

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16458 of 2018
Date of Decision:24.07.2018

Subhash Makkar

. Petitioner

Vs.

State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Lokesh Sharma, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner, who is the father and senior citizen, filed an application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'] before the Maintenance Tribunal. The Tribunal vide its order dated 5.9.2017 passed the order of eviction against respondents No.6 & 7 herein. Aggrieved against the said order, the wife of the petitioner filed the appeal which was allowed by the Appellate Tribunal vide its order dated 30.1.2018 only to the extent that respondent No.7 herein would take care of the petitioner and provide him food and in case respondent No.7 herein do not provide the food then he would pay ₹3000/- per month as rent.

After hearing learned counsel for the petitioner and perusing both the orders of the Tribunal and Appellate Tribunal, I am of the considered opinion that both the orders passed by the Tribunal and

Appellate Tribunal are patently illegal. The first order passed by the Tribunal is on an application filed under Section 5 of the Act by which it has directed respondents No.6 & 7 herein to vacate the house of the petitioner. It is needless to mention that the Tribunal constituted under Section 7 of the Act can only decide the application filed under Section 5 of the Act and Section 23 of the Act for the purpose of annulling the document by which the senior citizen/parent has transferred his property if the transferee fails to provide adequate services to the said senior citizen/parent but the Tribunal does not have the jurisdiction to pass the order of eviction as the order of eviction could only be passed in terms of Section 22(2) of the Act for which the powers have been conferred exclusively upon the *persona designata* i.e. the District Magistrate of the District, who has to take action in accordance with the action plan. Insofar as the order of the Appellate Tribunal is concerned, the said order has been passed on an appeal filed by Motia Rani, wife of the petitioner, against whom there was no order of eviction passed by the Tribunal, therefore, she was not an aggrieved person to maintain the appeal in which the Appellate Tribunal has directed respondents No.6 & 7 herein i.e. the sons of the petitioner, to pay maintenance.

In view of the aforesaid, both the orders are hereby set aside and the matter is remanded back to the Maintenance Tribunal to decide the application with regard to award of maintenance to the petitioner, in accordance with law and permission is also granted to the petitioner to file an appropriate application before the District Magistrate, in case he desires the eviction of his sons, on the ground

that they are not providing him proper maintenance. With these observations, the present petition is hereby disposed of.

Parties are directed to appear before the Maintenance Tribunal on 10.9.2018.

24.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

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