

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: August 24, 2015

1. C.W.P. No. 17351 of 2015

Savita Sharma and others ... *Petitioners*

Versus

District Magistrate and others ... *Respondents*

2. C.W.P. No. 17352 of 2015

Mukesh Sharma ... *Petitioner*

Versus

District Magistrate and others ... *Respondents*

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) *Whether Reporters of the local papers may be allowed to see the judgment?* **Yes**

2) *To be referred to the Reporters or not?* **Yes**

3) *Whether the judgment should be reported in the Digest?* **Yes**

Present: Mr. Satyaveer Singh, Advocate,
for the petitioner(s).

Paramjeet Singh, J.

This is an avoidable and unfortunate litigation between
father, son, daughter-in-law and others.

titled “Savita Sharma and others vs. District Magistrate and others” and CWP No. 17352 of 2015 titled “Mukesh Sharma vs. District Magistrate and others” as challenge in both the writ petitions is to order dated 09.07.2015 (Annexure P/5) passed by respondent no.1 – District Magistrate, U.T., Chandigarh whereby petitioner – Mukesh Sharma-son has been directed to vacate house No. 2092, Sector 37-C, Chandigarh and Shed No. 36, Rehri Market, Sector 23, Chandigarh under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”). C.W.P. No. 17351 of 2015 has been separately filed by wife of Mukesh Sharma and his children.

I had the occasion to deal with almost the identical dispute in **Ashwinder Singh and another vs. Bhagwant Singh and another, 2014(3) R.C.R. (Civil), 906.** It would be apposite to reproduce relevant paragraphs:-

“This unfortunate regular second appeal is a poignant reminder of decaying social values and traditions in our country. The case is telltale story of how children have become detached in today's commercialized world and are making attempts to throw out their aged parents from the property which the parents have acquired during their life-time. It is perfect example of children becoming insensate towards parents/senior citizens.

“Maatru Devo Bhava” (revere your mother as God) and “Pitro Devo Bhava” (revere your father as God) is a well-known proverb.

2. *On page 1200 of Sri Guru Granth Sahib, Sri Guru Ram Dass has written that “KAAHAY POOT JHAGRAT HA-O SANG BAAP / JIN KAY JANAY BADEERAY TUM HA-O TIN SIO JHAGRAT PAAP//” (O son, why do you argue with your father? It is a sin to argue with the one who fathered you and raised you.).*

3. *The above words of prudence guide us that we have to treat our parents as God. Modernization, technological advancement and social liability have changed our life-style and values. Sadly, our bent of mind and responsibility towards parents has degenerated. We have forgotten about Sharavan Kumar, who placed his blind parents in two baskets and carried the baskets on his shoulder to various places of pilgrimage. We have also forgotten the duties of a son towards aged parents. We have completely given up our ancient traditions when parents were most revered and respected.”*

Over the years the law has become more complicated and more involved in the different areas of people's lives. Sometimes the law appears to be meddling and intrusive particularly in family disputes and private life. There has to be a balance between people's right to live and the right of the law to intervene on behalf of the society. The balance between the needs of society and people's individual rights applies to families too.

Family has been the dominating institution, both in the life of the individual and in the society. It is a basic, cohesive and integral unit of larger social system. We are seeing rapidly changing family scenario. Our children will always be our children. The parents believe

in trial and error principles so far children are concerned. Even though parents do all right things for children specifically children and their families, but many a times, children feel that they are not being treated equally and this results into tearing break ups which is very anguishing for the parents. This happens when tension rises beyond bearable level. At this stage, there is a need for trained therapist practicing in this field. When efforts to effect compromise/settlement fail, can there be any good reason to keep cause of trouble under the same roof? Introspection by one and all can play a pivotal role in brushing aside the differences and bringing back the peace and harmony in the family. Everyone should analyze what his/her heart says. Parents and children should think calmly and not on the basis of pure emotion before drawing a line in the sand, one should be fully convinced that his/her actions are not based on anger or fear. The idea of fate exists in all human cultures, and was developed as a way of dealing with difficult decisions those make us uncomfortable. We invoke fate to say, it is out of my hand now, there is nothing I can do. When no positive results are in sight only then parents should ask the children politely but firmly to pack things and leave the house.

What expectations are the legitimate in the relationship between adult children and elderly parents?

It is a larger issue and can be examined by the sociologists.

