

CWP-13360-2020

103 IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CWP-13360-2020

Date of Decision: 04.09.2020

VRINDA SHARMA

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.Deepak Vaswani, Advocate for the petitioner
Mr.Deepak Manchanda, Addl.A.G. Haryana
for respondent Nos.1 & 2
Mr.Amit Jain, Advocate for respondent Nos.3 & 4
Mr.Ashish Gupta, Advocate for respondent No.5

Deepak Sibal, J. (Oral)

Case taken up through Video Conferencing.

The present petition has been filed under Articles 226/227 of the Constitution of India for setting aside order dated 24.06.2020 passed by the District Magistrate, Gurugram (for short – the Competent Authority) through which the petitioner has been directed to vacate the second floor of House No.532, Sector 31-32-A, Gurugram (in short the demised premises).

The facts in brief which are required to be noticed for adjudication of the present petition are that in the year 2009 the petitioner got married to Puneet Sharma who is the son of respondent nos.3 and 4. The demised premises which was owned by respondent nos.3 and 4 comprised of the ground and two floors. Respondent nos.3 and 4 resided

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on the ground floor; the first floor had been let out to tenants and the petitioner, her husband and her son, as licensees, were permitted by respondent nos.3 and 4 to occupy the second floor. There was marital discord between the petitioner and her husband which led to mental harassment of respondent nos.3 and 4 as a consequence whereof, in the year 2011, respondent nos.3 and 4 disowned both the petitioner and her husband. However, the marital disharmony between the petitioner and her husband continued and this led to further deterioration of relations between the petitioner on one hand and respondent nos.3 and 4 on the other. Allegedly, on receiving threats from the petitioner, respondent nos.3 and 4 filed a complaint against the petitioner on 4.9.2019 in Police Station Sector 40, Gurugram. Thereafter the petitioner filed a complaint against respondent nos.3 and 4 under Section 12 of the Domestic Violence Act, 2005 (for short – the 2005 Act) as also a complaint against respondent nos.3 and 4 before the Women Cell Gurugram on 14.11.2019. In these circumstances respondent nos.3 and 4 being senior citizens, filed an application before the Competent Authority under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short – the 2007 Act) against the petitioner and her husband seeking therein their eviction from the second floor of the demised premises. On being put to notice both the petitioner and her husband appeared before the Competent Authority and contested the application. However, neither the petitioner nor her husband contested the fact that the demised premises was not the self acquired property of respondent nos.3 and 4. The Competent Authority, after considering the issues with regard to the ownership of the demised premises; maintainability of respondent nos.3 and 4's application against their daughter-in-law; the premises in question

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being a shared household of the petitioner; the petitioner's right of residence in the premises in question in terms of Section 17(1) of 2005 Act and filing of complaints by the petitioner against respondent nos.3 and 4, ordered her eviction through the order under challenge in the present proceedings. No eviction order was passed against the petitioner's husband as he was found to be residing in a rented accommodation elsewhere and not on the second floor of the demised premises.

Learned counsel for the petitioner submitted that the impugned order was liable to be set aside on the ground that the application before the Competent Authority had been filed by respondent nos.3 and 4 in collusion with the petitioner's husband as there was enough evidence with regard to the cordiality of relations between them. It was further submitted that the demised premises was not the self acquired property of respondent nos.3 and 4 and therefore their application was not maintainable. Lastly, it was contended that, if evicted, the petitioner had no other place to go and therefore she be granted the relief as prayed for by her.

