

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 19006 of 2016

Date of Decision: April 5, 2017

Surinder Kaur

.....Petitioner

Vs.

State of Punjab and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Akshay Bhan, Sr. Advocate with
Mr. S.S. Momi, Advocate for the petitioner.

Ms. Anu Pal, AAG, Punjab.

Mr. Gurminder Singh, Sr. Advocate with
Ms. Harpriya Khaneka, Advocate for respondent No.4.

Mr.H.S. Hooda, Sr. Advocate with
Ms. G.K. Mann, Advocate for respondents No.5 to 7.

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M.M.S. BEDI, J.

The petitioner is a senior citizen lady aged about 87 years who besides claiming protection of life and liberty has sought the right of dignified life of honour and have challenged order annexure P-6 dated June 22, 2016 whereby an appeal filed by her under Section 16 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, for short

‘the Act’ before the District Magistrate was not decided on merits but was remanded back to the Sub Divisional Magistrate. The petitioner is mother-in-law of respondent No.4.

Brief facts as pleaded in the writ petition are that being a senior citizen, with an objective to live a life of dignity and honour and not mere animal existence at the fag end of her life, the petitioner seeks the protection as per Section 22, 23 and 32 of the Act. She claims to be in possession of her house situated in Village Nasipur near Punjabi University, Patiala situated in 15 bighas 17 biswas of land. She feels that her daughter-in-law, respondent No.4 in collusion with Mr. Gurinder Singh Dhillon, DIG, Punjab Police, wants to dispossess her and forcibly evict her from her house. The petitioner being harassed and humiliated by respondent No.4 who had made her life hell bereft of any human dignity, filed an application under Section 22 of the Act on January 20, 2014. Copy of the application dated January 20, 2014 has been appended as annexure P-3 before Sub Divisional Magistrate, Patiala. Respondent No.4 filed reply to the petition taking up number of pleas. Petitioner claims that respondent No.4 had taken wrong and baseless pleas in the reply with an objective to prolong the matter on one pretext or other, as a result of which the petitioner was compelled to approach this Court to file CWP No. 8056 of 2015 for issuance of a direction to the SDM, Patiala to decide her case expeditiously. On May 15, 2015, Additional Advocate General, Punjab, sought telephonic instructions and stated that the case will be decided within a period of six weeks. Copy of

the order dated May 15, 2015 has been appended with the petition as annexure P-4. The SDM dismissed the application filed by the petitioner vide order dated July 24, 2015 with an observation that respondent No.4 is in authorized possession of the property, therefore, application was not maintainable. The order dated July 24, 2015 passed by SDM, Patiala, -0Sh.Gurcharan Singh Chahal, annexure P-5 was challenged before the Appellate Authority-cum-Deputy Commissioner, Patiala and the said order was set aside vide order dated June 22, 2016 and case was remanded back to decide the same afresh as per the rules. Copy of the order passed by Deputy Commissioner, Patiala has been appended with the petition as annexure P-6. The operative part of the order passed by the District Magistrate is reproduced hereunder:-

“5. Application presented by counsel for the respondent, perused properly and file perused properly. After perusing thoroughly regarding this, it is found that proceedings was to be initiated in view of notification issued by Punjab Government regarding present act but didn't initiate proceedings as per the notification issued by Punjab Government. Therefore, appeal is entitled to be decided on merits. After hearing the parties and after perusing the case file, it is found that appellant party is claiming that appellant is an old aged person and remained ill, who needs medical care. Whereas as per

respondent party, appellant has filed this present complaint only with an intention to grab the property and filed on the instances of her girl. Respondent is still ready to take care for her and she is ready to take care for her in every means. As far as question arises regarding the dismissal of complaint of appellant which was sent to Sub-Divisional Magistrate, Patiala, as per rules order passed by Sub Divisional Magistrate, Patiala cannot be dismissed through appeal. Proceedings to be done as per notification No. 10/20/2014-1/D.C. 353259/1 dated 27.11.2014. Therefore, order passed by Sub Divisional Magistrate, Patiala on 24.07.2015 is set aside and case is being remanded with this direction that after hearing both the parties, case to be disposed of within month as per rules. Order pronounced. Case file after verification and attestation be consigned to office record.

