

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

**CWP No.10126 of 2016
Date of Decision.20.02.2017**

T.S. Virk and another

.....Petitioners

Vs

State of Punjab and others

.....Respondents

Present: Mr. Sudeep Mahajan, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. M.K. Dogra, Advocate
for respondent Nos.5 and 6.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Reply filed on behalf of the State is taken on record.

The present writ petition is at the instance of the senior citizens-petitioners, aged 80 and 75 years respectively, challenging the order dated 04.04.2016 (Annexure P-23) rendered by the District Magistrate relegating them to the pending civil suit instituted by respondent Nos.1 and 2 i.e. son and daughter-in-law of the petitioners, claiming declaration/right in the property on the first floor namely 196, 197-B, Ranjit Avenue Amritsar.

Mr. Sudeep Mahajan, learned counsel appearing on behalf of the petitioners submits that the petitioner No.1 is a practicing lawyer at Amritsar and had been a President and Secretary of the District Bar Association. The aforementioned property by virtue of sale deeds (Annexures P-2 and P-3) are in his ownership. The son-respondent No.1 was married with respondent No.2 in the year 1993 and out of the wedlock,

one son and two daughters are born. Petitioners have another two married daughters, one settled at Canada and another at Patiala.

He submits that owing to the circumstances explained in the writ petition, which I do not deem appropriate to mention on the premise that perhaps at a later point of time, sanity or wisdom may dawn upon the son to realize the value of the parents, no option left for the petitioners but to file the petition under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. He submits that the first petition came to be disposed of on 30.01.2014 (Annexure P-20), however, the aforementioned order was set aside by this Court in CWP No.3161 of 2014 on 17.11.2015 (Annexure P-21), as by that time, in view of the powers conferred under Section 22(1) & (2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and as well as Rule 23 of the Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012, the action plan came to be promulgated describing the procedure qua eviction of the property and enforcement of orders etc. However, in the meantime i.e. on 07.01.2016/22.03.2016, respondent Nos.1 and 2 have filed the suit (Annexure P-24), claiming the following relief:-

“Suit for declaration to the effect that the plaintiff No.1 is owner in possession of property bearing No.B-197, First Floor, Ranjit Avenue, Amritsar and B-196, Ranjit Avenue Amritsar being one of the co sharer/successor in interest as property mentioned above is purchased by the defendant No.1 from the amount which was received by them by selling the ancestral property to which plaintiff No.1 being beneficiary as co-parcener/co sharer and successor in interest of the property which was owned and possessed by his grandfather and also in other properties which belong to his grandfather, along with permanent injunction restraining the defendants themselves through their agents, privies, representatives, officials, attorney from forcibly dispossessing the plaintiffs and/or

interfering into the peaceful possession of the plaintiffs and not to disconnect the electricity supply over the property situated at first floor bearing No.B-197, Ranjit Avenue, Amritsar as shown as red in the site plan attached herewith especially by defendant No.2 who is acting as agent on behalf of defendant No.1 as well as other agents and previes to do so.

And for mandatory injunction directing the defendants to restore the electricity supply on the first floor of property No.B-197, Ranjit Avenue, Amritsar in which the plaintiffs are residing.”

In view of the aforementioned, the District Magistrate vide order dated 04.04.2016 dismissed the petition owing to the pendency of the civil suit, leaving the parties to seek the adjudication therein.

The questions arise for consideration in the present writ petitions are:-

- (i) Whether filing of the civil suit at the instance of the son or daughter-in-law of the senior citizens would render them remediless or not?
- (ii) Whether during the pendency of the civil suit, the order of eviction can be passed or not?
- (iii) Whether the hands of the authorities deriving powers under the Act would be handcuffed due to pendency of the civil suit or not?

In order to answer the aforementioned questions, Mr. Sudeep Mahajan has relied upon the judgment rendered by the Division Bench of this Court in **Gurpreet Singh Vs. State of Punjab and others 2016(1) CCC 529 (P&H)** to contend that the aforementioned Act bars the jurisdiction of the Civil Court in respect of any matter to which any provisions of the Act are applicable, much less, injunction to be granted by any Civil Court. On

similar lines the unreported judgment of Division Bench of this Court in **Justice Shanti Sarup Dewan, Chief Justice (retired) and another Vs. Union Territory, Chandigarh and others** in LPA No.1007 of 2013 on 26.09.2013 wherein the Division Bench while directing the son to vacate the premises, passed the following directions:-

- i) The Administration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under [Section 32\(1\)](#) of the said Act for the purposes mentioned under sub section (2) of [Section 32](#) more specifically clauses (e) and (f) so as to protect the life and property of senior citizens as envisaged under [Section 22](#) of the said Act. This should include a comprehensive action plan including enforcement mechanism and conferring relevant powers to the District Magistrate or officers subordinate to him as envisaged under sub section (1) of [Section 22](#) of the said Act. Such action may be taken within one month from today.*
- ii) Respondent No. 7 and his family members are directed to vacate the property bearing House No. 642, Sector 11-B, Chandigarh to the extent it is occupied by them and the keys be handed over to appellant No.1 within a period of 15 days from today.*
- iii) The Senior Superintendent of Police of Union Territory, Chandigarh/respondent No.3 is directed to ensure enforcement of the direction (ii) mentioned above.*
- iv) If respondent No. 7 wants to establish any legal right or share in the aforesaid house, he is free to file appropriate civil proceedings but without infringing the exclusive rights of the appellants in the interregnum period implying that there would be no interim injunction qua occupation by the civil court as that would be a violation of the provisions of the said Act.*

