

CWP No.16010 of 2017

[1]

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

**CWP No.16010 of 2017
Date of decision:25.07.2017**

Ashok Kumar and others ...Petitioners

Versus

District Commissioner-cum-District Magistrate and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. N.K.Setia and Mr. Kunal Siag, Advocates,
for the petitioners.

Rakesh Kumar Jain, J. (Oral)

This petition is filed in order to challenge the order passed by the District Magistrate, Union Territory, Chandigarh dated 01.06.2017, purported to have been passed under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act"), directing the petitioners to vacate Flat No.3257/1, Sector 45-D, Chandigarh (hereinafter referred to as the "property in question"), within 15 days, failing which the Station House Officer, Police Station (South), U.T., Chandigarh is directed to get the said flat vacated and hand over physical possession thereof to respondent no.2.

Concededly, the property in question is owned by respondent no.2. Petitioner no.1 is the son of respondent no.2; petitioner no.2 is the wife of petitioner no.1 and petitioners no.3 to 5 are the children of petitioners no.1 and 2. Respondent no.2 is a widow lady, whose husband had expired in 2005. The application filed by respondent no.2 under Sections 22 & 23 of the Act has

been allowed by the District Magistrate, holding that the property in question belongs to respondent no.2 and she does not want the petitioners herein to continue in possession on account of their mis-behaviour with her, much-less declaring them to be in unauthorized possession.

Counsel for the petitioners has submitted that the District Magistrate had no jurisdiction to pass the order under Section 22 of the Act as the order could have been passed only by the Tribunal, constituted under Section 7 of the Act. It is further submitted that once the order is passed by the Tribunal, the appeal would lie under Section 16 of the Act to the Appellate Tribunal, constituted under Section 15 of the Act. It is also submitted that Section 16 of the Act has been explained by this Court, holding that the right to appeal is not only meant for the senior citizens but also for any of the aggrieved party. It is also submitted by learned counsel for the petitioners that the District Magistrate has not taken into consideration the fact that the property in question was purchased with the contribution of petitioner no.1, who had been sending money to his father when he was working in Dubai. It is further submitted that in order to challenge the order of the District Magistrate, no Appellate Tribunal has been constituted and as such, the present petition has been filed.

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

There is no dispute that the application has been filed by respondent no.2 under Sections 22 & 23 of the Act. Sections 22 & 23 of the Act are reproduced as under for a ready reference:-

“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.

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.”

As per Section 22(1) of the Act, the Legislature has conferred power upon the State Government to impose such duties on a District Magistrate, as may be necessary, to ensure that the provisions of the Act are properly carried out. Section 22(2) further provides that the State Government shall prescribe a comprehensive action plan for providing protection of life and

property of senior citizens.

Section 2(d) of the Act defines “parent” which means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen. Section 2(h) of the Act defines “senior citizens” to mean any person being a citizen of India, who has attained the age of sixty years or above. The “Tribunal” is also defined under Section 2(j) of the Act, which means the Maintenance Tribunal constituted under Section 7 of Act.

The Act is divided into three parts. The first part deals with the maintenance of parents and senior citizens. The second part deals with the welfare of the senior citizens, such as establishment of the old age homes and medical support etc. and the third part deals with the protection of the life and property of the parents and senior citizens. If there is a case for seeking maintenance by a senior citizen from his children, who are defined under Section 2(a) of the Act to mean son, daughter, grandson and grand-daughter but does not include a minor, then an application under Section 5 of the Act is to be filed and that application has to be considered by the Tribunal, constituted under Section 7 of the Act. The said application is to be tried in a summary manner, as per the procedure prescribed under Section 8 of the Act and the order has to be passed under Section 9 of the Act, which is enforceable under Section 11 of the Act and if anybody is not satisfied with the order of the Tribunal, then he may file an appeal under Section 16 of the Act before the Appellate Tribunal, constituted under Section 15 of the Act. This procedure pertains to the part of maintenance.

In the second part of the Act, Sections 19 and 20 deal with the

welfare of senior citizens i.e. establishment of old age homes and for medical care of senior citizens.

Then comes the third part of the Act, which deals with the protection of life and property of the senior citizens, in which Section 21 deals with the measures for publicity, awareness etc. for welfare of senior citizens and Section 22 confers the powers to the State Government to impose duties on the District Magistrate, as may be necessary, to ensure that the provisions of the Act are properly carried out. Further right has been given to the senior citizens to get their property back from a person, to whom it has been gifted in lieu of services to be rendered by him, in case the said transferee is not properly looking after them.