Per contra, learned counsel appearing for the caveators/ respondent nos.3 and 4 submitted that relations between the petitioner's husband and respondent nos.3 and 4 were not cordial as respondent nos.3 and 4, way back in the year 2011, had disowned him. It was further submitted that the petitioner's husband was not residing with respondent nos.3 and 4 and had taken on rent House No.551/21, Chakarpur, Gurugram. Even otherwise, the petitioner being a licensee had no right to reside on the second floor of the demised premises especially when she had filed repeated complaints against respondent nos.3 and 4 and was treating them with both mental and physical cruelty. On the issue that the demised premises was not the ownership of respondent nos.3 and 4 it was

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submitted that the petitioner had not raised this issue before the Competent Authority. Further, in the writ petition also there was no pleading in this regard. Learned counsel for respondent nos.3 and 4 further submitted that the petitioner had made a false statement that on being evicted from the second floor of the demised premises she had no place to go as her parental home was in Delhi.

It has not been disputed that the impugned eviction order has been passed at the behest of two senior citizens.

Before the Competent Authority no challenge was made by the petitioner with regard to respondent nos.3 and 4 not being owners of the demised premises. No specific pleading in the present petition is also found contesting respondent nos.3 and 4's ownership.

Further, a perusal of the impugned order reveals that before passing the impugned order the Competent Authority, who is the District Magistrate, Gurugram, had got verified the title of the demised premises from the Sub Divisional Magistrate, Gurugram and such verification had clearly revealed that respondent nos.3 and 4 were the owners of the demised premises through a sale deed dated 18.09.2001. No evidence to the contrary has been produced/ shown on behalf of the petitioner.

In proceedings under the 2005 Act the petitioner had sought the same relief as prayed for through the instant petition i.e. the right to reside on the second floor of the demised premises. Such prayer of the petitioner was declined through an order dated 07.03.2020 passed by the Judicial Magistrate 1st Class, Gurugram (order has been filed by learned counsel for the petitioner and has been taken on record as Annexure P-8). Relevant portion of the said order reads as under:-

“Keeping in view the aforesaid discussion, the complainant is not entitled for any residence order in the second floor of house no.532, Sector 31, Gurugram which is self acquired property of his father in law and mother in law. Hence the request made by learned counsel for the complainant to restrain the respondent from dispossessing him from second floor of the house no.532, Sector 31, Gurugram is hereby declined. However, since the respondent no.1 is willing to take the complainant with him in his rented accommodation, she is at liberty to join her husband’s company.” (Emphasis supplied)

In the above quoted order, after recording a specific finding that the demised premises was the self acquired property of respondent nos.3 and 4, the petitioner was denied the right to reside on its second floor. On a query posed by this Court learned counsel for the petitioner admitted that the above referred order has not been challenged by the petitioner. Thus, the same has attained finality.

In view of the above, this Court has no hesitation in rejecting the issue raised by the petitioner disputing the factum of the demised premises not being the self acquired property of respondent nos.3 and 4.

The petitioner’s status to occupy the second floor of the demised premises has also virtually been admitted to be that of a licensee as no submission to the contrary has even been raised before this Court. No evidence has also been produced or shown to claim possession of the premises in question in any other capacity. Even otherwise, as per settled law, the petitioner has no right to claim right of residence over the self acquired property of her father/ mother-in-law.

A perusal of the record reveals that the petitioner has filed a complaint against respondent nos.3 and 4 with the Women Cell at

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Gurugram as also a petition against them under the 2005 Act. On the other hand, way back in the year 2011 respondent nos.3 and 4 had disowned the petitioner and her husband. There is also a complaint filed by respondent nos.3 and 4 against the petitioner in which they have alleged that the petitioner continuously threatens respondent nos.3 and 4 that she would embroil them in false cases. These facts clearly reveal the extent of sour relations between the parties.

The submission of the petitioner before this Court that if evicted from the demised premises she has no other place to go is also found to be false because when her counsel was confronted with the submission made by learned counsel for respondent nos.3 and 4 that the petitioner had her parental home in Delhi, he, on instructions from the petitioner, admitted the same but complained that the same was inadequate.

In view of the above, the present petition has no merit and the same is hereby dismissed. However, this would not preclude the petitioner from claiming right of residence from her husband in accordance with law.

04.09.2020
gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No