

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

CWP No.4575 of 2012 (O&M)
Date of decision: 7.1.2016

Satbir

..... Petitioner

Versus

Tribunal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. C.P. Tiwana, Advocate, for the petitioner.

Mr. Sachin Jain, Advocate, for respondent No.2.

RAJESH BINDAL, J

The petitioner has approached this Court impugning the order dated 23.2.2012 passed by the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act'), vide which the petitioner has been directed to be evicted from the shop in his possession as a tenant.

Learned counsel for the petitioner submitted that the petitioner is a tenant under respondent No.2 in a shop. The rent is being paid regularly. Respondent No.2 filed application seeking eviction of the petitioner from the shop in his possession as a tenant. Despite the fact that the Tribunal did not have jurisdiction to entertain the application for the reason that the petitioner has no relation whatsoever with respondent No.2, still the application was entertained and order of eviction was passed, which is totally without jurisdiction. He further submitted that earlier also respondent No.2 tried to put undue pressure on the petitioner to vacate the premises. The petitioner filed Civil Suit No.380 on 22.12.1984 for permanent injunction, which was decreed in his favour on 19.1.1985 on the statement made by the defendants therein that the petitioner will not be dispossessed unless in due course of law. On the plea that respondent No.2 was again trying to dispossess the petitioner from the shop in question by misusing of

process of law, Civil Suit No.7 of 2012/13.1.2012 was filed, which was decreed on 19.1.2012 restraining the respondents therein from dispossessing the petitioner from the shop in question unless in due course of law. He further submitted that respondent No.2 has filed eviction petition against the petitioner before the Rent Controller, Faridabad, which is pending. He further submitted that the aforesaid facts were duly placed before the Tribunal, however, those have not even been noticed in the impugned order. The order being totally without jurisdiction deserves to be set aside.

On the other hand, learned counsel for respondent No.2 could not dispute the fact that there is no relation between the petitioner and respondent No.2. Further he did not dispute the fact that the jurisdiction of the Tribunal can be invoked either by the parents against their children or by the senior citizen against their relatives. He further did not dispute the fact that eviction petition has been filed by respondent No.2, which is pending at Faridabad.

Heard learned counsel for the parties and perused the paper book.
Relevant provisions of the Act are extracted below:

“Section 2. (g): “relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;

Section 4. Maintenance of parents and senior citizens-- (1) A senior citizen including parents who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of-

- (i) parent or grand-parent, against one or more of his children not being a minor;
 - (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.
- (2) The obligation of the children or relative as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.
- (3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

5. Application for maintenance-- (1) An application for maintenance under section 4, may be made-

- (a) by a senior citizen or a parent, as the case may be; or
- (b) if he is incapable, by any other person or organization authorized by him; or
- (c) the Tribunal may take cognizance suo motu.

Explanation- For the purposes of this section “organization” means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force.”

A perusal of Section 4 of the Act provides that if a senior citizen including the parent is unable to maintain himself from his own earning or out of the property owned by him, he shall be entitled to make an application to the Tribunal in case of parent or grand parent against one or more of his children and in case of a childless senior citizen against such of his relative as defined in Section 2 (g) of the Act, to mean legal heirs of childless senior citizen, who is in possession of or would inherit his property after his death. In the case in hand, it is not in dispute that the petitioner has no relation whatsoever with respondent No.2 except that of landlord and tenant. Their relationship do not fall in any of the category covered under the provisions of the Act to enable respondent No.2 to invoke jurisdiction of the Tribunal under the Act, which was enacted with certain specified objects as enumerated in the Statement of Objects and Reasons, which are extracted below:-

“Statement of Objects and Reasons – Traditional norms are values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by

their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.”

Once, in terms of the provisions of the Act, the Tribunal did not have jurisdiction to entertain the application filed by respondent No.2, the only inescapable conclusion is that the order passed by the Tribunal being totally without jurisdiction deserves to be set aside.

Ordered accordingly.

The petition stands disposed of.

(RAJESH BINDAL)
JUDGE

7.1.2016

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(Refer to Reporter)