

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 13th October, 2015

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W.P.(C) 9717/2015 & CM No.23286/2015 (for stay)

NASIR

..... Petitioner

Through: Mr. Sudhir Nagar with Mr. B.L.
Madhukar & Mr. M.K. Saroga, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Saurabh Chadda, Adv. for R-
1&2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.23287/2015 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 9717/2015

3. The petition impugns the order dated 11th September, 2015 of the Maintenance Tribunal for Welfare of Parents & Senior Citizen, North-West District, Kanjhawala, Delhi constituted under the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 issuing the following directions in a petition before it by the mother of the petitioner:

“In view of the above, the tribunal directs the concerned area SHO to ensure that the entry of the senior citizen in the property owned by the

petitioner should be peaceful. The petitioner will occupy the First Floor of the house and recover rental income from the other two floors.

Further, the respondents are hereby directed to maintain peace at the house and not to disturb the applicant on day to day activities since the applicant is an old aged person and in her lean years she must have psychological support and care.

Let a copy of this order send to both the parties and concerned area SHO for necessary compliance.”

4. The counsel for the petitioner argues that a Maintenance Tribunal constituted under the Senior Citizens Act supra is only entitled to pass an order of maintenance in favour of the senior citizens and is not entitled to issue any such directions as have been issued in the present case. Reliance in this regard is placed on the judgment of the Single Judge of this Court in *Sanjay Walia Vs. Sneha Walia* 204 (2013) DLT 618 to the extent laying down that the power and jurisdiction of the Maintenance Tribunal is restricted to grant of maintenance at the rate not exceeding Rs.10,000/- per month and that the Tribunal has not been bestowed by the Legislature with the power to direct handing over the possession of a property to the applicant before it, as had been done in that case.

5. As far as I recollect, the aforesaid judgment of the learned Single Judge of this Court was subject matter of appeal. The counsel for the petitioner states that he is not aware of the outcome of the appeal.

6. Section 9 of the Act, on which reliance was placed in the aforesaid judgment, is to be found in Chapter II of the said Act titled “Maintenance of Parents and Senior Citizens”. Else, the Preamble of the Act describes the same as an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The statement of Objects and Reasons of the said Act is also to the effect that in the changing times, a number of elderly are not being looked after by their family and ageing has become a challenge and there is a need to give more attention to the care and protection of older persons and to cast an obligation on the persons who inherit the property of their aged relatives, to maintain such aged relatives. Section 3 of the Act gives it an overriding effect over any other enactment or instrument. Section 4 (in Chapter II) titled “Maintenance of Parents and Senior Citizens” in sub-section (2) thereof provides that the obligation of children to maintain a senior citizen extends to the needs of such citizen so that the senior citizen may lead a normal life. Normal life would certainly include a right to peacefully live in one’s own property and being not prevented from use thereof and recovering

rent thereof, regarding which directions have been issued in the impugned order.

7. Besides Chapter II supra, Chapter III of the Act deals with provisions for establishment of old age homes, Chapter IV contains provisions for medical care of senior citizens and Chapter V contains provisions for protection of life and property of senior citizens. Section 22 of the Act empowers the State Government to confer such powers and impose such duties on District Magistrate, as may be necessary to ensure that the provisions of this Act are properly carried out and further empower the District Magistrate to delegate the said power. Section 23 of the Act empowers the Maintenance Tribunal to declare certain transfers of property by the senior citizen to be void.

8. The judgment on which the counsel for the petitioner relies, has confined itself to an interpretation of Section 9 of the Act and did not have the occasion to consider the other provisions of the Act, particularly Chapter V. the same thus does not bind me in interpretation of provisions under Chapter V.

9. In the present case, the petitioner, before the Maintenance Tribunal claimed to be the owner of the property with respect to which the directions

have been issued by the Maintenance Tribunal, on the basis of a Gift Deed but which is admittedly unregistered. It has as such been enquired from the counsel for the petitioner as to how the petitioner can claim any title to the property on the basis of an unregistered document and whether not the claim of the petitioner tantamounts to an admission by the petitioner of the title to the property of his mother from whom he claims a Gift vide the said unregistered deed.

