impetus to the protection of life and property of the senior citizens, the State Government has also dedicated a helpline for Senior Citizens and an initiative has been made under the aegis of "**Savera Scheme**" for older residents. A Helpline Number **112** has been dedicated for the Savera Scheme, where the senior citizens can get themselves registered.



125. The Scheme is targetted towards senior citizens who can seek assistance through the helpline, to contact to the nearest police station or the police response vehicle can reach to the doorstep of such a senior citizen in need and where he can be provided with timely aid and his security concerns can be addressed, too.

126. On 29th November, 2023, the Police Headquarters issued a SOP for effective implementation of the Savera Scheme which is being reproduced hereinafter for ready reference:-

“कृपया सचिव, उत्तर प्रदेश शासन गृह (पुलिस) अनुभाग-15 के पत्र संख्या-680/6-पु-15/2023 दिनांक 04 जुलाई, 2023 का सन्दर्भ ग्रहण करें, जो कि सेफ सिटी परियोजना के संबंध में दिनांक 22.00-2023 को मुख्य प्रति उ०प्र० शासन की अध्यक्षता में आयोजित बैठक के कार्यवृत्त में दिए गए निर्देशनुपालन संबंधित के कार्यकृत के हिंदु संख्या 4.1 में बीट आरक्षियों द्वारा वरिष्ठ नागरिकों से मिलना एवं मदद को के संग में सर्वेश स्कीमा की BOP यूपी-112 द्वारा तैयार किये जाने हेतु निर्देशित किया गया है।

2 उपरोक्त के परिप्रेक्ष्य में सवेरा योजना के संचालन की मानक संचालन प्रक्रिया (SOP) पुलिस महानिदेशक उ०प्र० महोदय द्वारा अनुमोदन के उपरांत मुख्यालय यूपी-112 द्वारा कमिश्नर / जनपद स्तर से कार्यवाही हेतु दिनांक 18 जुलाई 2023 को जारी कर दी गयी है। (सुलभ सन्दर्भ हेतु SOP की छायाप्रति संलग्न है)।”

“सवेरा योजना के संचालन हेतु मानक संचालन प्रक्रिया (SOP)

#### 1. उद्देश्य:

यूपी-112 द्वारा प्रदेश के वरिष्ठ नागरिकों को सुरक्षा एवं किसी भी आपात स्थिति में उन्हें त्वरित पुलिस सहायता उपलब्ध कराने के उद्देश्य से 28 अक्टूबर 2019 को 'सवेरा योजना' प्रारम्भ की गयी। सामाजिक तौर पर प्रायः यह देखा गया है कि वरिष्ठ नागरिकों / बुजुर्गों को समय से समुचित सहायता उपलब्ध नहीं हो पाती है जिस कारण बुजुर्ग पारिवारिक प्रताड़ना के शिकार हो जाते हैं, इत्ती के दृष्टिगत उत्तर प्रदेश पुलिस द्वारा वरिष्ठ नागरिकों / बुजुर्गों को त्वरित पुलिस सहायता प्रदान करने के उद्देश्य से 'सवेरा योजना' प्रारम्भ की गयी। इसके अंतर्गत 60 वर्ष या उससे अधिक की उम्र के उत्तर प्रदेश के नागरिक पंजीकरण कराकर यूपी-112 की सेवाएं प्राप्त कर सकते हैं। पंजीकरण के पश्चात वरिष्ठ नागरिकों से संबंधित रिकॉर्ड यूपी-112 के सिस्टम में सुरक्षित रहता है। सहायता हेतु कॉल करने पर वरिष्ठ नागरिकों को त्वरित सहायता प्रदान की जाती है।

#### 2. पंजीकरण के माध्यम/प्रक्रिया :-

A- कोई भी वरिष्ठ नागरिक यूपी-112 में कॉल करके अपना नाम, मोबाइल नंबर, पता व अन्य विवरण के संबंध में जानकारी देकर पंजीकरण करवा सकता है। यूपी-112 मुख्यालय की संवाद अधिकारी (CO) द्वारा पंजीकरण किया जायेगा।

