

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10976 of 2017
Date of Decision:22.05.2018

Ishar Dass

..... Petitioner

Vs.

District Magistrate, Jalandhar and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Dr. Anju Sharma, Advocate,
for the petitioner.

Mr.Rohit Khullar, Advocate,
for the non-applicant/respondent No.2.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is a senior citizen, who has challenged the order of the District Magistrate, Jalandhar dated 11.04.2017 by which an application filed by him under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] read with the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 [for short 'the Rules'] and Action Plan notified on 27.11.2014 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Punjab) [for short 'the Action Plan'], against his widowed daughter-in-law for seeking her eviction from House No.36-A situated at Gobind Nagar, Jalandhar City, has been dismissed.

The petitioner is the father-in-law of respondent No.2. He is a senior citizen. His wife, who is also a senior citizen, is residing with him in the house in question. Respondent No.2 got married with Sanjay Kumar, son of the petitioner, on 23.4.2000. A girl child, namely, Surbhi was born to

respondent No.2 on 10.12.2002. The son of the petitioner, namely, Sanjay died in a road accident on 30.6.2011. Respondent No.2 with his daughter, who is now about more than 15 years of age, is living in a portion of the house in question. The petitioner filed an application before the District Magistrate, Jalandhar under Section 22 of the Act, Rules and Action Plan in which he has averred that when his son was alive the behaviour of respondent No.2 was good but she started harassing the petitioner after the death of his son and he had to execute a registered Will in favour of respondent No.2 which was later on revoked. He has given the incidence of harassment by referring to a complaint alleged to have been lodged by respondent No.2 on 16.10.2016 with Police Station Division No.8, Jalandhar, which is allegedly found to be false and consigned. The petitioner has further alleged that he had orally revoked the license of occupation of respondent No.2 and asked her to vacate the portion in her possession. The said application was dealt with by the District Magistrate, Jalandhar in terms of the provisions of the Action Plan which provides that District Magistrate, after receiving the complaint, shall forward the same to the Sub Divisional Magistrate for verification of the title of the property. The said Sub Divisional Magistrate, Jalandhar-I sent his report dated 24.1.2017. Thereafter notice was issued by the District Magistrate to respondent No.2 to appear and file her reply. Denying all the allegations made in the application filed by the petitioner, it was averred by the respondents in her reply that the allegations made in the complaint are false, frivolous and baseless. She also stated that after the death of her husband in the road accident, the amount of compensation was taken by the petitioner and also the amount of insurance policy was received by the petitioner and his wife which was deposited in

their name. She has also averred that after the death of her husband, it has become difficult for her to maintain herself and her daughter, namely, Surbhi, who is studying in a school and that the construction of the house was done with the funds of her husband. It is also submitted by her that there is no incident, sort of any kind of harassment or humiliation, reported by the petitioner and the application had been filed by misusing the provisions of law for seeking her and her minor daughter eviction from the house in question. It is also submitted that being a widow with a minor daughter, she has no place to live except the portion which she has been using after the death of her husband. She has denied to have lodged any complaint to the police on 16.10.2016 against the petitioner.

The District Magistrate, after hearing the parties, was of the view that the house in question, as per the report of the SDM, Jalandhar-I, belongs to the petitioner. He has found that respondent No.2, who is a widowed daughter-in-law having a minor daughter, should not have been evicted from the house in question.

Learned counsel for the petitioner has vehemently argued that as per the law laid down by this Court, the daughter-in-law is only a licensee and if she is forcibly keeping a portion of a house belonging to a senior citizen then she deserves to be evicted by the District Magistrate in terms of the Action Plan and in view of Section 22(2) of the Act.

