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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 22.02.2018

+ LPA 783/2017, CAV 1058/2017, CM APPL. 44840/2017 (stay), CM
APPL. 44841/2017, CM APPL. 44842/2017, CM APPL. 1929/2018

SHADAB KHAIRI & ANR

..... Appellants

Through: Mr Viresh B. Saharya, Mr Akshat
Agarwal, Advs

versus

THE STATE & ORS

..... Respondents

Through: Ms Manika Tripathy Pandey,
Mr Ashutosh Kaushik and Ms Raveena Tandon,
Advs for Respondents 1 and 4
Mr Jayant Bhatt, Ms Mekhala Pandey, Advs for
Respondent No.3

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

1. It is axiomatic that all legislations in a welfare State are enacted with the object of promoting the general welfare. But certain enactments are more responsive to some urgent social demands and have more immediate and visible impact on the social vices in society by operating more directly to achieve social reforms. These enactments, in our view, demand an interpretation liberal enough to achieve the legislative purpose, without doing violence to the language. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

(hereinafter referred to as ‘the Act’) is evidently one such legislation. It was enacted with the avowed resolve to provide for more effective mechanism to ensure maintenance and welfare of parents and senior citizens as recognized under the Constitution of India.

2. The issue that has arisen for consideration in the present appeal, is “whether the Maintenance Tribunal has the jurisdiction to pass an order of eviction?”

3. Both the Maintenance Tribunal as well as the learned Single Judge of this Court have returned a finding that in cases of parental abuse, an order of eviction can be passed by the Maintenance Tribunal in terms of the provisions of the Act.

4. Needless to state that the above view is further fortified by the Rules promulgated thereunder, in the exercise of powers conferred by Section 32 of the Act, read with clause (i) of Section 2, by the Social Welfare Department, vide its Notification dated 19.12.2016.

5. Regardless of the legal position, it is sought to be urged before this Court on behalf of the appellants that a Maintenance Tribunal inherently lacks jurisdiction to pass an order of eviction and the same is beyond the scope of the proceedings for maintenance, instituted on behalf of a senior citizen.

6. In fact, the further submission made on behalf of the appellants borders on the absurd, inasmuch as, it is urged that the Maintenance Tribunal constituted under the Act is an administrative forum and does not possess any judicial power.

7. Be that as it may, for the effective adjudication of the present appeal, it would be necessary to elucidate the following facts:

a. Mohammud Aftab Khairi, respondent No.3, is the 68 year old father of the appellants. It has been admitted before us that the said respondent is the owner and resident of the properties bearing No.3616-3617, Katra Deena Beg, Lal Kuan, Delhi-110006 (hereinafter referred to as 'the subject property'), which is stated to be contiguous. Respondent No.3 was blessed with three sons, namely, Shahab Khairi (who is not a party to the present proceeding), Shadab Khairi, the appellant No.1 and Shahnawaz Khairi, the appellant No.2 herein.

b. Admittedly, respondent No.3 runs the business of a printing press, in the name and style of 'Khairi Printing Press', on the ground floor of the subject property and occupies the first floor thereof along with his ailing wife, namely, Shahina Khairi.

c. The three sons of respondent No.3, including appellant No.1 and appellant No. 2 occupy the second and third floor of the subject property, respectively.

d. Respondent No.3 instituted a petition under the Act alleging that despite having spent considerable amount on renovating the subject property and providing separate residential accommodation to his sons, the latter resiled from their undertaking to pay him a monthly sum of Rs.20,000/- collectively, towards his maintenance and for the day-to-day requirements of Shahina Khairi, who needs constant medical attention owing to her prolonged illness.

e. To add insult to injury, the daughters-in-law of the elderly couple have instituted criminal complaints against respondent No.3

inter alia alleging attempts by the latter to outrage the modesty of the former.

8. Having heard the learned counsel appearing on behalf of the parties and perusing the pleadings, the Maintenance Tribunal by way of its order dated 10.12.2015 directed as follows:-

“1. Respondent No.1 shall continue to stay in property No.3617 (on the second floor) and shall sincerely strive to support the complainant in his work and other responsibilities towards the family of the complainant.

2. Respondent No.1 shall look after and provide all the medical care to the complainant's wife or any other family member, in time of need.

3. Respondent No.1 shall also pay a sum of Rs.5000/- per month to the complainant.

4. Respondent No.2 and 3, shall peacefully vacate the respective portions on the third floor of the property bearing No.3617 Katra Deena Beg, Lal Kuan, Delhi, occupied by them within 3 weeks from the date of receiving of this order and make their own arrangement to shift within specified time.

5. Respondent No.2 and 3 are further directed that they shall refrain from indulging in any argument, making comments, threatening or causing any harm to the complainants in particular and all the other members of the family, including Respondent No.1.

