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

+ **W.P.(C) 12294/2018 & CM Nos. 47688-90/2018**

RAJEEV BEHL

..... Petitioner

Through: Mr Jayant Tripathi and Mr Sarfaraz
Ahmed, Advocates alongwith
petitioner in person.

versus

STATE & ORS

..... Respondents

Through: Ms Shefali Vohra, Advocate for R-1
and R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.11.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 17.10.2018 (hereafter 'the impugned order') passed by the Divisional Commissioner allowing respondent no.3's appeal preferred under Rule 22 (3) (4) of the Delhi Maintenance & Welfare of Parents and Senior Citizens Rules, 2009 (hereafter 'the said Rules').

2. By the impugned order, the Divisional Commissioner has directed that the petitioner be evicted from the property bearing no. 19, State Bank Colony, G.T. Karnal Road, Delhi -110009 (hereafter 'the property in question') within a period of 30 days from the date of the said order. The petitioner assails the impugned order on several fronts. First, it is submitted that the impugned order is not sustainable as the Divisional Commissioner

has failed to consider an earlier order passed by the Additional District Magistrate on 18/21.07.2014, wherein it was observed that the matter pertains to a family dispute over the property. The petitioner claims that the said order had attained finality and, therefore, respondent no.3's complaint could not be entertained. Second, it is stated that since respondent no.3 had limited his relief only to evict the petitioner from the property in question and had not sought any maintenance, his complaint was not maintainable. Third, it is claimed that the Divisional Commissioner has failed to consider the material on record including the SDM's report, which indicated that the dispute is, essentially, a family dispute over the property. Fourth, that the property in question belongs to a Hindu Undivided Family (HUF) of which the petitioner is a coparcener. The petitioner claims that he is, thus, entitled to enjoy the same. Fifth, that respondent no.3 has filed a suit for recovery of possession, permanent injunction and mesne profits (being CS (OS) 2423/2015 captioned *S.K. Garg v Rajiv Bahl & Ors.*) which is pending adjudication before this Court. The petitioner claims that the issue whether the property in question is a self-acquired property or HUF property, is an issue in the said action.

3. Briefly stated, the aforesaid controversy arises in the following context:-

3.1 The petitioner is the son of respondent no.3 and was born in the year 1966. The petitioner claims that prior to his birth, respondent no.3 had, at the suggestion of his father (the petitioner's grandfather) become a member of SBI Cooperative Society, which was formed by the employees of State Bank of India for developing a colony – a State Bank Colony. The petitioner

claims that a sum of ₹500/- was contributed by respondent no.3 to become a member of the said cooperative society, however, the same was paid by the petitioner's grand-father (father of respondent no.3).

3.2 The petitioner's grand-father expired in the year 1966 – the year in which the petitioner was born.

3.3 On 23.10.1967, a sub-lease deed in respect of the property in question was registered in favour of respondent no.1. The approximate cost of the plot was ₹6000/-, which the petitioner asserts was paid by funds arranged by respondent no.3 by selling assets of his father (the petitioner's grand-father). This is disputed by respondent no.3, who claims that the funds were arranged by him.

3.4 The property in question was constructed in the year 1969. Admittedly, the construction was raised by respondent no.3 by availing loan arranged by the SBI Society to the extent of ₹18,000/- approximately. The petitioner claims that the cost of construction was much higher at ₹42,000/- and the balance amount was arranged by respondent no.3 from the assets belonging to the petitioner's grand-father.

3.5 The petitioner claims that in the year 1988-89 an ancestral property (a house located at Mukerian) was sold.

3.6 On 11.08.2010, respondent no.3 filed a police complaint against the petitioner and his wife, wherein he stated that he had requested the petitioner and his wife to vacate the property in question but they had threatened him with dire consequences. He alleged that the petitioner had threatened him

that the petitioner would kill himself and blame him (respondent no.3) for it. He further alleged that on 11.08.2010, the petitioner had tried to commit suicide by sprinkling kerosene oil on himself.

3.7 The record indicates that respondent no.3 made several complaints thereafter, alleging that the petitioner and his wife were threatening and blackmailing respondent no.3. The complaints made to the police authorities indicate that the respondent no.3 was distressed by the behaviour of the petitioner and his wife.

3.8 Respondent no.3 also filed a complaint before the Maintenance Tribunal (Case No. ADM/N/Tribunal/2014/635-37) constituted under the Parents and Senior citizens, Act 2007 praying that the petitioner be evicted from the premises in question. The said complaint was disposed of by the Maintenance Tribunal by an order dated 21.07.2018, *inter alia*, holding that the dispute with regard to the property in question is civil in nature and the same could not be decided under the said Act. The relevant extract of the said decision is set out below:-

“The present application of property dispute is beyond the scope of Maintenance and Welfare of Parents and Senior Citizens Act and is out of the jurisdiction of this Tribunal, however, the Tribunal directs the respondents no. 1 & 2 :

1) to take care of the petitioner in proper and respectful manner and ensure that no inconvenience is caused to him in future.

