

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

Writ Appeal No.1632 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the petitioner in W.P. No. 33371 of 2017 aggrieved by the order passed by the learned Single Judge dated 5.10.2017. The appellant herein had sought a mandamus to declare the order passed by the Revenue Divisional Officer, Rajendranagar Division, who is also the Maintenance Tribunal under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as arbitrary and illegal.

In the order impugned in the Writ Petition, the 2nd respondent-Revenue Divisional Officer relied on the judgment of the Gujarat High Court in **Jayanthram Vallabhdas Meswania vs. Vallabhdas Govindram Meswania**¹ wherein the ambit of Section 23 of the Act was expanded to bring within its scope the right of Senior Citizens to put the property owned by them to use, and to seek eviction. Reliance was also placed by the 2nd respondent-Revenue Divisional Officer on the judgment of the Delhi High Court **Sunny Paul vs. State NCT of Delhi**² wherein a similar view was taken. Relying on the aforesaid two judgments, the Revenue Divisional Officer directed eviction of the appellant-writ petitioner from the subject premises, as also that of the tenants who were residing in the premises in terms of an agreement entered into with the appellant-writ petitioner. The appellant-writ petitioner was directed to vacate the residential house bearing No. 1-111/4/7, Plot No.41, Hanuman Nagar, Kondapur Village,

¹ Laws (GJH) 2012-10-196

² 2017 Lawsuit (Del) 978

Serlingampally Mandal, Ranga Reddy District within ten days from the date of receipt of a copy of the order. The 2nd respondent-Revenue Divisional Officer further directed the Station House Officer, Madhapur to ensure enforcement of the direction, to ensure that the life and property of the 3rd respondent is secured, and no harassment is caused to his family. Liberty was granted to the appellant-writ petitioner to file a separate claim regarding the rights of her minor son, and for their maintenance.

Aggrieved thereby, the appellant herein invoked the jurisdiction of this Court contending that her husband had deserted her; she, being a single lady living with a child, could not be thrown out on the roads by her in-laws; and since she was not employed, it was difficult for her to secure any other alternate accommodation.

In the order under appeal, the learned Single Judge has noted the submission, urged on behalf of the 3rd respondent, that the appellant-writ petitioner had meted out harassment to them; and a criminal case was filed, DVC proceedings were initiated, and several other illegalities were committed by the appellant-writ petitioner. The learned Single Judge, while expressing his disinclination to examine these issues, directed that the appellant-writ petitioner, being a lady with a young boy, should be granted two months time to secure alternate accommodation, and to vacate the premises occupied by her; and it was open to the parties to resolve their *inter-se* disputes in the meanwhile. The learned Single Judge left it open to the 3rd respondent to enforce the order dated 16.9.2017 with reference to other tenants, and directed the 3rd respondent not to take any coercive steps against the appellant-writ petitioner for two months.

Sri J. Rajeswar, learned counsel for the appellant-writ petitioner, would submit that the 2nd respondent-Revenue Divisional Officer lacks

jurisdiction to direct the appellant-writ petitioner to vacate the subject premises on the ground that the property belongs to her father-in-law; on a plain and literal reading of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the 2007 Act”), it is evident that it does not provide for eviction; Section 23 of the 2007 Act declares transfer of property to be void in certain circumstances; the view taken by both the Gujarat and Delhi High Courts, if accepted, would require words to be added to Section 23 which is impermissible in law; while Courts interpret provisions of Statutes, they would not, ordinarily, add words or delete words therefrom; it is only transfer of property, hedged with conditions, which can be declared void by the 2nd respondent-Revenue Divisional Officer under Section 23 of the 2007 Act; the provisions of the 2007 Act do not confer any power or authority on the 2nd respondent-Revenue Divisional Officer to direct the appellant-writ petitioner (the daughter-in-law in distress), to vacate the premises in her occupation; Section 17(1) of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as “the DVC Act”) confers a right on every woman in a domestic relationship, notwithstanding anything contained in any other law for the time being in force, to have the right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same; Section 17(2) provides that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent, save in accordance with the procedure established by law; and the order of the learned Single Judge, in effect, amounts to dismissal of the Writ Petition at the stage of admission itself, without examining the question whether or not the 2nd respondent-Revenue Divisional Officer has jurisdiction, to direct eviction, under the 2007 Act.

On the other hand Sri A. Suryanarayana, learned counsel for the 3rd respondent, would submit that the 3rd respondent is a senior citizen aged about 85 years; he is not even in a position to stay in the property owned by him; false cases were foisted against him, his wife and other family members by his estranged daughter-in-law; now they have been driven out from the house which belongs to them; the 2007 Act was made with the laudable intention of protecting the interests of Senior citizens; the learned Single Judge was justified in refusing to exercise discretion to interfere with the order passed by the 2nd respondent-Revenue Divisional Officer at the stage of admission; in fact, the learned Single Judge was indulgent in granting the appellant-writ petitioner two months time to vacate the premises; the Division Bench of the Punjab & Haryana High Court, in **Justice Shanti Sarup Dewan vs. Union Territory, Chandigarh**³, had directed eviction, of the son of the owner of the property, in proceedings under Article 226/227 of the Constitution of India; and this Court should, therefore, refrain from interference.

On being informed that the subject building was a two storied structure, we asked Sri A. Suryanarayana, learned counsel for the 3rd respondent, to ascertain whether the 3rd respondent was willing to reside in the ground floor, leaving the first floor of the building for the occupation of the appellant-writ petitioner. The learned counsel, on instructions, would submit that, in view of the strained relationship between the parties and as the 3rd respondent perceives a threat to his life from the appellant-writ petitioner, it would not be possible for the 3rd respondent to live in the same building. We have, therefore, no alternative except to examine the appellant's contention on merits.

³ L.P.A. No. 1007 of 2013 dated 26.9.2013

The main Writ Petition is still pending on the file of the learned Single Judge; and, while directing the Writ Petition to be posted to 3.12.2017, the order under appeal was passed. The effect of the order, however, is that the appellant-writ petitioner is required to vacate the subject premises within two months. This would render the cause in the Writ Petition infructuous, even without an adjudication of the appellant's contention that the 2nd respondent-Revenue Divisional Officer lacks jurisdiction to entertain an application for eviction under Section 23 of the 2007 Act, and the remedy of the 3rd respondent is only to approach the competent Civil Court. The judgments, relied upon on behalf of the 3rd respondent, are those of other High Courts and, while they have no doubt persuasive value, no judgment of this Court, in which the scope of Section 23 of the 2007 Act has been examined, has been brought to our notice. As this question necessitates examination in the Writ Petition, it would be wholly inequitable to permit enforcement of the order of the 2nd respondent-Revenue Divisional Officer which, in effect, would result in rendering the cause in the Writ Petition infructuous.

We consider it appropriate, therefore, to set aside the order under appeal, to the extent the appellant-writ petitioner was directed to vacate the premises within two months. The order of the 2nd respondent-Revenue Divisional Officer, to the limited extent he directed eviction of the appellant-writ petitioner, shall stand suspended. We make it clear that we have not interfered with the order passed by the 2nd respondent-Revenue Divisional Officer in so far as the direction, for eviction of the tenants with whom the appellant had entered into agreements, is concerned.

Needless to state that the order now passed by us shall not disable the 3rd respondent from filing an application before the learned

Single Judge seeking permission to reside in a part of the subject premises.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

15th November, 2017

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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