B- वरिष्ठ नागरिक द्वारा त्वयं एंड्रायड फोन / डेस्कटॉप / लैपटॉप से URL

125.16.12.217/Srcitizenreg के माध्यम से अपना पंजीकरण किया जा सकता है।

C- थाने के बीट कांस्टेबल एवं हल्का इंचार्ज / चौकी इंचार्ज भी अपने क्षेत्र के वरिष्ठ नागरिकों का पंजीकरण URL 125.16.12.217/Srcitizen पर उपलब्ध कराये गये यूजरनेम और पासवर्ड के माध्यम से कर सकते हैं।

D- 'सवेरा योजना' के अंतर्गत वरिष्ठ नागरिकों के पंजीकरण से सम्बन्धित प्रक्रिया का विवरण संलग्न है।

(संलग्नक-1)

### 3. थाना प्रभारी के कार्य एवं दायित्व-

1. बीट कांस्टेबल से उनके बीट के गाँव / मोहल्ले के वरिष्ठ नागरिकों का सवेरा योजना में अधिक से अधिक पंजीकरण करायेंगे।

II. 'सवेरा योजना' में पंजीकृत वरिष्ठ नागरिकों के संबंध में सूचना को अद्यावधिक कराये जाने हेतु बीट कांस्टेबल को बीट बार वरिष्ठ नागरिकों के नाम आवंटित करेंगे।

III. वरिष्ठ नागरिक के पंजीकरण के पश्चात थाने के बीट कांस्टेबल एवं हल्का इंचार्ज / चौकी इंचार्ज को मौके पर भेजकर वरिष्ठ नागरिकों से मिलकर सूचना अद्यावधिक (Update) करायेंगे।

IV. थाना स्तर पर आयोजित होने वाली संक्रांत नागरिकों / शांति सुरक्षा समिति की बैठक में सवेरा में पंजीकृत वरिष्ठ नागरिकों को भी आमंत्रित करेंगे।

V. कम्युनिटी पुलिसिंग के अंतर्गत बीट कांस्टेबल एवं हल्का इंचार्ज / चौकी इंचार्ज अपने बीट, हल्का / चौकी क्षेत्र के गांव । मोहल्ला के वरिष्ठ नागरिकों से व्यक्तिगत रूप से समय-समय पर मिलकर उनका हाल-चाल पूछते हुए उनकी मदद करेंगे साथ ही उन्हें सुरक्षा का बोध करायेंगे।

### 4. बीट पुलिस कर्मी के कार्य एवं दायित्व-

(1) अपनी बीट के गांव / मोहल्ले के वरिष्ठ नागरिकों का पंजीकरण करेंगे।

(i) जिन वरिष्ठ नागरिकों का पंजीकरण हो चुका है उनके संबंध में सूचना को अद्यावधिक करेंगे।

(1) बीट कांस्टेबल अपनी बीट के पंजीकृत वरिष्ठ नागरिकों का समय-समय पर सत्यापन करेंगे तथा कम से कम 03 माह में एक बार उनका हाल-चाल लेमा अवश्य सुनिश्चित करेंगे।

### 5. चौकी प्रभारी / हल्का इंचार्ज के कार्य एवं दायित्व -

(1) अपने चौकी / हल्का क्षेत्र में पड़ने वाले समस्त गांव। मोहल्ले के वरिष्ठ नागरिकों का पंजीकरण सुनिश्चित करायेंगे।

(1) जिन वरिष्ठ नागरिकों का पंजीकरण हो चुका है उनके संबंध में सूचना को अद्यावधिक करेंगे।

(M) प्रत्येक 03 माह में कम से कम 01 बार अपनी बीट के पंजीकृत समस्त वरिष्ठ नागरिकों का सत्यापन कर उनका हाल-चाल लेंगे तथा उनकी मदद करेंगे।

#### 6. नोडल अधिकारी यूपी-112 के कार्य एवं दायित्व-

वरिष्ठ नागरिकों के पंजीकरण की समीक्षा प्रतिभाड़ करते हुए कृत कार्रवाई की सूचना यूपी-112 मुख्यालय को संलग्न प्रारूप (संलग्नह-2) में उपलब्ध करायेंगे।

#### 7. पर्यवेक्षण-

कमिश्नरेट / जनपद स्तर पर- प्रतिमाह धानावार सवेरा योजना में पंजीकरण एवं अद्यावधिक की गयी सूचना के संबंध में समीक्षा पुलिस कमिश्नर/जनपदीय पुलिस अधीक्षक/वरिष्ठ पुलिस अधीक्षक द्वारा की जायेगी।

