

CWP No.3322 of 2018 (O&M)

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

**CWP No.3322 of 2018 (O&M)**  
**Date of decision: March 09, 2018**

Sushila Devi and others ...Petitioners

Versus

Commissioner, Gurugram Division and others ...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Vineet Sehgal, Advocate,  
for the petitioners.

Mr. N.D.Achint, Advocate,  
for respondent no.6.

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**Rakesh Kumar Jain, J.**

**CM No.2944-CWP of 2018**

Application is allowed, as prayed for.

Written statement on behalf of respondent no.6 is taken on record.

**CWP No.3322 of 2018**

The petitioners have challenged the order dated 15.06.2017 passed by the District Magistrate, Gurugram, by which an application filed by respondent no.6, being a senior citizen, under Section 22(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "Act") has been allowed and the petitioners have been directed to vacate House Nos.331/25 and 333/25, situated in village Hadayatpur Chhawani, Pataudi Road, Gurugram.

It is averred in the petition that petitioners no.1 is the owner in

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possession of the property bearing Municipal No.632/20 (old) (presently 332/25), measuring 250 sq. yards, falling in Khasra No.141, excluding the area of Temple which falls in between the said property and bounded as under:-

North : Property Sh. Karan Singh

East : Land of Kabristan

West : Pataudi Road, and

South: Mandir and property of Baljeet

situated in Shakti Nagar, Gurugram within the municipal limits of Gurugram, Tehsil and District Gurugram. In the said property, petitioner no.1 is residing with her husband (petitioner no.2 herein), her unmarried son (petitioner no.3 herein) and a daughter. It is alleged that petitioner no.1 had inherited the aforesaid property from her father Yaad Ram. It is further alleged that petitioner no.1 has been paying various taxes/fee etc. of the Municipal Corporation in respect of the aforesaid property. Respondent no.6 has otherwise alleged that he had purchased the property in question from Vashist Goel S/o Ram Chander and also alleged that father of petitioner no.1 had executed a lease deed in respect of the said property in his favour in his life time. Since there had been a dispute about ownership and possession over the property in question, therefore, petitioner no.1 had to file a Civil Suit for permanent injunction in order to restrain respondent no.6 from interfering in the suit property, in which *status quo* with regard to possession was granted by the Civil Court. The said order of *status quo* was vacated on 26.08.2014, which was challenged by petitioner no.1 in appeal. The appeal was allowed on 23.09.2014 and respondent no.6 was restrained from raising construction over the property in question measuring 160 sq. yards during pendency of the Civil

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Suit and was further directed to maintain *status quo*. Respondent no.6 challenged the order of the Appellate Court before this Court by way of Civil Revision No.7112 of 2014, which was dismissed on 23.02.2015. It is alleged that respondent no.6 has then filed the present application under Section 22(2) of the Act alleging that he is a senior citizen, aged 72 years, and is owner in possession of the land measuring 265 sq. yards, comprising in Khasra No.177min, situated in village Hidayatpur Chhawani, Pataudi Road, Gurugram, purchased by him vide sale deed no.9610 dated 24.02.1989. It is further alleged in the application that one part of the suit property measuring 100 sq. yards is existed on the north side of Shani Mandir and other part measuring 95 sq. yards is situated on the south side of Shani Mandir and three storey shop has been constructed, on which the petitioners are trying to make unauthorized possession. Respondent no.6, thus, prayed for protection of his house nos.331/25 and 333/25 from the petitioners.

The District Magistrate had allegedly got the title of respondent no.6 over the property in question verified from SDO(C), Gurugram-North who, vide his report no.172 dated 01.03.2017, reported in favour of respondent no.6. The District Magistrate thereafter decided to pass the order of eviction against the petitioners by relying upon a decision of this Court passed in the case of **Balbir Kaur vs. Presiding Officer-cum-S.D.M. of the Maintenance & Welfare of Senior Citizen Tribunal, Pehowa, District Kurukshetra and others**, 2015(3) PLR 688.

