

CWP-10788-2016

Date of Decision : 01.05.2017

Ashwani Kumar and another

.....Petitioners

versus

Sub Divisional Magistrate, Gurgaon and another

....Respondents

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** Mr. Rajesh Arora, Advocate
for the petitioners.

Mr. R.K. Singla, AAG, Haryana.

Mr. P.S. Saini, Advocate
for respondent No. 2.**M.M.S. BEDI, JUDGE (ORAL)**

The petitioners have been ordered to be evicted by the Maintenance Tribunal consisting of Sub-Divisional Magistrate and two members directing the petitioners to vacate the premises owned by respondent No. 2, a senior citizen. The portion ordered to be vacated is first floor of the residential house bearing No. 56, Gali No.13, Arjun Nagar, Gurgaon.

The short question which has been argued by learned counsel for the petitioners is that it is only the District Magistrate who can pass an eviction order if seen in context to the provision of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the rules framed thereunder along with the provisions of Action Plan formulated under the notification dated 26.05.2015.

The aforesaid provisions of law came up for discussion before this Court in CWP No. 22405 of 2015 titled ***Manjit Singh versus District Magistrate-cum-Deputy Commissioner, Karnal and others*** decided on 30.10.2015 and ***Sanjeev Kumar and another versus District Magistrate UT Chandigarh and others*** 2016 (1) Law Herald 720 and in another case in CWP No. 19006 of 20016, titled ***Surinder Kaur versus State of Punjab and others***, decided 05.04.2017 wherein it has been clarified that the eviction proceeding are required to be considered by the District Magistrate and this power of eviction cannot be exercised by the Maintenance Tribunal which can only consider the claims of maintenance to senior citizens and the parents.

Following the above said judgments, without expression of any opinion on merits of the case, it is held that the order Annexure P-13 passed by the Maintenance Tribunal, Gurgaon is without jurisdiction. Any order passed without jurisdiction would be a nullity in the eyes of law. The petition is allowed. The eviction order Annexure P-13 is hereby set aside. However, in the interest of justice, it is directed that both the parties will appear before the District Magistrate, Gurugram on 19.05.2017 at 2:00 P.M. The District Magistrate, Gurugram shall take up the proceedings from the stage of pleadings which are complete, after summoning the record of pleadings from the Sub Divisional Magistrate. He would conclude the proceedings as per the provisions of the Act, Rules framed thereunder and the Action Plan, mentioned hereinabove, within a period of 30 days thereafter.

Copy of the order be sent to the concerned authorities for information compliance.

(M.M.S. BEDI)
JUDGE

01.05.2017
Neha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No