

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.32 of 2017 (O&M)
Date of Decision: 01.08.2017

Danish Sandhu and another

....Petitioners

Vs.

Deputy Commissioner-Cum-District Magistrate, UT, Chandigarh and
others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikas Bahl, Sr. Advocate, with
Mr.M.S. Batth, Advocate,
for the petitioners.

Ms.Deepali Puri, Advocate,
for respondent No.1.

Mr.Kanwaljit Singh, Sr. Advocate, for
Mr.Gagandeep Singh Virk, Advocate,
for respondent No.2.

Mr.Rajeev Gupta, Advocate,
for respondent No.3.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed for quashing the order passed by the Deputy Commissioner-cum-District Magistrate, Chandigarh dated 15.12.2016, purported to have been passed on an application filed by respondent No.2 under Sections 22 & 23 of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] read with section 19 of the Chandigarh Maintenance & Welfare of Parents and Senior Citizens Rules, 2009 [for short 'the Rules'] seeking to evict the petitioners from the 50% share of House No.165, Sector 18A, Chandigarh, which has been allowed by the Deputy Commissioner-cum-

District Magistrate, Chandigarh directing petitioner No.2 to take

possession of back portion of the said house. It was also directed that respondent No.2 will bear expenses of temporary wooden partition to be constructed in between drawing room and lobby door between front side bed room and lobby will be locked from both sides. Petitioner No.2 was allowed to retain the front portion of the house.

Learned counsel for the petitioners has submitted that the impugned order dated 15.12.2016 could not have been passed on an application filed both under Sections 22 and 23 of the Act as different authorities have been provided under the Act to decide the said applications. It is submitted that if the application under Section 22 of the Act is filed then the District Magistrate would have the jurisdiction to decide but if the application is filed under Section 23 of the Act then it would be decided by the Tribunal. It is also submitted that even if it is presumed that the application has been filed under Section 22 of the Act, even then it could not have been filed against the petitioners in view of Rule 20(3)(1)(iv) of the Rules because the said application was maintainable only against the son, daughter and legal heir whereas the petitioner No.2 is not the daughter or legal heir of respondent No.2, who happens to be her jeth (brother-in-law). It is also submitted that the application under Section 22 of the Act is not filed on the ground that respondent No.2 himself requires the property as in the application filed before the District Magistrate, it is specifically mentioned that he is presently residing at Ludhiana and the eviction is being sought only on the ground that the half portion of the property which came to the share of his younger brother has been occupied by the petitioners herein whereas the younger brother and his mother have shifted to a flat. It is also submitted by learned counsel for the petitioners that there is a past history of this case as the relations of petitioners No.2 is not cordial with her husband

and she had already filed a complaint on 8.9.2015 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and petitioner No.1 filed a civil suit through petitioner No.2 for declaration seeking the ancestral property after the death of his grand-father, which is pending and the mother-in-law of petitioner No.2 had also filed an application under the Act for seeking eviction of the petitioners but the said application was dismissed on 7.4.2016 on the ground that she was not the owner and thereafter the present application has been filed by the Jeth. It is thus submitted that the entire exercise on the part of respondent No.1 smacks of *mala fide* as there is a concerted effort on the part of the respondents to harass the petitioners for one reason or the other.

On the other hand, learned counsel for respondent No.2 has submitted that the house in question was purchased by both the brothers, namely, respondent No.2 and the husband of petitioner No.2 by way of registered sale deed and thus by way of family settlement arrived at on 25.7.2015 divided the property to the extent of 50% share each. It is further submitted that earlier the mother of respondent No.2 was also living with the petitioners in the house in question but later on she shifted to a flat where husband of respondent No.2 is also residing at present. He has also submitted that there is no intention on the part of respondent No.2 to dispossess the petitioners from the house in question rather he is only asking for the share which he owns by way of sale deed so that he may also enjoy the property purchased by him. It is not denied that the application was filed both under Sections 22 & 23 of the Act. It is submitted that Section 22 of the Act protects the life and property of the senior citizen and Section 23 of the Act retrieves the property given to a person even as a licensee. In this regard his main reliance is on the

decision of this Court rendered in the case of ***“Promil Tomar and others Vs. State of Haryana and others”*** 2014(1) LAR 246.