Since, there is only one incident mentioned by the petitioner in the writ petition to make allegations against respondent No.2 that she had made a false complaint against him before the SHO, Police Station Division No.8, Jalandhar on 16.10.2016 which was not appended with the writ petition, the Court had asked the petitioner to place the same on record by its

application bearing CM No.7691 of 2018 and placed the said complaint after translation as Annexure A-1. Although the petitioner has mentioned in para No.4 of the writ petition that *“the respondent No.2 started exerting pressure upon the petitioner to transfer the entire property in the name of the respondent No.2. The respondent No.2 did not stop here, she moved a complaint before SHO, P.S. Div. No.8, Jalandhar against the petitioner on 16.10.2016”*. But in para 2 of the application bearing CM No.7691 of 2018, he has mentioned that *“Annexure A-1 is the complaint submitted by the sister of the respondent No.2 against the petitioner and his wife”*. Since the petitioner knew it very well that the alleged complaint was not made by respondent No.2 to the SHO, Police Station Division No.8, Jalandhar then why did he mentioned in para No.4 of the writ petition that the said complaint was made by respondent No.2 and verified the contents of para No.4 as correct. The said application was made by one Bachni Devi w/o Puran Chand, who happened to be the sister of respondent No.2. Therefore, the allegation made by the petitioner against respondent No.2 that she had made a false complaint against him is not found to be correct. Besides the aforesaid complaint, the petitioner has not referred to any other incident in the application filed under Section 22 of the Act and has made all bald allegations against respondent No.2 which have been strongly denied by respondent No.2 in her reply. Rather she has stated that after the death of her husband, the amount of compensation received was taken by the petitioner and his wife and the amount of the insurance policy was also taken by them.

In the backdrop of the aforesaid facts and circumstances, a serious issue for consideration by this Court is as to whether the widowed daughter-in-law along with her teen aged daughter should be asked to vacate

the portion of the house in question, which is though owned by her father-in-law, only on the ground that she is living as a licensee or there has to be some cogent reason for the father-in-law to dispossess his widowed daughter-in-law and her teen aged daughter or the satisfaction of the District Magistrate is to be looked into about the unauthorized occupation of the property in question by respondent No.2?

In order to appreciate the controversy involved, it would be relevant to refer to the Action Plan, which is reproduced as under:

***“ACTION PLAN UNDER THE
MAINTENANCE AND WELFARE OF
PARENTS AND SENIOR CITIZENS ACT,
2007, (56 OF 2007) (PUNJAB)***

Vide Notification No.10/20/2014-IDC/353259/1 dated 27.11.2014 issued by the Department of Social Security (Disability Cell) published in the Punjab Government Gazette, Part I, March 13, 2015 (PHGN 22, 1936 SAKA).

In exercise fo the powers conferred under Section 22(1) & (2) of “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”, (56 of 2007) and as prescribed by Rule 23 of “The Punjab Maintenance and Welfare of Parents and Senior Citizen Rules 2012”, the Punjab Government is pleased to make the following Action Plan.

1. This Action plan shall come into force from the date of its issuance.

1. Procedure for eviction from property/residential buildings of Senior Citizens/parent:

(i) Complaints received (as per provisions of the Maintenance of

Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Department/Agencies i.e. Social security, Sub Divisional Magistrate, Police Department, NGOs/Social Worker, Helpline for Senior Citizens and District Magistrate himself; shall be forwarded to the District Magistrate of the concerned district for further action.

- (ii) The District Magistrate shall immediately forward such complaints/applications to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case through revenue department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.*
- (iii) The Sub Divisional Magistrate shall submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.*
- (iv) If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizens/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of*

parents and Senior Citizens act 2007, and that they should be evicted, the District Magistrate 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 ground 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 issue thereof.*
- c) The District Magistrate shall cause the notice to be served by having it affixed on the outer door or at some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given/served to all persons concerned.*

2. Eviction Order from property/residential building of Senior Citizens/Parents;

- (i) *If, after considering the cause, if any, shown by any persons 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 District Magistrate is satisfied that the property/premises are in unauthorized occupation, the District Magistrate or other officer dully authorized may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated, on such date, not later than 45 days from the date of receipt of such order, as may be specified in that order, by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises;*
- (ii) *The District Magistrate may also associate NGOs/Voluntary organizations/social workers working for the welfare of senior citizens for the enforcement of order;*

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 District Magistrate if or any other officer duly authorized by the District Magistrate if or any other officer duly authorized by the District Magistrate in this behalf may evict that person from the premises in Question and take possession.

