

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.18414 of 2015 (O&M)

Date of decision: **September 22, 2015**

Sanjeev Kumar and another

...Petitioners

Versus

District Magistrate, U.T.Chandigarh
and others

...Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Deepak Arora-1, Advocate
for the petitioners.

Mr.Fateh Singh Saini, Advocate for
respondent No.3.

HARINDER SINGH SIDHU, J.

In this petition, the petitioners have challenged the order dated 6.8.2015 (Annexure P-8) passed by the District Magistrate, U.T. Chandigarh (passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007) whereby, the petitioners have been directed to vacate Flat No.1719, Nirwana Society, Sector-49-B, Chandigarh.

Brief facts are that the petitioners are husband and wife, respectively, and respondent No.3 is mother of petitioner No.1. The petitioners were married in the year 2007 and since then they have been residing in a portion of the flat in question, which is owned by respondent No.3.

In the year 2014, respondent No.3 made a complaint (Annexure P-3) to the Senior Superintendent of Police, Chandigarh stating that she is a widow. She had met with an accident on 29.03.2014, she is under treatment at PGI and she had to get rods implanted in both her legs and that she cannot sit and stand. She had disowned her son Sanjeev Kumar (petitioner No.1) from her property in the year 2008. She further stated that the petitioners and mother of petitioner No.2 made police complaints against her three times and threatened to kill her. She stated that earlier she used to live in Sector 27-D on rent. In order that she can stay on the ground floor she came to reside in her own house. She is being taken care of by her daughter Rajni Gujral. The petitioners quarrel with her daily even in the midnight hours and pressurize her to transfer the flat in their name. She requested that the flat be vacated from the petitioners.

However, the matter was compromised between the parties and the complaint was withdrawn by respondent No.3 (Annexure P-4 and P-5).

Things again went wrong and on 28.7.2015, respondent No.3 filed an application under Sections 21 and 22(2) of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as the "2007 Act") before the District Magistrate seeking police protection and to get the flat in question vacated by the petitioners. Giving the background of her sufferings at the hands of the petitioners, she stated that the earlier complaint was

withdrawn because the petitioners had agreed to vacate the flat and not harass her. But they had neither vacated the flat nor ended the harassment. She complained that her life had been made hell by the petitioners. It was also stated that the petitioners have an accommodation of their own in Sector 19, where they can comfortably reside.

The District Magistrate heard both the parties in person. It was admitted by both the parties that the flat in question was in the name of respondent No. 3. While appearing before the District Magistrate, respondent No. 3 reiterated all the allegations made in the application. The petitioners could not effectively rebut those allegations. Accordingly the application, was allowed vide order dated 6.8.2015 (Annexure P-8), and the petitioners were directed to vacate the flat No. 1719, Narwana Society, Sector 49-A, within ten days from the date of the receipt of the order. Necessary directions were issued to the Station House Officer of Police Station, Sector 34 to get the flat vacated and deliver vacant possession of the portion of the flat to respondent No. 3.

Aggrieved, the petitioners have filed the present writ petition.

I have heard Learned counsel for the parties.

Ld. Counsel for the petitioner has mainly stressed that the District Magistrate had no jurisdiction to order the eviction of the petitioners on a complaint of respondent No. 3 filed under Section 22 of the 2007 Act as no such power vests in the District Magistrate. He

further stressed that the procedure for eviction as laid down in Rule 3(1) of The Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as the “2009 Rules”) has not been followed. He states that the complaint was not forwarded to the Sub-Divisional Magistrate for verification and consequently no report was submitted by the Sub-Divisional Magistrate, nor was any further show cause notice issued to them to explain why they should not be evicted. Hence the order cannot be sustained. He further states that the petitioners have no other place where they can reside.

Ld. Counsel for the respondent No. 3 on the other hand stated she has been harassed and troubled by the petitioner to such an extent that she can no longer put up with them and wants to live her remaining life in peace.