Dated: 22.6.2016 Sd/-District Magistrate, Patiala”

The order annexure P-6 has been challenged, mainly on the ground that it is a non-speaking order without giving sufficient reasons.

Mr. Akshay Bhan, Sr. Advocate for the petitioner has submitted that the District Magistrate is bound to perform the duties as per Section 22 of the Act which provides that it will be the duty of the District Magistrate to ensure that the life and liberty of senior citizen of the district are protected

and he is able to live with sense of security and dignity and that in case of any danger to the life or property of the senior citizen, it shall be the duty of the District Magistrate or the officer authorized by him to protect the life and liberty of said citizen. Section 22 of the Act reads as follows:-

“Section 22: Authorities who may be specified for implementing the provisions of this Act.– (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

It has been contended by counsel for the petitioner that an independent right is conferred upon senior citizen (s) irrespective of the fact whether the persons who had threatened or endangered the life and property of said senior citizen is related to him/ her/ them or not. He referred to the observations of a Division Bench of this Court in **Shanti Sarup Dewan Vs.**

U.T. Chandigarh, 2013 (4) LH (P&H) 3063 in which it has been held by a Division Bench of this Court that a proper mechanism for enforcement of the provisions of the Act for protecting the property rights of senior citizen under Section 22 of the Act has to be put in place by the State and special cell to ensure that for seeking eviction, parents who are senior citizens, should not be compelled to go to civil Court to obtain possession of the property from their children which would defeat the very purpose of the Act. It was held in the said judgment that the provisions of the Act would have an over-riding effect qua any other enactment.

On the other hand, Mr. Gurminder Singh, Sr. Advocate appearing on behalf of respondent No.4 has submitted that on earlier occasion also respondent No.4 had agreed that she was ready and willing to have a peaceful settlement with the petitioner. He also submitted that it has always been the heartfelt endeavour that the respondent along with her children should continue to live peacefully in the ancestral house from where she is sought to be evicted. Respondent No.4 claims herself to be a dutiful daughter-in-law having cared and looked after the petitioner through her ill health and undertakes to continue to look her needs and requirements. The house in dispute is built in a compound of 8 ½ acres. Counsel for respondent No.4 has submitted that where a Statute provides for certain procedure and remedy, then the same must be duly followed. In the present case the District Magistrate has set aside the order dated July 24, 2015, annexure P-5, passed by Sub Divisional Magistrate and remanded the case

with a direction that same may be dealt with by applying procedure as set out in the Statute and notification. He argued that the present petition is an attempt to bye-pass the procedure as set out in the Statute. The District Magistrate is deputed under Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012, for short 'the Rules' and Action Plan. In the written statement the allegations levelled against Gurinder Singh Dhillon have been denied claiming that he being a relation of respondent No.4 from her father's side has been wrongly attributed malafide. Allegations have been levelled that the petitioner has launched the proceedings against respondent No.4 at the instance of her daughters after the death of husband of respondent No.4.

After hearing counsel for the petitioner and counsel for the respondents, this Court is of the opinion that the short question which is required to be determined in the present case is whether the District Magistrate should have remanded the application for eviction to the SDM or he should have finally decided the application for eviction taking into consideration the provisions of Action Plan made under Section 23 of the Act.

So far as the allegations of petitioner against respondent No.4 and the counter allegations of respondent No.4 against the petitioner, title of the property, nature of the possession of respondent No.4 and the enforceable right of the petitioner are concerned, no opinion is being expressed by this Court but in the light of the statutory provisions, the

authority of District Magistrate as per provisions of Sections 22 and 23 of the Act and the Action Plan prepared under Section 23 of the Act has been taken into consideration with an objective to determine the legality and propriety of order annexure P-6 by virtue of which the District Magistrate has opted to remand the application under Section 23 of the Act to the SDM, after setting aside the order annexure P-5 passed by him determining the status of respondent No.4 in the property in dispute. It is also not out of place to observe here that since the notification dated November 27, 2014 was formulated and notified as an Action Plan to deal with eviction from the property of senior citizen, its applicability will be debatable as the petitioner had initiated the proceedings for eviction on January 20, 2014, prior to the coming into force of the notification.

