

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

CWP No. 19327 of 2018

Date of Decision: 06.08.2018

TARA RANI

....Petitioner

VS.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Arvinder Arora, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The question involved in this case is as to whether an application filed by a senior citizen under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') read with Rules and the action plan would be maintainable in case the said senior citizen transfers the title of the property to someone else during the pendency of the application?

Brief facts of this case are that the petitioner, being a senior citizen and mother of private respondents, filed an application under Section 22 of the Act before the District Magistrate, Ambala for seeking eviction of private respondents from the property in dispute i.e. House No. 575/2, Chanana Colony, Naraingarh, District Amabala. She made allegations against her son-respondent No. 1 that he is a drunkard, also assaulted her with iron-rod and other members of his family and also misbehaved with her.

The complaint made by the petitioner was dismissed by the District Magistrate vide order dated 30.01.2018 on the ground that the petitioner ceased to be the owner of the property because she had transferred

the said property vide registered transfer deed No. 2954 dated 22.03.2017 to respondents No. 10 and 11 before the final decision of the application filed under Section 22 of the Act.

Learned counsel for the petitioner has submitted that the impugned order is illegal because the property is defined under Section 2 (f) of the Act which means "*property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property.*" It is submitted that even if she is no more owner of the property in question, she would be a licensee of the said property under Section 52 of the Indian Easement Act, 1882 and in this regard has referred to Section 23 of the Act to contend that if the petitioner may not be owner of the property than she would the licensee in view of the word used in the sub-section as gift or "**otherwise**".

I have heard learned counsel for the petitioner and perused the record with his able assistance.

Chapter V of the Act deals with "Protection of Life and Property of Senior Citizen" in which Section 22 provides that "*the State Government to confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.*"

Section 22 (2) further provides that "*the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.*"

Section 23 deals with the transfer of property to be declared as void in certain circumstances in which it is provided that *"a senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal."*

The Tribunal is defined under Section 2 (j) which means Maintenance Tribunal constituted under Section 7.

Since, Section 22 (2) provides that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens, therefore, in terms of Rules 24 of the Haryana Maintenance of Parents and Senior Citizen Rules, 2009, the Action Plan was provided. The said Rule reads under: -

"An action plan, for protection of life and property of senior citizens shall be notified by the State Government within a period of six months from the date of publication of these rules."

The action plan was notified on 26.05.2015 by the Government of Haryana, Social Justice and Empowerment Department which contains two parts. First part deals with the action plan for the protection of life and property of the Senior Citizen for which the powers are conferred upon the Senior Superintendent of Police and the second part deals with the procedure for eviction from the property/residential building of the senior

Magistrate. Since, in this case we are dealing with the issue regarding to the eviction order having been sought by a Senior Citizen from the Court of the District Magistrate in terms of the action plan, therefore, the action plan dealing with the procedure needs to be noticed which read as under: -

(1) “Procedure for eviction from the property/residential building belonging to/occupied by Senior Citizen/Parents:-

- i) *Complaints received (as per provisions of the Maintenance of Parents and Senior Citizen Act, 2007) regarding life and property of Senior Citizens by different Department, NGOS/Social Workers, Helpline for Senior Citizen 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/application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the cases through Revenue Department/concerned Tehsildar/spot verification within 15 days from the date of receipt of such complaints/application.*
- iii) *The Sub Divisional Magistrates shall immediately submit his/her report to the concerned District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.*
- iv) *If the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizen/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 grounds 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 receipt 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 to all persons concerned.*

(2) ***Eviction Order from property/residential building Senior Citizen/parents:-***

- i. *If, after considering the cause, if any, shown by any person 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 duly 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 as may be specified in the order, by all persons who may be in occupation of any part, thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part to 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 eviction 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 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, of the concerned district shall have powers to enforce the eviction orders through the Police Department.*
- iii. *The District Magistrate, of the concerned district shall further arrange to handover the property/premises in question to the concerned Senior Citizens/parents.*
- iv. *The District Magistrate, of the concerned district shall forward a monthly report of such cases to the Director General, Social Justice and Empowerment Department Haryana, Chandigarh by 7th of the following month for review of such cases in the State Council for Senior Citizens constitute under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules of 2009 framed under the said Act under the Chairmanship of the Hon'ble Minister of Social Welfare, Haryana.*

As per the aforesaid procedure, as soon as a complaint is received by the District Magistrate, he would immediately forward the same to the concerned Sub Divisional Magistrate (SDM) for seeking verification of the title of the said property from the Revenue Department. The said action has to be taken within a period of 15 days from the date of receipt of the said complaint/application. Thereafter, the SDM would immediately submit his/her report to the District Magistrate for passing of the final order within a period of 21 days. The District Magistrate, if thereafter, is of the opinion that the son(s)/daughter(s)/legal heir(s) of the senior citizen is in unauthorized occupation of any property as defined under the Act and deserve to be evicted then he would follow the procedure and pass the eviction order thereafter.

From the reading of the aforesaid provision, it is apparent that the *sine qua non* for seeking eviction by a senior citizen is the ownership of the property in dispute. That is why the District Magistrate at the first

instance seeks the information from the SDM concerned about the verification of title of the property in question. Once, he is satisfied that the property belongs to the senior citizen, thereafter, he is to form an opinion on the basis of the material brought before him that the son(s)/daughter(s)/legal heir(s) of the senior citizen is in unauthorized occupation of the property i.e. against the wishes of the senior citizen and then he may start proceedings by issuing notice to the person(s) concerned specifying the ground on which the eviction is being sought. Thereafter, he would pass an order after considering the cause shown by the person(s) in pursuance to the notice and any evidence he/she may produce in support of the same after giving reasonable opportunity to him/her. The DM has to be satisfied that the property/premises is in the unauthorized occupation of the person to be evicted.

In the present case, however, when the application was filed by the Senior Citizen, she was the owner of the property but she could not maintain the ownership till the culmination of the proceedings as during the pendency of the application, she gifted the property in question to two of her grandsons, sons of the other son, by way of a registered gift deed, therefore, she had washed her hands from the title of the property.

The argument of the learned counsel for the petitioner that the definition of “Property” given under Section 2 (f) means that the Senior Citizen, even after losing his or her title would have an interest in the said property, is totally fallacious. Insofar as the other argument that the word '**otherwise**' used under Section 23 of the Act means that the petitioner is a licensee would also patently erroneous because the word “gift or otherwise” has been used to expand the nature of transfer of property and not making the person as a licensee after losing the title of the property. She may be a

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grandsons to whom she has gifted the property by way of a registered gift deed and she, being not the owner of the property, cannot seek eviction of the persons because she herself stand in the same shoes of those persons against whom the petition was filed because earlier she was claiming them to be the licensee in the property being owner of the property.

Thus, in view of the above, the question posed in the beginning is answered to the effect that if a senior citizen loses the title in a disputed property, during the pendency of the application, filed under Section 22 of the Act, then the said application is not maintainable and has to be dismissed.

With these observations, the present petition is dismissed.

August 6, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

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