Learned counsel for the petitioners has submitted that the District Magistrate has committed a patent error in passing the order of eviction against them being totally strangers. It is argued that the provisions of the Action Plan

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for the Protection of Life and Property of Senior Citizens under the Act, belonging to the State of Haryana (hereinafter referred to as the “Action Plan”) cannot be applied against the strangers as it can be invoked only against the son, daughter or legal heir of a senior citizen/parents whose property is unauthorizedly occupied by the said persons.

On the other hand, learned counsel for respondent no.6, while contesting the petition, has vehemently argued that firstly, the writ petition is not maintainable as the petitioners have the remedy of appeal under Section 16 of the Act and secondly, the order of eviction has rightly been passed against the petitioners even though they are strangers and are not related to him. In support of both these contentions, he has placed reliance upon the decision of this Court rendered in **Balbir Kaur's case (supra)**.

Learned counsel for the petitioners, in rebuttal, has submitted that there is no remedy of appeal available to the petitioners much-less under Section 16 of the Act as the appeal to the Appellate Tribunal is provided only against an order passed by the Maintenance Tribunal and not by the District Magistrate. As regards the order having been passed against the strangers, it is submitted that the District Magistrate had exercised his powers only in terms of the provisions of the Action Plan notified in terms of Rule 24 of the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as the “Rules”), which is silent about the power of the District Magistrate to pass an order of eviction against a stranger.

I have heard learned counsel for both the parties and examined the available record with their able assistance.

There are two issues raised by learned counsel for respondent

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no.6 to contest the petition filed by the petitioners, i.e. (i) the writ petition is not maintainable in view of the right of appeal provided under Section 16 of the Act; and (ii) the District Magistrate has the power under the Action Plan to pass the order of eviction against a stranger.

In order to appreciate the respective contentions and also to answer the aforesaid two questions, it would be appropriate to refer to the scheme of the Act at the first instance. The Act is divided into 7 chapters. Chapter II deals with the maintenance of parents and senior citizens and Chapter V with the protection of life and property of senior citizens. The Legislature has used two terms in the Act, namely, “maintenance” and “welfare” of the parents and senior citizens. The term “maintenance” is defined under Section 2(b), “welfare” under Section 2(k), “parent” under Section 2(d) and “senior citizens” under Section 2(h) of the Act. The jurisdiction to decide the application for maintenance is conferred upon the Maintenance Tribunal. The Maintenance Tribunal is constituted under Section 7 of the Act and the Appellate Tribunal under Section 15 of the Act. The order of the Maintenance Tribunal is amenable to appeal under Section 16 of the Act to the Appellate Tribunal. Chapter II of the Act exclusively deals with the maintenance and has nothing to do with the protection of life and property of the senior citizens.

Chapter V of the Act deals with the protection of life and property of the senior citizens. Section 22 of the Act is an enabling provision for the State Government to confer such powers and impose such duties on a District Magistrate for ensuring execution of the provisions of the Act. Section 22(2) of the Act further provides that the State Government shall provide a

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comprehensive action plan for providing protection of life and property of senior citizens.

In order to lay down the procedure for Maintenance Tribunal, Appellate Tribunal and other ancillary matters, the State of Haryana made the Rules exercising its power conferred under Section 32 of the Act, in which Rule 24 laid down the period within which the Action Plan has to be notified. Rule 24 of the Rules reads as under:-

**“24. Action Plan for the protection of life and property of senior citizens.--** 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.”

In view of Section 22 of the Act and Rule 24 of the Rules, Action Plan was notified by the State of Haryana on 26.05.2015 by the Department of Social Justice and Empowerment, Haryana. Since the Action Plan is for the protection of life and property of senior citizens, therefore, it is divided into two parts. The first part of the Action Plan deals with the action plan for the protection of life of parents and senior citizens, for which the entire responsibility has been put upon the Superintending of Police/Senior Superintending of Police of the District concerned and the second part of the Action Plan deals with the procedure for eviction from the property/residential building belonging to/occupied by senior citizens/parents. In this matter, the responsibility has been handed over to the District Magistrate who has been empowered to pass an order of eviction in respect of an unauthorized occupant of the property of the senior citizens/parents.

