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

+ **W.P.(C) 11511/2017**

MANOHAR SINGH

..... Petitioner

Through: Ms Manmeet Arora, Ms Sanam
Tripathi, Mr Keshav Sehgal,
Advocates.

versus

GOVT.OF NCT DELHI & ANR

..... Respondents

Through: Ms Jyoti Taneja, Advocate for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.12.2017

CM 46925/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner, who is a senior citizen, has filed the present petition impugning an order dated 06.12.2017 (hereafter 'the impugned order') passed by the District Magistrate (Central) under the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendments) Rules, 2016 (hereafter 'the Rules').

4. Ms Manmeet Arora, learned counsel appearing for the petitioner assails the impugned order on three fronts. First, she states that the

impugned order was passed on a palpably incorrect premise that the property in question from which the petitioner seeks to evict respondent no.2 is not self acquired property of the petitioner.

5. Second, she submits that the impugned order was passed on the basis of a report submitted by the SDM, which was neither put to the petitioner nor any inquiry had been made by the SDM from the petitioner before submitting the said report.

6. Third, she submits that the impugned order has been passed on the basis that a senior citizen can only file petitions in respect of the self-acquired properties. She submits that by a notification dated 28.07.2017, the Rules were further amended by amending Sub rule (3) of Rule 22 of the said Rules and in terms of the said amended Rules, a senior citizen could make an application for eviction of his son or daughter or legal heir from his property irrespective of whether it was a self-acquired or ancestral property.

7. It is also pointed out that the impugned order was passed *ex parte* without any notice to respondent no.2. In view of the order that this Court proposes to pass, it is not necessary to issue any notice to respondent no.2.

8. A plain reading of the impugned order indicates that although, the District Magistrate has concluded that the property in question - M15, Pratap Nagar, Gulabi Bagh, Delhi-110007 (hereafter 'the property') - is not a self-acquired property of the petitioner, the impugned order does not disclose any reason for arriving at this conclusion. According to the petitioner, the property was acquired by his late father Mr Jagat Singh on 10.08.1982. The petitioner's father expired on 20.07.1984 leaving behind 14 legal heirs

including the petitioner. The petitioner claims that all other legal heirs of Late Mr Jagat Singh executed and registered a Release Deed dated 23.05.2000 in favour of the petitioner.

9. If the aforesaid facts are correct then, plainly, the property in question would be a self-acquired property of the petitioner.

10. This Court is of the view that if the petitioner's claim in this regard was to be rejected, the District Magistrate was required to specifically state the reasons for the same.

11. There is also much merit in Ms Arora's contention that the District Magistrate has apparently proceeded on the basis of Rule 22(3) of the Rules, as it existed prior to the amendment made in 2017.

12. By the notification dated 28.07.2017, clause (i) of Sub-rule 3 of Rule 22 of the said Rules was substituted to read as under:-

“A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interest in such property on account of his non-maintenance and ill-treatment.”

13. It is apparent from the above that the senior citizen could also maintain an application in respect of the ancestral property.

14. Lastly, this Court is also of the view that before relying on the report of the SDM, it was necessary for the District Magistrate to have shared the same with the concerned parties and the decision ought to have been taken

only after affording them an opportunity to be heard in this regard.

15. In view of the above, the impugned order is set aside and the matter is remanded to the District Magistrate to consider it afresh. The District Magistrate shall decide the petitioner's application as expeditiously as possible and in any event within a period of four weeks from today after affording full opportunity of being heard to the concerned parties.

16. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

DECEMBER 21, 2017
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