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

+ **W.P.(C) 5105/2018 & CM APPL. 19726/2018**

AMRITA KUMAR

..... Petitioner

Through Mr Saurabh D. Karan Singh, Ms Kanika Jain, Advocates with petitioner in person.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through Ms Shobhana, Counsel for GNCTD with Mr Shivani Jain, Advocate.
Mr Rahul Soja Sahay, Mr Siddharth Boyal, Advocates for R4 and R5.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.03.2019

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 12.03.2018 passed by the District Magistrate, South allowing the application of respondent nos. 4 and 5 (senior citizens) seeking eviction of the petitioner from the premises in question (7-C, measuring 35 sq yards, Khasra No. 564, Khanpur Extension, Dr Ambedkar Nagar, Delhi). The petitioner also impugns an order dated 26.04.2018 passed by the Divisional Commissioner, rejecting the petitioner's appeal against the order dated 12.03.2018 passed by the District Magistrate.
2. The Divisional Commissioner has rejected the petitioner's appeal on the ground that in terms of Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, an appeal is available only to a senior

citizen or a parent. The said order is not sustainable as the order dated 12.03.2018 passed by the District Magistrate was in terms under Rule 22 (3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereafter 'the rules'), as then in force. Concededly, an appeal against the said order is provided under Rule 22 (3) (4) of the said Rules. The appeals referred to under Section 16 of the Maintenance and Senior Citizens Act, 2007 are appeals against an order of Maintenance Tribunal are not against an order passed by the District Magistrate under the aforementioned Rules. This issue was covered by an earlier decision of this Court in ***W.P. (C) 11703/ 2018: Sudesh Chhikara v. State (Govt of NCT of Delhi) & Ors.***

3. In view of the above, the impugned order dated 26.04.2018 is set aside, and the petitioner's appeal is restored to the file of the Divisional Commissioner for consideration on merits.

4. At this stage, the learned counsel appearing for the parties also agree that during the pendency of the aforesaid appeal the petitioner shall shift on to the second floor of the premises in question within one week, from today, and shall vacate the portions occupied by her. Respondent nos. 4 and 5 would be free to occupy the other two floors – ground floor and the first floor of the premises in question. The counsel for the parties are bound by the said statement. This arrangement would continue till the Divisional Commissioner hears the petitioner's appeal and would be subject to the orders passed in the said proceedings.

5. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

MARCH 25, 2019

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