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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9642/2018

TEK CHAND

..... Petitioner

Through: Counsel for the petitioner (appearance
not given).

versus

STATE (GNCTD) & ORS

..... Respondents

Through: Mr Mohit Agarwal, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.09.2018

C.M. No.37496/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 9642/2018

2. The petitioner has filed the present petition impugning an order dated 16.04.2018 passed by respondent no.1 (the Deputy Commissioner, Maintenance and Welfare of Parents and Senior Citizens Tribunal). It is seen that the said order has been passed by the Deputy Commissioner, District North West. The learned counsel appearing for respondent no.1 states that although the said order indicates that it has been passed pursuant to a complaint made under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'), the same is, in fact, passed under Rule 22(3)(1) of the Delhi Maintenance and Welfare of Parents

and Senior Citizens Rules, 2009 as amended subsequently (hereafter ‘the said Rules’). He also submits that in both the cases – that is, cases relating to maintenance before the Tribunal as well as cases relating to eviction under the aforesaid Rule [Rule 22(3)(1)], before the Deputy Commissioner/District Magistrate – the designated authority is required to adopt a summary procedure.

3. On an pointed query, whether any enquiry was conducted by the SDM as required under Rule 22 (3)(1)(ii) and 22 (3)(1)(iii) of the said Rules, the learned counsel appearing for respondent no.1 responded that it was done and referred to the petitioner’s statement recorded by the concerned SDM (which is at page 82 of the petition).

4. Clearly, the said statement cannot be read as a substitute of the enquiry report that is required under Rule 22(3)(1)(iii) of the said Rules. The contention that the concerned Deputy Commissioner had also proceeded with the complaint of the petitioner under the said Rules, also appears to be incorrect. This is so because the impugned order refers to the complaint under Section 5 of the Act, whereas the petitioner’s application/complaint did not refer to the said provision. Further, the impugned order also indicates that it has been passed by the Deputy Commissioner acting as a Maintenance Tribunal. The application under Rule 22(3)(1)(i) of the said Rules has to be considered by the District Magistrate/Deputy Commissioner in his official capacity and by the Maintenance Tribunal under the Act even though the same officer may be acting in that capacity as well.

5. In the aforesaid view, the impugned order is unsustainable and is, accordingly, set aside. The concerned Deputy Commissioner/District

Magistrate is directed to consider the petitioner's complaint/application in terms of Rule 22(3)(1)(i) of the said Rules and pass an appropriate order after following the procedure as specified in the said Rules.

6. The petition is disposed of.

7. Order *dasti*.

VIBHU BAKHRU, J

SEPTEMBER 18, 2018
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