Though parents want to maintain their independence and do not expect much from adult children as children expect from them, parents also hope that children will be there for them when called upon particularly in the evening of their life. Often parents lay less emphasis upon physical and financial support, however at least, expect emotional support of children and grand children.

Brief facts as averred in CWP No. 17351 of 2015 are that petitioner no.1 is the wife of respondent no.7 – Mukesh Kumar and petitioners no. 2 and 3 are the minor daughters of petitioner no.1 and respondent No.7. The petitioners are residing in House No. 2092, Sector 35-C, Chandigarh with respondent no.7 and respondent no.5, who is father-in-law of petitioner no.1. Respondent no.5 – Om Parkash Sharma, father-in-law of petitioner no1. and father of respondent no.7-Mukesh Sharma, has filed a suit for possession of Shed No. 36, Sector 23, Chandigarh against respondent no.7 - Mukesh Sharma. Respondent no.5 has also filed another suit for ejectment from House No. 2092, Sector 37-C, Chandigarh against petitioner no.1 and respondent no.7. Respondent no.5 also filed a complaint under Sections 21 and 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”) before respondent no.1 for eviction of the petitioners from House No. 2092, Sector 37-C, Chandigarh and Shed No.

36, Sector 23, Chandigarh. Thereafter, respondent no.1 issued notice to respondent no.7 along with respondents no.2 and 3 for appearance. Respondent no.7 – Mukesh Sharma appeared and filed his reply stating therein the factual position regarding allegations in the complaint. Respondent No.1, vide order dated 09.07.2015 (Annexure P/5) has directed respondent no.7 – Mukesh Sharma to vacate house No. 2092, Sector 37-C, Chandigarh and Shed No. 36, Rehri Market, Sector 23, Chandigarh and restore its possession to his father and mother within fifteen days. Hence, the writ petition.

Brief facts as averred in CWP No. 17352 of 2015 are that respondent no.5 – Om Parkash Sharma, father of petitioner-Mukesh Sharma, has filed a suit for possession of Shed No. 36, Sector 23, Chandigarh against petitioner – Mukesh Sharma. Respondent no.5 has also filed another suit for ejectment from house No. 2092, Sector 37-C, Chandigarh against the petitioner. Respondent no.5 also filed a complaint under Sections 21 and 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”) before respondent no.1 for eviction of the petitioners from House No. 2092, Sector 37-C, Chandigarh and Shed No. 36, Sector 23, Chandigarh. Thereafter, respondent no.1 issued notice to the petitioners for appearance. Petitioner – Mukesh Sharma appeared and filed his reply

stating therein the factual position regarding allegations in the complaint. Respondent No.1, vide order dated 09.07.2015 (Annexure P/5) has directed petitioner – Mukesh Sharma to vacate house No. 2092, Sector 37-C, Chandigarh and Shed No. 36, Rehri Market, Sector 23, Chandigarh and restore its possession to his father and mother within fifteen days. Hence, the writ petition.

I have heard learned counsel for the petitioners.

Learned counsel for the petitioners relied upon a judgment of Hon'ble Kerala High Court in **C.K. Wasu vs. the Circle Inspector of Police and others, Writ Petition (C) No. 20850 of 2011** to contend that no provision in the Act for passing the impugned order. Learned counsel further contends that the impugned order was passed without issuing notice to the petitioners and without making petitioners party in any complaint. The petitioners have their independent right in the properties in question being members of Hindu joint family. Learned counsel further contends that respondent no.1 did not give any time to the petitioners to file appeal and did not issue any notice before forcibly taking over the possession of shed in question. Learned counsel further contends that complaint filed under the Act by respondent no.5 was at the instance and instigation of Mahesh Kumar, elder brother of petitioner – Mukesh Sharma, who wants to grab the entire properties alone.

I have considered the contentions raised by learned counsel for the petitioners and perused the record.

Before I deal with the submissions of learned counsel for the petitioners, it would be appropriate to reproduce extract from judgment of the Hon'ble Division Bench of this Court in **Justice Shanti Sarup Diwan, Chief Justice (Retired) & another Vs Union Territory, Chandigarh & others, 2014 (5) R.C.R. (Civil) 656**. In the said judgment a Division Bench examined the scheme of the Act and almost identical issue.

“28. SCHEME OF THE ACT -

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who

inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.

29. Section 2 contains the definitions and clause (f) defines 'property' as under:-

Definitions:- *In this Act, unless the context otherwise requires:-*

a) xx xx xx

b) xx xx xx

c) xx xx xx

d) xx xx xx

e) xx xx xx

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."

