

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

**CWP No. 6723 of 2017
Date of Decision: 30.1.2018**

Vishwa Bhushan Bharti

.....Petitioner

v.

District Magistrate, Union Territory, Chandigarh and another

.....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Rahul Sharma, Advocate, for the petitioner

Mr. S.S. Narula, Advocate, for the respondents

Ms. Suman Devi, Advocate, for
Ms. Deepali Puri, Advocate, for UOI

RAKESH KUMAR JAIN, J (Oral) :

The petitioner has challenged the order dated 9.3.2017 passed by the District Magistrate, Chandigarh, by which an application filed by respondent No. 2 under Section 21 and 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act'), has been allowed and the petitioner has been ordered to vacate the demised premises.

Learned counsel for the petitioner has submitted that admittedly, the petitioner is a tenant of respondent No.2. Respondent No.2 filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Rent Act') against the petitioner on 23.3.2016 and while it was pending, resorted to file an application under Section 21 and 22 of the Act on 9.8.2016, alleging therein that the petitioner, who is occupying the same premises with him as a tenant, is

causing undue harassment and inconvenience to him. The District Magistrate, exercising his powers in terms of the Chandigarh Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (for short 'the Rules'), has passed the order of his eviction.

Learned counsel for the petitioner has submitted that not only the application filed under Section 22 of the Act, during the pendency of the petition filed under Section 13 of the Rent Act, is an abuse of the process of law because respondent himself had let the premises to the petitioner but also the application filed under Section 22 of the Act is not maintainable against the petitioner being a tenant.

In this regard, he has referred to Rule 20 (3)(1) of the Rules to contend that the District Magistrate has the power and jurisdiction to pass the order of eviction against the son or daughter or legal heirs of a senior citizen/parents, who is found to be in un-authorized occupation of any property of the senior citizen/parent.

In reply, learned counsel for respondent No.2 has submitted that Section 3 of the Act would be applicable to maintain the application filed under Section 22 of the Act.

I have heard learned counsel for the parties and perused the record.

Section 22 of the Act provides the power to the State Government to impose such duties on a District Magistrate as may be necessary to ensure that the provisions of the 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.

Sub Section (2) further provides action plan for the protection of life and property of senior citizens. In Chandigarh, unlike the States of Punjab and Haryana, the action plan is not separately provided but it is provided in the Rules itself in Chapter VI. Rule 20 of the Rules deals with the action plan which has two parts. The first part i.e. Rule 20 (1) deals with the power of SSP, who is to take necessary steps to look after the well being of the senior citizens by means of policing, whereas Rule 20 (3)(1) deals with the eviction from property/residential building of the senior citizens/parents, for which the jurisdiction has been vested with the District Magistrate. Since, I am dealing with the case in regard to the order of eviction passed by the District Magistrate against a tenant, therefore, it would be relevant to refer to Rule 3(1) as it is :

“20 (3)(1) Procedure for eviction from property/residential building of senior citizen/parent:

(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 Departments i.e. Social Welfare, Sub Divisional Magistrates, Police Department, NGOs/Social Workers, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate, Union Territory, Chandigarh for further action.

(ii) The District Magistrate, Union Territory, Chandigarh shall immediately forward such complaints/applications to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case through Revenue Department/concerned Tehsildars within 15 days from the date of receipt of such complaint/application.

(iii) The Sub Divisional Magistrate shall immediately submit its 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-cum-Estate Officer 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 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.”

According to the aforesaid Rule, the District Magistrate of the Union Territory, Chandigarh, if informed by the Department of Social Welfare, by the SDM, Police Department, NGOs/Social Workers, Helpline for Senior Citizens or he himself is of the view that parents or senior citizens' life and property is required to be protected, then he would immediately forward the complaint or the application to the concerned Sub Divisional Magistrate and verify the facts of the case through Revenue Department/Tehsildar concerned within 15 days from the date of receipt of such complaint, who shall report to the SDM, who would further report to the District Magistrate.

Thereafter, if the District Magistrate is of the opinion that

son/daughter or a legal heir of a senior citizen/parents is in unauthorised occupation of any property, which is so defined in the Act, then the District Magistrate would issue a notice in the prescribed manner calling all those persons to show cause as to why eviction order be not passed against them. The said notice shall also specify the grounds on which the eviction is proposed and all the persons concerned, who are in occupation or claim interest in the property, reply to the notice within a prescribed time of 10 days. After that, the District Magistrate shall, in case he is satisfied, after giving reasonable opportunity of hearing to the parties, that the premises in question is in unauthorised occupation, he would pass the order of eviction.

Son and daughter are not defined in the Act, rather the term 'children' has been defined which includes – son, daughter, grandson and grand daughter but does not include a minor. The 'legal representative' is also not defined in the Act, for which the definition has to be taken from Section 2(11) of the CPC i.e. the person who in law represents the estate of a deceased person and includes any person who intermeddles with the property of deceased person and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued in that sense of the matter would succeed to the property of senior citizen/parent.

The tenant in any case do not falls in the definition of a legal heir. Therefore, the petition filed against the petitioner before the District Magistrate was patently an abuse of law. I will not go into the issue as to whether subsequent application filed under Section 22 of the Act is maintainable or not while the petition filed under Section 13 of the Rent Act is pending and the said issue is kept open because the present petition is

being allowed only on the ground that the application filed by respondent No.2 is not maintainable against a tenant.

With these observations, the present petition is hereby allowed and the impugned order is set aside.

(RAKESH KUMAR JAIN)
JUDGE

30.1.2018
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No