

\$~39

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

+ **W.P.(C) 11703/2018 & CM No. 45292/2018**

SUDESH CHHIKARA

..... Petitioner

Through: Mr Mukesh Anand with Mr Krishan
Kumar, Mr Y. Grover, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) AND ORS..... Respondents

Through: Mr Tarveen Singh Nanda, Mr Ashish
Gumber, Advocates for R-4.

Mr Vikas Yadav, in person with
R-5.

ASI Sukhbir Singh, P.S. Tilak Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

13.11.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 09.10.2018 passed by respondent no.2 (the Divisional Commissioner), whereby the petitioner's appeal under Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended by the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 (hereafter 'the said Rules') was rejected as not maintainable.

2. The said appeal was dismissed as the Divisional Commissioner was of the view that an appeal was maintainable only at the instance of senior citizens and parents and not the son, daughter and/or any other legal heirs of the senior citizens.

3. The limited controversy that arises for consideration of this Court is whether an appeal under Rule 22(3)(4) of the said Rules, is maintainable by the relative(s) of the senior citizen, who is/are sought to be evicted by the senior citizen under Rule 22(3) of the said Rules.

4. The petitioner resides at B-128, Ganesh Nagar, Tilak Nagar, Delhi along with her minor son. She is the widow of the deceased son of respondent no.5 (who is a senior citizen). Respondent no.5 had filed a complaint for eviction of the petitioner from the premises in question (B-128, Ganesh Nagar, New Delhi-110018) before respondent no.3 (the District Magistrate). The District Magistrate had called for a report from the SDM, Patel Nagar, with regard to the title of the said property. After considering the same as well as the rival contentions, the District Magistrate passed an order dated 12.09.2018 directing the petitioner to vacate the premises in question within a period of four week from the date of the said order.

5. The petitioner, being aggrieved by the same, preferred an appeal before the Divisional Commissioner, which was rejected by the impugned order. The Divisional Commissioner has reasoned that an appeal preferred under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act') is available only to a senior citizen or a parent who is aggrieved by an order passed by the Maintenance Tribunal and, therefore, the appeal preferred by the petitioner was not maintainable.

6. Before considering the aforesaid controversy, it would be relevant to refer to Section 16 of the Act as well as Rule 22(3) of the said Rules. The

said provisions are set out below:-

“16. Appeals.—(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.

22(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents, —

- (i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate (DM) of his district for eviction of his son and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.
- (ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.
- (iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application
- (iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007 If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen and that they should be evicted, the Deputy Commissioner/DM 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 issued thereof.

(2) Eviction Order from property/residential building of Senior Citizens/Parent. —

- (i) If, after considering the cause, if any, shown by any person 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 Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated;

(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 Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession.
- (ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order
- (iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.

- (iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.

(4) Appeal

- (i) The appeal against the order of Dy. Commissioner/DM shall lie before Divisional Commissioner, Delhi.
- (ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

7. It is, at once, clear from the plain reading of the aforesaid provisions that whereas an appeal under Section 16(1) of the Act is available only to a senior citizen or a parent, who is aggrieved by the order of the Maintenance Tribunal, the language of Rule 22(3)(4) of the said Rules reflects no such condition and cannot be read as restricting the appeal to any one party. In terms of Clause (i) of Rule 22(3)(4) of the said Rules, an appeal against the order of Deputy Commissioner / DM would lie before the Divisional Commissioner, Delhi. In view of the plain language of the said Clause, it is difficult to accept that the appeal under the said Rules is limited only to a senior citizen or an aggrieved parent.

8. Rule 22(3) of the said Rules has been framed by the Government of NCT of Delhi for implementing the provisions of Section 22 of the Act; that is, for providing protection of life and property of senior citizens. The Divisional Commissioner fell in error in proceeding on the basis that an appeal preferred by the petitioner was under the provisions of Section 16 of the Act. Clearly, the appeal preferred by the petitioner was under the provisions of Rule 22(3)(4) of the said Rules and as observed above, the

right to file such an appeal is not restricted only to senior citizens or parents, as the case may be.

