

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.160 of 2018
Date of Decision: 14.09.2018

Devi Bai

..... Petitioner

Vs.

Narinder Kumar and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Lekh Raj Sharma, Advocate,
for the petitioner.

Mr.Parminder Singh, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

The petitioner is a senior citizen and mother of respondents No.1 & 2, who had initiated proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] against respondents No.1 & 2 before the SDM, Panipat wherein her application was registered as Case No.18/SDM in which she had alleged that she is the owner of House No.330, Ward No.7, Panipat which was purchased by her vide Vasika No.491/1 dated 02.6.1970 by way of a registered sale deed. She is a widow and having three sons and three daughters. Two daughters are married but the third daughter namely, Sudesh Kumari is unmarried who is the owner of House No.331, Ward No.7, Panipat and is living separately. Out of her three sons, one son, namely, Sanjay is living in Delhi with his family whereas the other two sons, namely, respondents No.1 & 2 are living with their family on the 1st and 2nd Floor of her House No.330, Ward No.7,

No.1 & 2 and their family members on daily basis inasmuch as she had to take shelter in the house of her unmarried daughter-Sudesh Kumari. She also made a complaint at Police Post Kila against respondents No.1 & 2. The petitioner has thus made a prayer that respondents No.1 & 2 are in the unauthorized possession of her house, they may be ordered to be evicted and the possession of the house in question be delivered to her with a direction to them to pay ₹10,000/- per month as monthly subsistence as well.

It has been found as a fact that the petitioner is the owner of House No.330, Ward No.7, Panipat. The SDM, Panipat passed the order of eviction on 27.10.2014 against respondents No.1 & 2. Aggrieved against the said order, respondents No.1 & 2 filed an appeal before the Maintenance Appellate Tribunal i.e. in the Court of District Magistrate, Panipat, which was registered as case No.149/DC. The said appeal was disposed of on 10.6.2016 with a direction that the ground floor of House No.330, Ward No.7, Sanauli Road, Panipat shall be given to the petitioner in which respondents No.1 & 2 would not interfere and they would also pay ₹2000/- each every month to her as subsistence allowance.

The petitioner was not satisfied with the order of the Maintenance Appellate Tribunal and filed CWP No.20075 of 2016. During the course of hearing of that case, respondents No.1 & 2 had submitted that the order of eviction could not have been passed by the Tribunal. Rather it was submitted that at the most maintenance could have been ordered by the Tribunal from the date of order and not from the date of the application. The said writ petition was disposed of by this Court by clarifying that the subsistence allowance has to be paid by respondents No.1 & 2 to the petitioner from the date of application i.e. 1.10.2014 and not from the date of

seeking eviction of her sons is concerned, it was observed that since the application was filed before a wrong forum, therefore, it has no meaning in the eyes of law and the petitioner was given liberty to file the application in terms of Section 22(2) of the Act before the competent authority i.e. Deputy Commissioner, Panipat.

The petitioner, thereafter, filed the application under Section 22(2) of the Act read with Action Plan of the State of Haryana before the District Magistrate, Panipat for seeking eviction of respondents No.1 & 2 from her house. The said application is registered before the District Magistrate, Panipat as case No.28/DC which has now been disposed of by the impugned order dated 22.11.2017 with the observation that though the property in question was purchased by the father of respondents No.1 & 2 in the name of their mother/petitioner but they have a right in this property. It is also observed that the respondents are maintaining their family by doing private job. They would deposit the entire amount of maintenance, as earlier directed, within a period of one year but it was also observed that the order dated 10.6.2016, passed by the District Magistrate, Panipat in Appeal No.149/DC, shall be treated as part and parcel of the impugned order.

Aggrieved against the order dated 22.11.2017, the present petition has been filed in which notice was issued and the respondents have filed their respective replies.

It is admitted by respondent No.1 in his reply that the house in question is in the name of the petitioner whereas adjacent House No.331, Ward No.7, Panipat is in the name of her sister. It is also admitted that the petitioner some times lives with them and some times with her unmarried daughter, who is the owner of House No.331, Ward No.7, Panipat.