The ratio decidendi emerged from the aforementioned judgments is that right of son to seek the remedy in Civil Court has not been taken away but equally right to live in the property has been restricted in sense that the son has been ordered to be evicted and would claim his right only in case succeeds in the suit. The Legislature in its wisdom framed the aforementioned Act keeping in view the vagaries of life of the senior citizens, particularly the parents, who are left to the fate of destiny without

any assistance. It is in this backdrop, the District Magistrate had been authorized to ensure that life and property of the parents are protected and they can live with a sense of security and dignity. The provisions of Section 22 of the Act and Rule 23 of the aforementioned Rules have already been extracted in the judgment referred to above in **Gupreet Singh's case** and I do not intend to extract the same for the sake of repetition as the statute is to be only referred and not incorporated in the pleadings.

The Action Plan notified in the State of Punjab had been notified vide notification dated 27.11.2014 wherein the procedure for eviction from property/residential building of senior citizens has been prescribed. For the sake of brevity, the relevant Rules read as under:-

“1. Procedure for eviction from property/residential building of Senior Citizens/ parent:

(i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Department/Agencies i.e. Social security, Sub Divisional Magistrate, Police Department, NGOs/Social Worker, 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/ applications to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case through revenue department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.

(iii) The Sub Divisional Magistrates shall submit its report to the 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 citizens/ 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 ground 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 issue 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/served to all persons concerned.

2. Eviction Order from property/residential building of Senior Citizens/Parents:

(i) If, after considering the cause, if any, shown by any persons 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, not later than 45 days from the date of receipt of such order, as may be specified in that order, by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of 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 order;”

Even the enforcement of orders and actions related to police department have also been incorporated. As per the provisions culled out, the time period provided for vacating the building is not more than 45 days from the date of receipt of such order.

The relief sought in the aforementioned suit is based upon the allegations of purchasing the property in dispute from the proceeds of ancestral property. I would refrain myself from commenting upon the relief as it would be in the domain of the Civil Court to take a decision on

preponderance of the evidence. Be that as it may, the fact remains, concededly, that respondent Nos.1 and 2 i.e. son and daughter-in-law along with their children are in occupation of the first floor. The status of the son is not more than a licensee but will only be subject to the outcome of the pending litigation, in essence, this order of mine shall not be construed as branding them as licensees. Apprehension in the mind of senior citizens, who are owners of the property, at the hands of their son and daughter-in-law, is writ large. In other words, if their peace of life is put into jeopardy, they can always resort to the provisions of the aforementioned Act. Such method has been adopted in the present case. In my view, the findings of the District Magistrate in dismissing the petition and relegating the petitioners to Civil Court to claim right of eviction by filing separate suit or counter-claim is not a correct approach, much less, statement of objects and reasons of the aforementioned Act, which is a welfare legislation, has been defeated.

There is another aspect of the matter. The daughter in law had even approached this Court vide Crl. Misc. No.M-18722 of 2013 by invoking the provisions of Section 482 Cr.P.C for issuing direction to the official respondents to look into her representation for registering of FIR against the petitioners and this Court vide order dated 30.05.2013 dismissed the petition with costs of ₹25,000/-. The operative part of the order reads as under:-

“Now in the instant petition, the allegations have been levelled by the petitioner against her father-in-law, mother-in-law and brother-in-law (Nandoi). The learned counsel for the petitioner also failed to point out that how this petition is maintainable, when the alternative remedy is available with the petitioner. Rather, it is the duty of son and daughter-in-

law to take care of their old aged parents. They are supposed to look after the old aged parents, instead of harassing them by filing such frivolous petitions which have no head or tail as is clear from the averments which are per se false.

In view of this, the instant petition is dismissed in limine with costs of Rs.25,000/- which shall be deposited with the Punjab State Legal Services Authority within two months from today failing which the authority will be at liberty to effect the recovery as land revenue from the petitioner.”

Thus, all these factors leave no manner of doubt that the son and daughter-in-law are not allowing the petitioners to live in peace and have any sense of security of their life.

So long as the respondents are not able to establish their right in the pending civil suit, they cannot be permitted to occupy the first floor of 196, 197B, Ranjit Avenue, Amritsar and therefore, required to vacate the premises. All these factors had not been noticed and taken care by the District Magistrate, particularly, the Action Plan and Rules referred to here-in-above, therefore, the order of the District Magistrate is hereby set aside. A time period of 45 days is granted to the respondents to vacate the aforementioned premises subject to the observations made here-in-above.

Resultantly the writ petition stands allowed.

In case, the aforementioned eviction order is not respected and regarded and the respondents do not vacate the premises, the procedure prescribed within the Action Plan regarding the enforcement of the order should follow.

Since, Mr. T.S. Virk, who is present in Court, stated that he and his wife, who is ailing and is on oxygen support round the clock, have a threat perception to their life, I deem it appropriate to direct Police

Commissioner, Amritsar to render security forthwith to the petitioners.

A copy of this order be handed over to Mr. Yatinder Sharma, Addl. A.G., Punjab under the signatures of Reader attached to this Court for onward transmission to the concerned authority to provide appropriate security.

(AMIT RAWAL)
JUDGE

February 20, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable Yes