

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

CWP No. 17086 of 2017

Date of decision :05.12.2017

Arun Mishra & anr.

...Petitioners

V/s

District Magistrate & anr.

...Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for the petitioners.

Mr. Rohit Arya, Asst. A.G. Haryana.

Mr. Arpandeep Narula, Advocate for respondent no. 2.

RAJAN GUPTA J.

Petitioners have impugned order dated 13.06.2017 passed by District Magistrate, Panchkula whereby he has directed eviction of the petitioners from the premises in question. It has been contended on behalf of the petitioners that exercise of jurisdiction of the District Magistrate is vitiated as the Rules envisage constitution of a Tribunal for deciding the disputes under the Act. The District Magistrate himself proceeded to consider the entire issue and directed eviction of the petitioners ignoring legal as well as factual aspects. Petitioner no. 1 has already preferred a suit before the civil court at Panchkula seeking a declaration that he was joint owner in possession to the extent of 1/3rd of the house in question and entitled to separate possession by way of partition. Thus, order needs to be set-aside. Plea has been opposed by learned counsel representing respondent no. 2. According to him, applicant-Prabha Wati Mishra is exclusive owner of the property. Same was purchased by her husband.

After his death, property in question was transferred in her name.

According to reply, applicant-Prabha Wati Mishra was a partner in M/s Mishra Engineering Company alongwith her son Arun Mishra (petitioner no. 1 herein). Said company owned a property in the Industrial Area, Panchkula which was sold by Arun Mishra vide registered sale-deed no. 1980 dated 29.12.2006. He usurped the share of his mother. Out of the funds, he purchased a residential property in Sector 25, Panchkula in his own name and his wife Neelu Mishra (petitioner no. 2 herein). He also disposed off the property of Prabha Wati Mishra in village Raymala, Varanasi (UP) without her consent, taking advantage of a GPA executed by her. According to her stand, she had been completely ruined and forced to live in one room in the back side of the house. She, thus, disowned the petitioners from the property by publication in newspapers namely Aaj Samaj and Indian Express on 08.10.2015. Petitioner No. 1 Arun Mishra had also obtained a loan from the bank by getting signatures of respondent no. 2 Prabha Wati Mishra on certain documents adding to her liability. She also reported the matter to the police but to no avail.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Respondent no. 2 Prabha Wati Mishra invoked the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The authority found that the applicant Prabha Wati Mishra was sole owner of House No. 827, Sector 7, Panchkula which was earlier in the name of her husband namely Mrityunjaya Mishra. The property was not ancestral in nature. After death of her husband, same was transferred in the name of Prabha Wati Mishra. In 2015, she disowned the petitioners by publication in the newspapers. The authority also found that as per HUDA record, the

property in question was mortgage to ICICI Bank. In view of allegations of

maltreatment at the hands of the petitioners, the authority felt that the senior citizen was entitled to spend rest of her life in peace and without interference of the petitioners. I find no legal infirmity with the order passed. From the record it is clear that there was discord within the family. Petitioner no. 1 has filed a suit before the civil court seeking a decree that he was joint owner to the extent of 1/3rd share in the house and entitled to separate possession. The widow-mother has alleged that she was being harassed by the petitioners. The matter had been reported to the police number of times. In such circumstances, the mother has invoked provisions of the special enactment which has been brought to provide succour to the senior citizen. The object thereof would be defeated in case same is not effectively implemented. The contention that only a tribunal could have entertained and decided the issue has no merit. Section 22 of the enactment confers powers on the District Magistrate to deal with the applications by senior citizens and proceed further. An action plan has also been notified by the State in terms of the statutory provisions. The statement of objects and reasons refer to traditional norms and values of the Indian society to provide care to the elderly. With the withering away of these values, elders have been facing emotional neglect and lack of physical and financial support. Ageing has become a major social problem. It was, thus deemed necessary that a simple, inexpensive and speedy remedy be provided to the parents/senior citizens. The enactment was, thus, made to provide a suitable mechanism for protection of life and property of elderly persons. It needs to be noticed that in judgment reported as ***Justice Shanti Sarup Dewan Chief Justice (Retd.) & anr. vs. U.T. Chandigarh & ors. 2014(5) RCR (Civil) 656***, this court in exercise of its writ power resorted to the provisions of Act

in the interests of justice and equity and directed the ward to vacate the

property in question. It was held that nothing prohibits the writ court to exercise its writ jurisdiction in the facts and circumstances of the case. In judgment reported as ***Gurpreet Singh vs. State of Punjab 2016(1) RCR (Civil) 324***, it has been held as under:-

“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.”

In view of above, I am of the considered view that no ground for interference in writ jurisdiction is made out. Stand of the parent-respondent no. 2 is that she was facing harassment at the hands of her son who already had a residential property in Sector 25, Panchkula. Same was bought after selling industrial shed in which she was a partner. As regards pendency of civil suit same would have no effect on proceedings before the authority under the special enactment. Provisions of Section 27 of the Act would be relevant in this regard.

Petition is without any merit and is hereby dismissed.

December 05, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No