In rebuttal, learned counsel for the petitioners has submitted that vide notification dated 22.12.2008 issued by the Chandigarh Administration, the Maintenance Tribunal under Section 7(1) & 2 and the Appellate Tribunal under Section 15(1) & (2) have already been constituted. In support of his submissions, he has relied upon a decision of this Court rendered in the case of ***“Major Harmohinder Singh (Retd.) Vs. State of Punjab through Secretary”*** 2014(5) RCR (Civil) 693, which has been upheld by the Division Bench of this Court in ***LPA No.1588 of 2014*** titled as ***“Major Harmohinder Singh (Retd.) Vs. State of Punjab and others”*** on 14.10.2014. He also relied upon two decisions of this Court rendered in ***“Natasha Sood Vs. Chandigarh Administration and others”*** 2015(4) PLR 521 and ***“Harvinder Kaur Bawa Vs. The Appellate Tribunal, Panchkula and others”*** 2017(1) RCR (Civil) 853.

I have heard learned counsel for the parties and perused the record with their able assistance.

In 2007, this Act was enacted with a laudable object to ensure that the parents and senior citizens of this country are well looked after by their children or the persons, who have to inherit their property and for this purpose, the Act was divided into four parts, namely, Chapter II, III, IV & V. Chapter II deals with Maintenance of Parents and Senior Citizens in which Section 5 provides that in case a senior citizen or a parent, who is incapable of supporting himself may apply for maintenance under Section 4 of the Act to the Maintenance Tribunal, which is constituted under Section 7 of the Act. The Tribunal has to proceed in a summary manner and pass the order under Section 9 of the Act, the orders are enforceable under Section 11 of the Act and if the

senior citizen or the parent is not satisfied with the order of the Tribunal, they are further given a chance to file and appeal in terms of Section 16 of the Act. Chapter-III & IV deals with the welfare of the senior citizen as Section 19 of the Act provides establishment of oldage homes and Section 20 of the Act provides for the medical support. Chapter V deals with the protection of life and property of senior citizens and for that Section 21 of the Act deals with the measures for publicity, awareness, etc. for the welfare of senior citizens and Section 22 of the Act lays down that the State Government may confer such powers on the District Magistrate to ensure the protection of life and liberty of the senior citizen and in that regard Section 22 (2) of the Act further provides for comprehensive action plan for providing protection of life and property of senior citizen. Section 23 deals with the situation where the senior citizen, who had transferred his property, after commencement of this Act, by way of gift or otherwise and is not getting the basic amenities or support for his physical needs from the transferee then he could approach the Tribunal for the purpose of declaration of the said transfer as void on the ground that the transfer has been made on the basis of fraud or coercion or under undue influence. The State of Haryana, Punjab and Chandigarh made the rules called, the Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012, the Haryana, Maintenance of Parents and Senior Citizen Rules, 2009 and the Chandigarh Maintenance of Parents and Senior Citizen Rules, 2009.

In terms of Section 20(2) of the Act, as per which the State Government was obliged to prepare a comprehensive action plan, the State of Haryana notified the action plan vide notification dated 15.5.2007 called the action plan under the Maintenance and Welfare of Parents & Senior Citizen Act, 2007 and the Punjab Government notified the action

plan on 30.3.2015 called by the same name. However, the Chandigarh Administration did not prepare the action plan rather the same is provided in Section 20 in Chapter VI of the Rules which deals with the action plan for the protection of life and property of senior citizens.

The action plan is also divided into two parts. The first part of the action plan deals with the responsibility of the Senior Superintendent of Police, to take all necessary steps subject to the guidelines as the State Government may issue from time to time for the protection of life and property of senior citizens. The other part deals with the procedure for eviction from property/residential building of senior citizen/parent and this responsibility is handed over to the District Magistrate. Since, we are concerned in this case with the order of eviction having been passed by the District Magistrate in respect of the senior citizen against the petitioners, therefore, I would confine myself to Rule 20(3)(1) of the Rules, which read as under: -

“20(3)(1) Procedure for eviction from property/residential building of senior citizen/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 Departments i.e. Social Welfare, Sub Divisional Magistrates, Police Department, NGOs/Social Workers, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to*

the District Magistrate, Union Territory, Chandigarh for further action.

(ii) The District Magistrate, Union Territory, Chandigarh 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 immediately submit its report to the District Magistrate for final orders without 21 days from the date of receipt of the complaint / application.

(iv) If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen / 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-cum-Estate Officer 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 grounds 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 to all persons concerned.”*

This Rule provides that if a complaint is received by the District Magistrate either through Social Welfare, Sub Divisional Magistrate, Police Department or NGOs/Social Workers, Helpline for Senior Citizens and if it is made to him then he would immediately forward the application to the concerned SDM for verification of title of the property and facts through Revenue Department/concerned Tehsildar.