Learned counsel for the petitioner has submitted that the impugned order is patently illegal as the District Magistrate, Panipat has made the decision rendered in appeal No.149/DC dated 10.6.2016 as a part and parcel of the impugned order whereas the said order is not passed by him as a *persona designata* in terms of Section 22(2) of the Act read with the Action Plan but as the Maintenance Tribunal. It is submitted that the application for seeking eviction by a senior citizen against unauthorized occupation by his/her son, daughter or legal heir is maintainable only before the District Magistrate, who has to decide the same in terms of the procedure laid down in the Action Plan and the said application is not maintainable at all before the Tribunal. It is further submitted that the Tribunal is headed by the SDM whereas when an application is filed under Section 22(2) of the Act and the Action Plan is invoked for the purpose of following the procedure, the SDM has to only make a report to the District Magistrate, on his asking, about the verification of the title of the property involved and once the District Magistrate is satisfied with his report that the property in question is owned by the person, who had filed the application, he would follow the procedure further for deciding about the issue of eviction of the said unauthorized occupants of the house of the senior citizen. Therefore, it is submitted that when the order was passed in CWP No. 20075 of 2016 on 09.08.2017, this Court had held that the application earlier filed for seeking eviction before a wrong forum, the order has no meaning in the eyes of law and liberty was given to the petitioner to file a fresh application in accordance with law which would mean that the earlier proceedings initiated under Section 22(2) of the Act before the SDM has been washed away. It is further submitted that the previous litigation has been confined only to the

extent of payment of maintenance which falls within the jurisdiction of the Tribunal in terms of Section 4 & 5 of the Act.

On the other hand, learned counsel for the respondents has submitted that respondent No.1 is also a senior citizen, having a family as well and engaged in a petty job. It is further submitted that the petitioner is living happily with her daughter in the adjacent house which is better built than the house in question and has no requirement of the house but she has initiated this litigation just for the sake of dispossessing the respondents at the instance of her unmarried daughter.

I have heard learned counsel for the parties and perused the record with their able assistance.

The purpose of enactment of the Act was to ensure the safety and security of the senior citizens or the parents. It was found that the parents and senior citizens need to be maintained for which Tribunal is constituted to make a summary inquiry and pass the order of maintenance against the persons, who are liable to pay and in case there is no-one to maintain them then the provision is made for oldage homes and medical support. Insofar as, the issue of protection of life and property of the senior citizen is concerned, provisions are made to order the return of the property given by the parent/senior citizen to his/her children, who may start ignoring them after taking the property from them and for restoring the possession of their property in case they are being harassed by their children/legal heir living therein with their permission.

In this process, the provision is made under Section 22(2) of the Act for the State Government to prescribe a comprehensive action plan for providing protection of life and property of senior citizens. The Action Plan

with Rule 24 of the Haryana, Maintenance of Parents and Senior Citizens Rules, 2009 [for short 'the Rules'] conferring the jurisdiction upon the District Magistrate to examine such applications and pass necessary orders of eviction and enforcement of the said orders. Thus earlier order of eviction of respondents No.1 & 2 passed by the District Magistrate, in case No.149/DC, by which the petitioner has been given only one portion of her house while hearing appeal against the order of the SDM, who has passed the order of eviction from the entire property, was patently without jurisdiction as the said proceedings had been initiated before the Maintenance Tribunal, having no jurisdiction at all to decide the issue of passing an order under Section 22(2) of the Act.

Accordingly, vide order dated 9.8.2017 passed in CWP No. 20075 of 2016, this Court has observed that since the application for eviction was filed before the wrong forum, therefore, it has no meaning in the eyes of law which means that the previous order of eviction has become redundant. As a result thereof, the petitioner filed a fresh application under Section 22(2) of the Act as the permission was granted to her and the District Magistrate has committed a patent error in making the order, passed in appeal case No.149/DC, as part and parcel of the impugned order meaning thereby he has passed the order of giving part possession of the property in question to the petitioner though she is entitled to possession of the entire house which admittedly belongs to her and not to respondents No.1 & 2.

Thus in view of the aforesaid discussion, the present petition is hereby allowed, the order of the District Magistrate, Panipat is set aside and respondents No.1 & 2 are ordered to be evicted from House No.330, Ward No.7, Panipat. Direction is issued to the District Magistrate, Panipat to

ensure the eviction of respondents No.1 & 2 within a period of 30 days from

the date of receipt of certified copy of this order for the purpose of delivery of possession to the petitioner.

14.09.2018
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*