

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

CWP No.26974 of 2016 (O&M)

Date of decision : 03.05.2017

Sandeep Bansal

...Petitioner

Versus

District Magistrate, Patiala and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Virat Amarnath, Advocate for the petitioner.

Mr. Gurcharan Dass, Advocate for respondent No.2.

AMIT RAWAL, J. (Oral)

The petitioner-Sandeep Bansal son of Sh. Sat Paul Bansal who is arrayed as respondent No.2 has challenged the order dated 20.09.2016 (Annexure P-4) rendered by District Magistrate, Patiala allowing the application moved under Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as Act of 2007) read with Rule (i) of Sub-Rule 2 of Rule 22 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 declaring the possession of the petitioner and his family being void from the property, in essence, seeking eviction from the portion shown red in colour in House No.2, Shiva Enclave, Beer Mehs, Nabha, strictly as per site plan Annexure A-1.

Mr. S.K. Garg Narwana, learned Senior Counsel assisted by Mr. Virat Amarnath, learned counsel appearing on behalf of petitioner submits that aforementioned application was contested by the petitioner on the premise that application was without jurisdiction which did not come within the purview of Senior Citizens Act, 2007 as controversy is subject matter of the suit for mandatory injunction filed by respondent No.2. In fact, the house was purchased by the petitioner but the sale deed was got executed in the name of his father as a mark of respect on account of fiduciary relationship between the parties and had also placed on record supporting documents, much less, brief submissions, but the authorities below had allowed the application by ordering the eviction of the petitioner, which is not sustainable on the ground that property had been purchased by the petitioner from his own funds and the petitioner had been repaying the house loan taken on the property in question and in this regard has referred to the cheques (Annexure P-5) (Collectively) issued by the petitioner to discharge all the liability of the home loan and also certificates (Annexure P-6) (Collectively) issued by the State Bank of India to prima facie establish being co-borrower and only guarantor of the loan.

Even the Assistant from the concerned bank with the loan files was summoned, who admitted the factum of deposit of the cheques, by the petitioner, towards discharge of the home loan and statement of the aforementioned Assistant is Annexure P-7. The application is bereft of any reasons seeking the eviction of the petitioner. The respondent No.2 is self-sufficient from his own earning and has claimed the benefit of the aforementioned Act, whereas the mother of petitioner is the proprietor of the

petrol pump.

Civil Suit for mandatory injunction directing the petitioner to vacate and deliver the possession in question has already been preferred by the respondent prior to the filing of the application (Annexure P-8) but the same fact has not been disclosed. The decision rendered by this Court in Justice Shanti Sarup Dewan (Retd.) Vs UT of Chandigarh and ors., in LPA No.1007 of 2013 is not applicable to the facts of the present case as house herein in the instant case is owned by the petitioner. None of the contentions raised by the petitioner have been considered by the Deputy Commissioner. In fact, application has been filed by the respondent No.2 on instigation of brother of the petitioner, Ravinder Bansal who wanted to dislodge the petitioner from their house one way or the other.

The petitioner and respondent No.2 intended to run a petrol pump jointly and accordingly land at Village Rohta was purchased in the name of respondent No.2 from the funds contributed by the petitioner and the sale deed was got executed in the name of respondent No.2 as a mark of respect and gratitude. The respondent No.2 appointed the petitioner as General Attorney and petrol pump for a lease period of 30 years was allotted by Reliance Industry in the name of the petitioner and till date, petrol pump is in operation which fact is evident from the documents (Annexure P-11) (Collectively), thus, relationship between son and father are cordial. A compromise deed dated 07.11.2016 (Annexure P-12) was entered into between the petitioner and respondent No.2 and other family members by virtue of which all the issues between the parties were settled including the rights with respect to the house in question and as per the settlement, 50%

of share of house in question is to be transferred in favour of the petitioner, in essence, petrol pump at Duladhi under the name and style of Chakrawati Filling Station is to be sold for a sum of ₹1,45,00,000/-and out of the aforementioned amount, liability of the Oriental Bank of Commerce to the tune of ₹70,00,000/- is to be paid off and balance of ₹75,00,000/- to be retained by respondent No.2 and petitioner is required to pay another sum of ₹25,00,000/-, in essence, total amount of ₹1,00,00,000/- is to be deposited in the shape of FDR in favour of respondent No.2 who would be getting interest thereon.

It has also been decided that respondent No.2 shall get 50% share of the property in question i.e. house in favour of petitioner and remaining 50% would be transferred after the lifetime of respondent No.2 and his wife. An agreement to sell executed by respondent No.2 of even date (Annexure P-13) as fallout of honouring the agreement is the testimony of the same. The petitioner is looking after both the parents who are aged 76 years and 78 years, whereas brother of the petitioner is living in Ludhiana since 1982 never looked after his parents. The petitioner is paying electricity bills of property in question through cheques (Annexure P-14) (Collectively) and thus urges this Court for setting aside of the order.

