

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

CWP No.2648 of 2019
Date of decision:-11.02.2019

Jagtar Singh and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Lalit Pathak, Advocate for the petitioners.

TEJINDER SINGH DHINDSA, J.

Challenge in the instant petition is to the order dated 27.12.2018 (Annexure P-4) passed by the Additional District Magistrate, Patiala and in terms of which the petitioners have been directed to vacate the premises in question.

Petitioners herein are the son and daughter-in-law of respondent No.3.

An application was moved by respondent No.3 under Section 22/23 of the Maintenance and Welfare of Parents and Senior Citizen, Act, 2007 (hereinafter to be referred to as 'the Act'), seeking eviction of the petitioners herein. Vide order dated 08.05.2018 passed by the Maintenance Tribunal-cum-SDM, Nabha (Annexure P-3), the application was dismissed. Appeal having been preferred by respondent No.3 the same has been accepted by the Appellate Authority in terms of the impugned order dated 27.12.2018 (Annexure P-4).

Counsel for the petitioners has urged before this Court that the impugned order is patently illegal. It is submitted that the Maintenance Tribunal-cum-SDM, Nabha, had dismissed the application seeking eviction by observing that respondent No.3 was habitual of consuming alcohol and otherwise was working as a Mason and was healthy. It had also been observed by the Maintenance Tribunal that the son i.e.petitioner No.1 herein was ready to take care of him. It is contended that such aspect has been over-looked by the Appellate Authority while directing eviction. Counsel submits that the allegations raised by the father against the present petitioners of harassment and abusive behaviour, are false and fabricated. The application under the Act, seeking eviction, has been moved by the respondent No.3 with an oblique motive and only on instigation of third parties. The impugned order would cause great hardship to the petitioners is yet another submission raised by counsel.

Having heard counsel for the petitioners at length and having perused the pleadings on record, I am of the considered view that the instant petition is bereft of merit and deserves to be dismissed.

Counsel does not dispute that pursuant to the application having been moved by respondent No.3, seeking eviction of the petitioners, the Maintenance Tribunal-cum-SDM, Nabha, had called for a report from the Naib Tehsildar, Nabha. The report dated 09.11.2018, furnished by Naib Tehsildar, Nabha, has been placed on record and appended as Annexure-2 alongwith the instant petition. Perusal of the same would reveal that the statements of the Sarpanch, Nambardar, Chowkidar as also a number of neighbourers had been recorded and who had stated in unison that the house in question is measuring 3½ biswas and had been inherited by

respondent No.3 from his forefathers. The electricity connection was also in his name. Since the house was quite old, the same was demolished and then rebuilt by Mehar Singh- respondent No.3 with his own funds. As per statements recorded, respondent No.3 used to work as a Mason but lately he has not been doing any work and neither he is addicted. As per report of the Naib Tehsildar, son of Mehar Singh and his daughter-in-law, harass him.

This Court finds that the Maintenance Tribunal-cum-SDM, Nabha, while dismissing the application moved by respondent No.3 on 08.05.2018 had completely ignored the report of the Naib Tehsildar.

It is by now well-settled that if the property is owned by senior Citizen/parents, who are being harassed mentally/physically, the said senior citizen/parent may file an application before the District Magistrate under the provisions of the Act for purpose of seeking eviction. This is precisely what has been done in the present case.

A Division Bench of this Court in **Gurpreet Singh Vs. State of Punjab & others, 2016 (1) RCR (Civil) 324** had held as under:

“12. The petitioner is a licensee living in the premises on the basis of concession given by his father to live in the property owned by him. As a licensee, the petitioner is only permitted to enjoy the possession of the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any kind in the licensee to remain in possession of the property licensed. Admittedly, respondent No.4 is the owner of the property in question. The petitioner is living in part of the property. Such property owned by respondent No.4 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the

Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who wishes to interfere in the possession of the property of the senior citizen. Protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure will ensure for the benefit of the senior citizen. The petitioner would have no right to resist his eviction only on the ground that the Act does not contemplate eviction of an occupant. Eviction is one part of the right to protect the property of a senior citizen which right could be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.”

The dictum laid down in **Gurpreet Singh's case (supra)** would virtually negate the challenge raised by the petitioners to the impugned order dated 27.12.2018 (Annexure P-4).

It would also be apposite to take note that on a previous date of hearing i.e.31.01.2019 a submission had been raised by counsel that the petitioners are ready and willing to contribute for the maintenance of respondent No.3 and to prove the bona fide of such statement an undertaking had been furnished that a demand draft of rupees one lakh in the name of respondent No.3, would be furnished within a period of one week.

During the course of resumed hearing today, the undertaking has not been made good. Even part amount has not been furnished. Even though counsel concedes that petitioner No.1 i.e.son is an employee of the Jail Department, State of Punjab, yet expresses his inability to offer any

sum of money for the maintenance and upkeep of his father/respondent No.3.

In an overview of the matter, the impugned order of eviction, does not call for any interference.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

11.02.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No