

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

(112)

**CWP-955-2017 (O&M)
Decided on: April 18, 2017.**

Monika Kapoor

.... Petitioner

Versus

District Magistrate-cum-Deputy Commissioner and others

..... Respondents

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

Present: Mr. Aayush Gupta, Advocate, for the petitioner.

Ms. Anu Pal, AAG, Punjab.

Mr. R.S. Bains, Advocate, for respondents No. 3 & 4.

M.M.S. BEDI, J (ORAL)

Without expression of any opinion regarding the status of matrimonial relationship of petitioner with respondent No.2, I am of the considered opinion that all the pleas which have been taken up in the petition, could have been taken by the petitioner, had she been given an opportunity to appear before the District Magistrate, Ludhiana exercising the powers of the Tribunal under Sections 22/23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

The impugned order dated 01.06.2016 is liable to be set aside solely on the ground that it has been passed in violation of rules of natural justice without giving any opportunity of hearing to the petitioner who appears to be directly prejudiced and effected by the impugned order.

The petition is allowed. Impugned order dated 01.06.2016 is hereby set aside on the sole ground of being violative of rules of natural justice. The matter is remanded to the District Magistrate, Ludhiana for

adjudication of the matter afresh after giving a fair opportunity of hearing to the petitioner. The plea raised by the petitioner that the proceedings initiated against her on account of collusion of her husband respondent No.2 with his parents respondents No. 3 and 4, may be raised and considered by the District Magistrate.

Petitioner and respondents No. 1 to 3 will appear before the District Magistrate on 03.05.2017. The District Magistrate shall take up the proceedings thereafter by giving an opportunity to the petitioner to file reply. The proceedings will be taken in accordance with relevant provisions of law i.e. Rules and the concerned Action Plan framed vide notification dated 27.11.2014.

It is directed that the case will be finally decided within the time limit prescribed under the Rules and the Action Plan.

Nothing mentioned in this order will prejudice the right of the parties pending in other civil and criminal cases.

It is specifically observed here that merits of the case have intentionally not been touched lest it should prejudice the rights of any of the parties in the litigation already pending before the different Courts/forums.

Since this petition has been allowed and the impugned order Annexure P-5 has been set aside, the petitioner is entitled to the restoration of the possession in the portion from where the petitioner was actually dispossessed.

In the interest of justice, striking a balance between the rights of respondents No. 3 and 4 and the petitioner, instead of ordering restoration of possession of the entire house to the petitioner, it is ordered that the

petitioner would be restored possession of ground floor of the house in question which consists only one hall whereas respondents No. 3 and 4 who have taken possession of the premises in dispute pursuant to the impugned order (which has been set aside) would retain the possession of the first floor.

It is observed that in case of any imminent threat to the petitioner and respondents No. 3 and 4, it will be open to the District Magistrate to exercise powers under Section 22 of the Act to pass any appropriate order for maintenance of peace or protection of respondents No. 3 and 4 being senior citizen.

During pendency of the proceedings, it will be the duty of the District Magistrate to ensure the implementation of the above said direction.

(M.M.S. BEDI)
JUDGE

April 18, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No