The Sub Divisional Magistrate shall immediately submit its report for

final orders. The time is prescribed in Rule 23(3)(1)(iii) of the Rules that the SDM shall immediately submit his report to the District Magistrate for final orders within 21 days.

To my mind this time is provided to expedite the matter so that it may not keep on lingering for the decision of the final authority and the senior citizen would not keep on waiting endlessly about the decision of his complaint. Rule 20(3)(1)(iv) of the Rules further provides that if the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any property as defined in the Act, then they may be evicted and the District Magistrate-cum-Estate Officer shall issue 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. The term legal representative' is not defined in the Act. However, the children are defined under Section 2(a) of the Act which includes son, daughter, grandson and grand-daughter but does not include a minor. Since, the legal representative is not defined in the Act, therefore, the definition of legal representative is taken from the Code of Civil Procedure [for short 'the CPC'], provided in Section 2(11) of the CPC, which says that legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

The first question would be as to whether the sister-in-law (devrani) is a legal heir of her brother-in-law (jeth)? In this regard, we have to look into Section 8 of the Hindu Succession Act, 1956, which lays down as to how the property of a male Hindu, who died intestate, would devolve. Section 8 of the Hindu Succession Act, 1956 provides the

general rules of succession in the case of males. It says that the property of a male Hindu, dying intestate, shall devolve according to the provisions of this Chapter – (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule, (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule, (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased and (d) lastly, if there is no agnate, then upon the cognates of the deceased.

In Schedule, Class I heir and Class II heir are both provided in which I could not find sister-in-law (Devrani) as a successor or a legal heir of Brother-in-law (jeth). In any case she would not succeed to the property of her brother-in-law (jeth) in case he dies intestate. The question is thus decided that petitioner No.2 is not the legal heir of respondent No.2. If she is neither a son nor daughter or legal heir then whether the District Magistrate had the jurisdiction under Rule 20(3)(1)(iv) of the Rules to exercise his powers for the purpose of even calling her objection to the application filed by respondent No.2. The answer is emphatically no. The application was not maintainable insofar as the said senior citizen is concerned, who happened to be her brother-in-law (jeth).

Once, I have decided that the application by itself was not maintainable even if it was filed under Section 22 of the Act with reference to Rule 20(3)(1) of the Rules, the order having been passed by the District Magistrate was totally without jurisdiction. Now I would also like to observe as to whether an application, if it is filed exclusively under Section 23 of the Act, can be decided by the District Magistrate?

Section 23 of the Act, as I have already observed, deals with an altogether different situation where the right has been given to the

senior citizen to declare the transfer made by him or her as void. I would not enter into this arena as to whether the transfer is of title or possession. I am deciding as to who would be the authority to decide such an issue. The word has been carefully used by the legislature in Section 23 of the Act as the forum to decide is the Tribunal. In Section 22 of the Act it is specifically provided the forum to decide is the District Magistrate. The definition of District Magistrate is not defined under the Act but the Tribunal is defined in Section 2(j) of the Act which means the Maintenance Tribunal constituted under Section 7. Section 7 of the Act says that the State Government shall within a period of six months from the date of commencement of this Act, by notification in the official gazette, constitute for each sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under Section 5. It further provides that the Tribunal shall be presided over by an officer not below the rank of Sub Divisional Officer of a State and where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them.

In the present case, as I find so, there is a Tribunal constituted by the Chandigarh Administration while exercising its power conferred under Section 7(1) and 2) and Section 15(1) and (2) of the Act both, by way of notification issued on 22.12.2008. Thus, I am of the considered opinion that if an application is to be filed under Section 23 of the Act in order to avoid the transfer, the application has to be heard and decided by the Tribunal and not by the District Magistrate, therefore, such type of application should be avoided by the District Magistrate, which is filed by the parties both under Sections 22 and 23 of the Act. He should return such type of application asking the party as to under which

provision the application is filed and under which provision he has to invoke his jurisdiction. These kinds of applications, which are filed under both Sections 22 & 23 of the Act creates the problem which is being faced by this Court as if happened today in this case as it was argued at one point of time that the application was filed under both Sections 22 & 23 of the Act and the District Magistrate has rightly decided the same. Insofar as the judgments relied upon by the parties are concerned, these are on their own facts and are not relevant. Since, I have decided that the application filed before the District Magistrate was not maintainable as petitioner No.2 does not fall within the definition of son or daughter or legal representative of respondent No.2 for the purpose of entertaining the application under Rule 20(3)(1)(iv) of the rules.

With these observations, the present petition is allowed and the impugned order is hereby set aside.

01.08.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

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