

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

CWP No. 8572 of 2017 (O&M)

Date of Decision: 06.07.2018

ASHWANI KUMAR AND ANOTHER

...Petitioners

VS.

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present: Mr. Deepak Sabherwal, Advocate,
 for the petitioners.

 Ms. Lavanya Paul, AAG, Punjab.

 Mr. Gursimran Singh, Advocate,
 for respondent No. 3.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have assailed the validity of the order dated 23.01.2017 passed by the Sub Divisional Magistrate-cum-Tribunal, Jalandhar-I, constituted under Maintenance and Welfare of Parents and Senior Citizen Act, 2007 by which they have been ordered to vacate the premises allegedly owned by the parent/senior citizen.

Learned counsel for petitioners has argued that as per the action plan of State of Punjab, the jurisdiction to pass the order of eviction lies with the District Magistrate and not with the Sub Divisional Magistrate. It is also submitted that as soon as an application is filed in terms of Section 22 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as 'the Act') by the parent/senior citizen to the District Magistrate, he would seek the report from the SDM concerned about the title/ownership over the property in question of the applicant. There is a time period provided in the Action Plan for referring the matter to the SDM by the District Magistrate and by the SDM, after obtaining the report about

the title of the parent/senior citizen, to the District Magistrate. The time is provided so as to avoid delay in the decision of the application because the Legislature has provided the summary procedure to decide the issue as to whether parent/senior citizen is entitled to seek vacation of his/her premises on the ground his/her son or relative is not rendering service or is causing any kind of mental or physical harassment. After obtaining the report, the District Magistrate, as per action plan, would issue notice to the affected parties and after taking their stand/evidence, would pass necessary orders. It is submitted that in the present case, the SDM has passed the eviction order which is totally without jurisdiction.

Learned counsel for the respondents could not support the impugned order rather learned counsel appearing on behalf of the parent-respondent No. 3 (Asha Rani) has submitted that the impugned order may be set aside but liberty may be given to respondent No. 3 to file an appropriate application in accordance with law before the District Magistrate, who may further be directed to act immediately upon the application so that it may be decided as early as possible because respondent No. 3 is 70 years of age.

After taking into consideration the aforesaid facts and circumstances, the present petition is hereby allowed and the impugned order dated 23.01.2017 (Annexure P-5), having been passed by the SDM-cum-Tribunal, causing eviction of the petitioner, is hereby set aside and liberty is granted to respondent No. 3 to file an application, if so advised, in terms of Section 22 of the Act read with the Action Plan, for seeking eviction of the petitioners, before the competent authority. In case any such application is

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filed within 15 days from the date receipt of certified copy of this order, the District Magistrate concerned shall immediately act on her application in accordance with law.

July 6, 2018

Ess Kay

**(RAKESH KUMAR JAIN)
JUDGE**

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