RELEVANT PROVISIONS OF LAW FOR DETERMINING THE COMPETENT AUTHORITY TO ADJUDICATE UPON THE EVICTION APPLICATION FILED BY A SENIOR CITIZEN:

In the present case the District Magistrate vide annexure P-6 has remanded the ejectment proceedings for inquiry on the ground that the proceedings have not been initiated as per the notification (Action Plan) issued by the Punjab Government as such after hearing both the parties case was to be disposed of within a period of one month. The said direction is to be analyzed on the touch-stone of the relevant provisions of law which are relevant for the decision of the present case

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has to be perused in context to the object of the Statute, which reads as follows:-

“Statements of Objects and Reasons:- Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time- consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to

make provisions for setting-up old-age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

- (a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;
- (b) providing better medical facilities to senior citizens;
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;
- (d) setting up of oldage homes in every district.

4. The Bill seeks to achieve the above objectives.”

Taking into consideration the above noted objectives, the Act was enacted. The preamble of the said Act reads as follows:-

“Preamble:- An act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto”

A specific provisions with non-obstante clause was incorporated in Section 3 of the Act to give an over-riding effect to the provisions of the Act, in case anything inconsistent is contained in any enactment. Section 3 of the Act reads as follows:-

“Section 3: Act to have overriding effect.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.”

Chapter V of the Act which is relevant for the protection of life and property of the Senior citizens providing Sections 22 and 23 read thus:-

Section 22: Authorities who may be specified for implementing the provisions of this Act.— (1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

Section 23: Transfer of property to be void in certain

circumstances- —(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken

on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5.”

The power to make Rules vests in the State Government for carrying out the purpose of the Act. Section 32 of the Act reads as follows:-

“**Section 32:-** Power of State Government to make rules— (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (1) of section 8;

(b) the power and procedure of the Tribunal for other purposes under sub-section (2) of section 8;

(c) the maximum maintenance allowance which may be ordered by the Tribunal under sub-section (2) of section 9;

(d) the scheme for management of oldage homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes under sub-section (2) of section 19;

- (e) the powers and duties of the authorities for implementing the provisions of this Act, under sub-section (1) of section 22;
 - (f) a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;
 - (g) any other matter which is to be, or may be, prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House before that House.”

Different State Governments have framed Rules in the exercise of powers under Section 32 of the Act.

In the present case the Rules framed by the State Government being relevant, it is pertinent to observe that the State Government has framed the Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012, hereinafter referred to as ‘2012 Rules’. Rule 22 of the 2012 Rules defines duties and power of the District Magistrate, reads as follows:-

"22. Duties and power of the District Magistrate.--(1)
District Magistrate or any other officer authorized by him
in this behalf within the local limits of his jurisdiction

shall perform the duties and exercise the powers mentioned in sub rules (2) and (3), so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to-

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with a sense of security and dignity;

(ii) oversee and monitor the work of the maintenance Tribunal and the Maintenance officer of the district with a view to ensuring timely and fair disposal of applications for maintenance and execution of Tribunals order;

(iii) Oversee and monitor the working of old-age homes in the district, so as to ensure that they conform to the standards laid down by the guidelines issued in this respect by the Government from time to time.

(iv) ensure regular and wide publicity of the provisions of the Act and the Central and the State Government's programmes for the welfare of senior citizens;

(v) Encourage and coordinate with panchayats, Municipalities, Nehru Yuva Kendras, educational institutions and especially National Service Units,

organizations, specialists experts, activities etc. working in the district so that their resources and efforts are effectively utilized for the welfare of senior citizens of the district;

(vi) ensure provisions of timely assistance and relief to senior citizens in the event of natural calamities and other emergencies;

(vii) ensure periodic sensitization of officers of various Department and Local Bodies associated with the welfare of senior citizens, towards the needs of such citizens, and the duties of the officers towards such senior citizens;

(viii) review the progress of investigation and trial of cases relating to senior citizens in the district, except in cities having a Police Commissioner;

(ix) ensure that adequate number of prescribed application forms for maintenance are available with Panchayats, Post Offices, Block Development Officer, Tehsil Offices, Collectorate and Police Stations etc;

(x) promote establishment of dedicated helplines for senior citizens at the district headquarters; and

(xi) perform such other functions as the State Government may, by order, assign to the District Magistrate in this behalf, from time to time.