10. To be fair to the counsel for the petitioner, he has not even attempted to canvass to the contrary.

11. Once it is found that it is the mother of the petitioner who is the owner of the subject property, no error can be found with the directions issued by the Maintenance Tribunal restraining the petitioner from interfering with his mother occupying the first floor of the property and / or from recovering the rental income of the other two floors of the property and further directing the petitioner to maintain peace in the house and not to disturb his aged mother. If in such a situation also, it is said that the respondent should have been relegated by the Maintenance Tribunal to the Civil Court, the same, in my view, would have been in negation of the very purpose of setting up of such Tribunals. While interpreting the provisions, the object of the Act has to be

kept in mind. The object is to provide simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The provisions have to be liberally construed as the primary object is to give social justice to parents and senior citizens. The Supreme Court in ***Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan*** 1979 (2) SCC 468 held that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted.

12. It is the settled principle that beneficial or welfare statutes should be given a liberal and not literal or strict interpretation. In ***Hindustan Lever Ltd. Vs. Ashok Vishnu Kate*** (1995) 6 SCC 326 it was reiterated that words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. It was further held that in construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced; Judges ought to be more concerned with the 'colour', 'content' and 'context' of such statutes. Francis Bennion on 'Statutory Interpretation' opining that a

purposive construction of an enactment is one which gives effect to the legislative purpose *inter alia* by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose, was quoted with approval. Recently, the Supreme Court in ***Indian Performing Rights Society Ltd. Vs. Sanjay Dalia*** (2015) 7 SCALE 574 reiterated the Rule in Heydon's case of purposive construction that the Courts must adopt that construction which shall suppress the mischief and advance the remedy.

13. Mention may also be made of ***Union of India Vs. Paras Laminates (P) Ltd.*** (1990) 4 SCC 453 where though in the context of Customs, Excise and Gold (Control) Appellate Tribunal, it was held that a Tribunal though required to function within its jurisdiction has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. It was further held that certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised, inspite of the powers of the Tribunal being limited.

14. A Division Bench of the High Court of Punjab & Haryana in *Justice Shanti Sarup Dewan Vs. Union Territory, Chandigarh* MANU/PH/2648/2013 also held that the definition of property within the meaning of the Senior Citizens Act is wide and comprehensive, with the object of securing the interest of the elders and has to be read alongwith Section 6 which gives the provisions of the Act overriding effect.

15. There is another reason which prevails with me. Though the State Governments under Section 22(1)&(2) of the Act are required to prescribe comprehensive action plan for providing protection of life and property of senior citizens but the Government of National Capital Territory of Delhi does not appear to have done so till now. It is found that Governments of certain other States have made Rules in exercise of the said power for protection of the property of the senior citizens. The Government having failed in its duty, this Court in exercise of powers under Article 226 of the Constitution of India, would not undo what the Maintenance Tribunal has done and which would have been beyond the pale of controversy, had the GNCTD framed the Rules, as was expected by it.

16. The counsel for the petitioner states that the ground floor of the house is occupied by the mother and the first floor is occupied by the petitioner.

The counsel for the Government of NCT of Delhi (GNCTD) appearing on advance notice states that as per the pleadings before the Tribunal, the ground floor is tenanted. The counsel for the petitioner now states that a part of the ground floor is tenanted but the other part is with the mother.

17. I do not find this to be a fit case to entertain in exercise of writ jurisdiction, particularly when it is not in dispute that the property belongs to the mother. I am sure that if the petitioner lives in the house as a good son, the mother would have no objection thereto.

18. The counsel for the petitioner has also contended that in pursuance to the impugned order, the Station House Officer (SHO) of the locality is asking the petitioner to vacate the property.

19. No such direction is found in the impugned order and if the SHO, in spite of the same is troubling the petitioner, the petitioner would have remedies thereagainst.

20. The counsel for the petitioner at this stage seeks a clarification that no observation contained herein would affect the determination of title to the said property before the Civil Court.

21. The petitioner, if entitled to any better relief with respect to the property in the Civil Court, would be entitled thereto.

22. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 13, 2015

‘gsr’/bs’