

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 12854 of 2012

Date of decision : August 21, 2017

Naresh Bhatia

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Jagjot Singh , Advocate
for the petitioner.

Mr. Saurav Mohunta, DAG., Haryana.

RAKESH KUMAR JAIN, J (oral).

This petition is filed to challenge the order dated 24.11.2011 passed by the Maintenance Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') and order dated 19.6.2012 passed by the Appellate Tribunal by which application filed under Section 5 of the Act by Bhagwan Dass Bhatia respondent No.3, father of the petitioner Naresh Bhatia has been allowed and the petitioner has been ordered to vacate the first floor of the house in question within 30 days.

After notice was issued in this case on July 12,2012, parties were directed to remain present in Court. They appeared before this

Court and the matter was listed before the Mediation and Conciliation

Centre of this Court in order to explore the possibility of compromise between the parties. Although the case was listed before the Mediation and Conciliation Centre a number of times but the parties could not reach to an amicable solution and thus, the mediation proceedings failed and the case was sent back to this Court for decision on merits. Thereafter, the case was adjourned on the request of the counsel for the parties. The issue involved in this case is as to whether the order of eviction could be passed by the Maintenance Tribunal on an application filed under Section 5 of the Act?

According to the scheme of the Act, a senior citizen or a parent as the case may be, may file an application under Section 4 of the Act before the Maintenance Tribunal in case he/they are unable to maintain himself/themselves from his/her/their own earning or property owned by him/her or them. If such an application is filed under Section 5, the Tribunal has to follow the procedure prescribed under Section 5 itself and then to pass an order by resorting to summary procedure in case of enquiry as provided under Section 8.

Insofar as the order of eviction is concerned, the said order could be passed only if an application is filed under Section 22 (2) of the Act before the District Magistrate. It is to be borne in mind that the tribunal and the District Magistrate are two separate authorities recognized under the Act because maintenance tribunal is constituted under Section 7 of the Act, by the State Government by way of a notification in the official Gazette for each Sub-Division or to be presided over by an officer not below the rank of Sub Divisional Officer of the State. The Appellate Tribunal is constituted under Section 15 of the Act and the members of the Tribunal have to be notified by the State Government in the official Gazette.

Whereas no notification is required for the District Magistrate. The Tribunal can pass the order for the purpose of awarding maintenance and also to set at naught any transfer made by a senior citizen in terms of Section 23 of the Act. Insofar as, the order of vacation/eviction is concerned, it can only be passed by the District Magistrate under Section 22 (2) for which the State Government has to frame action plan in terms of the rules. The action plan for the State of Haryana is already in place by virtue of notification dated 26.5.2015 which has been issued in terms of Rule 24 of the Haryana Maintenance and Welfare of Parents & Senior Citizens Rules 2009. The procedure of eviction from the property/residential house belonging/occupied of a Senior citizen is provided therein and power has been given solely to the District Magistrate for this purpose. It is also provided therein that the District Magistrate, as soon as he receives the complaint/application, would forward the same to the Sub Divisional Magistrate for verification of the facts and after receiving the report, if his/her son/daughter or legal heirs are in unauthorized occupation of the property, call upon them to show cause and thereafter pass an order of eviction accordingly.

Since the application, is attached as Annexure P-1, was filed by respondent No.3 only under Section 5 of the Act, therefore, the said application should have only been decided by the Tribunal for the purpose of granting or not granting the maintenance but it had no jurisdiction to decide about vacation of the premises by the person unauthorisedly occupying, either as a son/daughter or legal heir of a senior citizen.

Consequently, in my considered opinion, the order passed by the Tribunal passing the eviction order is totally without

jurisdiction and hence both the orders dated 24.11.2011 and 19.6.2012 are hereby set aside and writ petition is allowed.

(RAKESH KUMAR JAIN)
JUDGE

August 21, 2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No