(3) With a view to performing the duties mentioned in sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with these rules, the Act and general guidelines of the State Government, as may be necessary, to any Government and statutory agency or body working in the district and especially to the following:-

- (a) Officers of the State Government in the Police Department, Health and Family Welfare Department, Information and Public Relations Department and the departments dealing with the welfare of senior citizens;
- (b) Maintenance Tribunal and the Conciliation Officers;
- (c) Panchayats and Municipalities;
- (d) Educational Institutions.

(4) In order to implement the provisions of the Act, the District Magistrate or an officer authorized by him in this behalf not below the rank of Sub-Divisional Magistrate, shall have the power to refer the case of a senior citizen, who may be considered “indigent” to the Tribunal.

(5) In case of any danger to the life or the property of a senior citizens, it shall be the duty of the District

Magistrate or the officer authorized by him to protect the senior citizen from the said danger.

(6) In case a senior citizen requires protection or is destitute, it shall be the duty of the District Magistrate or the Officer authorized by him to provide shelter to him in an old-age home being run by the State Government or a Non-Government organization.

(7) In case of emergency, the District Magistrate or the officer duly authorized by him, shall also make suitable arrangements for medical care of the abandoned and indigent senior citizen.”

As per Section 2 (2) of the Act, State Government was required to prescribe a comprehensive Action Plan for protection of life and liberty of senior citizens and as per Rule 23 of the 2012 Rules, the State Government was required to publish action plan within a period of six months from the date of publication of the 2012 Rules. Rule 23 of the 2012 Rules, reads as follows:-

“Rule 23. Action plan for the protection of life and property of senior citizens.- An action plan, for protection of life and property of senior citizens 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 it may be revised from time to time."

State of Punjab, as per Rule 23 of the 2012 Rules has notified the Action Plan on November 27, 2014 providing the procedure for eviction from the property/ residential building of senior citizen/ parents. The Action Plan providing the procedure for eviction of unauthorized occupants contains the following provisions:-

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 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 dully 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.”

Joint reading of object of the Act, provisions of Sections 22 and 23 and 2012 Rules framed under Section 32 of the Act i.e. Rules 22 and 23 of the 2012 Rules read with the Action Plan providing procedure for eviction from property/ residential building of senior citizens / parent, indicate that the District Magistrate is competent to order eviction of an unauthorized occupant in terms of the said provisions. The provisions of the Act came up for consideration before a Division Bench of this Court in the case of **Shanti Sarup Dewan’s** case (supra) wherein considering the provisions of the Act, it was observed that the Act is not only restricted to grant maintenance but also cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and the Act was aimed to provide for institutionalization of a suitable mechanism for protection of life and liberty of old persons. Since the UT Administration had not made any statutory rules in terms of Section 32 of the Act for implementation of the provisions of the Act, in the exercise of jurisdiction under Articles 226 and 27 of the Constitution of India, a direction was given to the State for implementation of the provisions of the Act. Though the relevant rules had not been made for protection of the life, liberty and property of senior

