

\$~57

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

+ W.P.(C) 7614/2017

SANJAY KUSHWAHA & ORS. Petitioners

Through: Mr A. K. Tripathi, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

29.08.2017

CM No.31444/2017

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 7614/2017 & CM No.31443/2017

3. The petitioners have filed the present petition, *inter alia*, impugning an order dated 28.07.2017(the impugned order) passed by the District Magistrate (North-East) directing that the petitioners be evicted from the property bearing "H no.A-143, Part-I, Gali No.1, Pusta-1, Sonia Vihar, Delhi 110094" (in short, the said property) within a period of 30 days. The said order was passed pursuant to the application filed by respondent no.2 under the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) 2016.

4. A perusal of the order indicates that respondent no.2 had produced a copy of the General Power of Attorney, Will, electricity bill for the said

property and has thus established her interest in the said property. The petitioners had disputed respondent no.2's interest/title to the said property and claimed that the deceased husband of respondent no.2 (father of the petitioners) had sold ancestral lands and had invested the proceeds thereof in purchasing of the said property. However, the petitioners were unable to establish their claim by any material whatsoever. In the aforesaid circumstances, the District Magistrate proceeded on the basis that the said property belongs to respondent no.2 and has ordered that the petitioners be evicted from the said property.

5. The impugned order also indicates that respondent no.2 had made allegations regarding her being ill treated by the petitioners. Respondent no.2's statement was also recorded to the effect that the petitioners used to quarrel with her and used to physically beat her. She had also alleged that her daughters-in-law also beat and abuse her. It is in this context she had requested that the petitioners be evicted from her property.

6. In this petition also, no material has been produced to indicate that the petitioners have any interest in the said property. Thus, the decision of the District Magistrate to proceed on the footing that the said property belonged to respondent no.2 cannot be faulted.

7. The learned counsel for the petitioners state that the petitioners are her only sons and if they are removed from the said property there would nobody to look after respondent no.2. He further states that respondent no.2 is suffering from "mental fatigue" and, therefore, is not in a position to differentiate between right and wrong.

8. None of the aforesaid contentions are merited. Respondent no.2 was constrained to move the District Magistrate on account of her being ill treated and, therefore the contention that if the petitioners are evicted there would nobody to take care of her is plainly unsustainable. Respondent no.2 has chosen to live by herself rather than be ill-treated by the petitioners and her wishes in this regard must be accepted. Although, it is claimed that respondent no.2 is suffering from mental fatigue (whatever that may mean) there is no material on record, which will remotely indicate that respondent no.2 is suffering from any mental illness. It is also noteworthy that no such contention was raised before the District Magistrate.

9. In the given circumstances, this Court finds no ground to interfere with the impugned order.

10. The learned counsel for the petitioner states that petitioner nos.1 & 2 are living with their family and it is very difficult for them to find an alternative accommodation in this short period. In this view, the petitioners are granted further six weeks time to vacate the premises in question.

11. The petition is dismissed with the aforesaid observations.

12. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

AUGUST 29, 2017
MK