Since we are concerned with the order of eviction in this case

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having been passed by the District Magistrate, therefore, it would be relevant to refer to the entire procedure prescribed for eviction in the Action Plan, which reads as under:-

**“1. Procedure for eviction from property/residential building belonging to/occupied by Senior Citizen/Parents:**

- (i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Department, NGOs/Social Workers, Helpline for Senior Citizens 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 Magistrate for verification of the title of the property and facts of the cases through Revenue Department/concerned Tehsildars/spot verification within 15 days from the date of receipt of such complaints/application.
- (iii) The Sub Divisional Magistrates shall submit his/her report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.
- (iv) If the District Magistrate is of 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

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cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than then days from the date of issue 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 of Senior Citizens/Parents:**

- (i) If, after considering the cause, if any, shown by any persons 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 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.

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- iii. The District Magistrate, of the concerned district shall further arrange to hand over 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 & Empowerment Department Haryana, Chandigarh by 7<sup>th</sup> of the following month for review of such cases in the State Council for Senior Citizens constituted 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.”

From a bare perusal of the aforesaid provisions much-less the fact that the order of eviction is passed by the District Magistrate, acting in pursuance of his powers conferred under the Action Plan, no appeal under Section 16 is available to the petitioners which could have been filed before the Appellate Tribunal against the order of the District Magistrate, therefore, the argument raised by learned counsel for respondent no.6 about non-maintainability of the writ petition in the wake of availability of right to appeal under Section 16 of the Act is hereby rejected. At this stage, I may also add a respectful disagreement with the observations returned in **Balbir Kaur's case (supra)** as in that case, all these facts were not brought to the notice of the Court, rather Rule 23 of the Rules was categorically mentioned which only describes as to what would be the duties and powers of the District Magistrate. Insofar as the duties prescribed under Rule 23 of the Rules are concerned, these are the general duties but the order of eviction could be passed by him only by following the due procedure provided in the Action Plan.

Insofar as the second issue as to whether order of eviction could have been passed against a stranger is concerned, it is worthwhile to refer again

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to the provisions of the Action Plan, in which it is categorically mentioned that the District Magistrate has to form an opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any of his properties before he would pass an order of eviction. The words used “all persons concerned” are relatable only to “son”, “daughter” and “legal heir” and not to anyone else. The son, daughter and legal heir are not defined in the Act or the Rules. Since we are not confronted with the situation where the Court has to decide the lis about the son, daughter or legal heir, therefore, it is not required at this stage to make an opinion about them but the argument of respondent no.6, while taking support from the decision of **Balbir Kaur's case (supra)**, that the District Magistrate has got the power to evict anyone who is in unauthorized occupation of the property of a senior citizen/parents is again rejected with respectful disagreement with the observations made in **Balbir Kaur's case (supra)**. The relevant portion of the Action Plan, which has been referred to in the earlier part of this order, was not brought to the notice of the Hon'ble Court dealing with the **Balbir Kaur's case (supra)**, otherwise the Action Plan specifically says that the order of eviction can only be passed by the District Magistrate in terms of Clause I(iv) and before passing the order of eviction against the son or daughter or legal heir, the District Magistrate is required to serve notice to all such persons concerned, which does not mean a stranger as well.

In view of the aforesaid discussion, it is held that in an application filed under Section 22(2) of the Act, read with Rule 24 of the Rules and the provision of the Action Plan pertaining to eviction of unauthorized occupant from the property of senior citizens/parents, the District Magistrate does not

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have the jurisdiction to pass an order of eviction against a stranger or a person who is not related to the senior citizens/parents as a son, daughter or legal heir.

Consequently, the present writ petition is hereby allowed being meritorious, though without any order as to costs, and the impugned orders are set aside.

**March 09, 2018**  
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**(Rakesh Kumar Jain)**  
**Judge**

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