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

+ **W.P.(C) 4274/2017& CM No.18707/2017**

MOHD KHALID

..... Petitioner

Through: Mr Javed Ahmad with Mr Anis
Ahmad, Advocates.

versus

YASMEEN BEGUM

..... Respondent

Through: Ms Vibha Mahajan Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.07.2017

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 27.03.2017 passed by the District Magistrate (North-East), Govt. of NCT of Delhi (hereafter 'the DM') under the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereafter 'the Rules') as amended by the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016, directing eviction of the petitioner and his brother, Mohd. Rashid from the premises bearing no. A-23, Buland Masjid, Shastri Park, Delhi-110053 (hereafter 'the premises').

2. The respondent, Smt. Yasmeen Begum - who is the mother of the petitioner and Mohd. Rashid - had filed an application before the DM under the Rules alleging that her two sons (the petitioner and Mohd. Rashid) with their respective spouses (both named Shabnam) were residing with her at the premises which was owned by her exclusively. She alleged that she was being tortured physically and mentally by her two sons, Mohd. Rashid and

Mohd. Khalid and their wives. The DM had considered the respondent's plight and after examining the allegations directed the eviction of Mohd. Khalid and Mohd. Rashid from the said premises.

3. In the said proceedings, the petitioner and Mohd. Rashid had contested the respondent's claim that she was the owner of the premises and had alleged that the documents produced by her were forged. However, neither the petitioner nor Mohd. Rashid had produced any documents to establish any right or interest in the premises. The DM noted that the respondent had produced an unregistered General Power of Attorney (GPA) of the premises in her favour but the house number was not mentioned. In addition, the respondent had also produced electricity bill, water bill and receipt of gas connection in her name. The DM, after considering the report of the Tehsildar and after considering rival contentions, passed the order dated 27.03.2017 directing eviction of Mohd. Rashid and Mohd. Khalid (the sons of the respondent) from the said premises within a period of 30 days from the date of the said order.

4. The petitioner appealed against the said order before the Appellate Court of Divisional Commissioner (the Appellate Authority). The Appellate Authority rejected the said appeal by an order dated 05.05.2017. The Appellate Authority was of the view that it was the respondent's decision whether to permit her two sons to live with her or not. Since the respondent had unequivocally stated that her sons were not taking care of her but were ill-treating her by physically beating and abusing her, the Appellate Authority declined to interfere with the order passed by the DM and further directed the two sons (Mohd. Rashid and Mohd. Khalid) to vacate the

premises by 5.00 p.m. on 12.05.2017, failing which, the local police would take steps for their eviction.

5. The learned counsel for the petitioner has sought to assail the orders dated 27.03.2017 passed by the DM and order dated 05.05.2017 passed by the Appellate Authority (hereafter collectively referred as 'the impugned orders'), principally on the ground that the DM and the Appellate Authority did not have the jurisdiction to direct eviction under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'). The learned counsel also sought to contest the finding that the respondent was being ill-treated as erroneous.

6. This Court is not persuaded to interfere with the findings to the effect that the respondent was being ill-treated by her two sons and their wives. The respondent had recorded her statement to the aforesaid effect and the said allegation has been examined by the DM and the Appellate Authority. The findings are based on material on record and this Court finds no reason to interfere with the said findings.

7. The second question as to whether eviction order can be passed in proceedings under the Act, is squarely covered by the decision of a Coordinate Bench of this Court in ***Sunny Paul & Anr. v. State (NCT of Delhi) and Ors.: 2017 SCC OnLine Del 7451*** wherein it was held that "*even in the absence of a comprehensive action plan for protecting the life and property of senior citizens under section 22 of the Act, 2007, on the date the impugned order was passed, the Maintenance Tribunal had the jurisdiction to pass an order of eviction*".

8. The Lt. Governor of the National Capital Territory of Delhi has in exercise of powers conferred under Section 32 read with clause (i) of Section 2 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has made the Rules. The said Rules were amended by virtue of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2010 and Chapter IV captioned as '*Protection of Life and Property of Senior Citizens*' was added which included Rule 22 with the heading '*Action plan for the protection of life and property of senior citizens*'. The Rules were further amended by virtue of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016 and sub-rule (3) was introduced in Rule 22 of the Rules to expressly provide for the procedure for eviction from properties of senior citizens. The said sub-rule is set out below:

“(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents, –

- (i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate(DM) of his district for eviction of his son and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.
- (ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.

- (iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.
- (iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM 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 issued thereof.

(2) Eviction Order from property/residential building of Senior Citizens/Parent. –

- (i) If, after considering the cause, if any, shown by any

person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated;

(3) Enforcement of Orders, -

- (i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;
- (ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.
- (iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.
- (iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.

(4) Appeal

- (i) The appeal against the order of Dy. Commissioner/DM shall lie before Divisional Commissioner, Delhi.

- (ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

9. In *Sunny Paul* (*supra*), this Court has also directed to amend/formulate the Rules in conformity with the said decision.

10. In view of the above, this Court is not inclined to interfere with the impugned orders. The petition is, accordingly, dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

JULY 05, 2017

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