

231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14752-2017(O&M)
Date of decision : 06.09.2017

Amar Chand Sharma and another Petitioners

versus

The Presiding Officer-cum-District
Magistrate-cum-Chairman and others Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Siddharth Gupta, Advocate for the petitioners.

Mr.Ashok Muthreja, DAG, Haryana.

Respondent No.3 in person.

RAKESH KUMAR JAIN, J. (Oral)

This petition is filed to challenge the order dated 16.05.2017 passed by the Chairman, Appellate Tribunal-cum-District Magistrate, Ambala by which order dated 03.10.2016 passed by the Presiding Officer-cum-Sub Divisional Magistrate, Maintenance Tribunal, Ambala has been set aside vide which the respondent No.3-Smt.Sonal Sharma was ordered to be evicted from the house in question.

In short, respondent No.3 is married to respondent No.2. The petitioners are the parents of respondent No.2 who have filed an application under Sections 4, 5 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007(in short 'the Act'). The said application has been allowed by the Maintenance Tribunal against respondents No. 2 and 3 directing them to vacate the first floor of the house in question within a

period of one month. Aggrieved against the said order, respondent No.3 has filed the appeal before the Appellate Tribunal-cum-District Magistrate, Ambala which has been allowed vide impugned order dated 16.05.2017.

Learned counsel for the petitioners has submitted that the impugned order is patently illegal and deserves to be set aside.

On the other hand, respondent No.3, appearing in person, has submitted that even the application filed before the Appellate Tribunal-cum-District Magistrate is not maintainable.

I have heard learned counsel for the parties, respondent No.3 in person and perused the available record with their able assistance. The question arises in this case is as to whether an application for eviction is maintainable before the Tribunal or before the District Magistrate. The scheme of the Act provides the definition of Tribunal under Section 2(j) of the Act which means the Maintenance Tribunal constituted under Section 7 of the Act. Section 7 provides for the constitution of Maintenance Tribunals which has to be presided over by an officer not below the rank of the Sub Divisional Officer of the State. The Act is divided into various Chapters. Chapter II deals with the maintenance of parents and senior citizens, Chapter III deals with the establishment of old age homes, Chapter IV deals with provisions for medical care of senior citizens and Chapter V deals with protection of life and property of senior citizens. In case a senior citizen demands maintenance from his children, who are also defined under Section 2(a) of the Act, which includes son, daughter, grandson and grand daughter but does not include a minor, he may file an application under Section 4 of the Act which has to be decided as per the procedure prescribed under the Act by the Maintenance Tribunal. The procedure has to be followed in the

manner as provided under Section 8 and order has to be passed in terms of Section 9 of the Act. The said order is enforced under Section 11 of the Act and if the senior citizen is not satisfied with the order passed by the Tribunal then he may go in appeal in terms of Section 16 of the Act. So far as the protection of life and property of the senior citizen is concerned, Section 22(2) provides that “the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.” Section 23 of the Act deals with the property which is transferred by a senior citizen with the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and in case such transferee refuses or fails to provide such amenities and physical needs, the transferor may file an application before the Tribunal for the purpose of declaration of said transfer as void. In order to make Section 22(2) workable, the Haryana Government framed the rules called the Haryana Maintenance and Welfare of of Parents and Senior Citizens Rules, 2009 (for short 'the Rules). Rule 24 of the said Rules provides for the action plan. Action plan for the State of Haryana was notified on 26.05.2015 in which clause 2(i) deals with the procedure for eviction from the property/residential building belonging to/occupied by senior citizens/parents. According to this provision, in case of receipt of any complaint regarding life and property of senior citizens by different department/NGOs/Social Workers, the help line for senior citizens and District Magistrate himself, it shall be forwarded to the District Magistrate of the concerned district for further action. The District Magistrate shall immediately forward such complaint/application to the concerned Sub Divisional Magistrate for verification of title of the property and facts of the

case through Revenue Department/concerned Tehsildar/Spot Inspection within 15 days from the date of receipt of such complaint/application. The Sub Divisional Magistrate shall immediately submit his/her report to the concerned District Magistrate for final orders within 21 days from the date of receipt of complaint/application. Thereafter if the District Magistrate is of the opinion that any son or daughter of legal heir of a senior citizen/parents are in unauthorised occupation of any property as defined in the Act, then he would evict the said person in the manner prescribed.

Respondent No.3 who is appearing in person has submitted that firstly, the order on an application can be passed only by the District Magistrate and secondly, against the heirs. She has submitted that she is not the heir of the petitioners because she is their daughter-in-law. The heir, in fact, is her husband who is alive. She has referred to Section 8 of the Hindu Succession Act, 1956 in which a table is provided depicting the persons who would succeed to the property of a Hindu male who died intestate. In this table the daughters-in-law do not stand anywhere. However, a widowed daughter-in-law is an heir. It is also submitted that since the jurisdiction only vests with the Tribunal who could decide the dispute between the parties in so far as maintenance is concerned or can deal with an application filed under Section 23 of the Act for the purpose of declaring a deed of transfer obtained by any such transferee by way of undue influence, coercion or fraud to be void if the physical needs or the basic amenities as promised by the transferee are not fulfilled.

In my considered opinion, the application filed for seeking eviction can only be decided by the District Magistrate and not by the Tribunal. Thus, the question posed in this case is decided in favour of

respondent No.3 and against the petitioners. Accordingly this litigation from its very inception was without jurisdiction and the application filed by the petitioners for seeking eviction of respondent No.3 was also not maintainable before the Tribunal.

Petition is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

September 06, 2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No