The first question that arises for consideration is whether the District Magistrate has jurisdiction under Section 22 of the 2007 Act to order eviction of the petitioners from the flat of respondent No. 3.?

It was not disputed by the petitioners before the District Magistrate nor is it disputed here that the flat in question is in the name of respondent No. 3.

It has been held in a Division Bench Judgment of this Court in **Justice Shanti Sarup Dewan, Chief Justice (Retired) and another vs. Union Territory, Chandigarh and others 2014 (5) RCR (Civil) 656** that a direction for eviction from the property of the Senior Citizens can be issued under the Act. This was even when no

specific Rules to this effect had been framed under Section 32 of the Act by the Chandigarh Administration. The Rules have since been framed and contain specific provision for eviction from property/ residential building of Senior Citizen/ Parent.

In **Justice Dewan's** case (supra) the object, purpose and scheme of the 2007 Act, was discussed as under:

“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 alongwith 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."

Dealing with the specific issue of ordering eviction from the property of the Senior Citizen it was observed:

"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(1) R.C.R.(Civil) 825 : (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. Infact, 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.

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 overriding effect qua any other enactment in view of Section 3 of the said Act. Infact, 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. Infact, that is the very objective of

respondent No. 7.

40. In the present case, there is, as noticed, a failure to provide mechanism and thus the protection of the property of the appellants envisaged under the salutary provisions of the said Act certainly can be enforced under Article 226 of the Constitution of India. We have already noticed above that if there is a legal right to share the property at Chandigarh, which respondent No. 7 seeks to establish, for whatever it is worth, it is for respondent No. 7 to approach the Civil Court and not vice-versa. The right of exclusive possession of a self owned property by a registered document of title can well be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 of the Constitution of India. We have thus once again in no hesitation in coming to the conclusion that there is nothing which prohibits the writ jurisdiction to be exercised in such a case."

The Division Bench held that the right of exclusive possession of a self owned property by a registered document of title can be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 even though Rules had not been framed.

Following the aforesaid judgment, the scope of Section 22 was again considered in **Balbir Kaur Vs. Presiding Officer-cum-SDM** (CWP No. 15477 of 2014 decided on June 29, 2015) and it was observed as under:

"17. It is an admitted fact that the application dated 03.03.2014 (Annexure P-11) has been filed under Section 22 of the Act by respondent Nos.2 and 3, who are senior citizens. When the scope of Section 22(2) of the Act is taken note of, the State Government thereunder is mandated to prescribe a comprehensive action plan for providing protection of life and property of the senior citizens. Section 32 of the Act gives the power to the State Government to make rules. Sub-section (2)(f) of this Section empowers the State Government to enact

such rules which provide for a comprehensive action plan for protection of life and property of the senior citizen under Section 22(2) of the Act. In accordance thereto, State of Haryana enacted and notified the 2009 Rules on 19.06.2009.

18. Chapter V of the 2009 Rules deals with the duties and powers of the District Magistrate. Rule 23 (1), (2) (i) and (5), which are relevant for the purpose of present case reads as under:-

“23. 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) to (xi) xx xx xx xx

(3) xx xx xx xx

(4) xx xx xx xx

(5) In case of a danger to life or property of a senior citizen, it shall be the duty of the District Magistrate or an officer subordinate to him duly authorized to protect the life and property of such senior citizen.”

19. A perusal of the above would show that it is the duty of the District Magistrate to ensure that the life and property of the senior citizen of the District are protected and they are able to live with security and dignity. Further in case of danger to life or property of a senior citizen, a duty has been cast to protect the same on the Duty Magistrate or an officer subordinate to him, who has been duly authorized to do so. This is an independent right conferred upon the senior citizen(s) irrespective of the fact whether the person who has threatened or endangered the life and property of such senior citizen(s) is related to him/her/them or not. This is apparent from the plain language of Section 22 of the Act and the Rules referred to above.