(३) रेंज/जोन स्तर पर प्रत्येक 03 माह में रेंज फोन स्तर पर 'सवेरा योजना' में पंजीकरण एवं SOP के अनुरूप की गयी कार्रवाई की समीक्षा की जायेगी।  
उक्त SOP पुलिस महानिदेशक उत्तर प्रदेश महोदय के अनुमोदन के उपरान्त निर्गत की जा रही है।"

127. This scheme is available both in the cities and in the rural areas. The SOP for the Savera Scheme delineates its objective, registration and further it also envisages the duties to be carried out by the Police Authorities at the patrolling level, at the level of the Police Station and at the Station House level. Noticing the scheme in its entirety, it would indicate that the role of police has been expanded in the sense that its traditional role of maintaining law and order has been enlarged by incorporating social responsibilities for the benefit of the public including the senior citizens.

Illustratively, wherever a senior citizen feels threatened either in terms of a trespass or exploitation at the hands of some person who may be a relative or a care giver or any other third person or in a situation where a senior citizen may be alone and may have a medical emergency or an act of fire, in such situations, the senior citizens can access this Helpline 112 to register his complaint and the police as per their patrolling force can immediately reach out to such a senior citizens in distress and act as a first responder to address the grievance of the senior citizens.

Similarly, if the senior citizens feels threatened at the behest of some unwanted element creating nuisance to the discomfort of such senior citizens,

he can access 112 and the first response team will reach out to such senior citizens at the earliest, to resolve the issue, including by taking recourse to mediation to de-escalate the situation.

Similarly, in case of medical emergency, the senior citizen can reach out to the first response team who may provide first aid or take the senior citizen to the nearest health center/hospitals where first aid can be administered and thereafter as per the medical advice, the senior citizen can be guided to the appropriate hospital, if further specialized treatment is required. Likewise in case of a calamity such as fire, the first response team can immediately call the fire brigade who may do the needful for such senior citizens in the stress hour.

128. Thus, it would be seen that what the Act and the Rules and the comprehensive Action Plan as framed by the State Government reflects is a preventive and facilitative scheme of affairs and it does not create any special adjudicatory forum nor does it envisage or confer any new adjudicatory/coercive powers with the Authorities while providing immediate redressal, beyond the existing framework of laws. The aforesaid provision/scheme would indicate that the measures as provided are service based, pre-emptive and preventive in nature and certainly not reactive or curative.

129. The endeavour is to bring about a transitional change in the role of the State and its police force from being Law Enforcement Agency to being a friend of the public. The concept of creating a unified Helpline for the elderly and for making efforts to get the larger populace of senior citizens registered under the '**Savera Scheme**' is primarily to create a data bank of the senior

citizens for effective monitoring and prompt attention to be given to such preferred class and it is this kind of protection to the life and property of senior citizens which is envisaged in the Act and the Rules.

130. Now, this brings the Court to consider an important provision i.e. Section 23 of the Act of 2007, which has an impact and it also confers some powers on the Tribunal which are in contrast to the powers as mentioned in Sections 5 to 9 of the Act of 2007. For the ease of reference, Section 23 is being reproduced hereinafter:-

***“23. Transfer of property to be void in certain circumstances.— (1) Where any senior citizen who, after the commencement of this Act, has 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.”*

131. On the plain reading of the aforesaid provision, it would indicate that to activate, the said section, certain conditions as mentioned therein must exist:-

- (i) a transfer is made by a senior citizen by way of a gift or otherwise after the commencement of this Act of his property ;
- (ii) such a transfer is subject to the condition that the transferee would provide the basic amenities and for basic physical needs to the transferor ;
- (iii) despite the said stipulation, the transferee refuses or fails to provide such amenities and physical needs, so promised;

132. If the aforesaid three conditions co-exist then such a transfer made at the option of the transferor shall be deemed to have been made by fraud or coercion or under undue influence and at the option of the transferor be declared void by the Tribunal.

133. This is another method to protect and create a safe environment for the senior citizen so that they may not fall an easy prey for unscrupulous people who may or may not include the children/relatives or third persons (including care givers) who may take advantage of the senior citizen especially those who are residing on their own or may be dependent on such persons due to frailties accompanying their age.