The aforesaid would thus show the definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read along with Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

30. Chapter-II of the said Act deals with the maintenance of parents and senior citizens while Chapter-IV deals with the medical care. However, since the appellants before us

are claiming neither, we are not delving these provisions in any detail. The relevant Chapter-V provides for protection of life and property of senior citizens. Section 21 provides for measures of publicity, awareness etc. for welfare of senior citizens, while Section 22 provides for the Authorities who may be specified for implementing the provisions of the said Act. Section 22 reads as under:-

"22. Authorities who may be specified for implementing the provisions of this Act

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens."

Thus what is envisaged is both protection of life and protection of property through a comprehensive action plan.

31. In order to prevent interference by Civil Courts qua any action taken in furtherance of the provisions of the said Act, Section 27 bars the jurisdiction of the Civil Courts, especially in respect of injunction. Section 27 of the said Act reads as under:-

"27. Jurisdiction of civil courts barred

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act."

32. *Sub Section (1) of Section 32 of the said Act requires the State Government to make rules for carrying out the purposes of this Act which in turn would imply that the same inter-alia provides for protection of life and property of senior citizens under clause (f) of sub section (2) of section 32 of the said Act.*

33. *The major grievance made by the appellants in the context of the aforesaid provisions thus is that there is failure to make statutory rules in terms of Section 32, as envisaged aforesaid, by the Chandigarh Administration which itself compelled the appellants to approach this Court under Articles 226/227 of the Constitution of India.*

34. *In the context of the aforesaid discussion about the provisions of the Act, now we proceed to analyze two crucial questions referred to aforesaid:-*

Question No. (i):-

The stand of respondent No. 7 before the Court is not that there was any contribution given by him for acquisition of the plot at Chandigarh. It is also not his say that the property is an inherited property. The registered document of title is also in favour of only appellant No.1. In fact, out of his own earnings, appellant No.1 gifted the plot to

respondent No. 7 as well as two other plots to his daughters. There is just a bald statement that the property at Chandigarh is joint Hindu family property. The failure, which has been attributed to Administration of Union Territory, Chandigarh, is qua the provisions of Section 32 read with Section 22 of the said Act. There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of Section 32 of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for implementation of the provisions of the said Act under sub section (1) of Section 22 (clause (e) of sub section (2) of Section 32) and a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of Section 32). No such Rules have been notified. The grievance thus being made is that in the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under section 22 (2) of the Act would not suffice. In fact sub section (1) of Section 22 of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of

the problem at hand, this is absent.

35. *What is the right of respondent No. 7 and his family members to insist on occupying a portion of the house of appellant No.1 especially when the sale-deed is registered in the name of appellant No.1 in his individual name? Merely stating that it is a joint Hindu family property would not suffice. In order to establish that the property belongs to joint family, it must be established that a joint family had a sufficient nucleus at the time of its acquisition. (P. S. Sairam and another V. P.S.Rama Rao Pisey and others (2004) 11 SCC 320). Leave aside the corpus, it is not even alleged that the funds other than the individual funds of appellant No.1 were utilized to purchase the plot at Chandigarh. Respondent No. 7 could not have even alleged so as he actually received a self acquired plot at Panchkula from appellant No.1 by way of gift while daughters of appellant No.1 received one plot each in Karnal. Other than the oblique motive to grab the property at Chandigarh and keep possession of the same against the wishes of the owner, there can be no other reason. In fact, it was quite clear during the course of arguments that not only respondent No. 7 wants to deprive the appellant No.1 to deal with his property as per his wishes but wanted to grab the whole property for himself denying the share of his sisters.*

36. *In Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another 2011(9) SCC 788 it has been held by the Supreme Court that in view of the amendment of Section 6 of the Hindu Succession Act, 1956, a daughter is*

entitled to share in the ancestral property and is a co-parcener as if she had been a son w.e.f. 09.09.2005. Daughter of a co-parcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The only exception carved out is that where the disposition or alienation has taken place before 20.12.2004 and where testamentary disposition of property has been made before the said date.

37. *It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an over-riding effect qua any other enactment in view of Section 3 of the said Act. In fact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings*

may not be finished during the life time of appellant No.1. In fact, that is the very objective of respondent No. 7.