20. This conclusion of mine is further fortified on critical

analysis of the Act from another angle. It is worth noting that there is no mention or even indication with regard to any relationship in the context of terms as defined in Section 2 i.e. 'parent', 'children', 'relative' nor does it relate to 'maintenance'. Though, 'relationship' has a nexus with maintenance, which is dealt in Chapter II but the same has no connection with protection, which is dealt in Chapter V. The heading of Chapter II is "Maintenance of parents and senior citizens", which contains Sections 5 to 18 of the Act, whereas Section 22 falls in Chapter V, with the heading "Protection of life and property of a senior citizen". Chapter II is applicable to both parents and senior citizens whereas Chapter V applies to only senior citizens. Therefore, it is clear that the relationship is of no consequence as far as the applicability of Chapter V of the Act is concerned. Even the definitions, on which reliance has been placed by counsel for the petitioner, would not be applicable as those terms, as defined in the Act, would relate to family relationship, which would be/have no consequence as far as Chapter V is concerned as the terms do not find mentioned here.

21. In view of the above, an application under Section 22 of the Act would be maintainable against any person irrespective of the fact whether the respondent in the application falls within the category of persons as defined in any of the definitions as provided for in Section 2 of the Act or otherwise. The only rider is that the applicant should be a senior citizen as defined in Section 2(h) i.e. a citizen of India, who has attained the age of 60 years or above and further as defined in Section 2 (f), he/she has a property of any kind whether movable or immovable or self acquired, tangible or intangible and includes rights and interest in such property. Accordingly, it cannot be said that the application preferred by respondent Nos.2 and 3 against the petitioner, who is daughter-in-law, would not be maintainable under Section 22 of the Act."

It was held that as per Section 22 of the Act, a duty has been cast on the District Magistrate to ensure the protection of the

life and liberty of a senior citizen, irrespective of the fact whether the person who has threatened or endangered the life and property of the senior citizen is related to him/ her or not.

After the decision of the Division Bench, the Chandigarh Administration has inserted the Rules 3(1), 3(2) and 3(3) providing the procedure for eviction from property/ residential building of a Senior Citizen, in the earlier notified Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009, whereafter there can be no dispute about the power of the District Magistrate to order eviction.

The relevant Rules are reproduced as under:

“19. Duties and powers 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 Tribunal and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, and execution of Tribunal's orders;

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[3(1) Procedure for eviction from property/residential building of Senior Citizen/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 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 sub 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 Citizen 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.*

3(2) Eviction Order from property/residential building of Senior Citizen/Parent.-

(i) *If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the District Magistrate is satisfied that the property/premises are in unauthorized*

occupation, the District Magistrate or other officer duly authorized may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises;

(ii) The District Magistrate may also associate NGOs/Voluntary organizations/social workers working for the welfare of senior citizens for the enforcement of orders.”

Learned Counsel for the petitioner has emphasized that the procedure as envisaged under the Rules has not been followed in as much as no report from the Sub-Divisional Magistrate was called for and no show cause notice specifying the grounds of eviction as envisaged under Rule 3(1) (iv) was issued to the petitioner.

In my view, in the facts of this case, as there was no dispute about the title and ownership of the flat in question which the petitioners admitted was of respondent No. 3, and respondent No. 3 while appearing before the District Magistrate in the presence of the petitioners reiterated her version about harassment and nuisance caused by the petitioners which had made her life unbearable, which the petitioners were not able to satisfactorily refute, there is no illegality in the impugned order merely on the ground that no report from the Sub Divisional Magistrate was sought and that a show cause notice to explain within the period as contemplated in Rule 3(1)(iv) the Rules was not given.

In fact, this court had also made an attempt to find an

amicable resolution of the issue but without success. Respondent No. 3 (who was present in Court in the presence of the petitioners who were also present) very clearly stated that there was no possibility of reconciliation and asserted that her life would be unbearable if she is to put up with the petitioners.

Accordingly this petition is dismissed.

However the petitioners are given four months time from today to vacate the flat. The petitioners are directed to positively vacate the flat within this period.

September 22, 2015

gian/Atul

**(HARINDER SINGH SIDHU)
JUDGE**