134. This Section 23 as noticed above pre-supposes three conditions before it can be pressed into service. The very fact that the three conditions exist, then the deeming provision pre-supposes that such transfer is occasioned by fraud, coercion and undue influence, making the transaction vulnerable for being declared void by the Tribunal, at the behest of the transferor.

135. As noticed above, the Tribunal is constituted under Section 7 which is manned by an officer not below the rank of the Sub Divisional Officer of the State. Moreover, the Tribunal has been conferred with the powers to declare an instrument as envisaged in Section 23 as void. The word 'void' implies, something being not valid and not binding since inception. Hence, in that limited context where a transferee who is given exclusive possession or a right in the property of the senior citizen, by virtue of a conditional instrument, as mentioned in Section 23 of the Act of 2007 then the moment such an instrument is declared void by the Tribunal which takes effect from the date of the instrument, then, where necessary, the possession can be

recognized to be with the transferror i.e. the senior citizen from its inception and the Tribunal can hand over the possession by its order which can be implemented through the Authorities, utilizing the powers conferred on the District Magistrate in terms of Sections 21, 22 read with Rules 21 and 22.

136. However, this does not necessarily mean to confer, either upon the Maintenance Tribunal or the Appellate Tribunal or the District Magistrate, with powers to take on an adjudicatory role to deal with any intricate question relating to right, title or interest of party who may have set up a right, bonafide, which may be adverse to the senior citizens under the Act of 2007 and/or is engaging the attention of the regular courts or forum.

137. Having considered the overall scheme of the Act and looking into Section 23 as well as the pronouncement of the Apex Court in **Urmila Dixit (Supra)**, it would reveal that the powers exercised by Maintenance Tribunal/Appellate Tribunal, as the case may be, after declaring the instrument of transfer as void in terms of Section 23, to pass necessary orders regarding possession in favour of the senior citizen including eviction of an undesirable person from the property of the senior citizen is consequential.

138. This consequential order of possession, or removal of any individual person from the property of the senior citizen is more in the nature of restitution than a power of eviction, as understood in traditional sense and is generally associated with rent and tenancy laws.

139. Generally, eviction orders are passed by the Competent Courts/ Authorities in terms of some statute or statutory rules and after ascertaining the rights of the parties and upon finding a party to be in breach of some provisions which entitles the other party to seek eviction of such a defaulting

party.

140. The word restitution in its plain meaning means restoring anything unjustly taken from another. It has its roots in the Latin Maxim ‘**Restituito**’. The aforesaid principles of restitution is also expressly embodied in Section 144 of the Code of Civil Procedure, 1908. The word restitution was used earlier in common law to denote the return or repatriate of a specific thing or condition. In modern legal usage, its meaning has frequently been extended to include, not only the restoration or giving back of something to its rightful owner, but, also compensation, reimbursement, indemnifaciton or repatriation of benefit derived from or for loss or injury caused to another.

141. The principal of restitution also finds reflection in Sections 64 and 65 of the Indian Contract Act, 1872. For the ease of reference, the aforesaid Sections 64 and 65 are being reproduced hereinafter:-

***“Section 64: Consequences of Rescission of a Voidable Contract***

*When a party at whose option a contract is voidable rescinds it, the other party is no longer obligated to perform the contract.*

*The party who rescinds the contract and has received any benefit under it must restore that benefit, as far as possible, to the person from whom it was received.*

***Section 65: Obligation of Person Who Has Received Advantage Under Void Agreement or Contract That Becomes Void***

*When an agreement is discovered to be void or a contract becomes void, any person who has received an advantage under it is obligated to restore that advantage, or to make compensation for it, to the person from whom it was received. This means they must return any benefit they received or pay compensation for it, ensuring that no one is unjustly enriched..”*

142. It is in this context that if Section 23 of the Act is seen, it would indicate that if the essential ingredients envisaged in Section 23 exist meaning thereby that a document is executed by a senior citizen on the premise that the person in whose favour such a document is executed shall maintain the said senior citizen. In case the transferee breaches the condition



and the senior citizen brings an action in terms of Section 23 and the Tribunal declares the said document to be void, then as a concomitant, principal of restitution is attracted and it is in recognition of the said right of restitution that the Maintenance Tribunal can issue an order restoring the possession to the senior citizen.

