

CWP No.17482 of 2015

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

**CWP No.17482 of 2015
Date of decision:17.10.2016**

Harvinder Kaur Bawa

...Petitioner

Versus

The Appellate Tribunal, Panchkula and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Kabir Sarin, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana,
for respondents No.1 and 2.

Mr. Sudhir Mittal, Advocate,
for respondents No.3 and 4.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 24.11.2014 passed by the Welfare Tribunal, Panchkula, dismissing her application filed under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") and order dated 24.03.2015 passed by the Appellate Tribunal-cum-Deputy Commissioner, Panchkula, dismissing her appeal.

In brief, the petitioner is a widowed senior citizen. She filed an application under Section 23(1) of the Act against her son and daughter-in-law seeking their eviction from the portion, in their occupation, of House No.225, Sector-6, Panchkula. Her application filed under Section 23(1) has been dismissed, *inter alia*, on the ground that it was not found maintainable

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because the petitioner has not transferred the property in question in the name of the private respondents.

Counsel for the petitioner has argued that the petitioner can maintain the application under Section 23(1) of the Act and has basically relied upon the word “or otherwise”, used in that provision, to contend that the petitioner can seek eviction for recovering possession and has relied upon a decision of this Court rendered in the case of **Promil Tomar and others vs. State of Haryana and others**, 2014(1) RCR (Civil) 403.

On the other hand, counsel for the respondents has submitted that the very title of the property in question is in litigation as the said property was allotted by the Haryana Urban Development Authority to respondent No.3 and has been illegally mutated in the name of the petitioner during the period when he was a minor.

The point involved in this case is in a narrow compass as this Court has to decide as to whether the application filed by the petitioner under Section 23(1) of the Act for seeking eviction of the private respondents is maintainable?

In order to appreciate the rival contentions, it would be necessary to discuss various provisions of the Act. The name of the Act itself suggests that it has been enacted for maintenance and welfare of the parents and senior citizens. The words “maintenance”, “parent”, “senior citizens” and “welfare” have been specifically defined under Sections 2(b), (d), (h) and (k) respectively in the Act. All the four definitions are reproduced as under:-

- “(b) “**maintenance**” includes provision for food, clothing, residence and medical attendance and treatment;
xxx xxx xxx xxx
- (d) “**parent**” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;
xxx xxx xxx xxx
- (h) “**senior citizens**” means any person being a citizen of India, who has attained the age of sixty years or above;
xxx xxx xxx xxx
- (k) “**welfare**” means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.”

It is pertinent to mention that as per definition of “parent”, he or she need not to be a senior citizen, meaning thereby he or she need not to be a person of more than 60 years of age. “Maintenance” includes provision for food, clothing, residence, medical attendance and treatment but “welfare” means provision for food, healthcare, recreation centres and other amenities necessary for the senior citizens. The Legislature has dedicated Chapter II for the maintenance of parents and senior citizens. Section 7 of the Act provides for constitution of the Maintenance Tribunal and Section 15 of the Act for the Appellate Tribunal. A complete procedure is provided from Sections 4 to 18 of the Act in respect of maintenance, whereas Sections 19 and 20 deals with the welfare part of the parent and senior citizens, which mandates establishment of old age homes and medical support. Section 21 of the Act deals with the measures for publicity, awareness etc. for welfare of senior citizens and Section 22 deals with the authorities, who may be specified for implementing the provisions of the Act and Section 22(2) provides for prescribing a comprehensive action plan

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by the State Government for protection of life and property of the senior citizens. Section 23 is in respect of transfer of property to be declared void in certain circumstances.

Section 32 of the Act empowers the State Government to make rules and in pursuance thereto, the States of Punjab and Haryana and Union Territory, Chandigarh have framed their respective Rules, namely, the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as the “Punjab Rules”), the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 ((hereinafter referred to as the “Haryana Rules”) and the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 ((hereinafter referred to as the “Chandigarh Rules”). The action plan has also been provided under Section 22(2) of the Act read with Rule 22 of the Punjab Rules, 24 of the Haryana Rules and Rule 20 of the Chandigarh Rules. Accordingly, the States of Punjab, Haryana and the Union Territory, Chandigarh have notified their respective action plan(s) in respect of maintenance, welfare and protection of life and property of the parents and senior citizens.

Since the property in question is in the State of Haryana, therefore, it would be apt to refer to the action plan of the State of Haryana. Section 22(2) of the Act categorically provides for the State Government to provide a comprehensive action plan for protection of life and property of the senior citizens. Thus, the action plan notified by the State of Haryana is divided into two parts, in which duties/authorities have been assigned to both the District Administration headed by the Deputy Commissioner and

the Police Administration headed by the Senior Superintendent of Police. The Deputy Commissioner/District Magistrate has been given powers for passing of an order of eviction from the property/residential building belonging to/occupied by the senior citizens/parents. A complete procedure is provided therein, which is reproduced 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 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 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 person concerned.