9. The learned counsel appearing for the respondents submitted that in terms of Clause (ii) of Rule 22(3)(4) of the said Rules, the provisions of Section 16(1) of the Act would also apply to the appeals before the Divisional Commissioner. The said contention is unmerited.

10. The plain reading of Clause (ii) of Rule 22(3)(4) of the said Rules indicates that only provisions regarding “*disposal of an appeal before the Appellate Tribunal*” would apply *mutatis mutandis* before the Divisional Commissioner. The said Clause has no application with regard to institution of the appeal.

11. It is well settled that right to file an appeal is a statutory right. (See: ***Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh: (2014) 9 SCC 78***) and the statute providing for the appeal to the Divisional Commissioner – Rule 22(3)(4) of the said Rules – expressly provides such right against the order passed by the Deputy Commissioner / DM.

12. Clause (ii) of Rule 22(3)(4) of the said Rules only incorporates the provisions regarding disposal of an appeal as provided under Section 16 of the Act. The provisions regarding disposal of an appeal by the Appellate Tribunal are set out in sub-sections (2) to (7) of Section 16 of the Act. Sub-section (2) of Section 16 of the Act pertains to service of notice on the respondent; sub-section (3) of Section 16 of the Act enables the Appellate Tribunal to call for records of the proceedings from the Tribunal against whose order the appeal is preferred; sub-section (4) of Section 16 of the Act

provides that the Appellate Tribunal may after examining the appeal and records either allow or reject an appeal; sub-section (5) of Section 16 of the Act provides that the order of the Appellate Tribunal would be final and further provides that an appeal would not be rejected unless an opportunity has been provided to both the parties of being heard in person or through a duly authorised representative; sub-section (6) of Section 16 of the Act provides that the Appellate Tribunal would endeavour to pronounce its order in writing within a period of one months of receipt of the appeal; and, sub-section (7) of Section 16 of the Act provides that a copy of the order shall be sent to both the parties free of cost. By virtue of Clause (ii) of Rule 22(3)(4) of the said Rules, the aforesaid provision also apply to appeals before a Divisional Commissioner. However, the provisions of Section 16(1) of the Act, which pertains to the institution of an appeal – and not its disposal – cannot be readily inferred as incorporated by reference in Rule 22(3)(4) of the said Rules.

13. Before concluding, it would also be relevant to refer to the decision of a Division Bench of Punjab and Haryana High Court in ***Paramjit Kumar Saroya v. Union of India and Another: AIR 2014 P&H 121***, wherein the Court had interpreted Section 16(1) of the Act to also provide the right of appeal to any of the affected parties. In terms of the said decision, the provisions of Section 16(1) of the Act cannot be read to limit the appeal only to one party (Senior Citizens or Parents as the case may be), as the same would render the provisions invalid. The Court had reasoned that to sustain the validity of Section 16(1) of the Act, the same must be interpreted by applying the principles of purposive interpretation and *casus omissus*. The

Court rejected the challenge to the validity of Section 16(1) of the Act but held that “*it must be read to provide for the right of appeal to any of the affected parties.*”

14. This Court is not called upon to examine the validity of Section 16(1) of the Act or even to decide whether an appeal under Section 16(1) of the Act is available to either of the parties (and not to senior citizens or parents alone). It is not necessary to consider the aforesaid question in this petition as on a plain reading of Rule 22(3)(4) of the said Rules, the appeal to a Divisional Commissioner is not restricted only to senior citizens or parents, as the case may be.

15. In view of the above, the impugned order dated 09.10.2018 passed by the Divisional Commissioner is set aside and the matter is remanded to the Divisional Commissioner to decide the petitioner’s appeal in accordance with law.

16. The petition is disposed of in the aforesaid terms. The pending application also stands disposed of.

17. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

NOVEMBER 13, 2018
RK