143. The basic concept of a document as mentioned and referred in terms of Section 23 of the Act of 2007 indicates that it encapsulates reciprocal obligations upon the transferee/donee and upon violation of such obligation it renders the instrument void and in such circumstances any benefit accrued to the transferee/donee automatically comes to an end and in such circumstances alone can the possession be restored to the senior citizen. This is for the reason that even while the document is executed both the donor/transferee (the senior citizen) and the transferee/donee (the legal heir or third party) are in possession and it is not as if the third party is in exclusive possession to the exclusion of the transferor/donor/the senior citizen, hence, the possession which is restored is that of the transferor/donor/the senior citizen. The possession claimed by the transferee/donee/the third party is emanating only from the said instrument executed which casts reciprocal obligation to take care of the transferor/senior citizen and upon it being held as a nullity then such possession cannot be perpetuated and it has to revert back to the transferor/senior citizen by drawing strength from the principles of restitution.

144. On the other hand, in ordinary and normal circumstances, any dispute between a senior citizen and his opponent, are to be adjudicated in the Civil Courts or other Forums which may be available as per law and in such Civil Courts or Forums, the judicial officers or the Authorities, as the case may be,

be more sensitive to give priority, keeping in mind the provisions of Section 21 (ii) of the Act of 2007 read with Rule 21 and 22 of the Rules of 2014. The State or the District Magistrate who has been obligated in terms of Section 19 and 20 of the Act read with Rules 21 and 22 are required only to create a strengthened social framework for the social security of the senior citizens.

145. However, the Act or the Rules do not confer or create a special forum or a special authority with overriding powers or authority to do something in terms of the Act of 2007 which is otherwise available only with the regular courts and authorities. The overriding powers of this Act in terms of Section 3 is limited only to the extent of powers conferred on the Tribunal or the Authority which they have to discharge in terms of the Act of 2007 and not beyond that. The traditional forums and courts are free to proceed with the matters in accordance with law which are not covered by the matters which are within the ambit and jurisdiction of Maintenance Tribunal, Appellate Tribunal in terms of the Act of 2007.

146. Traditionally, a right of evicting a person is entrenched in the rent laws or in terms of the Specific Relief Act, 1963 or Transfer of Property Act, 1882. The Tribunal as envisaged under the Act of 2007 is an Authority of limited jurisdiction and that too dealing with issues of maintenance only up to a limit of Rs. 10,000/-. The word ‘property’ as defined in the Act is of a very wide connotation and includes both movable and immovable, tangible or intangible, ancestral or self-acquired. It does not appear to be to the intention of the Act to bypass the provisions of the other Act relating to the power of eviction, inasmuch as, otherwise where a Tribunal who is competent to pass a maintenance order, maximum up to a limit of Rs. 10,000/- cannot indirectly be empowered to deal with the property of a senior citizen which may exceed

many times the value of Rs. 10,000/-and in garb thereof the Tribunal or Authority under the Act of 2007 may enter into the realm of other regular courts and forum established by law, having jurisdiction over the subject matter.

147. Now, with the promulgation of the Act of 2007, if it is assumed that the Tribunal or the District Magistrate has the Authority to order an eviction then such power has to have some source within the Act of 2007 and only then it can be pressed into service or else it will amount to an indirect method to achieve something which has not been conferred by the Act directly, and such an interpretation would not be desirable.

148. It is true that the Act of 2007 is a social beneficial legislation for the senior citizens/parents and it should be construed liberally in their favour yet it also must be kept in mind that the rules of interpretation do not give right to the Court to read into a legislation or a provision of the Act a power which otherwise is conspicuously absent as shall be evident from the reading of the scheme of the Act and the rules framed thereunder.

149. It is now well settled that the courts do not legislate rather it interprets the law. Even though, the Act of 2007 is a social beneficial legislation but it cannot be lost sight off that the courts do not read something into the Act which has not been provided. It is the golden rule of intepretation of statute that the Act must be read in the manner with all the words and provisions and to make it workable keeping in mind that all the sections are given full effect and no provisions as far as possible is made redundant or superfluous.

