

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

CWP No.6365 of 2015 (O&M)
Date of decision : 20.02.2017

Shamsher Singh

...Petitioner

Versus

District Magistrate, U.T. Administration, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Shamsher Singh, petitioner in person.

Mr. Vikas Chatrath, Advocate and
Mr. Pranav Grover, Advocate for U.T.

Mr. G.S. Bal, Sr. Advocate with
Mr. S.S. Blari, Advocate for respondent Nos.2 to 5.

AMIT RAWAL, J. (Oral)

The petitioner has approached this Court seeking quashing of the order dated 29.01.2015 (Annexure P-5) and with a further direction to respondent No.1 to allow the application of the petitioner filed under Rule 20(3)(1) and (2) of the Welfare and Maintenance of Parents and Senior Citizens Rules, 2009 for eviction of the respondent Nos.2 to 5 namely Surjit Kaur, Harkrit Singh, Inder Preet Singh and Rajwant Singh. Inder Preet Singh, Harkrit Singh and Surjit Kaur are the sons and wife of Rajwant Singh. The petitioner had already approached this Court in CWP No.15263 of 2015 for the non-implementation of the orders passed by the Deputy Commissioner and this Court vide order dated 29.07.2015 had disposed of

writ petition with following directions:-

“Keeping in view the aforementioned facts, I further direct the private respondent Nos.9 to 14 to maintain law and order to strictly comply with the aims and objects of the 2007 Act and should not attempt to abuse and cause harassment to their parents. In case, it is found that they are not adhering to the directions, trespass in the residential accommodation in possession of petitioners or encroaching upon their privacy, the Deputy Commissioner and Senior Superintendent of Police, UT Chandigarh on being informed, are directed to ensure compliance of this order. They are further directed to make an attempt to negotiate between the parties in arriving at some settlement, if possible.

With the aforementioned directions, the writ petition stands disposed of.”

The petitioners had come up with following prayer in CWP No.15263 of 2015:-

“The petitioners being senior citizens have approached this Court for issuance of a writ in the nature of mandamus directing respondent No.2-The District Magistrate, Union Territory, Chandigarh for execution and enforcement of Chapter V of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as '2007 Act') and the rules framed by the Chandigarh Administration, as well as, execution and enforcement of the orders dated 03.09.2010, 28.11.2013 and 29.01.2015, Annexures P-10, P-11 and P-12, passed by the Deputy Commissioner in pursuance to the petition filed under Rule 19 of 2009 Rules.”

The District Magistrate had dismissed the petition vide

impugned order dated 29.01.2015 on the premise that matter is pending before the Civil Court, therefore, he would not have any jurisdiction to order for the eviction but granted the security by issuing direction to the Station House Officer of Police Station, Sector-39, Chandigarh to depute one Sub Inspector of Police working under his control to visit house No.234, Village Maloya, UT Chandigarh on receipt of this order and ensure safety of the petitioner and his wife.

Mr. Shamsher Singh, petitioner in person submits that Magistrate has sought report from SDM regarding the status of the ownership of the house. On the basis of the report, it has been found that petitioner is the owner of the aforementioned plot measuring 8¼ marla approximately and the house is two storied wherein petitioner and his wife is staying on the ground floor whereas son along with his family mentioned above on the first floor. The second son is residing in Mohali. Aforementioned report reflected in the impugned order reads thus:-

“In the instant case report with regard to ownership of the property in question was desired from the Sub-Divisional Magistrate-cum-Maintenance Tribunal, UT, Chandigarh. Accordingly, report dated 28.11.2014 of the Patwari (Revenue) duly signed by the Kanungo and Tehsildar (Revenue), U.T. Chandigarh has been received vide memo dated 08.12.2014. As per said report dtd. 28.11.2014 that Sh. Shamsher Singh s/o Sh. Sucha Singh is owner of plot measuring 8 ¼ marla approximately and the house is two storied. Sh. Shamsher Singh resides at ground floor and his one son is residing at first floor. Sh. Shamsher Singh is Advocate by profession. His second son is residing in Mohali. Son of the applicant residing at first floor has no

income and always remains sick. Jamabandi for the year 1981-82 showing ownership of the applicant to the extent of 1/3rd share in plot measuring 1-7 i.e. 0-9 in khasra No.29/30, Khewat No.457, Khatauni No.616, Village Maloya, UT, Chandigarh, has also been attached with the said report dtd. 28.11.2014.”

He submits that he does not want his son and daughter-in-law and grandchildren to stay on the first floor of the house for the reasons mentioned in the petition, much less, the fact that he wants to live his remaining part of the life alongwith his wife in most peaceful and uninterrupted manner. In support of his contention, he has relied upon ratio decidendi culled out by Division Bench of this Court in *Gurpreet Singh Vs. State of Punjab and others, 2016(1) RCR (Civil) 324*.

Per Contra, Mr. G.S. Bal, Sr. Advocate assisted by Mr. S.S. Blari, Advocate for respondent Nos.2 to 5 submits that already a civil suit seeking declaration of the owner of the house on various ground had been filed though it was dismissed in default. It is in this aspect of the matter, Deputy Commissioner think that since Civil Court had dismissed the matter, had only provided security and thus urges this Court for dismissal of the present writ petition as the order under challenge is perfectly legal and justified.

He further submits that application for restoration of suit was also dismissed and the appeal filed against the same is pending adjudication.

I have heard learned counsel for the parties and appraised the paper book.

Chandigarh Maintenance of Parents and Senior Citizens Rules,

2009 have been framed by the Chandigarh Administration, whereby District Magistrate has been obliged to ensure that life and property of Senior citizens of the Union Territory are protected in order to enable them to live with security and dignity. There is no dispute to the ownership of the property. The status of the son and daughter-in-law along with their son despite the pendency of the suit is for the time being licensee. However, observation of mine shall not be construed an expression of merits and opinion in the pending suit filed by the respondent Nos.2 to 5 as it would be domain of the trial Court to determine the same. Be that as it may, but the fact remains that once father who is the owner of the property being senior citizen does not want his married son and daughter-in-law to stay in the house, law on this point is no longer res integra in view of the findings rendered in para No.12 of the Judgment (Supra). The same reads 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 enure 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.”

Respondents, in my view, cannot be permitted to stay on the first floor of the house. They are required to vacate the premises in view of the provisions of aforementioned act. I also do not deem it appropriate to delve on the allegations and counter allegations levelled by either party as it would also be under the domain of the civil court but the fact remains that till the respondents are able to establish their right of ownership in the pending suit for which application is filed, they cannot be permitted to live in the house.

Resultantly, order qua non-granting of eviction is hereby set aside and rest of the order providing the security is upheld.

Application in toto is allowed. Respondent Nos.2 to 5 are directed to vacate the first floor of the house within a period of 45 days from the date of receipt of certified copy of the order. In case it is not done, then the present SSP, Chandigarh is directed to insure the compliance of the

order and report the matter to this Court.

Accordingly, present writ petition stands allowed.

20.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No