

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.5902 of 2016
Date of decision:24.8.2016**

Varun Gupta and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Saurabh Arora, Advocate for the petitioners.

Mr.Jaivir Chandail, Advocate for
Mr.Vineet Sehgal, Advocate for respondent No.5.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant writ petition is directed against the order dated 3.12.2015 (Annexure P-16), passed by the Presiding Officer of Maintenance Tribunal, constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('the Act' for short), whereby application of respondent No.5 was allowed, directing the petitioners to vacate the house, admittedly owned by respondent No.5.

Notice of motion was issued to respondent No.5 only to the limited extent for exploring the possibility of compromise, subject to deposit of Rs.20,000/- as litigation expenses, to be paid to respondent No.5.

Learned counsel for the petitioners submits that though efforts were made but the parties could not arrive at an amicable settlement. He further submits that let the instant writ petition be decided on merits.

Although, as per the notice of motion order dated 30.3.2016 passed by this Court, the writ petition needs not to be decided on merits, because notice of motion itself was issued to the limited extent, only for

exploring the possibility of an amicable settlement, yet in the interest of justice, the writ petition is being decided on merits.

Heard learned counsel for the parties.

It is a matter of record that respondent No.5 is the mother of petitioner No.1. It is also not in dispute that she is an absolute owner of the house in question. She is an old lady of 78 years. When she was being put to harassment by the petitioners, she was left with no other option except to move an appropriate application under the Act, seeking vacation order against the petitioners, qua her residential house. The learned Tribunal heard both the parties and after going through the record, passed the impugned order dated 3.12.2015 (Annexure P-16), directing the petitioners to vacate the house.

A bare reading of the impugned order would show that the learned Tribunal considered each and every relevant aspect of the matter, before recording cogent findings, which have been found duly supported by sound reasons, because of which the impugned order deserves to be upheld. Learned counsel for respondent No.5 has rightly pointed out that respondent No.5 is facing civil as well as criminal litigation, at the hands of the petitioners.

Despite having been harassed to a great extent, respondent No.5 was not averse to an amicable settlement. She only requested the petitioners to withdraw their respective civil as well as criminal litigations, which they have initiated against respondent No.5, but the petitioners were not ready even to withdraw those litigations. In such a situation, only inference which can be drawn against the petitioners, is that they did not intend to honour their own undertaking, given before this Court on

30.3.2016 on the basis of which, notice of motion was issued.

It seems that petitioners were not proceeding on a *bonafide* approach right from day one and they were intending to play hide and seek even with this Court. Had their intention been clear, there would have been no difficulty with the petitioners, in withdrawing their civil as well as criminal litigation against respondent No.5, so as to decide the matter amicably. However, they did not agree for said proposal for the reasons best known to them. They were intending to keep the sword of criminal as well as civil litigation, hanging on the head of respondent No.5.

The order dated 30.3.2016, whereby notice of motion was issued, deserves to be noticed here and the same reads as under:-

“Learned counsel for the petitioners contends that dispute is between the family members. There is possibility of amicable settlement between the parties.

Notice of motion for 23.4.2016 to respondent No.5 only to the limited extent of exploring the possibility of compromise, subject to deposit of Rs.20,000/- as litigation expenses to be paid to respondent No.5.”

During the course of hearing, learned counsel for the petitioners could not substantiate any of his arguments. He failed to point out any patent illegality or perversity in the impugned order (Annexure P-16). He also could not point any prejudice, which might have been caused to the petitioners, while passing the impugned order. Having said that, this Court feels no hesitation to conclude that since the impugned order has been passed as per true facts of the case and also in accordance with law, the same deserves to be upheld, for this reason also.

To be fair to learned counsel for the petitioners, his argument that the application of respondent No.5 was not maintainable under Section

23 of the Act is to be considered. His argument is based on the averments taken in para 21 (i) of the writ petition at page 15 of the paperbook. He submits that house in question was transferred in the name of respondent No.5 much before the Act came into force.

The above-said argument raised by the learned counsel for the petitioners is to be noted to be rejected. It is so said because the argument, after due consideration, has been found wholly misplaced. This argument would have been available to the petitioners, if at all, only if respondent No.5 would have transferred the house in question in favour of the petitioners. But that is not the fact here as she never transferred the house either before or after coming into force the Act. She is the absolute owner of the house even today and her application was very much maintainable.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order has not been found to be suffering from any patent illegality or perversity. Instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

24.8.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No