

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.10.2017

+ **W.P.(C) 866/2016 and CM Nos. 23434/2017, 17173/2017**

SHADAB KHAIRI AND ANR

..... Petitioners

Versus

**THE STATE (GOVT OF NCT OF DELHI)
AND ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Viresh B. Saharya and Mr Akshant Agarwal.
For the Respondent :Mr Jayant Bhatt, Ms Shivani Sharma and Mr
Vipin Kumar for Complainant.
Ms Aayush Gupta for Mr Raman Duggal,
Standing Counsel for GNCTD(Civil) for R-1
and R-2 with ASI kanwarpal for PS Hauz Qazi.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners- who are the sons of respondent no.3- have filed the present petition impugning the order dated 10.12.2015 (hereafter 'the impugned order') passed by the Maintenance Tribunal, Central District constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'). By the impugned order, the Tribunal has, *inter alia*, directed the petitioners to vacate the respective portions occupied by them on the third floor of the property bearing No.3617, Katra Deena Beg, Lal Kuan, Delhi within a period of three weeks from the date of receipt of the impugned order.

2. The petitioners have assailed the impugned order on the principal ground that the same is without jurisdiction; according to the petitioners, the Maintenance Tribunal does not have the jurisdiction to pass an order of eviction and its jurisdiction is only limited to awarding maintenance to senior citizens.

3. Mohammud Aftab Khairi (respondent no.3) is stated to be aged about 68 years old (a senior citizen). He claims to be the owner and resident of the properties bearing Nos.3616-3617, Katra Deena Beg, Lal Kuan, Delhi-110006. The said properties are contiguous. Respondent no.3 has three sons, namely, Shahab Khairi, Shadab Khairi (petitioner no.1) and Shahnawaz Khairi (petitioner no.2). He claims that he runs the business of printing in the name of 'Khairi Printing Press' on the ground floor of the properties in question and he and his family occupy the first floor of the properties. The second and third floor is occupied by his three sons.

4. Respondent no.3 filed a complaint before the Maintenance Tribunal, *inter alia*, alleging that he had spent a considerable amount on renovating the residential premises and had provided separate residential accommodation to his three sons on the second and the third floors. He claimed that his sons had agreed to pay a monthly sum of ₹15,000/- for his maintenance and additional ₹5,000/- per month to his wife (their mother) for day-to-day requirements. Respondent No.3 complained that despite a verbal agreement, his three sons (who were arrayed as respondents before the Maintenance Tribunal) had failed to live up to their commitment; they had paid the agreed amount to their mother for the month of March 2012 but had, thereafter, failed to provide any further assistance. The petitioners (respondents therein) had filed a statement contesting the complaint before

the Tribunal and had, *inter alia*, alleged that the properties in question were ancestral properties and therefore, had the right to reside in it as co-owners.

5. The Maintenance Tribunal examined the complaint and passed the impugned order directing as under:

- “ 1 Respondent No.1 shall continue to stay in property No. 3617 on the (second floor) and shall sincerely strive to support the complainant in his work and other responsibilities towards the family of the complainant.
- 2 Respondent No. 1 shall look after and provide all the medical care to the complainant's wife or any other member of the family, in time of need.
- 3 Respondent No. 1 shall also pay a sum of Rs.5000/- per month to the complainant.
- 4 Respondent No.2&3 shall peacefully vacate the respective portions on third floor of the property bearing No.3617 Katra Deena Beg, Lal Kuan, Delhi, occupied by them within 3 weeks from the date of receiving of this order and make their own arrangements to shift within specified time.
- 5 Respondent No. 2&3 are further directed that they shall refrain from indulging in any argument, making comments, threatening or causing any harm to the complainants in particular and all the other members of the family including Respondent No. 1.
- 6 That SHO PS Hauz Qazi is directed to depute beat staff for regular visits to ensure that life and property of the senior citizen parent is safe and secure. The SHO is further directed to ensure implementation of the above said direction in true letter and spirit and put the complainant in possession of the property. Necessary compliance report be sent to the tribunal.”

6. The learned counsel appearing for the petitioners contended that the order passed by the Maintenance Tribunal directing that the petitioners be evicted from the property in question is without jurisdiction.

7. The aforesaid contention is unmerited. This issue is squarely covered by a decision of this Court in ***Sunny Paul & Anr. v. State NCT of Delhi & Ors.:(W.P. (C) No. 10463/2015) 2017 SCC Online Del 7451***, wherein this Court had concluded as under:

“73. Keeping in view the aforesaid conclusions, this Court is of the view that the Act, 2007, amongst other remedies, provides for eviction of adult children in cases of parental abuse—like in the present case. Accordingly, the present writ petition and application are dismissed and the concerned SDM and SHO, Police Station Civil Lines, are directed to forthwith comply with the impugned order dated 1st October, 2015 passed by the Maintenance Tribunal, Central District, Delhi.”

8. It is also relevant to mention that the aforesaid decision had been rendered in the petition challenging an order dated 01.10.2015 passed by the Maintenance Tribunal (Central District, Delhi) under the Act. This Court had noticed in its decision that Section 22 (2) of the Act required the State Government to provide a comprehensive action plan for protecting the life and property of senior citizens. However, as on the date when the said petition (W.P. (C) No.10463/2015) was filed, the Government of NCT of Delhi had not framed any rules providing for eviction of unauthorized occupants and had not prepared a comprehensive action plan as required under Section 22 (2) of the Act. However, thereafter, the Government of NCT has framed the Delhi Maintenance and Welfare of Senior Citizens

(Amendment) Rules 2016, which expressly empower the Deputy Commissioner / District Magistrate to pass eviction orders from properties belonging to Senior Citizens.

9. The written statement filed by the petitioners before the Maintenance Tribunal to oppose the complaint filed by respondent no.3 also indicates that the petitioners had filed FIRs alleging that respondent no.3 had attempted to outrage the modesty of their wives, this clearly indicates that the petitioners and respondent no.3 cannot live together and this Court finds no reason to interfere with the order passed by the Maintenance Tribunal.

10. The petition is accordingly dismissed. All applications stands disposed of.

OCTOBER 31, 2017
dr

VIBHU BAKHRU, J

