

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

CWP No.2828 of 2018
Date of Decision: 08.02.2018

Rajwinder Kaur

. . . . Petitioner

Vs.

District Magistrate and another

. . . .Respondents

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

Present: Mr.Arun Sharma, Advocate,
for the petitioner.

Mr.Amit Gupta, Advocate,
for the caveator/respondent No.2.

RAKESH KUMAR JAIN, J. (ORAL)

Petitioner is the daughter-in-law of respondent No.2, who had filed an application for seeking her eviction from his House No.30, Street No.23, Anand Nagar-B, Patiala under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for short 'the Act'], *inter alia*, on the ground that the petitioner is causing harassment and inconvenience to him in his day-to-day life. The application has been allowed by the District Magistrate, Patiala on 29.11.2017 and the petitioner has been directed to vacate the said house.

Learned counsel for the petitioner submits that the application filed for seeking her eviction is not maintainable in terms of the provisions of the Act because the application could only be maintained against the son, daughter and heir whereas the petitioner being the daughter-in-law is not covered. It is further submitted that the son and daughter is not defined in the Act except for 'children' and 'relative' which are defined in Section 2(e) and

2(g) of the Act. According to the definition provided in Section 2(e) of the Act, 'Children' include son, daughter, grandson and grand-daughter but does not include a minor and the definition of 'Relative' provided in Section 2(g) of the Act provides that 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. The daughter-in-law is neither defined as 'children' nor 'relative' in the Act. In the Scheme of the Act, Section 22 deals with the Authorities, who may be specified for implementing the provisions of this Act. Section 22(2) of the Act provides that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Since it is a case relating to the State of Punjab, therefore, the State of Punjab has also provided the Action Plan in order to protect the life and property of the senior citizens. Action Plan, under the Act, of Punjab was notified on 27.11.2014 in which Clause 1 deals with the Procedure for eviction from property/residential building of Senior Citizens/ parent and the District Magistrate has been empowered to pass the necessary orders. Clause 1(iv) of the Action Plan provides that if the District Magistrate is of the opinion that any son or daughter or legal heir of a senior citizens/ 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 are required to be evicted then he shall issue notice in the manner provided calling upon all such persons to show cause as to why an order of eviction be not passed against them/him/her.

According to the aforesaid provision, the District Magistrate can take action against the son or daughter or legal heir of the senior

citizens/ parents. As I have already observed that the daughter-in-law is not a son, daughter or legal heir.

The 'legal heir' is not defined in the Act and for that purpose reference has to be made to the Hindu Succession Act, 1956 [for short 'the 1956 Act'] in which Section 8 deals with the heir of a person dying intestate. Section 8 of the 1956 Act provides two types of heirs which are called Class-I and Class-II heirs. A daughter-in-law is neither Class-I nor Class-II heir. However, a widowed daughter-in-law of a predeceased son is a Class-I heir. The petitioner is the daughter-in-law, therefore, she does not fall either in Class-I or Class-II heir. Therefore, the proceedings initiated under the Action Plan of the Act is not applicable to her and for that matter the District Magistrate has no jurisdiction to pass an order of eviction against her on an application filed under Section 22 of the Act. Therefore, the entire proceedings initiated against the petitioner, at the instance of respondent No.2 and the order passed by the District Magistrate, Patiala are patently without jurisdiction. Consequently, the petition is allowed and the impugned order is hereby set aside.

08.02.2018

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No