(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 to 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 7th 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 framed under the said Act under the Chairmanship of the Hon'ble Minister of Social Welfare, Haryana.”

The salient feature of the aforesaid procedure is that the District Magistrate, to whom a complaint is made by a senior citizen or a parent, has to forward the application/complaint to the SDM for verification of the title of the property within 15 days from the date of its receipt. The SDM is required immediately to submit the report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint. Thereafter, the District Magistrate has to form an opinion that the son or daughter or legal heir of a senior citizen/parents is in unauthorized occupation of any “property”, as defined in Section 2(f) of the Act and then he has to issue notice to the other party to show cause as to why the order of eviction should not be passed and after affording an opportunity of hearing and taking any evidence tendered in reply, if the District Magistrate is satisfied that the property/premises is in unauthorized occupation, then he may make an order of eviction, for reasons to be recorded therein, specifying the date

on which the property/residential building shall have to be vacated by the said unauthorized occupant.

It would be pertinent to mention that there is no reference of any Tribunal in the procedure provided in the action plan notified in terms of Section 22(2) of the Act. The entire exercise has to be conducted by the District Magistrate on the basis of a report of the SDM. On the contrary, in order to decide an application filed under Section 23(1) of the Act, the order has to be passed by the Tribunal. Section 23(1) of the Act is reproduced as under:-

“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.

xxx xxx xxx xxx”

This provision, on dissection, lays down various parameters to be satisfied (i) the person who has filed the application must be a senior citizen; (ii) he or she must have transferred his property after commencement of the Act i.e. after 29.12.2007; (iii) the transfer of the property may be by way of gift or otherwise; (iv) the transfer shall be subject to the condition that a transferee shall provide the basic amenities and basic physical needs to the transferor; and (v) the transferee has to refuse or fail to provide such amenities or physical needs to the transferor.

In case the aforesaid conditions are satisfied, only then the Tribunal would be in a position to declare the transfer of the property of a senior citizen/parent as void being fraudulent or actuated under coercion or undue influence. The decision has to be taken by the Tribunal, which is defined under Section 2(j) of the Act, which read as under:-

“(j) “Tribunal” means the Maintenance Tribunal constituted under section 7;”

It is provided under Section 7 of the Act that the Maintenance Tribunal has to be constituted by way of notification by the Government. Section 7 of the Act reads as under:-

“7. Constitution of Maintenance Tribunal.--(1) The State Government shall within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.
(2) The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.
(3) Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.”

It is pertinent to mention here that vide notification No.887-SW (4)2012 dated 10.12.2012, the Maintenance Tribunal and the Appellate Tribunal have been constituted in the State of Haryana. As per the said notification, the members of both the Tribunals are as under:-

Appellate Tribunal, Panchkula.

1. District Magistrate, Panchkula. Chairman

Non-Official Members

2. Sh. Subhash Kapoor, Member Senior Citizen Club,
Sec.-25, #508, GH-3, Sec.-24, Panchkula.

3. Sh. Ashok Kumar Chandok, Advocate, #185,
Kendriya Vihar-2, Sec-25, Panchkula.

Maintenance Tribunal, Panchkula

1. Sub-Divisional Magistrate, Panchkula.

Non-Official Members

2. Sh. V.P.Kumar, Member, Chairman
Senior Citizen Council,
Panchkula, # 261, Sec.12/A, Panchkula.
3. Sh. Jasbir Singh, Advocate, #177/B, Amrawati Enclave,
Panchkula.”

Thus, it is evident that any order to be passed under Section 23(1) of the Act is by a Tribunal of which the SDM shall be the Chairman with two non-official members and the Appellate Tribunal shall be headed by the District Magistrate with two non-official members.

Reverting back to the facts of this case, the application has been filed by the petitioner under Section 23(1) of the Act. In my considered opinion, the said application can only be filed in order to avoid a document by which title of the property has been transferred, without filing a suit for declaration in the Civil Court. All that has to be proved by the senior citizen/parent is that he/she had transferred the title of the property to the other party with a condition that the said party shall provide basic amenities and basic physical needs and has to prove that the said party has refused or failed to provide such amenities and physical needs. The parent/senior citizen is also required to prove that the said transfer of the property has been made after commencement of the Act, meaning thereby any transfer of the property prior to the commencement of this Act cannot be avoided by filing an application under Section 23(1) of the Act. The

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Tribunal, as constituted under Section 7 of the Act, has to follow a summary procedure and may declare that the transfer by the senior citizen/parent in favour of the other party was either an act of fraud or coercion or undue influence.

Thus, in view of the aforesaid facts and circumstances, the application filed by the petitioner under Section 23(1) of the Act has rightly been dismissed as she was required to file an application under Section 22 (2) of the Act much-less under the action plan in which an altogether different procedure is to be followed.

Consequently, the present petition is hereby dismissed being denuded of any merit.

October 17, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No0