



2025:AHC:168346-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 31470 of 2025

Vinayak Prabal And 2 Others

.....Petitioner(s)

Versus

District Magistrate And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Mukesh Kumar Pandey, Udai Chandani
Counsel for Respondent(s) : C.S.C.

Court No. - 39

HON'BLE ARINDAM SINHA, J.

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

(Per : Arindam Sinha, J.)

1. The writ petition was moved on 17th September, 2025. Mr. Udai Chandani, learned advocate appearing on behalf of petitioners had submitted, petitioner no.2 is mother of petitioner no.1, who is grandson of petitioner no.3. Private respondent no.4 is son of petitioner no.3, husband of petitioner no.2 and father of petitioner no.1. Challenge in the writ petition is against, inter alia, orders dated 11th March, 2025 and 7th August, 2025, both made by respondent no.2 (the Sub-Divisional Magistrate). Submission was, the orders were made purportedly as empowered by section 23 in Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in favour of private respondent no.4. Thereby his clients face imminent eviction. Hence, interference is sought.

2. Mr. G.C. Tiwari, learned advocate, Standing Counsel appears on behalf of State. Mr. Amit Pratap Singh, learned advocate appears on behalf of private respondent no.4. He submits, respondent no.3 resides with her brother and not with other petitioners. His client is present in Court. He was under wrongful custody of petitioners. A passage from paragraph-2 of earlier order dated 17th September, 2025 bearing record of submissions is reproduced below.

".....He was under wrongful custody of petitioners as will appear from order dated 17th September, 2020 made by the learned

single Judge, directing production of his client from such illegal custody. There are several other orders made both by other Benches of this Court as well as concerned authority, to show that petitioners are seeking to grab his client's property. He submits, petitioner no.3 is not with petitioner nos. 1 and 2 but with her brother. As such petitioner nos. 1 and 2 are squarely covered by provisions of the Act of 2007. There be no interference."

3. Today Mr. Chandani relies on view taken by a Larger Bench of this Court at Lucknow in **Onkar Nath Gaur and another vs. District Magistrate/President Appellate Tribunal Lko. and 2 others**. The view came on **judgment dated 27th May, 2025**. It was on a reference. The questions are reproduced below.

"(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?"

(emphasis supplied)

4. We have heard the parties. The facts are, the property stands in name of respondent no.4. He is outside. The property is occupied by petitioners, or at least petitioner nos.1 and 2. In that context, direction made by impugned order, is reproduced below.

"Therefore, in the above mentioned situation, it was ordered to the Tehsildar, Padrauna to ensure the transfer and possession of the land registered in the name of Rajendra Kumar Jaiswal (petitioner) in revenue village Sohanpur, to the Executive Officer, Padrauna to ensure the transfer and possession of the house and land registered in the name of the petitioner in front of Rungta Petrol Pump, Municipal Council, Padrauna, Kushinagar and to the Inspector In-charge, Kotwali-Padrauna to ensure the custody of the licensed rifle and pistol in the name of the petitioner as per the rules Under Section 22 and 23 of the Maintenance and Welfare for Senior Citizens Act. A copy of the order be sent to the Tehsildar, Padrauna, Executive Officer, Municipal Council, Padrauna, District- Kushinagar, and the Inspector In-charge, Kotwali Padrauna, Kushinagar for compliance and to Rajendra Kumar Jaiswal (petitioner) for information. The file be consigned to records after necessary action. Stay order, if any, is withdrawn hereby."

5. On behalf of petitioners, reliance was placed on paragraph-98 in **Onkar Nath Gaur** (supra), reproduced below.

*"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."

(emphasis supplied)

Keeping reliance on above view in mind, we again looked at the direction made in impugned order. They are for ensuring transfer and possession of the house and land registered in name of respondent no.4. To ensure custody of licensed in his name rifle and pistol, as per sections 22 and 23 of the Act of 2007 and the Rules of 2014. We do not find any direction made for eviction of petitioners. On query we have ascertained, there are nine rooms that can be used for residential purpose, while others are occupied and used to commercially.

6. In fact situation aforesaid, we see that chapter-II in the Act provides for maintenance of parents and senior citizens. **Onkar Nath Gaur** (supra) says, the Tribunal must be confined to that chapter in exercising its powers, inter alia, in relation to sections 21 to 23. Here we must observe that a senior citizen and respondent no.4 is one such, is entitled to seek assistance for maintenance. The Tribunal has found upon hearing the parties that petitioners are in occupation of his house and in possession of his guns, while as aforesaid, he is outside. One of the incidents of maintenance is having a roof over one's heads and in this case the property stands in name of respondent no.4. Considering there is no direction for eviction, as there cannot be because the claim for assistance is not or cannot be likened to an eviction suit, we refuse to interfere. We further observe that intention of the Legislature is apparent from section 23 in empowering the Tribunal to declare transfers void, where children or relatives have got transferred to themselves property from a senior citizen.

7. At this stage, Mr. Chandani relies upon writing dated 12th September, 2025 made by Executive Officer, Nagar Palika Parishad, Padrauna. He submits, the officer has directed eviction. He points out a paragraph in the letter, reproduced below.

"अतः आपको निर्देशित किया जाता है कि न्यायालय उप जिलाधिकारी पडरौना में वाद संख्या-

टी202505440110367 अन्तर्गत धारा 23 उ०प्र०भरण पोषण एवं कल्याण अधिनियम 2007 राजेन्द्र कुमार जायसवाल बनाम विनायक आदि में पारित आदेश दिनांक 11.03.2025 के अनुपालन में एक सप्ताह (दिनांक 18.09.2025 तक) के अन्दर रूंगटा पेट्रोल पम्प के सामने सुभाष चौक पडरौना में स्थित भवन / जमीन से अपना कब्जा हटाते हुए खाली करें। अन्यथा की स्थिति में मा० न्यायालय के आदेश के समादर में आवश्यक बल प्रयोग करते हुए कब्जा हटा दिया जायेगा जिसके समस्त व्यय की जिम्मेदारी आपकी होगी। साथ ही यदि ऐसा करने पर आपकी किसी सम्पत्ति को क्षति पहुंचती है तो उसकी भी पूर्ण जिम्मेदारी आपकी होगी।"

The Executive Officer referring to eviction must be seen as done in line with the direction for putting petitioner in possession. The officer's interpretation of eviction, therefore, is in apprehension of resistance as may be offered by petitioners. We make it clear that impugned order having found on facts that the property stands in name of respondent no.4, he being put in possession will mean that petitioners can only have permission to remain in the property as his family members upon discharging their duty to look after him for his maintenance.

8. We appreciate that English translation of impugned order made by the Registry has been placed in the file for our assistance.

9. On above observations, the writ petition is disposed of. The interim order stands vacated.

(Arindam Sinha, J.)

(Arun Kumar Singh Deshwal, J.)

September 19, 2025

Ashutosh