- (ii) The District Magistrate shall have powers to enforce the eviction orders with Police help.*
- (iii) The District Magistrate will further handover the property/premises in question to the concerned Senior Citizens/Parents;*
- (iv) The District Magistrate, shall forward monthly repost of such cases to the Director, Social Security Department, Punjab by 7th of the following month for review of such cases in the State Council for Senior Citizens constituted under “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007” and Rules of 2012 framed under the said Act under the Chairmanship of the Principal Secretary, Social Security Department, Punjab.*

4. Actions Related to Police Department.

- 1. The Senior Superintendent of Police of each district and in case of district having a Commissionerate system, such police*

commissioner will take all necessary steps subject to such guidelines as the state government may issue from time to time, for the protection of life and property of senior citizens (as defined in the Act) in the state.

- 2. Each police station will maintain an up to date list of senior citizens living within its jurisdiction, especially those who are living by themselves (i.e. Without there being any member in the households who not a senior citizens) as format enclosed Annexure-I. This register will be updated every 3 months.*
- 3. A representative of the police station along with (as far as possible) a social worker or volunteer, will visit such senior citizens at regular intervals and should remain accessible at the time of distress as in emergency cases on receipt of a request for assistance.*
- 4. Complaints/problem of senior citizens will be promptly attended by the local police.*
- 5. One or more volunteers committee(s) will be formed for each police station which will ensure regular contact between the senior citizens, especially those living by themselves, on the one*

hand and the police and the district administration on the other.

6. *The Commissioner of Police/Senior Superintendent of Police will give wide publicity in the media and through the police station, of the steps being taken for the protection of life and property of senior citizens. This will be in addition to publicity to be given by public relations department and district administration.*
7. *Crime against senior citizens should be attended to promptly. Each Police station will maintain two registers, one containing all important particulars relating to offences committed against senior citizens, particularly those concerned with their safety (format enclosed as Annexure-II) and the other with their complaints/grievances (other than crime) (format enclosed as Annexure-III) and efforts should be need to get these redressed from appropriate authorities through Deputy Commissioner at the earliest.*
8. *The register referred to in clause (7) will be kept available for public inspection, and every officer (Police, Judicial or Executive Magistrate) inspecting a police station will invariably*

review the status as reflected in the register.

9. *All police stations will maintain new register titled “Visits to Senior Citizens Register” for monitoring the visit of beat staff to the senior citizens. This register would be maintained beat wise i.e. one register for every beat and while making the door-to-door visit the beat official would obtain the signature of the senior citizens as a token of acknowledgement of their visit. The senior citizen register would be maintained as per the Performa enclosed as Annexure-IV. A monthly report regarding the visits to senior citizens by the beat staff will be sent by Police Station to the CP/SSP through in charge Community Relations Unit (CRU), who will compile the reports and put up to the Inspector General of Police, (HR) for perusal as per below Performa (format enclosed as Annexure-V).*
10. *List of Do’s and Don’ts as prepared by concerned Commissioner of Police/Senior Superintendent of Police to be followed by senior citizens in the interest of their safety and will be widely publicized (safety protocols to be followed).*

11. *Antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens. Senior citizens will be responsible to give information about domestic servants, tenants and landlords.*
12. *Community policing and activating system of the beat constables along with adequate patrolling will be undertaken in consultation with citizens living in the locality. Efforts should be made to rope in volunteers, members of civil society, resident welfare associations NGO,s etc.*
13. *The police station will send a monthly report of (a) crimes against senior citizens and (b) grievances of senior citizens to the Commissioner of Police/Senior Superintendent of Police, as the case may, by the 10th of every month on the same format, in which two registers are maintained. In addition, it will send a summary statement on investigation and trial of cases of crime against senior citizens in prescribed format. (Format enclosed as Annexure-VI and Annexure-VII).*
14. *The Police Commissioner/Senior Superintendent of Police shall submit to the Director General of Police, Punjab and the District*

Magistrate a monthly report by the 20th of every month, about the nature/status of crimes against senior citizens.