150. The court may be tempted to read something into the Act by invoking the doctrine of Casus Omissus but even to do so even in a social beneficial

legislation, while taking an approach of purposive interpretation, there are guidelines and unless the said guidelines are attracted, the court under the cloak of exercising the power of interpretation is not empowered to re-write the law. In **Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323**, the Apex Court has held as under:-

*“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as “more than five years” and as “more than four years” in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries, (1990) 2 SCC 378, Mangilal v. Suganchand Rathi AIR 1965 SC 101, Sri Ram Ram Narain Medhi v. State of Bombay, AIR 1959 SC 459, Hira Devi (Smt) v. District Board, Shahjahanpur (1952) 2 SCC 154, Nalinakhya Bysack v. Shyam Sunder Haldar (1953) 1 SCC 167, Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593, G. Narayanaswami v. G. Pannerseivam (1972) 3 SCC 717, N.S. Vardachari v. G. Vasantha Pai (1972) 2 SCC 594, Union of India v. Sankal Chand Himatlal Sheth (1977) 4 SCC 193 and CST v. Auriaya Chamber of Commerce, Allahabad (1986) 3 SCC 50. Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power.”*

151. In **Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, (2004) 6 SCC 672**, the Apex Court has held as under:-

*“17. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse [(1997) 6 SCC 312 : AIR 1998 SC 74] .) The intention of the legislature is primarily to be gathered from the language used, which means that attention should*

*be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner [(1846) 6 Moo PC 1 : 4 MIA 179] , courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel [(1998) 3 SCC 234 : 1998 SCC (Cri) 737 : JT (1998) 2 SC 253] .) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd. [(1978) 1 All ER 948 : (1978) 1 WLR 231 (HL)] ] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. v. Evans [1910 AC 444 : 79 LJKB 954 (HL)] quoted in Jumma Masjid v. Kodimaniandra Deviah [AIR 1962 SC 847] .)*

18. *The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage [218 FR 547] .) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama [(1990) 1 SCC 277 : AIR 1990 SC 981] (SCC p. 284, para 16).*

19. *In D.R. Venkatachalam v. Dy. Transport Commr. [(1977) 2 SCC 273 : AIR 1977 SC 842] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.*

20. *While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. Popular Trading Co. [(2000) 5 SCC 511] ) The legislative casus omissus cannot be supplied by judicial interpretative process.*

21. *Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)]*

(All ER p. 544 I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664 I) “This is not a new problem, though our standard of drafting is such that it rarely emerges.”]

22. It is then true that,

“when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*”.

“But”, on the other hand, “it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom” (see *Fenton v. Hampton* [(1858) 11 Moo PC 347 : 6 WR 341] ). A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt* legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute — *casus omissus et oblivioni datus dispositioni communis juris relinquitur*; “a *casus omissus*”, observed Buller, J. in *Jones v. Smart* [(1785) 1 TR 44 : 99 ER 963] (ER p. 967), “can in no case be supplied by a court of law, for that would be to make laws”.

23. The golden rule for construing wills, statutes and, in fact, all written instruments has been thus stated:

“The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further” (see *Grey v. Pearson* [(1857) 6 HL Cas 61 : 26 LJ Ch 473] ).

The latter part of this “golden rule” must, however, be applied with much caution. “If”, remarked Jervis, C.J.,

*the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied, where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely, because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning*. (See *Abley v. Dale* [(1851) 11 CB 378 : 138 ER 519] , ER p. 525.)”

152. Once, the legislature while framing the Act and the Rules has not conferred such powers of eviction nor there is any indication that such

powers have been conferred either in the action plan then in such circumstances, it will not be appropriate for this Court to read something into the Act and invest an Authority or Tribunal with limited jurisdiction with certain powers which the legislature in its wisdom had consciously excluded from the domain of such Authority or Tribunal.

153. It is in the aforesaid backdrop that Section 23 is treated as a stand alone section and only upon the adherence of the three pre-conditions, that the said section comes into play and only in such circumstances which are limited and explained hereinabove, can in a limited case upon an order being passed by the Maintenance Tribunal/Appellate Tribunal declaring the instrument as void can, as a necessary corollary and as consequential impact of the order, the possession may be put back with the senior citizen and only to that limited extent, the Tribunal may pass an order of restitution that can be implemented and if need be through the District Magistrate by taking aid of the police authorities.