In order to make the Act workable, the States of Punjab, Haryana and Union Territory, Chandigarh framed the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012, the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 and the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 respectively. Section 22(2) of the Act provides for an action plan. The said action plan has been notified by the State of Haryana vide notification dated 26.05.2015, published in the Haryana Government Gazette on 26.05.2015 called as “Action Plan for the protection of life and property of senior citizens under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and similarly the State of Punjab has also notified the action plan vide notification dated 27.11.2014, published in the Punjab Government Gazette on 13.03.2015 called as “Action Plan under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Chandigarh Administration has not notified any action plan but the provisions

have been given in the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as the “Rules”) itself in regard to ensuring protection to the life and property of the senior citizens. In the action plans of the States of Punjab and Haryana, power has been conferred upon the District Magistrate and the Superintendent of Police. The Superintendent of Police has to look after the security measures of the senior citizens i.e. sending police party to the house of the senior citizens to verify about their well being etc. and the District Magistrate has to look after the senior citizens in other manner including removing the unauthorized possession from the property owned by such senior citizens. Rule 19 of the Rules deals with the duties and powers of the District Magistrate and Rule 20 provides the action plan for the protection of life and property of senior citizens, pertaining to Superintendent of Police, who would take various measures including Do's and Don'ts to be followed by the senior citizens in the interest of their safety. Sub-rules 3(1), 3(2) and 3(3) of Rule 20 of the Rules lays down the procedure for eviction from property/residential building of senior citizen/parent and are reproduced as under for the quick reference:-

“3(1) Procedure for eviction from property/residential building of Senior Citizen/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 Departments i.e. Social Welfare, Sub Divisional Magistrates, Police Department, NGOs/Social Workers, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate, Union Territory, Chandigarh for further action.
- (ii) The District Magistrate, Union Territory, Chandigarh shall immediately forward such complaints/applications to the

concerned Sub Divisional Magistrates for verification of the tile 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 immediately 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 citizen/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-cum-Estate Officer 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 grounds 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 issued 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 to all persons concerned.

3(2) Eviction Order from property/residential building of Senior Citizen/Parent.--

- (i) If, after considering the cause, if any, shown by any person 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 as may be specified in the order, by all persons who may be in occupation thereof or any part 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 orders.

3(3) Enforcement of Orders.--

- (i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the District Magistrate or any other officer duly authorized by the District Magistrate in this behalf may evict that person from the premises in question and take possession;
- (ii) The District Magistrate, U.T., Chandigarh shall have powers to enforce the eviction orders through Police Department.
- (iii) The District Magistrate, U.T., Chandigarh further hand over the property/premises in question to the concerned Senior Citizens/Parents.
- (iv) The District Magistrate, U.T., Chandigarh shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month for review of such cases in the State Council for Senior Citizens constated under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules of 2009 framed under the said Act under the Chairmanship of the Secretary Social Welfare, Chandigarh Administration.”

In sub-rule 3(1)(iv) of Rule 20 of the Rules, it is provided that if the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizen/parent are in unauthorized occupation of any property as

defined in the Act and that they should be evicted, the District Magistrate-cum-Estate Officer shall issue them 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. The power is squarely vested in the District Magistrate of passing the order under sub-rule 3(2) of Rule 20 of the Rules, referred to above.

The argument raised by learned counsel for the petitioners that the application filed by respondent no.2 before the District Magistrate should have been tried by the Tribunal is totally fallacious. In Section 22 of the Act, there is no word as “Tribunal” used by the Legislature rather the word “Tribunal” is used in Section 23 of the Act wherein it says that “be declared void by the Tribunal”. The “Tribunal” is defined only under Section 2(j) of the Act, which means the Maintenance Tribunal constituted under Section 7 of the Act.

In my considered opinion, the Tribunal, which is constituted under Section 7 of the Act, can only deal with the application filed under Section 5 of the Act for seeking maintenance and an application filed by a senior citizen for seeking to declare void the gift deed or the transfer of property if the person, to whom the property is transferred, refused to provide him/her amenities and other physical needs but insofar as the application for seeking eviction from the property of the senior citizen is concerned, it has to be dealt with only by the District Magistrate and as per the procedure, it is not necessary, as argued by the learned counsel for the petitioners, that the District Magistrate should seek an order from a subordinate to him, as provided in Section 22(1) of the Act, and then sit over the matter as an Appellate Court rather in sub-rule 3(1) of Rule 20 of the Rules, it is provided that if an

application is given to the District Magistrate, then he would forward the said application to the concerned Sub Divisional Magistrate for verification of the title of the property and if it is found that the title of the property vests with the senior citizen, then he would proceed further in the matter.

In this case, there is no finding that the property in question belongs to the present petitioners rather the finding is that it belongs to respondent no.2. The mere fact, as alleged by the petitioners, that petitioner no.1 had contributed to the finances raised by his deceased father for the purchase of the property in question is not the subject of this case because it is alleged that petitioner no.1 had already filed a civil suit in this regard but the fact remains that the District Magistrate has to only see who is the owner of the property in question and then accordingly has to pass the order. In this case, it has been found that respondent no.2, mother of petitioner no.1, is the owner of the property in question and she has claimed that she does not want to live with the petitioners who are misbehaving and harassing her in her day to day life. She is 72 years of age and at the fag end of her life, she has to be given a comfortable life and cannot be allowed to be harassed at the hands of her children.

In view of the above, in my considered opinion, there is no error in the impugned order passed by the District Magistrate and hence, the present writ petition is hereby dismissed being denuded of any merit, though without any order as to costs.

July 25, 2017
vinod*

(Rakesh Kumar Jain)
Judge

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