Mr. Gurcharan Dass, learned counsel appearing on behalf of respondent No.2-Sat Paul Bansal submits that it is most unfortunate that father has been compelled to seek the eviction of the petitioner by taking the aid of Act No.56 of 2007. In fact, the property is in the name of respondent No.2. The petitioner is setting up the plea of benami which is not permissible. He was not having any source of income in the year 1998 till

2004, being younger son of the answering respondent. The answering respondent purchased agricultural land measuring 3 ½ bigha at Village Rohta, Tehsil Nabha, District Patiala in the year 1998 but the petitioner never challenged the sale deed of Shiva Enclave or of the Village Rohta. It is on the land of Village Rohta, the Reliance Petrol Pump is installed. However, respondent No.2 had on 03.03.2005 executed General Power of Attorney in favour of petitioner for giving the property on lease to the Reliance Company and instead of getting licence of petrol pump in the name of answering respondent, the petitioner fraudulently got the licence of the petrol pump in his own name. Neither, rendered any accounts.

In other words, he misused the GPA compelling him to cancel the power of attorney by registered cancellation deed dated 14.01.2010 yet on 25.10.2012, the photocopy of the said power of attorney was misused in connivance with the Deed Writer, Patwari and Tehsildar and the sale deed dated 25.10.2012 of the petrol pump was got registered by the petitioner in the name of his wife-Ashu Rani showing her to be the resident of Dhuri and daughter of Bhim Sain, in essence, sale deed is without consideration. Ashu Rani wife of the petitioner had filed the civil suit at Nabha against the respondent No.2 and his other son Ravinder Kumar Bansal, for declaration that the transfer deed bearing Wasika No.3285 dated 31.10.2012 executed by respondent No.2 in favour of Ravinder Bansal in respect of same very land which has been transferred by the petitioner by misusing the power of attorney in favour of his wife i.e. 3 bigha, 13 biswa and 10 biswasi and claimed the ownership on the basis of the registered sale deed dated 25.10.2012 and same suit is pending adjudication. The answering

respondent has also filed civil suit against the petitioner directing him to vacate the premises and thus urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. S.K. Garg Narwana, Sr. Advocate.

The law on the point of entertaining the application under 2007 Act is no longer been res integra. In this regard, in view of the findings rendered by the Division Bench of this Court in *S.R. Batra and others Vs. Taruna Batra, 2007(1) RCR (Civil) 378, Hamina Kang Vs. District Magistrate UT and others 2016(1) RCR (Civil) 976*.

Much emphasis has been laid on the compromise arrived at between the parties with regard to the properties but the fact remains that civil suit challenging the same is already pending. Filing of the civil suit for mandatory injunction would not debar the father to seek protection under the aforementioned Act. The aforementioned Act and the Rules framed therein have been culled out to protect the life and liberty, much less, property of Senior Citizens. Concededly, the petitioner is living in house along with father who does not want him to stay in. Even, if petitioner has set up a plea of benami of having funding the purchase of the property or construction, the same can independently be set up in a civil suit or as a counter claim in the pending suit filed by the respondent No.2 but not in the present litigation. For the time being, status of the petitioner along with his family members would not more than that of licensee. In case, the petitioner is able to prove the aforementioned plea of ownership, the necessary

consequential corollary would automatically follow.

In the judgment cited Supra, it has been held where house is exclusively belonging to the father, the daughter-in-law and the son would not have any right to live in the house of the father-in-law. Similar is the view rendered in S.R. Batra's case. This Court had made an attempt of conciliation by invoking the provision of Section 89 of the Code of Civil Procedure but after a lot of deliberation, son-petitioner is not willing to mend the way. It is strange that son, despite cancellation of the power of attorney, has misused the same and got the property under the petrol pump transferred in the name of his wife and thereafter filed suit. All these factors would be a matter of record. I need not to delve upon merits and demerits of the controversy pending in the Civil Court as it would seriously prejudice their interest or right. Any observation of mine with regard to the pendency of the suit should not come in the way and the Civil Court seized of the matter and would decide the matter uninfluenced but the fact remains that petitioner cannot retain the premises at this moment.

It would be for the betterment of both the parties to live in peace instead of making allegation and counter allegation. Stay of the petitioner alongwith his parents, at this stage, would unnecessarily increase the rancour which is not in the interest of either of the parties.

Resultantly, order of the Magistrate ordering the eviction of the petitioner, in my view, cannot be said to be suffering from any illegality or perversity or vitiated in law, much less, would fall within the realm of doctrine akin to judicial review and the same is upheld.

The present writ petition, resultantly is dismissed.

The petitioners are directed to vacate the premises and hand over the keys of the house in question failing which the respondent shall be at liberty to seek execution of the same, in accordance with law.

03.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No