154. In our country we adhere to the rule of law. Possession of a party is viewed with sanctity and any act of a person to disturb the possession is viewed seriously. Significantly, there is a distinction which has to be kept in mind considering an act where a person may be in the actual process of trespassing as opposed to a situation where a person may have trespassed and settled his possession.

155. In this regard, the observations of the Apex Court in **Ram Rattan Vs. State of U.P. (1977) 1 SCC 188**; will be relevant which is reproduced as under:-

*“4. ....We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the*

*possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to settled possession. There is no special charm or magic in the word 'settled possession' nor is it a ritualistic formula which can be confined in a strait-jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner ... Thus in our opinion the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:*

*“(i) that the trespasser must be in actual physical possession of property over a sufficiently long period;*

*(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possendie. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;*

*(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and*

*(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession; had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.”*

156. It will be relevant to observe that injunction is one of the most prolific preventive reliefs which are sought and granted by the courts, however, the Tribunal or the District Magistrate under the Act of 2007 or in terms of Rules of 2014 have not been invested with any such power.

157. Thus, where the Tribunal or the District Magistrate does not have the power to grant the injunction to prevent a breach of the legal obligation and then to suggest that the same Tribunal or the District Magistrate in absence of any clear conferment of power has been granted the power to evict a person becomes incongruous.

158. There might be a situation where some substantive proceedings are



pending in a court of law which involves a senior citizen/a parent where contentious questions may be under consideration including a relief of possession/eviction. Then whether simultaneously it can be said that the senior citizen/parent may approach the Tribunal or the District Magistrate and may obtain an order of eviction/possession through summary proceedings while the other party remains engaged before the regular courts also does not seem to be in consonance with the Scheme of the Act and the Rules.

159. Thus, for all the aforesaid reasons, this Court opines that the powers exercised in terms of Section 21 of the Act of 2007 or in terms of Rule 21 and 22 of the Rules of 2014 cannot include passing of an order of eviction except as explained above, where Section 23 of the Act of 2007 applies.

**G. Summary and Answers to the Questions Referred:-**

160. In light of the detailed discussions hereinabove we summarize and answer the reference as under:-

**Questions (i) and (ii)**

The Maintenance Tribunal constituted under Section 7 of the Act of 2007 in exercise of its power under Sections 7, 8 and 9 are not empowered to pass an order of eviction while deciding an application before it in terms of Section 5 of the Act of 2007. The Appellate Tribunal in terms of Section 15 and 16 of the Act of 2007 is also not conferred with the power to order an eviction except where in an appeal the Appellate Tribunal allows the prayer of the senior citizen/parent arising out of the plea of Section 23 of the Act of 2007.

**Question No. (iii)**

Considering the scope of Section 21 of the Act of 2007, the Authority is not

competent to pass an order of eviction as Section 21 and the Rules 21 and 22 of the Rules of 2014 do not confer any power of eviction on the District Magistrate. However, the Maintenance Tribunal/Appellate Tribunal only in cases covered by Section 23 of the Act of 2007, after it holds a document/instrument to be void then as a concomitant exercising its restitutionary powers can revert back the possession to the senior citizen/parent.

**Question No. (iv)**

In response to Question No. (iv), we find that the decision rendered by the Division Bench in **Shivani Verma (Supra)** does not lay down the correct law and accordingly, it is overruled. The decision of the Division Bench in **Swaraj Varun (Supra)** and **Bipraji Singh (Supra)** in so far as they hold that the power of eviction is not conferred on the Maintenance Tribunal and the Appellate Tribunal or the District Magistrate is upheld with a modification that it is subject to the exception where a case is covered by Section 23 of the Act of 2007 and a document is declared void then the Maintenance Tribunal/Appellate Tribunal while exercising its restitutionary powers may in a given case, where required, may restore/ handover the possession to the senior citizen/parent.

161. The reference is answered accordingly.

162. The matter shall now be placed before the Court concerned for its decisions on merits.

**Order Date :- 27<sup>th</sup> May, 2025**  
Asheesh/-

**(Subhash Vidyarthi, J.), (Jaspreet Singh, J.). (Attau Rahman Masoodi, J.)**