6. *That SHO, PS Hauz Qazi is directed to depute beat staff for regular visits to ensure that life and property of the senior citizen parent is safe and secure. The SHO is further directed to ensure implementation of the above said direction in true letter and spirit and put the complainant in possession of his property. Necessary compliance report be sent to the Tribunal.*

Complaint is disposed of accordingly. File be consigned to record room.”

9. Rather than complying with the directions issued in the order dated 10.12.2015 passed by the Maintenance Tribunal, the appellants instituted writ petition No.866/2016 before this Court, impugning the same on the above stated ground, i.e., the Maintenance Tribunal did not have jurisdiction to pass an order of eviction.

10. By way of the impugned order dated 31.10.2017 passed by a Single Judge of this Court in W.P.(C) No.866/2016, titled as ***Shadab Khairi and Anr vs. The State (Govt of NCT Delhi) and Ors.***, whilst considering the findings of this Court in ***Sunny Paul & Anr. v. State NCT of Delhi & Ors.*** (W.P. (C) No. 10463/2015) reported as **2017 SCC Online Del 7451**, as well as the provision of the Delhi Maintenance and Welfare of Senior Citizens (Amendment) Rules, 2016 (hereinafter referred to as ‘the subject Rules’), the learned Single Judge dismissed the petition.

11. At this stage, it would be relevant to observe that the learned Single Judge returned a finding that the appellants and their aged

parents cannot live together in view of the serious allegations levelled against the latter by the wives of the former.

12. It would also be relevant to observe that by way of the impugned directions, the Maintenance Tribunal had directed the appellants to peacefully vacate the respective portions of the third floor of the property bearing No.3617 Katra Deena Beg, Lal Kuan, Delhi, occupied by them and make their own arrangements to shift, within three weeks from the date of receipt of the order.

13. Needless to state that the appellants are still in possession of the subject premises. Further, subsequent thereto, the appellants have also proceeded to make complaints to the Municipal Corporation, alleging therein that unauthorized construction has been raised by respondent No.3 in the portion under his use and occupation, followed by institution of the writ petitions bearing W.P.(C) No.866/2016 and W.P.(C) No.7985/2016 in relation to the subject property before this Hon'ble Court, without arraying him as a party-respondent.

14. Having heard the learned counsel appearing on behalf of the parties and perused the relevant record, we proceed to determine the issue raised in the present appeal in the backdrop of the above elaborated facts.

15. In ***Sunny Paul & Anr.*** (*supra*), a Single Judge of this Court concluded as under:-

“73. Keeping in view the aforesaid conclusions, this Court is of the view that the Act, 2007, amongst other remedies, provides for eviction of adult children in cases of parental abuse—like in the present case. Accordingly,

the present writ petition and application are dismissed and the concerned SDM and SHO, Police Station Civil Lines, are directed to forthwith comply with the impugned order dated 1st October, 2015 passed by the Maintenance Tribunal, Central District, Delhi.”

16. In ***Sachin & Anr. vs. Jhabbu Lal and Anr.***, whilst disposing off RSA No.136/2016 and CM No.19123/2016, another Single Judge of this Court succinctly observed as follows:-

“Where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life.”

17. The subject Rules amended on 19.12.2016 provide as follows:-

“(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.”

18. A plain reading of the above extracted Rules clearly reflect that a senior citizen is entitled to institute an application seeking eviction of his son, daughter or other legal heir from his self-acquired property on the ground of ill-treatment and non-maintenance.

19. It must be observed that in instant proceedings, neither the vires of the Act nor the Rules framed thereunder have been assailed on behalf of the appellants. What is assailed is the competence of the Maintenance Tribunal to render an order of eviction under the Act.

Further, it is canvassed that the Act does not contemplate eviction *per se*. Alternatively, it has been urged that respondent No.3 being possessed of sufficient means and assets was disentitled from maintaining an application seeking maintenance within the meaning of the provisions of the Act.

20. We do not agree. At the outset, we had elaborated on how beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare State. The object for which the Act as well as the subject Rules, extracted hereinabove, were brought into force, namely, for the welfare of parents and senior citizens and for protection of their life and property, leave no manner of doubt that the Maintenance Tribunal constituted under the Act has the power and jurisdiction to render the order of eviction.

21. The issue framed hereinbefore is, therefore, decided against the appellants. Before parting, it would be incumbent for us to observe that the appellants have failed to show any rights to continue to occupy the subject property against the wishes of respondent No.3, especially when the latter has complained of ill-treatment and harassment at the hands of the former.

22. Further, whilst exercising extraordinary jurisdiction under Article 226 and 227 of the Constitution of India, the courts of equity can both refuse or grant relief in furtherance of public interest on considerations of justice, equity and good conscience.

23. In view of the foregoing discussion, we are of the considered view that the appeal is bereft any of merit and the same is accordingly dismissed.

24. The SHO, Police Station-Hauz Qazi is directed to comply with the directions issued by the Maintenance Tribunal and put respondent No.3 in possession of the subject property forthwith.

25. Pending applications also stand disposed off.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**FEBRUARY 22, 2018
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