citizen, or for eviction of the son or daughter or their families from the house owned by the senior citizens/ parents, but the right of exclusive possession of self-owned property was recognized as an enforceable right under the Act. The Court in the said case had gone to the extent of passing an eviction order in the exercise of powers under Article 226 of the Constitution of India to ensure that the senior citizen/ parent could live peacefully in his house with his wife without being forced to accommodate his son and his family. After the said decision the rules were framed by the U.T. Administration in 2009 called Chandigarh Maintenance of Parents and Senior Citizen Rules, 2009 providing procedure for filing of the applications for maintenance and for action plan for the protection of life and liberty of the senior citizen under Rule 20 of the 2009 Rules. Subsequent thereto, in the exercise of powers under Section 32 of the Act, the UT Administration made the Rules called the Chandigarh Maintenance of Parents and Senior Citizen Amendment Rules, 2014, prescribing procedure for eviction from the property/ residential building of senior citizen/ parents. The said provisions of Chandigarh came up for consideration before this Court in **Hamina Kang Vs. District Magistrate (UT), Chandigarh and others**, 2016 (2) PLR 138, wherein taking into consideration all the provisions of the Act, it was held that a daughter-in-law staying in the property exclusively owned by mother-in-law cannot be held entitled to claim right of residence and the eviction order could be passed against her in proceedings under the Act. Similarly in **Gurpreet Singh Vs. State of Punjab**, 2016 (1) RCR (C) 324, the provisions

of the Act, 2012 Rules and the action plan for protection of life and property of senior citizen framed under Rule 23 of the said Rules providing procedure for eviction of a son from the house owned by his senior citizen father came up for consideration. The Division Bench of this Court held that the District Magistrate is the competent authority to take steps for protection of life and property of the senior citizen and the summary exercise of jurisdiction by the District Magistrate is permissible to evict the son who could be a licensee and the moment the licensor terminates the licence, there is no vested right of any kind in the licensee to remain in possession of the property i.e. licensed. The operative part of the judgment is reproduced as under:-

“11. Section 22 falling in Chapter V of the Act enjoins a duty upon State Government to prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 32 (2) (f) also empowers the State Government to frame Rules in respect of comprehensive action plan for providing protection of life and property of senior citizens. In terms of such provisions, the Rules have been framed which causes a duty on the District Magistrate to ensure that the life and property of senior citizens are protected and they are able to live with a sense of security and dignity. Apart from framing such Rules, the Action Plan for protection of life and property of the senior citizens has been

published which inter alia provides for eviction of unauthorized occupants as reproduced above.

12. The petitioner is a licensee living in the premises on the basis of concession given by his father to live in the property owned by him. As a licensee, the petitioner is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any kind in the licensee to remain in possession of the property licensed. Admittedly, respondent No.4 is the owner of the property in question. The petitioner is living in part of the property. Such property owned by respondent No.4 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who wishes to interfere in the possession of the property of the senior citizen. Protection of the property of a senior citizen includes all incidences, rights and obligations in respect

of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure will ensure for the benefit of the senior citizen. The petitioner would have no right to resist his eviction only on the ground that the Act does not contemplate eviction of an occupant. Eviction is one part of the right to protect the property of a senior citizen which right could be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.”

A similar question came up before a Division Bench of this Court in a case of Union Territory, Chandigarh in **Sanjeev Kumar and another Vs. District Magistrate, UT Chandigarh and others**, 2016 (1) Law Herald 720. In the said case the District Magistrate had allowed the application of eviction filed by the parents. Writ petition filed by the son was dismissed. The LPA Bench had observed that as the house was recorded in the name of the mother, she was entitled to seek eviction against her son and daughter-in-law who were troubling her in the old age. The controversy regarding the jurisdiction for maintenance and summary eviction were taken into consideration in the light of the provisions of 2007 Act, 2014 Rules of UT and the provisions of the Action Plan and it was held that the Maintenance Act contemplates two remedies i.e. summary eviction which is

to be considered by the District Magistrate whereas the other remedy of maintenance is to be considered by the Maintenance Tribunal. It was held that both these remedies are separate. The eviction order passed by the District Magistrate was upheld directing the Maintenance Tribunal to consider the claim of maintenance. In **Promila Tomar and others Vs. State of Haryana and others**, 2014 (1) RCR (Civil) 403, a senior citizen of Haryana had transferred his property to his son who had failed to provide amenities and physical needs. It was held that under Section 23 of the Act a senior citizen will have a right to declare the transfer void and get back the property as handing over of possession of house to son or daughter -in-law with an implied latent promise that they would vouch for welfare of respondent and in case of they having failed to provide for the amenities, physical needs or even care and for having maltreated the senior citizen/ father, the order of voiding the transfer and handing over of the vacant possession of the property was valid order under the provisions of the Maintenance Act, 2007. In **Ashwinder Singh and another Vs. Bhagwant Singh**, 2014 (3) RCR (Civil) 906 and **Savita Sharma and others Vs. District Magistrate and others**, 2016 (5) RCR (Civil) 998, the order of the District Magistrate passing eviction order had been upheld holding that the said power vests in the Tribunal under the Act.

