

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

CWP-11001-2019 (O&M)
Date of decision:-28.05.2019

Tarwinder Sharma and others

.....Petitioner

versus

The Deputy Commissioner-cum-District Magistrate, Fatehgarh Sahib and
others

.....Respondents

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

Present:- Mr. Deepak Kumar Sharma, Advocate for the petitioners.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant writ petition is directed against the order dated 25.02.2019 (Annexure P-4) passed by the Maintenance Tribunal-cum-Additional District Magistrate, Fatehgarh Sahib and in terms of which the present petitioners have been directed to be evicted from the premises in question in pursuance to an application having been moved by the Senior Citizen/Parent i.e. respondent No.3 under the Maintenance and Welfare of Parents and Senior Citizen Act 2007 (hereinafter to be referred to as the 'Act').

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

Counsel for the petitioners has urged before this Court that the impugned order is patently illegal. It is contended that the allegations raised by respondent No.3 against his own son and daughter-in-law i.e. petitioner No.1 and 2 herein of harassment and abusive behaviour are false and fabricated. Further argued that the premises from where the petitioners

have been directed to be evicted was not the self-acquired property of the senior citizen/parent but had been purchased by him from funds sourced from the sale of ancestral property situated in District Sangrur. Reliance has also been placed upon a Division Bench judgement of this Court in **Major Harmohinder Singh (Retired) versus State of Punjab and others 2017 1 RCR (Criminal) 993**, to contend that the petitioners who were in long possession of the property in question cannot be evicted by adopting a summary procedure at the hands of the District Magistrate under the provisions of the Act.

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

It is not in dispute that respondent No.3 is a senior citizen and was aged 65 years on the date of filing of the application seeking eviction under the 2007 Act. In the application respondent No.3 had categorically stated that he had retired from the Public Relation Department in the year 2010. Marriage of his son i.e. petitioner No.1 had been solemnized with Opinderjit Sharma i.e. petitioner No.2 in the year 2003. It was further stated that both son and daughter-in-law misbehaved with the applicant and used foul language. Applicant had also stated that his wife remains ill and is a cardiac and diabetic patient and her treatment is being conducted from Balaji Heart Institution Patiala. The senior citizen had further stated that his son has been remiss and has not discharged his moral obligation of looking after his parents. Alongwith the application the newspaper cutting/notice with regard to having disowned his own son/petitioner No.1 had also been appended.

Perusal of the impugned order would reveal that a report had been sought from the Sub Divisional Magistrate, Fatehgarh Sahib and which was duly furnished vide letter dated 07.06.2018 reciting therein that as per report of the Tehsildar, Fatehgarh Sahib, ownership of the premises in question is in the name of the Senior Citizen/parent. Such factual premise is not even disputed by counsel representing the petitioners.

It is by now well settled that if the property is owned by the Senior Citizen/parent who is being harassed mentally/physically, the said Senior Citizen/parent may file an application before the District Magistrate under the provisions of the Act for purposes 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 25.02.2019 (Annexure P-4).

The reliance placed by counsel upon the **Division Bench judgment in Major Harmohinder Singh's case (supra)** is wholly misplaced. In such case eviction had been sought by the Senior Citizen of his divorced wife as also sons. A civil suit had been filed by the Senior Citizen seeking eviction of his divorced wife and sons which was already pending in the Court of Civil Judge at Mohali.

It is under such circumstances that parallel proceedings seeking eviction under the 2007 Act did not meet approval with the Division

Bench.

The facts of the present case are completely distinguishable.

For the reasons recorded above, no warrant for interference in the impugned order dated 25.02.2019 (Annexure P-4) is made out.

Petition dismissed.

At this stage counsel has raised an additional submission that eviction in any case could not have been directed against the daughter-in-law as also minor grand-children of the Senior Citizen/Parent. Even such submission would not cut any ice as on a specific query having been put to the counsel it has been conceded that petitioner no.1 as also his wife alongwith children are staying as a composite family and the eviction/impugned order is essentially directed against petitioner No.1.

(TEJINDER SINGH DHINDSA)
JUDGE

28.05.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No