

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

CWP No.24508 of 2015(O&M)

Date of Decision: 1.12.2015

Gurpreet Singh

....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE SNEH PRASHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Daygeesh Kumar Bhatti, Advocate for the petitioner.

HEMANT GUPTA, J.

The challenge in the present writ petition is to an order passed by the District Magistrate on 30.09.2015 ordering the petitioner to be ejected from the house of respondent No.4 - Mohinder Singh within a period of one month.

The brief facts out of which the present petition arises is that the petitioner is son of respondent No.4 - Mohinder Singh staying in a house measuring 124 square yards in which the petitioner, his wife and two daughters are said to be residing in an area of 24 square yards. The remaining portion is said to be in possession of father of the petitioner and another brother of the petitioner.

The petitioner has alleged that the petitioner toiled hard in the family and has been earning for the family out of which the house in question was purchased in the year 1986. The father of the petitioner is said to be not happy with the petitioner with the birth of his two daughters and that the respondent started maltreating the wife of the petitioner. The petitioner is said to be working in a Departmental Store of his father and that a First Information Report was lodged against his father though it resulted in acquittal. As per the petitioner, revision against the order of acquittal is pending before this Court.

The petitioner asserts that respondent No.4 is living separately happily with his other son and is in sound financial condition. Therefore, it cannot be said that the father is emotionally neglected and there is lack of physical and financial support. The petitioner asserts that litigation is pending with regard to the small portion of the house which is in occupation of the petitioner and his family which is pending in the Civil Court. Respondent No.4 filed an application before the District Magistrate in which the order has been passed without hearing the petitioner. The petitioner applied for setting aside the ex parte order but the application was returned.

The petitioner has challenged the order, inter alia, on the ground that on 27.11.2014, the State Government has published an Action Plan in terms of Rule 23 of The Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012 (for short 'the Rules'). The Action Plan contemplates eviction from the residential building of the senior citizens. It is contended that such provision of eviction is in exercise of the

excessive power of delegated legislation conferred on the State. Therefore, the petitioner cannot be ordered to be ejected by the District Magistrate.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') was enacted for maintenance and welfare of parents and senior citizens. Chapter II of the Act deals with maintenance of parents and senior citizens; Chapter III of the Act deals with establishment of old age homes; Chapter IV deals with the provisions for medical care of senior citizen. It is Chapter V which is relevant which deals with Protection of Life and Property of Senior Citizen.

The relevant provisions from Chapter V and VI of the Act 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 of life and property of senior citizens.

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27. Jurisdiction of civil courts barred.-- No Civil Court shall have jurisdiction in respect of any matter to which any provisions 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.

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32. Power of State Government to make rules.-- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generally of the foregoing power, such rules may provide for-

(a) xx xx xx

(f) A comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;

(g) Any other matter which is to be, or may be prescribed.”

In term of provisions of Section 32 of the Act, the State Government has framed “The Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012”. The relevant Rules for the present writ petition read as under:-

“22. Duties and power of the District Magistrate.--(1) District Magistrate or any other officer authorized by him in this behalf within the local limits of his jurisdiction 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 a sense of security and dignity;

xx xx xx

(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 these rules, the Act and general guidelines of the State Government, as may be necessary, to any Government and statutory agency or body working in the district and especially to the following:-

(a) Officers of the State Government in the Police Department, Health and Family Welfare Department, Information and public Relations Department and the departments dealing with the welfare of senior citizens;

(b) Maintenance Tribunal and the conciliation officers;

(c) Panchayats and Municipalities; and

(d) Educational Institutions.

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(5) In case of any danger to the life or the property of a senior citizens, it shall be the duty of the District Magistrate or the officer authorized by him to protect the senior citizen from the said danger.

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23. Action plan for the protection of life and property of senior citizens.- An action plan, for protection of life and property of senior citizens shall be notified by the State Government with in a period of six months from the date of publication of these rules in the Official Gazette and it may be revised from time to time.”

In terms of Rule 23 of the Rules, The State Government has published Action Plan on 27.11.2014, the relevant extract from which reads as under:-

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

(i) XX XX XX

(iv) 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.

2. Eviction Order from property/ residential building of Senior Citizens/ Parents:

(i) If, after considering the cause, if any, shown by any persons 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 office 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, not later than 45 days from the date of receipt of such order, as may be specified in that order, by all persons who may be in occupation 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 order;”

We have heard learned counsel for the petitioner and examined the contention as to whether the District Magistrate is competent to order eviction of an unauthorized occupant in terms of the provisions of the Act.

Section 22 falling in Chapter V of the Act enjoins a duty upon State Government to prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 32 (2) (f) also empowers the State Government to frame Rules in respect of comprehensive action plan for providing protection of life and property of senior citizens. In terms of such provisions, the Rules have been framed which causes a duty on the District Magistrate to ensure that the life and property of senior citizens are protected and they are able to live with a sense of security and dignity. Apart from framing such Rules, the Action Plan for protection of life and property of the senior citizens has been published which inter alia provides for eviction of unauthorized occupants as reproduced above.

The petitioner is a licensee living in the premises on the basis of concession given by his father to live in the property owned by him. As

a licensee, the petitioner is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any kind in the licensee to remain in possession of the property licensed. Admittedly, respondent No.4 is the owner of the property in question. The petitioner is living in part of the property. Such property owned by respondent No.4 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who wishes to interfere in the possession of the property of the senior citizen. Protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure will enure for the benefit of the senior citizen. The petitioner would have no right to resist his eviction only on the ground that the Act does not contemplate eviction of an occupant. Eviction is one part of the right to protect the property of a senior citizen which right could be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.

The argument that civil suit is pending regarding the rights of the petitioner in the property in question; therefore, the order of District Magistrate is not legal does not merit any acceptance. Suffice it to state that jurisdiction of the Civil Court is barred in respect of all matters falling

within the jurisdiction of the Act in terms of Section 27 thereof. Since, the protection of life and property falls within the jurisdiction of the District Magistrate, therefore, the District Magistrate is competent authority to take steps for the protection of life and property of the senior citizen.

However, we may say that such summary exercise of the jurisdiction is without prejudice to the rights of the parties which may be determined by the Civil Court in accordance with law.

The argument that the order of eviction was ex parte, passed without giving any opportunity of hearing is misconceived. Admittedly, the petitioner was served with a notice. The petitioner has not appeared before the District Magistrate assuming the said day to be non-working day. Once the petitioner was served and has chosen not to appear on the given date and time, the consequences have to be suffered by the petitioner alone. Still further, we find that eviction is sought to be resisted on wholly untenable grounds even in the present writ petition.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

DECEMBER 1, 2015
‘D. Gulati’

(SNEH PRASHAR)
JUDGE