In view of the above said judgments, this Court is of the considered opinion that the District Magistrate is entitled to pass an eviction order from the property/ residential building of senior citizen/ parent after

following the procedure i.e. issuance of show cause notice and considering the cause, if any, shown by any person in pursuance to the notice and any evidence produced after giving the occupant reasonable opportunity of being heard. If the District Magistrate is satisfied that property/ premises are/is in unauthorized occupation he or any other officer duly authorized may make an order of eviction by recording the reasons. He can direct that the property/ residential building shall be vacated on a particular date within a period of 45 days from the date of receipt of the order.

Mr. Akshay Bhan, learned Senior counsel for the petitioner has submitted that the Sub Divisional Magistrate, Patiala vide order dated July 24, 2015, annexure P-5 had wrongly held that respondent No.4 was not in unauthorized occupation of the house as such it was not a fit case for eviction of respondent No.4 from the property in dispute and that the appellant being a wealthy lady does not need any financial assistance. The observations made by the Sub Divisional Magistrate, Patiala had been challenged by the petitioner by filing an appeal before the District Magistrate, Patiala. The District Magistrate, Patiala had taken into consideration the provisions of Action Plan dated November 27, 2014 and issued a direction that the case should be disposed of by the SDM after hearing both the parties within a period of one month. Counsel for the petitioner has submitted that order of remand is illegal and without jurisdiction in accordance with the provisions of law. It is contended that in accordance with the provisions of law the eviction proceedings are to be

under the Maintenance Act, 2012 Rules and Action Plan of 2014 and are required to be considered by the District Magistrate and none else, as such the remand order is null and void.

On the other hand, Mr. Gurminder Singh, Senior counsel appearing for respondent No.4-daughter-in-law has submitted that no illegality has been committed by the District Magistrate in remanding the matter to the SDM as the proceedings had not been initiated as per the notification issued by the Punjab Government. Referring to the Action Plan, Mr. Gurminder Singh has argued that on the basis of the report received from SDM, the District Magistrate should have dismissed the petition as respondent No.4 has not been found to be in unauthorized occupation of the property.

Mr. H.S. Hooda, Senior Advocate has represented the cause of minor children claiming that they have got a legal right to stay in the property in their own right as there is no allegation against them and that they cannot be said to be unauthorized occupants. He has submitted that the matter in the present case deserves to be decided by mediation so that both the parties may live happily in the property.

I have considered the contentions of counsel for the parties and this Court is of the considered opinion that as per the provisions of Maintenance Act, 2007, 2012 Rules and the Action Plan prepared vide notification dated November 27, 2014 which are peri-meteria with 2014 Rules of UT and the Action Plan of 2014 which have been noticed

hereinabove, which came up for consideration before this court in **Sanjeev Kumar's** case (supra), **Hamina Kang's** case (supra), **Savita Sharma's** case (supra), **Ashwinder Singh's** case (supra) and **Promil Tomar's** case (supra) and it was held that the petition for eviction by senior citizen for voiding a document under Section 23 of the Act and for seeking possession of a property owned by senior citizen is maintainable and summary eviction order can be passed after considering the claim of the senior citizen and unauthorized occupant after following the procedure prescribed in the Action Plan. So far as the remedy for claiming maintenance by senior citizen is concerned, the claim is to be considered by the Maintenance Tribunal whereas the proceedings for summary eviction are required to be dealt with by District Magistrate. The provisions of Action Plan for the procedure of eviction from a property/ residential building of senior citizen/ parent in para 3 (1) of the Action Plan has been reproduced above. As per clause 3(1) which has been reproduced above, the complaints regarding life and liberty praying for eviction can be received by different Departments i.e. (i) Social Welfare Department; (ii) SDM; (iii) Police Department; (iv) NGO's / Social Workers; and (v) Helpline for senior citizens or by District Magistrate himself.