- 15. The Director General of Police, Punjab will cause the reports submitted under clause 13 to be complied, once a quarter, and submit the same to the Principal Secretary (Home) with a copy to Director, Social Security every quarter as well as every year for, inter alia, being placed before the State Council of Senior Citizens constituted under Rule 24 by Director, Social Security.*
- 16. Interactive sessions/programs will be carried out in order to redress their grievances especially in the presence of Residence welfare Associations (RWAs) and other members of the family.*
- 17. Punjab Police has also provided toll free senior citizens help line 181 in order to provide a quick and responsive access to the senior citizens. The multiple modes of contact for this helpline include, dial 181 from phone, SMS at 7696-181-181, Fax No. 0172-6626181, E-mailhelp@181pph.com and Portal www.181pph.com, when calling from abroad 0091-172-2298543. The toll free no 181 is being manned round the clock. On*

receipt of telephone calls requiring assistance, the PCR operator would send the nearest PCR vehicle to the senior citizens. When immediate help is required, the operator would also inform the concerned police station for sending police officials. Whenever the matter relates to other department, the concerned department would be informed for taking appropriate action.

- 18. The State Government has launched an 'Integrated Police Helpline' for multi-mode policing for Women, Children, Senior Citizens and NRIs on 23rd Aug., 2013. The Inspector General of Police (NRI Affairs) is in charge of NRI wing and will act as nodal authority at state level for this helpline.*
- 19. Several initiatives have been taken to interact with senior citizens and pay special attention to the security of their life and property. Advisory Committee was constituted in each police station for institutionalizing police public interaction which should be continued.*
- 20. A Community Relation Unit will be set up at District Police headquarters to monitor the neighbourhood watch scheme, effectiveness of police-public*

interactions, door-to-door visit by beat staff, special measures taken for the senior citizens, redressal of public grievances etc.

21. *The Inspector General of Police, Human Right Cell will act as Nodal Police officer at State level and will monitor all the progress/work done under this Act.*
22. *A list of senior citizens (as per Annexure-I) maintained in each police station will be sent to the CP/SSP through in charge Community Relation Unit. CP/SSP will nominate a Superintendent of Police rank officer as district nodal officer, who will maintain consolidated record of senior citizens.”*

Section 22(2) of the Act empowers the State Government to prescribe a comprehensive action plan for providing protection to life and property of senior citizens. The Action Plan lays down the procedure for eviction from the property/residential building of the senior citizens/parent and a careful reading of the said Action Plan would reveal that before any action is contemplated by the District Magistrate against a son, daughter or legal heir, report has to be obtained about the title of the property in dispute from the concerned Sub Divisional Magistrate because if the senior citizen/parent is not the owner of the property in dispute then he/she cannot maintain the application under Section 22 of the Act. After obtaining the report, if the District Magistrate is of the opinion that the son, daughter or

legal heir of senior citizen/parent is in unauthorized occupation then he would issue a notice in the manner prescribed which would contain the ground on which the order of eviction is proposed to be made.

After considering the cause shown by the person to whom the show cause notice is issued and any evidence which is produced by the said person and affording an opportunity of hearing, the District Magistrate has to be satisfied before passing the order of eviction that the person in possession is in unauthorized occupation and for that he had to record reasons and then direct the said person to vacate the premises in question but not later than 45 days from the date of receipt of such order.

Thus, from the Scheme of the Act, Rules and Action Plan it appears that the senior citizen/parent, who is the owner of the property, may seek eviction against the person, who may be the son, daughter or legal heir as unauthorized occupants but for that matter there should be some material against the son, daughter or legal heir otherwise the old parents, who may not have any personal grievance against their son, daughter or legal heirs, may play in the hands of other members of the family, who might have an eye on the property of the old parents, by misusing the provisions of law, that is why it is provided in the Action Plan that the District Magistrate, after taking into consideration any evidence, if satisfied that the person in possession is in unauthorized possession then pass the order of eviction. The application filed by the senior Citizen is not to be decided mechanically but after taking into consideration the facts and circumstances of a particular case.

As in the present case, the petitioner has failed to bring on record any *prima facie* evidence against respondent No.2 of her

the complaint made to the police which is also not found to have been made by respondent No.2. Therefore, it cannot be attributed to her for the purpose of holding it to be a misconduct on her part being the daughter-in-law. The respondent No.2, who is a widow having a teen aged daughter has no other shelter.

Thus in my considered opinion, the District Magistrate has committed no error in dismissing the application filed by the petitioner and hence, the writ petition is hereby dismissed. No costs.

22.05.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*