38. *Though it is not directly relevant but it is not even as if respondent no. 7 is without a roof over his head as he is a beneficiary of a gift from his father-appellant No.1 of a plot which was sold, smaller plot purchased and constructed upon and the house is lying vacant. What can be a greater travesty of justice in this situation where respondent No. 7 insists that he will not stay in his own house built by him lying vacant, but insists on staying with his parents who do not want him or his family to live with them. We don't have the slightest of hesitation in coming to a conclusion that all necessary directions can thus be made under the said Act to ensure that the appellants live peacefully in their house without being forced to accommodate respondent No. 7.”*

Rule 20 of the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009, reads as under:-

“20. Action Plan for the protection of life and property of senior citizens – (1) *The Senior Superintendent of Police, shall take all necessary steps, subject to such guidelines as the State Government may issue from time to time, for the protection of life and property of senior citizens.*

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

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

(ii) *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 Volunteers' 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 Senior Superintendent of Police shall cause to be publicized widely in the media and through the police stations, at regular intervals, the steps being taken for the protection of life and property of senior citizens.*

(vi) *each Police Station shall maintain a separate register containing all important particulars relating to offences committed against senior citizens in such form as the State Government may, by order, specify.*

(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 reflected in the register.*

(viii) *the Police Station shall send a monthly report of such crimes to the Senior Superintendent of Police by the 10th of every month.*

(ix) *list of Do's and Don'ts to be followed 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 citizen will be undertaken in conjunction with citizens living in the neighbourhood, Residents Welfare Associations, Youth Volunteers, Non-Government Organizations, etc.

(xii) the Senior Superintendent of Police shall submit to the Inspector General of Police and to the District Magistrate, a monthly report by the 20th day of every month, about the status of crime against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month.

(xiii) the District Magistrate shall cause the report to be placed before the State Level Coordination-cum-Monitoring Committee constituted under rule 22.

(xiv) The Inspector General of Police shall cause the reports submitted under clause (xii) to be compiled, once a quarter, and shall submit them to the State Government every quarter as well as every year for, inter alia, being placed before the State Council of Senior Citizens constituted under rule 21.”

The perusal of plaint-Annexure P4 reveals that House No. 2092, Sector 37C Chandigarh was allotted on 26.12.1985 and Shed No. 36 Sector 23, Chandigarh was allotted, vide allotment letter No. 15779 dated 25.09.1971, to respondent No. 5 by UT Administration. Respondent No.5 had disowned the petitioner - son in the year 2008 because of his bad conduct. Petitioner Mukesh is allegedly a drug addict

and has criminal record. For that reason he was disowned by respondent

No. 5. But he forcibly thrown out the petitioner and his wife from the shed No. 36 sector 23-C Chandigarh and also entered into house No. 2092 sector 35-C Chandigarh forcibly. The complaints were made to the Senior Superintendent of Police but nothing happened. The petitioner and his wife used to give thrashing to the wife of respondent No. 5, in fact they had made the living of these old people hell in the evening of their life. Respondent no.5 has five daughters, all are married besides other sons. Admittedly documents of title of house and shed are in favour of respondent No. 5 which has been allotted to him by the UT Administration. There is only bald statement of the petitioner on record that the property in question is joint Hindu family property. The provisions of the Act provide for protection of the property of the senior citizens. The petitioner and his family appear to have forcibly taken possession of house and shed with an oblique motive to grab the properties in question and is in possession of the same against the wishes of respondent no.5 - owner. At the most, it can be assumed that the petitioner and his family were residing with the permission of his parents. The permission stands withdrawn in the year 2008 when petitioner was disowned for his conduct by respondent No. 5 and its publication was also made in the newspapers. Although respondent No. 5 has approached a civil court for ejectment under the compelling

circumstances may be due to wrong advice under section 6 of the Specific Relief Act. The remedy under the Act is summary in nature and the provisions of the Act have overriding effect qua any other enactment in view of Section 3 of the Act. In fact jurisdiction of civil court has been precluded from entertaining any matter and jurisdiction vests in Tribunal under the said Act. The District Magistrate has rightly passed the directions vide impugned order against the petitioner so that respondent No. 5 along with his wife can spend the evening of their lives with peace. Learned counsel for the petitioners has failed to indicate any illegality and perversity in the order. Even on the basis of equity, petitioners do not deserve any indulgence by this Court.

This Court cannot interfere on merits with determinations made by any authority invested with statutory powers.

In view of the above I do not find any merit in both the aforementioned writ petitions, hence are dismissed in limine.

No order as to costs.

August 24, 2015
vkd

[Paramjeet Singh]
Judge