

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 5458 of 2016

Date of Decision: May 31, 2017

Dinesh and another

.....Petitioners

Vs.

Deputy Commissioner-cum-District Magistrate and others

.....Respondents

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

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Present:- Mr. Manoj Kumar, Advocate for the petitioners.

Mr. Raghav Goyal, Advocate for respondent No.1.'

Mr. Sukant Gupta, Advocate for respondents No.2 and 3.

Mr. Sanjay Patial, Advocate for respondents No.4 and 5.

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M.M.S. BEDI, J.

Petitioners are son and daughter-in-law of respondents No.4 and 5. Through instant writ petition, they have sought the quashing of order annexure P-14 dated February 24, 2016 passed by District Magistrate, UT Chandigarh, directing the petitioners to vacate two rooms on second floor of House No. 105, New Darshani Bagh, Manimajra, Chandigarh within 15 days from the receipt of the order.

Brief facts relevant for the decision of the present writ petition are that respondents No.4 and 5 had submitted an application that they were

owners of the above said house and have two daughters and one son i.e. petitioner No.1. Petitioner No.1 was married on September 25, 2012 with petitioner No.2. The petitioners started harassing and threatening them after their marriage as a result of which they were disowned from moveable and immovable property by a public notice which was got published in the newspaper Indian Express on July 15, 2014 and started living separately. Both the daughters are married. One is living with her husband but the second one had been living with respondents No.4 and 5 along with her child on account of matrimonial dispute with her husband. The said daughter used to look after respondents No.4 and 5. The house in dispute had been lying vacant and was not rented out as respondent No.5 was planning to shift to the house after retirement after getting the minor repairs/renovation but on September 21, 2015, respondents No.4 and 5 came to know that the petitioners broke open the locks of the house and trespassed illegally in the house with the help of relatives of petitioner No.2. Attempt was made to solve the dispute with the help of relations and friends but to no use as such the police force was called on September 26, 2015 to oust the petitioners from the house. The police was pressurized by the friends and relatives of the petitioners and two rooms on the second floor were given to the petitioners for living temporarily but the petitioners have refused to vacate the portion in their possession. A DDR No.51 dated September 26, 2015 had been lodged with the police. For the safety of respondents No.4 and 5, the SHO, Police Station, Sector 26, Chandigarh was directed to depute one SI of Police and a Lady Constable to ensure the protection. The District Magistrate had issued notice to the petitioners and obtained a report

from the SHO of concerned area. Petitioner No.1 was issued notice. He had denied the allegations and submitted that proceedings have been initiated against the petitioners to harass and humiliate them. Petitioner No.1 levelled allegations against his parents that they had raised huge demand of jewellery from his wife and a complaint of dowry was got registered by his wife and her parents. Allegation of misappropriation of the jewellery of petitioner No.2 was levelled. After considering all the facts and circumstances, the District Magistrate, Chandigarh passed the impugned order annexure P-14.

Learned counsel for the petitioners has contended that on the date of filing of the petition, respondent No.5 was a Government servant and had not retired whereas respondent No.4 is aged 55 years and under Section 2 (h) of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, for short 'the Act', only senior citizens are entitled to the benefit i.e. only the persons above the age of 60 years are entitled to file an application under Sections 5, 21 and 23 of the Act. Mr. Manoj Kumar, learned counsel for the petitioners has contended that the DRR dated September 26, 2015 clearly indicate that the matter was compromised and by mutual understanding two rooms had been given on the second floor to the petitioners by the consent of respondent No.5. Petitioners being in permissible possession cannot be vacated under the provisions of the Act.

An attempt was made to amicably resolve the dispute but controversy could not be settled.

Counsel for the petitioners has contended that petitioner No.2 is the wife of petitioner No.1 and has got individual right of residence.

Therefore, she has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, for short the 'Domestic Violence Act'. Copy of the application has been annexed with the writ petition as annexure P-17 wherein she has sought residence order under Section 19 of the Domestic Violence Act besides claiming maintenance.

In the written statement filed on behalf of respondents No.4 and 5, the allegations in the original complaint were reiterated. Serious allegations of cruelty against the petitioners have been levelled in the written statement stating that respondents No.4 and 5 had to call police on various occasions on account of the behaviour of the petitioners but the matter is compromised by the intervention of relations and police. Regarding the petition under Section 12 of the Domestic Violence Act it is pleaded that the said application is a counterblast to the order of the District Magistrate dated February 24, 2016. Respondent No.5 is patient of Cardio Vascular Disease and had undergone angioplasty in the year 2012 by inserting two stents. Record of the treatment of PGI has been appended as annexure R-5/1. Petitioner No.1 has been disowned vide publication dated July 14, 2015. It is claimed that date of retirement of respondent No.5 is May 31, 2016 and he would be 60 years on May 20, 2016.

I have heard counsel for the petitioners as well as counsel for respondents No.4 and 5 and carefully gone through the impugned order. Taking into consideration the objectives of the Act which has been made for the parents and senior citizens, respondents No.4 and 5 had filed application under Sections 21 and 22 of the Act for protection of life and liberty. Section 4 (3) of Chapter II grants protection to the life of the parents to live

normal life. On account of conduct of the petitioners, respondents No.4 and 5 have complained about the harassment and humiliation to the District Magistrate. Taking into consideration Chandigarh Maintenance of Parents and Senior Citizen Rules, 2009 and the 'Action Plan', there is no doubt that the provisions of the Act are meant not only for the senior citizens but also for the parents. The ownership of respondent No.5 is not disputed. Petitioners have gained entry into the house by force and on the basis of the compromise arrived at due to the intervention of the police, they were permitted to live temporarily in the portion in dispute. It is the subjective satisfaction of respondents No.4 and 5 regarding their wish to permit the petitioners to stay in their house as licensee or to seek their eviction in case they are not satisfied with their conduct. In the exercise of writ jurisdiction, it will not be possible for this Court to test the bonafide or the extent of humiliation of respondents No.4 and 5. This Court is of the opinion that the parents would be the last persons to have any malafide against their children. If the parents feel humiliated and harassed, it is only in those circumstances that the extreme step of approaching the police or launching proceedings under the Act is taken. The objectives of the Act were considered by this Court in the judgment of **Justice Shanti Sarup Dewan, Chief Justice (Retd.) and another**, 2014 (5) RCR (Civil) 656 and it was held that major aim is to provide for institutionalization of a suitable mechanism for the protection of life and property of the old persons. Taking into consideration the nature of the illness of respondent No.5 he is entitled to stay without any harassment and tension. The petitioners have not been able to establish any fact indicating that respondents No.4 and 5 are not harassed persons or that

they have got a specific malafide against the petitioners. Even otherwise, petitioners No.1 and 2 appear to be employed and capable of living independently. No ground is made out for interfering in the order dated February 24, 2016.

Petition is dismissed. However, taking into consideration the peculiar circumstances of this case, the petitioners are granted two months time to vacate the premises subject to their furnishing an undertaking before the District Magistrate, Chandigarh, within a period of 15 days that they would handover vacant possession of two rooms on the second floor of the premises in dispute and that they will not damage the property and will not, in any manner, harass respondents No.4 and 5 and would not commit any act of breach of peace for the period of two months till vacation.

May 31, 2017
sanjay

(M.M.S.BEDI)
JUDGE

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