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

**CWP No.9410 of 2018
Date of decision:17.08.2018**

Sumitra Devi ...Petitioner

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Saurabh Arora, Advocate,
for the petitioner.

Mr. Sahil Sharma, DAG, Punjab.

Mr. Vineet Kumar Sharma, Advocate,
for respondent no.9.

Rakesh Kumar Jain, J.

The petitioner, a 85 years' old senior citizen, has filed this petition for seeking direction to the official respondents to deliver her total physical possession of House No.78, Taraf Sekhewal, Tehsil and District Ludhiana, being occupied by his grandson, his wife and grandchildren, despite the order of eviction passed by the Additional District Magistrate, Khanna on 27.10.2017.

In brief, the petitioner filed an application for seeking eviction of respondent no.9 and his family members from House No.78, constructed over the land comprised in Khata No.488, 497, 503, 482, 465/480, Khasra No.158/1, 159 to 166, measuring 67 Sq. Yds., situated at Tarf Sekhewal, District Ludhiana. The said application was allowed by the Additional District Magistrate, Khanna with a categoric direction that “*hence, respondent party*

i.e. Sonu son of Hans Raj, resident of House No.78, constructed over land bearing Khata No.488, 497, 503, 482, 465/480, Khasra No.158/1, 159 to 166, measuring 67 Square Yards, situated at Tarf Sekhewal, District Ludhiana is issued direction to vacate the house belonging to Sumitra Devi wife of late Hans Raj, applicant and deliver its possession to applicant within a period of one month”.

Thereafter, the petitioner filed an application to the Additional District Magistrate, Khanna, for delivery of possession of her house with police help. The Additional District Magistrate, Khanna sought legal opinion of the District Attorney in this regard to apprise him as to whether police assistance can be provided to the applicant-senior citizen for delivery of possession of her house. The Additional District Magistrate, Ludhiana (East) directed the Tehsildar, Ludhiana (East), vide his order dated 15.02.2018, to take legal action as per the opinion of the District Attorney and in case there is an apprehension of any untoward incident, then police assistance may also be obtained. There is a report dated 20.02.2018 of the Halqa Patwari in which he has mentioned that while carrying out the proceedings for delivery of vacant possession of the house in question, petitioner -Sumitra Devi informed them that she has given two days' time, i.e. from 20.02.2018 to 22.02.2018, to respondent no.9 and his family members to vacate the house. Thereafter, there is another report dated 01.03.2018 in which it is mentioned that possession of the house in question was delivered to the petitioner but at the same time, there is another report dated 01.03.2018 signed by the Halwa Patwari and Kanungo, in which it is recorded that one room situated on the front side was got vacated and its possession was handed over to the petitioner. However, the petitioner

has approached this Court with a grievance that despite an order in her favour passed by the Competent Authority in terms of the provisions of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act”), possession of only one room has been given to her though she is entitled to possession of the entire house as per order dated 27.10.2017.

On 04.06.2018, this Court had directed the Commissioner of Police, Ludhiana, to depute an officer not below the rank of Deputy Commissioner of Police to visit the premises and ensure that the petitioner is not harassed and put to any inconvenience by respondent no.9. The report was also asked to be submitted. During the adjourned dates, the petitioner herself appeared with her advocate and made a complaint about the harassment by her grand daughter-in-law, therefore, at one point of time, the concerned SHO was asked to be present in the Court, who gave an assurance that he would send a woman constable twice a day to the petitioner's house to enquire about her well being and he would also pay visit as and when required.

Counsel for the petitioner has submitted that the ultimate prayer of the petitioner is for delivery of complete possession of the house in question which is still largely in occupation of respondent no.9 and his family members. His prayer is, thus, for execution of the order dated 27.10.2017 and it is further submitted that the said order has become final between the parties as it has not been challenged by respondent no.9 in any further Court of law. It is further submitted that the sale deed of the property in question has also been executed in favour of the petitioner which has not been denied by the respondents.

The officials respondents have only referred to the proceedings

which took place at the time of delivery of possession but it is nowhere denied that possession of the entire house has not been delivered to the petitioner except that she has been given a room on the front side of the house, a washroom under the staircase and some provision has been made for her kitchenette.

Counsel for respondent no.9 has also referred to an order dated 27.02.2018 passed by the Judicial Magistrate 1st Class, Ludhiana under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “Act of 2005”) in favour of his wife against him in order to protect possession of the house in question, from which he along with his wife and children were ordered to be evicted on 27.10.2017, much before the order passed by the JMJC on 27.02.2018 under Section 12 of the Act of 2005.

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

Section 22(2) of the Act provides that the State Government shall prescribe a comprehensive Action Plan for protection of life and property of the senior citizens. Rule 23 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as the “Rules”) provides that an Action Plan for protection of life and property of the senior citizens shall be notified within a period of six months from the date of publication of the Rules. The Action Plan for the State of Punjab was notified on 27.11.2014, in which the procedure is prescribed for eviction from the property/residential building of a senior citizen. Since we are only concerned with the enforcement of the order of eviction passed by the Competent Authority, namely, District Magistrate/Additional District Magistrate,

therefore, the provisions of the Enforcement of orders provided in the Action Plan needs to be referred, which read as under:-

“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 if 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 shall have powers to enforce the eviction orders with Police help.
- (iii) The District Magistrate will further hand over the property/premises in question to the concerned Senior Citizens/Parents;
- (iv) The District Magistrate, shall forward monthly report of such cases to the Director, Social Security Department, Punjab by 7th 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 2012 framed under the said Act under the Chairmanship of the Principal Secretary, Social Security Department, Punjab.

The Additional District Magistrate, Khanna, vide his order dated 27.10.2017, had also directed to hand over possession of the house in question to the petitioner within a period of 30 days. He had also passed an order for police help for enforcement of the eviction order but despite that possession of only one portion of the house in question was handed over to the petitioner, which resulted into this unwanted litigation.

Insofar as the order passed by the JMIC under Section 12 of the Act of 2005 is concerned, it has no effect on the order passed by the Additional District Magistrate, Khanna because the said order is subsequent and passed in an afterthought litigation because it has been obtained on 27.02.2018 after

taking two days' time from the petitioner on 20.02.2018 to hand over actual total physical possession to her.

Thus, in my considered opinion, the petitioner is entitled to the possession of the entire house, from which respondent no.9 and his family members have been ordered to be evicted by order dated 27.10.2017, which has already become final between the parties as it has not been challenged by respondent no.9 in any further Court of law.

In view of the above, the present petition is hereby allowed and the District Magistrate, Ludhiana and the Commissioner of Police, Ludhiana are directed to execute the order dated 27.10.2017 by delivering possession of the entire house in question to the petitioner within a period of one week from the date of receipt of certified copy of this order.

August 17, 2018
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No