

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

CWP No. 22162 of 2018 (O&M)

Date of Decision: 17.09.2018

ATMA SINGH SAMRA

..... Petitioner

V/s.

THE DISTRICT MAGISTRATE, JALANDHAR AND OTHERS

....Respondents

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

Present: Mr. Vijay Lath, Advocate
for the petitioner.

RAKESH KUMAR JAIN, J. (Oral)

This petition is directed against the order dated 02.05.2018 by which an application filed by the petitioner under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Act, 2007') read with the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (for short 'the Rules') read with Action Plan under the Act, 2007, notified on 27.11.2014 in terms of Rule 23 of Rules to seek eviction exclusively of respondent No. 2 who happened to be the daughter-in-law of the petitioner, *inter-alia*, on the ground of harassment and etc.

Though the application has been dismissed by the impugned order dated 02.05.2018 on other grounds but I am of the considered opinion that an application filed under Section 22 of the Act, 2007 itself is not maintainable against the daughter-in-law.

The Act, 2007 is divided into various Chapters. Chapter II deals with the Maintenance of the Parents and Senior Citizens. Chapter III deals with the Establishment of Old Age Homes. Chapter IV deals with the

Provisions for Medical Care of Senior Citizen and Chapter V deals with Protection of Life and Property of Senior Citizen.

Section 22 (2) is a part of Chapter V where it is provided that *“the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”*

The procedure is prescribed in the Rules in which Rule 23 provides that *“An action plan under section 22(2) shall be notified by the State Government within a period of six months from the date of publication of these rules in the Official Gazette and may be revised from time to time.”*

Accordingly, the action plan was notified in the gazette on 27.11.2014. The said action plan is also divided into two parts. First part of the plan deals with the powers of the District Magistrate to pass an order of eviction and to protect the life and property of the senior citizen/parent and the second part relates to the protection of life and property for which the Senior Superintendent of Police of the District has been given certain guidelines. Since, this case is pertaining to eviction, therefore, this Court is concerned only with the process prescribed under the action plan for seeking eviction of the person(s) who is in unauthorized occupation of the property of the senior citizen/parent.

Section 2 (a) of the Act, 2007 provides the definition of “children” which includes son, daughter, grand-son, grand-daughter but does not include a minor. Section 2 (d) defines the “parent” which means a father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen. Section 2 (f) defines the “property” 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. Section 2 (g) provides definition of “relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death. Section 2 (h) provides definition of “senior citizen” which means any person being a citizen of India, who has attained the age of sixty years or above.

As per the procedure prescribed in the action plan, conferring the powers upon the District Magistrate to entertain the application for seeking eviction of the unauthorized occupants of the property of the senior citizen/parent, the District Magistrate either himself receives the complaint or the same is referred to him, would first of all seek information from the Sub Divisional Magistrate about the title of the said property. After the receipt of report from the SDM, if the District Magistrate finds that the property in question belongs to the senior citizen/parent, he would form an opinion that any son, daughter or legal heir of the said senior citizen/parent is/are in unauthorized occupation from which eviction is sought. The District Magistrate shall issue the notice in writing calling upon all such person/persons against whom the application has been filed to show as to why an order of eviction should not be passed against him/her/them. Needless to mention that as per action plan, notice should be issued specifying the grounds in which the order of eviction is proposed. After the reply is taken, if the District Magistrate is satisfied that the person(s) against whom the petition is filed is in unauthorized occupation, he would pass an order of eviction and also enforce the said order as per the provisions under the action plan. The words used in the action plan about the person to be in unauthorized possession are “son, daughter or legal heir”. There is no need to

define the meaning of son or daughter as I am concerned only to the definition of “heir” because the matter relates to the eviction of a daughter-in-law. The word “heir” is not defined in the Act, 2007 but it is defined in the Hindu Succession Act, 1956 (hereinafter referred to “the Act, 1956”) under **Section 3 (f)** which means any person, male or female, who is entitled to succeed to the property of an intestate under that Act. The word “Intestate” is also defined under **Section 3 (g)** of the Act, 1956 which means a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect.

In regard to the general rule of succession, in case of males, it is provided under Section 8 of the Act 1956 that the property of a male Hindu, dying intestate, shall devolve according to the provisions of this Chapter, firstly, upon the heirs, being the relatives specified in class I of the Schedule and secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule and so on and so forth.

The question would be as to whether the daughter in law of the petitioner whose husband is alive would fall under the definition of “heir”?

In order to search the answer, the Schedule appended with the Act, 1956 dealing with the definition of “heirs” has to be looked into in which daughter-in-law, whose husband is alive, is conspicuously absent. Therefore, I am of the considered opinion that such an application for seeking eviction exclusively against the daughter-in-law is not maintainable as she is not a legal heir of the petitioner. Thus, in my considered opinion not that the application filed by the petitioner against her daughter-in-law, whose husband is alive, is per se not maintainable and deserves to be dismissed on this ground also.

No other point is raised.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed, though without any order as to costs.

September 17, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

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