1. The said applications are required to be forwarded to one authority i.e. the District Magistrate.

2. The District Magistrate is required to forward the complaints/ applications to the SDM for verification of title of the property

and the facts of the case through Revenue Department or concerned Tehsildar within 15 days from the date of receipt of the complaint.

3. The SDM is required to submit its report to the District Magistrate for final order within 21 days from the date of the receipt of the complaint. The District Magistrate on receipt of the report from SDM is required to form an opinion on the basis of the facts and material forwarded to him by SDM whether son/ daughter/ legal heir of the senior citizen/ parent are in unauthorized occupation of any property under the Maintenance Act, 2007. He is also required to form an opinion whether the said occupant should be evicted. After recording the said satisfaction, the District Magistrate is required to issue notice in writing to all the persons concerned to show cause as to why an order of eviction should not be issued against him.

4. Notice should specify the grounds on which the order of eviction is proposed to be made. The persons in occupation or claiming interest in the property/ premises are entitled to at least 10 days time to show cause.

5. The District Magistrate is required to ensure the due service on all the persons concerned.

6. After considering the cause in pursuance to the notice and evidence, if any, produced in support of the cause after giving a reasonable opportunity of being heard, the District Magistrate on his objective satisfaction, that the premises is in unauthorized occupation, the

District Magistrate or other office duly authorized may make an order of eviction by recording reasons.

7. Persons in occupation are required to be intimated the specific date on which they are required to vacate the property or any part thereof. The copy of the order is required to be affixed on the outer door of some other part of the premises.

8. The order of eviction can be enforced if the person (s) in occupation refused to comply with order of eviction within 30 days from the date of issue. The District Magistrate has powers to enforce the eviction order through police and handover the same to the senior citizen/ parent.

The above said procedure prescribed in the Action Plan indicates that the jurisdiction to pass an eviction order after giving opportunity of hearing to the occupants of the property/ house owned by the senior citizens is with the District Magistrate. All the applications for protection of life and liberty or for eviction may be presented with different authorities but ultimately these are to be received by the District Magistrate. The role of SDM is limited only to the verification of the title and confirmation of the facts of the case through the concerned revenue official within a period of 15 days. There is no provision for SDM to form an opinion whether the occupants i.e. son, daughter or legal heirs of senior citizen are in unauthorized occupation of any property as defined in the Act. It is only District Magistrate who has to form said opinion and take steps for

issuance of notice and after following the above said procedure to pass the eviction order.

In the present case the order annexure P-6 has been passed by the District Magistrate remanding the case to the SDM after having received the report. The jurisdiction of the SDM ceases to exist after report regarding title and verification of the facts mentioned in the complaint. In case any clarification pertaining to the title or facts is not sufficient for determination of the claim of the senior citizen, it is always open to the District Magistrate to take the evidence and consider the circumstances at his own level. There is no provision in the rules or the 'Action Plan' for delegating the authority of District Magistrate to the SDM in the garb of remand.

The order annexure P-6 is, therefore, illegal and without sanction of law and is hereby set aside. It is ordered that the District Magistrate, Patiala will proceed in accordance with law on the basis of the material supplied by the SDM. Any observations or opinion of the SDM regarding authorized or unauthorized occupation will not be binding on the District Magistrate. It will be open to the District Magistrate to form his independent opinion and give fair opportunity to the parties to take final decision regarding the application for eviction filed by the petitioner.

Allowed in the aforesaid terms.

Parties are directed to appear before the District Magistrate on a date notified by the District Magistrate after the receipt of a certified copy of the order.

Nothing mentioned in this order will be considered as expression of opinion on merits of the case. The rival claim of the parties have intentionally not been taken into consideration as the sole controversy involved in the petition pertain to the question of jurisdiction for eviction proceedings under the Maintenance Act.

April 5, 2017
sanjay

(M.M.S.BEDI)
JUDGE

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