2) further the SHO, PS Model Town, Delhi is directed to ensure safety and protection of life of the old aged petitioner so that he may live a peaceful life.

Copy of the order be sent to applicant as well as the Respondent.

File closed and consigned to record.”

3.9 In the year 2014, respondent no.3 filed a civil suit for permanent injunction against the petitioner. The said suit was disposed of on 18.02.2015 on the statement of the respondent no.3 that he would not dispossess the petitioner without due process of law.

3.10 Respondent no.3 continued to make complaints even thereafter seeking assistance from the police authorities.

3.11 Thereafter, respondent no.3 filed a suit for ejectment (Suit No. 275/2014), *inter alia*, praying for a decree of ejectment against the petitioner and his wife. The said suit was withdrawn by respondent no.3 with liberty to institute a fresh suit on the same cause of action.

3.12 Thereafter, on 11.08.2015 respondent no.3 instituted another suit (CS (OS) 2423/2015), *inter alia*, praying for a decree of possession against the petitioner and his wife with a direction for them to vacate the premises in question.

3.13 The said suit is stated to be pending adjudication before this Court.

4. Mr Tripathi, the learned counsel for the petitioner contended there were no new facts that would justify the Divisional Commissioner to take a view contrary to the one taken by the Maintenance Tribunal in its order dated 21.07.2014. He submitted that the first police complaint by respondent no.3 was made on 11.08.2010 and all further complaints were, essentially, in

the nature of reminders.

5. He further contended that the principal dispute between the parties is with regard to the title of the property in question: whereas respondent no.3 claims the property to be a self-acquired property, the petitioner claims the same to be a HUF property. He submitted that whether the respondent no.3 had any right to evict the petitioner from the premises in question is an issue pending trial in the suit filed by the respondent no.3.

6. He further contended that the respondent no.3 had not sought any maintenance from the petitioner and, therefore, his application under Rule 22 (3)(1)(i) of the said Rules was not maintainable.

Reasons and Conclusion

7. This Court is not persuaded to accept any of the contentions advanced on behalf of the petitioner. The record clearly indicates that respondent no.3 had been consistently making complaints to the police authorities and, therefore, it is incorrect to contend that respondent no.3 had made only one police complaint and the other letters were just reminders. It is seen that on 11.08.2010, respondent no.3 filed a complaint with the DCP, P.S. Model Town alleging that the petitioner and his wife had threatened him with dire consequences, and further threatened that they would commit suicide and blame him for the same. He also expressed fear for his daughters. The said complaint was followed by another complaint dated 20.05.2014. Respondent no.3 once again alleged that he was being threatened by the petitioner, who was also interfering in daily matters. A perusal of the said complaint indicates that respondent no.3 had sought action from the police so that he

could live peacefully with his wife. On 20.05.2014, the respondent no.3 once again sent a reminder stating that he and his wife were living in panic due to the violent behaviour of the petitioner and his wife. On 13.05.2014, respondent no.3 filed yet another complaint with the SHO stating that he was depressed by the acts of his son and his wife, and further requesting that an early action be taken so that he and his wife could leave peacefully. On 16.06.2014, respondent no.3 once again appealed for help from the SHO. He complained that *“they all together want to finish me and usurp my property. They can harm me anytime”*. On 16.07.2014, respondent no.3 filed another complaint stating that the petitioner had placed a refrigerator which exudes heat and also blocks the passage, making it impossible for respondent no.3 to sit in his room. He further stated that the petitioner and his wife were blackmailing him and he was depressed by the acts of the petitioner and his wife.

8. There are several other complaints which have been placed on record. However, it is not necessary to refer to them. Suffice it to state that a plain reading of the complaints indicate that respondent no.3 was distressed by the behaviour of his son and his daughter-in-law (the petitioner and his wife).

9. It is in this context that the respondent no.3 made an application to the Deputy Commissioner under Rule 22 (3)(1)(i) of the said Rules seeking eviction of the petitioner from the premises in question on account of cruelty and ill treatment. The said application was rejected by an order dated 30.01.2018. This led respondent no.3 to file an appeal before the Divisional Commissioner under Rule 22(3)(4) of the said Rules.

10. In the impugned order, the Divisional Commissioner has concluded that respondent no.3 is being harassed and ill treated and the ends of justice would be met if the petitioner is directed to be evicted from the premises in question, in order for respondent no.3 to live peacefully in his self-acquired property. This Court finds no infirmity with the aforesaid view.

