

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-20261-2017 (O&M)

Date of Decision: 09.10.2018.

Manmeet Singh

... Petitioner

Versus

Additional Deputy Commissioner-cum-District Magistrate and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. A.S. Sandhu, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. H.S. Jugait, Advocate,
for respondent No.2.

JITENDRA CHAUHAN.J.(ORAL)

This is a civil writ petition filed under Articles 226 and 227 of the Constitution of India for quashing the order dated 06.07.2017 (Annexure P-1) passed by Additional Deputy Commissioner-cum-Collector under the Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (for short “the Act”), SAS Nagar Mohali.

The petitioner is son of respondent No.2. He has been residing with his wife, one minor son and daughter in House No. 605, Phase 3B1, Mohali. In the year 1987, the petitioner had started residing in the aforesaid house along with his late mother who was the owner of the house.

It is contended that respondent No.2 father of the petitioner is permanent resident of Delhi and has been residing at House No.26, Rameshwar Nagar, Azadpur-3, Delhi. The house in dispute is possession of the petitioner. Respondent No.2 has prepared a forged and fabricated Will dated 22.10.2004 qua the house in dispute. Vide impugned order dated 06.07.2017 (Annexure P-1), the petitioner has been wrongly directed to vacate the said house.

It is asserted that the competent authority has not followed the provisions of the action plan inasmuch as he has not referred the complaint of respondent No.2 to the SDM for the purpose of verification of title of the complainant and thus there was no report before him for the purpose of proceeding further. In this regard he has referred to Clause 1(ii) & (iii) of the action plan notified by the State of Punjab on 13.3.2015. He cites *Major Harminder Singh (retired) vs. State of Punjab and others 2017(1) RCR (Civil) 904* to contend that the impugned order is bad in law since respondent No.1 was not empowered to evict the petitioner summarily who is in settled possession of the property in dispute owned by his mother Tarlochan Kaur.

On the other hand, it has been submitted by respondent No.1 that on receipt of complaint made by respondent No.2, the same was sent to Sub Divisional Magistrate to submit a fact finding report in view of notification dated 27.11.2014 vide letter dated

31.01.2017 (Annexure R-1/1). Similar letters dated 01.03.2017, 17.03.2017 and 11.04.2017 were also written to the office of the Sub Divisional Magistrate, SAS Nagar but no report was received from the latter. Respondent No.2 had filed affidavit regarding ownership which was in the name of Tarlochan Kaur wife of respondent No.2. On her death, the ownership was changed in the name of respondent No.2, therefore, the complaint was accepted and a direction was rightly issued to the petitioner to vacate the aforesaid house. The provisions of clause 1(ii) and (iii) of the Action Plan notified by the State of Punjab on 13.03.2015 have not been violated by respondent No.1.

As per respondent No.2, the petitioner is his elder son. The construction of the said house was carried out in 1986-87 and the said property was bought by respondent No.2 in the name of his late wife Smt. Tarlochan Kaur. After her death, vide letter dated 17.03.2017 (Annexure R-2/2) the ownership of the property in dispute was transferred in favour of respondent No.2. The petitioner is unauthorized occupant of the property in dispute. He is not paying rent to respondent No.2 rather he has been extending threats to him.

Heard.

Respondent No.2 is father of the petitioner. He is an old man. The house in question after the death of his wife, Tarlochan Kaur stands transferred in the name of respondent No.2. The same is under occupation of the petitioner. He is neither paying the rent nor

discharging his duties as son. Keeping in view the object of the Act, respondent No.1 has rightly directed the petitioner to vacate the house in question within 30 days. In the circumstances, the petitioner cannot be said to be in settled possession of the property in dispute. The ratio of law laid down in **Major Harmohinder Singh 's case (supra)** is distinguishable on facts of the present case. The plea of the petitioner that respondent No.2 has forged Will dated 22.10.2004 qua the house in dispute has already been rejected by the Civil Court vide judgment dated 06.12.2016. No cause of action has accrued in favour of the petitioner to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The pendency of appeal against judgment dated 06.12.2016 (Annexure R-2/1) would not be of much help to the petitioner. This Court does not find any reason to interfere in the well reasoned impugned order. Consequently, the present civil writ petition is dismissed.

09.10.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No