

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.21834 of 2016

Date of Decision: November 07, 2017

Inder Harpreet Singh and others

. . . . Petitioners

Vs.

The District Magistrate, Estate Office, Patiala and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Ms.Anupam Bhanot, Advocate, for the petitioners.

Mr.Saurav Khurana, DAG, Punjab.

Mr.Arjun Attri, Advocate, for respondent No.4.

RAKESH KUMAR JAIN, J.

The petitioners have challenged the order dated 13.07.2016 passed by the District Magistrate, Patiala directing them to vacate House No.830, Street No.8, Tafzalpur, Patiala.

Respondent No.4 filed an application under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] against the petitioners, who are her sons, daughters-in-law and grandson. The said application has been allowed by the District Magistrate, Patiala vide his order dated 19.08.2016 holding that respondent No.4 is an old lady and is being harassed by the petitioners.

Learned counsel for the petitioners has submitted that the application filed under Section 22 of the Act was not maintainable because the property in dispute is admittedly transferred by respondent No.4 vide Vasika No.21066 dated 16.12.2011 executed in favour of petitioners No.1 & 3. She has submitted that respondent No.4 had though filed a suit for

dated 16.12.2011 executed in favour of petitioners No.1 & 3 in respect of the house in question but the said civil suit has not been pursued by respondent No.4 as it was dismissed for non-prosecution on 09.08.2017. She has further submitted that the District Magistrate would have the jurisdiction to entertain the application under Section 22 of the Act and in terms of the Action Plan which has been prescribed by Rule 23 of the Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012 [for short 'the Rules'] notified on 13.03.2015 if respondent No.4 was the owner. It is further submitted that the District Magistrate would have the jurisdiction to evict an unauthorized occupant from the property of the senior citizen/parent after confirming the title of the senior citizen by the Sub Divisional Magistrate and then after giving *show cause notice* to a person in unauthorized possession would pass an appropriate order. It is also submitted that no such procedure has been followed, therefore, the impugned order is patently illegal and without jurisdiction.

On the other hand, learned counsel for the respondents has submitted that the petitioners had got the property in dispute transferred in their favour *malafidely* on 16.12.2011 otherwise respondent No.4 is the owner of the property in dispute. It is also submitted that respondent No.4 is old widowed lady, who has not been looked after by her children, therefore, she had to file application under Section 22 of the Act which has rightly been allowed by the District Magistrate.

I have heard learned counsel for the parties and perused the record.

The question involved in this petition is as to whether the District Magistrate would have the jurisdiction to entertain an application

under Section 22 of the Act when the petitioners are admittedly the owners of the property in dispute and are not in unauthorized possession?

As per the scheme of the Act, Section 22 of the Act provides that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 32 of the Act provides the power of the State Government to make Rules. Accordingly, the Rules were made by the State of Punjab in which Rule 23 of the Rules deals with the action plan and read as under: -

“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.”

The action plan was accordingly notified on 13.3.2015 and it is provided therein that it was come in force from the date of its issuance. The procedure for eviction from property/residential building of senior citizen is provided in the action plan besides the eviction order from property/residential building of senior citizen/parents and enforcement of orders. The entire action plan pertaining to the eviction from property/residential building of the senior citizen/parents is reproduced as under: -

“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 complaint/application.*
- (iv) *If the District Magistrate is of opinion that any son or daughter or legal heri 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, 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 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 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, 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.*

It is provided in the action plan that if a complaint is received by the District Magistrate then he would immediately forward the said complaint to the concerned Sub Divisional Magistrate for verification of the title and after receiving the report has to form an opinion that any son or daughter or legal heir of a senior citizens/parents are in unauthorized occupation of any property and deserves to be evicted. Thereafter, he would issue notice in writing to the said persons, who are in unauthorized occupation to show cause as to why they would not be evicted and in the notice he would specify the grounds on which the order of eviction is proposed to be made and thereafter passed the order of eviction as per procedure prescribed in Clause 2 of the Action Plan (Supra).

In the present case, respondent No.4 has herself admitted in the written statement that the property in dispute has already been transferred by

Harpreet Singh (petitioner No.1) and Sukhbir Singh (petitioner No.3), therefore, she is not the owner of the property in question regarding which she had filed application for eviction on the ground that the petitioners are in unauthorized occupation though they are in authorized occupation being owners. Moreover, the suit filed by her to challenge the said transfer deed dated 16.12.2011 has also been dismissed for non-prosecution and has not been restored as nothing has been shown to the Court about its restoration, therefore, the application under Section 22 filed by respondent No.4 against the petitioners was patently illegal and unsustainable and the District Magistrate had no jurisdiction to entertain the said application in the absence of title of respondent No.4 over the house in question for the purpose of passing an order of eviction against the petitioners.

In view of the aforesaid observation, the present petition is allowed and the impugned order is hereby set aside.

November 07, 2017

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No