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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2208/2017 and CM APPL. 9622/2017**

SUNIL AND ORS

..... Petitioners

Through: Mr Surinder Kumar and Ms Jyotsana  
Gupta alongwith petitioner in person.

versus

STATE AND ORS

..... Respondents

Through: Mr Avtar Singh, Advocate for R-1 &  
2.

Mr Sunil Kumar Jha, Advocate for R-  
3 alongwith R-3 in person.

**CORAM:**

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

**ORDER**

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**07.09.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 06.03.2017, passed by the Divisional Commissioner (the Appellate Authority), whereby the petitioners' appeal against the order dated 15.12.2016 passed by the District Magistrate, North-West directing eviction of petitioners from the property bearing No. T-758, Mangol Puri, Delhi – 110083, was rejected.

2. Briefly stated, the relevant facts are that respondent no.3 filed an application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 alleging that she had been ill-treated by her two sons and their respective spouses (the petitioners herein) who were staying in the property in question. It was respondent no.3's contention that she was the exclusive owner of the said property (House No. T-758, Mangol Puri). The said property was acquired by respondent no.3's husband (also the father of

petitioner no.1 and petitioner no.3). He expired on 26.11.2012. Respondent no.3 has produced a will whereby the said property was bequeathed by her husband to her exclusively and, she had also produced General Power of Attorney in respect of the said property, in her favour. After conducting the necessary inquiry, the District Magistrate, North-West came to the conclusion that given the prevailing relationship between respondent no.3 and the petitioners, it is necessary that the petitioners be evicted from the property in question. A bare perusal of the record also indicates that there are serious allegations of respondent no.3 being ill-treated by the petitioners.

3. Aggrieved by the aforesaid decision, the petitioners filed a writ petition before this Court (W.P.(C) 12243/2016), which was withdrawn by the petitioners on 30.12.2016 to approach the appellate authority on 30.12.2016. Thereafter, the petitioner approached the appellate authority (Divisional Commissioner) challenging the order dated 15.12.2016.

4. It is the petitioner's case that petitioner no.1 and 3 are also co-owners of the property in question, inasmuch, as it was the self acquired property of their late father, who, according to them, died intestate. The petitioners' dispute respondent no. 3's claim that the said property was bequeathed to her. The petitioners also point out that they have filed a suit for partition where the issue as to the validity of the documents (Will and General Power of Attorney) produced by respondent no.3 are in issue.

5. The Appellate Authority examined the aforesaid contentions and concluded that if the order passed by the District Magistrate, North-West was not upheld, the senior citizen (respondent no.3) would be deprived of

justice. Insofar as issue regarding the authentication of the Will is concerned, the appellate authority observed that since the same is subject matter of disputes in a suit, the decision in that proceeding would be binding on both parties.

6. Admittedly, no stay has been granted for eviction in civil suit instituted by the petitioners. This Court is also of the view that respondent no.3 cannot be deprived of her rights, pending the adjudication of the challenge laid by the petitioners in their civil suit. Thus, this Court finds no infirmity with the decision rendered by the Divisional Commissioner. This Court had by an order dated 10.03.2017, also directed the SHO, Police Station, Mangol Puri to depute an officer to visit respondent no.3 and to ascertain whether there was any complaint with regard to the petitioners living in the property in question. The concerned officer has since submitted his status report. It is stated therein that an Inspector was deputed to visit the property in question and, he had made inquiries from respondent no.3. The inquiries revealed that petitioner nos.2 and 4 had allegedly quarrelled and assaulted respondent no.3 and, in that regard a *Kalandara* under Section 107/150 Cr.P.C. had also been prepared. It is also reported that on 09.08.2016, an altercation and quarrel has taken place between respondent no.3 and petitioner nos. 1 and 3 and in the said quarrel, respondent no.3 had received certain injuries.

7. Keeping the aforesaid facts in mind, it is clearly not feasible to permit the petitioners to continue to reside in the same premises. This Court concurs with the view of the appellate authority that the adequate arrangements are required to be made for protection of the life and property

of the senior citizens and, the mandate of the Act would be lost if the adequate protection is not granted to the respondent no.3 in this regard.

8. The petition is, accordingly, dismissed.

9. However, petitioners are granted eight weeks time to voluntarily make alternate arrangements, failing which the concerned authorities will take necessary steps for eviction of the petitioners. The petitioners also cautioned to ensure that they maintain peace with respondent no.3 and, in the event any incident is reported, the concerned authorities are directed to take action to evict the petitioners forthwith on any report of an untoward incident.

**SEPTEMBER 07, 2017**  
**RK**

**VIBHU BAKHRU, J**