11. The contention that it was not open for the Divisional Commissioner to take a view contrary to the view taken by the Maintenance Tribunal in its order dated 21.07.2014 is, plainly, unmerited. The record indicates that respondent no.3 had continued to complain regarding his ill treatment. The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (the said Rules) were amended by the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 and provisions were introduced enabling a Senior Citizen to make an application before the Deputy Commissioner/District Magistrate for eviction of a son, daughter or legal heirs from his self-acquired property. Thus, the application filed by respondent no.3 was clearly maintainable, and the contention to the contrary is bereft of any merit.

12. It is also contended on behalf of the petitioner that since the respondent no.3 had not sought any maintenance from him, an application under Rule 22(3)(1)(i) of the said Rules was not maintainable. This contention is also unmerited. Rule 22 (3)(i) of the said Rules enables a senior citizen to make an application for eviction of a son, daughter or legal heir on account of non-maintenance and ill treatment.

13. Rule 22(3)(1) of the said Rules, as amended by the Delhi Maintenance

Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, is set out below:

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

- (i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such 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/District Magistrate during summary proceedings for the protection of senior citizen/parents shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/District Magistrate 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 property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate 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.”

14. In sub clause (i) of Rule 22(3)(1) of the Rules as referred above, the word “**and**” is used between the expressions “**non-maintenance**” and “**ill-treatment**”. However, the same cannot be construed to mean that a senior citizen can file an application only when he has a grievance regarding non-maintenance as well as ill-treatment. Read in the correct perspective, the word “and” is used to denote that both the grounds – of non-maintenance as well as ill-treatment – are available to a senior citizen for evicting his son, daughter or heirs. The contention that a senior citizen can maintain an application under Rule 22(3)(1)(i) of the said Rules only when he cumulatively establishes his allegation of non-maintenance and ill-treatment, cannot be accepted. This is so because accepting such contention would mean that so long as the son, daughter or heirs continue to pay maintenance, he or she can continue to ill-treat the senior citizen without fear of being evicted under Rule 22(3) of the said Rules. Such a construction of Rule 22(3) of the said Rules would militate against very object and purpose of enacting the said Rules.

15. The next question to be examined is whether the decision of the Divisional Commissioner, to direct eviction of the petitioner, can be faulted

on the ground of disputes raised by the petitioner with respect to the title of the property in question.

16. This Court is, *prima facie*, of the view that the case set up by the petitioner that the property in question is an HUF property is a ruse and is not sustainable. Respondent no.3 had become a member of the said society (SBI Cooperative Society) much prior to the birth of the petitioner. The lease deed of the property in question was registered in favour of respondent no.3 way back in 1967. The Division Commission found that there was no material which would establish the petitioner's case that the property in question is an HUF property. Merely claiming that the property in question had been purchased by sale of ancestral property can be of little assistance to the petitioner.

17. In ***Sunny (Minor) v. Raj Singh (2015) 225 DLT 211***, a Coordinate Bench of this Court had referred to the decision of the Supreme Court in ***Yudhishter v. Ashok Kumar, (1987) 1 SCC 204*** and had explained the circumstances where a person could claim a property to be an HUF property. The Court further held that if a person claims that the property is an HUF property, he or she is required to make positive statements in the plaint as to how and when the HUF was created and as to when the property stated to be the HUF property was thrown into the common Hotchpot. *Prima facie*, a plain reading of the averments made in the petition as well as in the written statement, filed by the petitioner in CS(OS) 2423 of 2015, fails to provide the particulars necessary for establishing a case of HUF property.

18. It is not necessary to further dwell into the controversy whether the

property in question is an HUF property as claimed by the petitioner. This is so because notwithstanding such claim, the petitioner cannot resist ejection from the property in question.

19. It is relevant to note that Clause (i) of Rule 22(3)(1) as introduced by the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 read as under:-

“(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.”

20. The said Clause was thereafter substituted by virtue of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017 and the reference to the self acquired property was now deleted. The Clause as it stands today expressly permits a citizen/parent to make an application for eviction of his son, daughter and legal heir from the property of any kind whether movable and immovable, ancestral or self-acquired and tangible or intangible. Thus, the defence raised by the petitioner in regard to the nature of the property in question is of little relevance.

21. The contention that the Divisional Commissioner has ignored the report of the SDM that the dispute is a property dispute is also unpersuasive. It is apparent from the plain reading of the impugned order that the Divisional Commissioner has examined the complaint of respondent no.3 and the material on record. There is ample material on record to indicate that respondent no.3 was distressed by the conduct of the petitioner and his wife.

Respondent no.3 has a right to live peacefully and this Court finds no infirmity with the impugned order passed by the Divisional Commissioner.

22. The petition is, accordingly, dismissed with costs quantified at ₹15,000/-. The cost shall be paid by the petitioner to respondent no.3 within a period of three weeks from today.

23. All pending applications stand disposed of.

NOVEMBER 16, 2018
Pkv/RK

VIBHU BAKHRU, J



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