

In the High Court of Punjab and Haryana at Chandigarh.

**CWP-14659 of 2017
Decided on 11.10.2017.**

Ranjit Kaur

--Petitioner

Vs.

State of Haryana and others

--Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Arinder Arora, Advocate, for the petitioner

Mr.Saurabh Mohunta, DAG, Haryana

Mr.Rakesh Bakshi, Advocate, for respondent No.3.

Rakesh Kumar Jain,J: (Oral)

The petitioner has challenged the orders passed by the Maintenance Tribunal, Naraingarh, dated 23.11.2015 by which the Tribunal has directed the petitioner to provide food for three times to respondent No.3 for six months in a year and after six months, Gurmeet Singh, the other son of respondent No.3 shall provide food to him. It is also directed that the petitioner would reside in lower portion of the house and respondent No.3 would reside in upper portion independently and the petitioner and Gurmeet Singh shall pay ₹5000/- each to respondent No.3 for his livelihood, otherwise they would be evicted from the house and the

order dated 28.3.2017 dismissing her appeal filed under Section 16 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short,'the Act)

Brief facts of the case are that respondent No.3, stated to be 80 years of age, is a widower. His wife died in 2001. He has four sons, namely, Avtar Singh (living in Mumbai with his family), Tarsem Singh (living in Belgium with his family), Gurmeet Singh (living in Bhurewala District Ambala with his family) and Paramjit Singh, at present living in Spain and his wife is the petitioner in this case.

Respondent No.3 filed an application under Sections 4 and 5 of the Act against the petitioner and his other son Gurmeet Singh for seeking maintenance being a parent and senior citizen. The said application has been allowed by the Maintenance Tribunal by the impugned order dated 23.11.2015, wherein not only the petitioner has been asked to provide food to respondent No.3 for a period of six months but also to pay ₹5000/- per month as maintenance and in case she would fail to do so, then she would be evicted from the house in question which is allegedly owned by respondent No.3.

Aggrieved against the said order, the petitioner filed an appeal under Section 16 of the Act to the Appellate Tribunal which was dismissed vide order dated 28.3.2017.

Learned counsel for respondent No.3 has submitted that he is only interested in eviction of the petitioner from the house in question.

On the other hand, learned counsel for the petitioner has submitted that the Tribunal has committed an error in ordering eviction of the petitioner from the house in question for not providing food three times

in a day for a period of six month and also payment of ₹5000/- towards maintenance of respondent No.3. In this regard, he has referred to Section 11 of the Act to contend that as per Section 11 (2) order of Maintenance Tribunal can be enforced in terms of Chapter IX of the Code of Criminal Procedure ,1973(Cr.P.C.). The order of Maintenance Tribunal that in case the petitioner does not pay ₹5000/- towards maintenance and provide three times food in a day to respondent No.3, then she would be liable for eviction, is patently erroneous. It is further submitted that if respondent No.3 is interested in seeking eviction of the petitioner from the house in question, then he has to file an application under Section 22 (2) of the Act which has to be decided by the District Magistrate and not by the Tribunal. It is also submitted that the petitioner is a house wife, having no means of her own for the purpose of giving maintenance to respondent No.3 who is otherwise living with Gurmeet Singh (other son of respondent No.3). It is further submitted that there is no evidence brought on record about the earning capacity of the petitioner to fulfill the needs of respondent No.3.

On the other hand, learned counsel for respondent No.3 has submitted that his son Paramjit Singh, who is in Spain, does not meet him as and when he visits India and the petitioner who is living in the house in question is not not serving him food, therefore, he made an application for seeking maintenance but otherwise he is more keen in seeking her eviction from the house in question. It is also submitted that there is no error in the order passed by the Maintenance Tribunal and the Appellate Tribunal and has prayed that this petition may be dismissed.

I have heard learned counsel for the parties and perused the record with their able assistance.

The first question which is required to be decided is *as to whether the Maintenance Tribunal has rightly passed the order of eviction of the petitioner from the house in question on account of non-payment of the amount of maintenance per month and also for violating other terms and conditions laid down for maintaining respondent No.3 ?*

In this regard, it is pertinent to mention that the Act is divided into seven Chapters. Chapter II deals with maintenance of parents and senior citizens; Chapter III deals with old-age homes; Chapter IV deals with the provisions for medical care of senior citizen; Chapter V deals with the Protection of life and property of senior citizen; Chapter VI deals with offences and procedure for trial and Chapter VII deals with Miscellaneous circumstances.

