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

+ **W.P.(C) 3814/2017 & CM APPL. 29895/2017, 16770/2017**

ABHA KOHLI

..... Petitioner

Through: Mr Sameer Mendiratta, Advocate
with Mr Prateek Gangwani,
Advocate.

versus

PUSHPA KOHLI AND ANR

..... Respondents

Through: Mr Uchit Bhandary, Advocate for R1.
Mr Mahesh Srivastava, Mr Vaibhav
Manu Srivastav, Advocates for R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.05.2019

1. The petitioner has filed the present petition, *inter alia*, challenging the final order dated 04.02.2017 passed by the Maintenance Tribunal, District West (hereafter the 'impugned order') under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'). By the impugned order, the Maintenance Tribunal had, *inter alia*, directed the petitioner and respondent no.2 to hand over the possession of part of the house at AD-68, Tagore Garden, New Delhi (hereafter 'the Property'), in their occupation.

2. The petitioner is the daughter-in-law of respondent no.1 and the wife of respondent no.2. She contends that a daughter-in-law does not fall within the purview of the Act, as she is not included in the definition of "children" or "relatives", as defined under Section 2(a) and 2(g) of the Act,

respectively.

3. The property was owned by late Sh. Satpal Kohli, husband of respondent no. 1 and the father of respondent no. 2. Sh. Satpal Kohli expired in the year 1978, intestate, and the property was inherited by the respondents and the younger brother of respondent no.2. Respondent no.1 claims that her sons (respondent no.2 and his younger brother) have relinquished their share in the property in favour of respondent no.1.

4. The parties and the younger son of respondent no.1 were residing together at the property. The respondents claim that the younger son of respondent no.1 (brother of respondent no.2) has since moved out of the said property and lives in a rented accommodation.

5. The petitioner alleges that on 05.04.2014, the younger brother of respondent no. 2 and his wife threatened the petitioner that she must leave the property, otherwise they would throw her out with the aid of anti social elements and bouncers. The petitioner lodged a complaint in this regard with the police station at Rajouri Garden, New Delhi, vide Diary No. 74-B.

5. The petitioner alleges that when she informed respondent no. 2 about the same, he said that his brother and his wife were at liberty to do so. The petitioner intimated the said fact to the SHO Rajouri Garden, New Delhi on 06.04.2014, vide DD No. 59 B.

6. The petitioner has also filed a suit of permanent injunction against the respondent no. 2, her brother-in-law and the wife of her brother-in-law for restraining them from dispossessing the petitioner and her children from the property. The suit is still pending before the Senior Civil Judge (West

District), Tis Hazari Courts.

7. The petitioner has filed an application under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 before the Mahila Court, Metropolitan Magistrate (West District), Tis Hazari Courts, Delhi against the respondents, praying that respondent no. 2 be directed to pay a sum of ₹40,000/- per month to the petitioner and her children.

8. The petitioner claims that with a view to oust the petitioner from the premises and as a counter blast to the applications filed under the Domestic Violence Act, 2005, respondent no. 1 had filed a false and a frivolous complaint under Section 23 of the Act before the Maintenance Tribunal.

9. In the complaint filed by respondent no.1, she categorically states that the petitioner, along with her relatives, had harassed her with the intention to make her leave the house so that she could gain possession of the entire property.

10. It is apparent from the above that there are disputes between the petitioner and respondent no.1. A plain reading of the complaint filed by respondent no.1 indicates that she had alleged that the petitioner was harassing her and she and her relatives had threatened respondent no.1 and made her life miserable.

11. It is also apparent from the records that the petitioner and respondent no.1 have found it difficult to live peacefully in the same house. Undisputedly, respondent no.1 is entitled to live in her house in peace and it

can hardly be disputed that the environment in the Property is not amicable.

12. The petitioner is seeking a right to reside in the property in question, on account of being married to respondent no.2 (son of respondent no.1). Respondent no.2 has filed an affidavit affirming that he is willing to abide by the orders passed by the Tribunal and vacate the Property. The additional affidavit filed by respondent no.2 also indicates that respondent no.2 has made arrangement of an alternative accommodation (Property bearing No. 3/211, Subhash Nagar, New Delhi) on a monthly rent of ₹9500/- per month. The learned counsel for respondent no.2 states that the rent agreement is registered and respondent no.2 has no objection for the petitioner to reside at the said property. He further states that he would continue to pay the lease rentals in terms of the rent agreement, so as to ensure that the petitioner is not disturbed from the said premises.

13. It is well settled that the remedies under Article 226 of the Constitution of India are discretionary remedies and in view of the above, this Court is not inclined to entertain the present petition. The petitioner would be at liberty to reside at the premises leased by him. The petitioner is also not precluded from seeking any relief against respondent no.2.

14. In view of the above, the petition is dismissed. The pending applications stand disposed of.

VIBHU BAKHRU, J

MAY 06, 2019
pkv/RK