

CWP No.22405 of 2015

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

**CWP No.22405 of 2015  
Date of decision:30.10.2015**

Manjit Singh

...Petitioner

Versus

District Magistrate-cum-  
Deputy Commissioner, Karnal & ors.

...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Parminder Singh, Advocate,  
for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

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**Rakesh Kumar Jain, J.**

The petitioner has raised a question about the jurisdiction of the respondents No.1 and 2 to pass an order of eviction against him under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”).

In brief, Rachpal Singh (respondent No.3) is married to Sarabjeet Kaur (respondent No.4) and both are residing in House No.40, Gali No.2, Gurunanakpur, Pingali Road, Karnal. He is a retired teacher. He has two sons and one daughter, who all are married. The elder son of respondent No.3 is mentally retarded from the last 25 years and his younger son Manjit Singh (petitioner) is living in the aforesaid house of respondent

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No.3. Since the petitioner was allegedly misbehaving with respondent No.3, he filed an application under Section 23 of the Act, which was allowed by respondent No.2 on 16.02.2015, holding that the house in question belongs to respondent No.3 and ordered eviction of the petitioner and his family. This order was challenged by the petitioner by way of an appeal before the District Magistrate without any success as the appeal was also dismissed on 02.09.2015 and hence, the present petition has been filed to challenge both the orders.

The only argument raised by counsel for the petitioner is that the order of eviction could not have been passed by respondents No.1 and 2 on an application filed under Section 23 of the Act which only deals with the issue of maintenance. It is rather sought to be argued that there is no provision under the Act under which the eviction order could be passed.

Although notice of motion was not issued in this case but counsel for the State was asked by the Court to assist on the issue of jurisdiction of respondents No.1 and 2 in passing the order of eviction.

Counsel for the State has submitted that as per Section 22(2) of the Act, the State Government had to prescribe a comprehensive action plan for providing protection to the life and property of the senior citizens which has to be notified in terms of Rule 24 of the Haryana Maintenance of Parents and Senior Citizen Rules, 2009 (hereinafter referred to as the "Rules"). He has also produced a copy of the notification No.530SW-(4)-2015 dated 26.05.2015 issued by the Haryana Government, Social Justice & Empowerment Department, Haryana, in which the action plan for protection

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of life and property of senior citizens has been provided, which includes the procedure for eviction from the property/residential building belonging to/occupied by Senior Citizen/Parents.

I have heard learned counsel for the parties and perused the available record.

Since the issue involved in this case is only of law, therefore, I would first refer to Section 23 and then Section 22 of the Act and Rule 24 of the Rules, which are reproduced as under:-

**Section 23 of the Act**

**“23. Transfer of property to be void in certain circumstances.--** (1) Where any senior citizen who, after the commencement of this Act, has transferred 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 organization referred to in Explanation to sub-section (1) of section 5.”

**Section 22 of the Act**

**“22. Authorities who may be specified for implementing the provisions of this Act.--** (1) The State Government may, confer

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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.”

**Rule 24 of the Rules**

**24. Action plan for the protection of life and property of senior citizens. [Section 22].** -- An action plan under section 22(2) shall be notified by the State Government within a period of six months from the date of publication of these rules in the Official Gazette and may be revised from time to time.”

Undoubtedly, Section 23 of the Act deals with the validity of transfer of property in certain circumstances. It provides that if a senior citizen who, after the commencement of the Act, has transferred by way of gift or otherwise, his property, with the condition that the transferee would provide basic amenities and basic physical needs to the transferor, who thereafter refuses or fails to provide such amenities and physical needs, then the transfer of the property made by the senior citizen 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. It further provides that if a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, then the senior citizen would have a right to receive maintenance from the transferee if the transferee has notice of the right or if the transfer is gratuitous but he would

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not be entitled to receive maintenance from the transferee to whom he has transferred the property for consideration and without notice of his right of maintenance as provided under Section 23(2) of the Act. It further provides that if a senior citizen is incapable of enforcing the right under Sections 23 (1) and (2) of the Act, then he can be helped by any of the organizations which are referred to in Explanation to Section 5(1) of the Act.

Insofar as Section 22 of the Act is concerned, it provides for the powers and duties imposed upon the District Magistrate/State Government for implementation of the provisions of the Act and also a comprehensive action plan for providing protection to the life and property of the senior citizens.

Rule 24 of the Rules further provides that the action plan under Section 22(2) of the Act has to be notified by the Government. It is needless to mention that in pursuance of Section 22(2) of the Act and Rule 24 of the Rules, the Government of Haryana has issued a notification No.530SW-(4)-2015 dated 26.05.2015, laying down the action plan for the protection of life and property of senior citizens. The relevant portion of the aforesaid notification in regard to the procedure for eviction from the property/residential building belonging to/occupied by senior citizen/parents is as under:-

**“(1) Procedure for eviction from the property/residential building belonging to/occupied by Senior Citizen/Parents.--**

- i. Complaints received (as per provisions of the Maintenance of Parents and Senior Citizen Act, 2007) regarding life and property of Senior Citizens by different Department, NGOs/Social Workers, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the

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District Magistrate of the concerned district for further action.

- ii. The District Magistrate, shall immediately forward such complaints/application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the cases through Revenue Department/concerned Tehsildars/spot verification within 15 days from the date of receipt of such complaints/application.
- iii. The Sub Divisional Magistrates shall immediately submit his/her report to the concerned 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 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 result 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 person concerned.

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**(2) Eviction Order from property/residential building of Senior Citizen/parents.--**

- 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 of 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 eviction order.

**(3) Enforcement of Orders.--**

- i. If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the District Magistrate or any other officer duly authorized by the District Magistrate in this behalf may evict that person from the premises in question and take possession.
- ii. The District Magistrate, of the concerned district shall have powers to enforce the eviction orders through the Police Department.
- iii. The District Magistrate, of the concerned district shall further arrange to hand over the property/premises in question to the concerned Senior Citizens/parents.
- iv. The District Magistrate, of the concerned district shall forward a monthly report of such cases to the Director General, Social Justice & Empowerment Department, Haryana, Chandigarh by 7<sup>th</sup> of the following month for review of such cases in the State Council for Senior Citizens constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules of 2009

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framed under the said Act under the Chairmanship of the  
Hon'ble Minister of Social Welfare, Haryana.”

It is provided in the action plan as to how the property of a  
senior citizen, which includes a residential building, can be got vacated  
from his son, daughter or legal heir while in unauthorized occupation and  
how the said order is to be enforced.

Thus, there is not an iota of doubt that there is a provision for  
eviction in the Act.

Even on merits, respondents No.1 and 2 have both found that  
residential house, in which the petitioner is residing, totally belongs to  
respondent No.3 who had not only purchased but also constructed the same  
from his own funds and has been held entitled not to retain the petitioner  
and his family in occupation thereof.

Thus, in view of the aforesaid discussion, I do not find any  
merit in the present petition and hence, the same is hereby dismissed.

October 30, 2015  
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**(Rakesh Kumar Jain)**  
**Judge**