Section 4 provides for maintenance of senior citizen including a parent who is unable to maintain himself from his own earning or out of the property owned by him who shall be entitled to make an application under Section 5 against one or more of his children not being a minor for the purpose of seeking maintenance which could be asked from the children or relative. Children is defined under Section 2 (a) which includes son, daughter, grandson and grand daughter but does not include a minor. Relative under Section 2(g) means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. Section 5 deals with the application for maintenance to be filed by a senior citizen or a parent as the case may be. Section 2 (d) parent means father or mother whether biological, adoptive or step father or step mother as the case may be whether or not the father or mother is a senior citizen. It means that a parent could be under the age

of 60 years as well but a person who is more than 60 years would be a senior citizen. Application under Section 5 is to be filed by a senior citizen or parent if he is incapable by any means to maintain himself. Section 7 provides for constitution of Maintenance Tribunal. Section 8 provides for summary procedure in case of inquiry and Section 9 deals with order for maintenance. Section 11 deals with enforcement of order of maintenance. Section 11 which is relevant for the purpose of this case is being reproduced below-.

“Enforcement of order of maintenance.-(i) A copy of the order of maintenance and including the order regarding expenses of proceedings, as the case may be, shall be given without payment of any fee to the senior citizen or to parent, as the case may be, in whose favour it is made and such order may be enforced by the Tribunal in any place where the person against whom it is made, such Tribunal on being satisfied as to the identity of the parties and then non-payment of the allowance, or as the case may be, expenses due.

(2) A maintenance order made under this Act shall have the same force and effect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be executed in the manner prescribed for the execution of such order by that Code”.

It is categorically provided in Section 11 (2) that order of maintenance shall have the same force and effect as an order passed under Chapter IX which deals with the order of maintenance to wife, children and parents in which enforcement of the order is provided under Section 128 of the Code of Criminal Procedure, which reads as under:-

“Enforcement of order of maintenance.- A copy of the order

(maintenance or interim maintenance and expenses of proceedings, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to (whom the allowance of maintenance or the allowance for the interim maintenance and expenses of proceedings, as the case may be,) is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the (allowance, or as the case may be, expenses, due.)”.

In case the Tribunal has passed the order fixing the allowances, the aggrieved party can go in appeal under Section 16 of the Act before the Appellate Tribunal constitution under Section 15 (1) which provides that the State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.

Section 22 deals with the powers and duties of the District Magistrate to ensure that the provisions of this Act are properly carried out and Section 22 (2) deals with the powers of the State Government to prescribe a comprehensive action plan for providing protection of life and property of senior citizen.

The State of Haryana has also framed '**The Haryana Maintenance of Parents and Senior Citizens Rules, 2009**' in which Rule 24 deals with the Action Plan for the protection of life and property of senior citizens (Section 22) which provides that an action plan under Section 22 (2) shall be notified by the State Government within a period of six months from the date of publication of these rules in the Official

Gazette and may be revised from time to time.

The Haryana Government has notified the action plan for the protection of life and liberty of senior citizens under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 on 26.5.2015 in which there are two parts. The first part deals with the powers vested with the Senior Superintendent of Police to look after the welfare of senior citizens and the second part deals with the procedure for eviction from property/residential building of Senior Citizen/Parent to accommodate them. The said power is vested with the District Magistrate. In case, a senior citizen is interested in seeking eviction from the property owned by him then he can move an application under Section 22 (2) in which it is provided that the District Magistrate himself shall forward such complaints/applications to the concerned S.D.M for verification of the title of the property and facts of the case through Revenue Department/ concerned Tehsildar within 15 days and the S.D.M shall immediately submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application and then if the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorised occupation of any property as defined in the Act, then he can pass the order of eviction but after giving a show cause notice.

Thus, in my opinion if respondent No.3 is not interested in living with the petitioner in the same house which is allegedly owned by him, then he can move an application under Section 22 (2) within one month.

Reverting back to the facts of the case it is worth while to

mention here that petitioner is the daughter-in-law of respondent No.3. Sector 4 provides that a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him shall be entitled to make an application under Section 5 against his relative. Relative is defined under Section 2 (g) which means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

The petitioner being the daughter-in-law in the present case is not even a relative of respondent No.3 because firstly respondent No.3 is not a childless senior citizen and secondly even daughter-in-law would not inherit his property after his death because daughter-in-law is not a legal heir as provided under Section 8 of the Hindu Succession Act, 1956 (for short, 'the Act'). Section 8 deals with the succession to the property of a male Hindu dying intestate which provides that it shall devolve upon (a) **firstly**, upon the heirs, being the relatives specified in class I of the Schedule (b) **secondly**, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule (c) **thirdly**, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) **lastly**, if there is no agnate, then upon the cognates of the deceased. As per the Act, agnate means "one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males" and. "cognate" means that "one person is said to be cognate of another if the two are related by blood or adoption but not wholly through male".

Thus, from any angle, the petitioner is not a relative of respondent No.3 and she cannot be ordered to be evicted from the demised premises in terms of the order passed by the Tribunal as the order can be

executed only in terms of Section 128 of the Cr.P.C. Hence, this petition is allowed and the impugned orders passed by the Tribunal and the Appellate Authority are hereby set aside.

11.10.2017
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(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned:	Yes/No.
Whether Reportable:	Yes/No.