

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

**CWP-38040 of 2018 (O&M)
DATE OF DECISION :05.11.2020**

Mamta Sharma

...Petitioner

Versus

Additional Deputy Commissioner cum Maintenance Tribunal &Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by : Ms. Promila Nain, Advocate,
for the petitioner.**

Mr. T.P.S. Chawla, DAG Punjab.

**Ms. ShubhreetKaur, Advocate
for respondent No.2.**

**Mr. L.M. Gulati, Advocate
forproforma respondent No.3.
(Presence marked through video conference)**

ARUN MONGA, J.

1. Before this court is a widowed daughter in law, aged about 53 years, pitted against her 82 years old father in law. She has assailed an order dated 26.11.2018 passed by Respondent No.1-Additional Deputy Commissioner cum Maintenance Tribunal on a complaint preferred by respondent No.2, under Maintenance and Welfare of Parents and Senior Citizen Act, 2007(for brevity, 2007 Act). Petitioner is aggrieved against the direction issued to her to vacate her matrimonial home set up in a part of the self-acquired house owned of her father in law/respondent no.2. She is/was to hand over vacant possession of the part of House No. 221, Model House, Ludhiana to respondent No.2 within a month. Prayer in the instant petition is to quash the impugned order and also to direct respondent No.2 not to harass petitioner and

to provide her alternate accommodation, either in the same house or at any other place. Further prayer is to direct respondent no.2 to give alleged share of petitioner and her deceased husband from the family business and, also hand over other immovable and moveable assets from the joint family.

2. At the outset, it may be pertinent to mention that in the present writ proceedings, with the able, earnest and considerable efforts of the learned counsel for parties, this court first tried for reconciliation between the parties. Despite repeated efforts nothing came forth in the end. Parties were directed to be present through video conferencing and were also heard by me in person. However, no amicable way out could be arrived at. Prior to efforts made by this court, matter was also referred to mediation center but, just as before this court, it turned out to be an exercise in futility.

3. Apart from writ proceedings herein emanating from a quasi-judicial Tribunal, multiple litigations filed by petitioner in different courts are also *sub-judice*. A civil suit for declaration, possession of immovable property and rendition of accounts; a complaint under Protection of women from Domestic Violence Act, 2005 and; a maintenance petition under Hindu Adoption and Maintenance Act, 1956 have been filed.

4. Succinct factual background which led to the institution of present writ petition is noticed first.

5. Petitioner got married on 17.11.1987 with late Sh. Brijesh Kumar son of respondent No.2. Three children, two daughters and a son, were born out of the wedlock. Late Brijesh Kumar was Managing Director in a private limited company namely M/s Vashishth Industrial Products Pvt. Ltd., while wife of respondent no.2 late Smt. Raj Rani (mother in law) and his two other sons Sh. Umesh Sharma and Sh. Sumesh Sharma were all Directors. Petitioner states

concern under the name and style of M/s Vashishth Forging was set up. Petitioner was made a partner with 40% share therein while respondent No.2 was the other partner with 60% share.

6. Petitioner's case is that the house in question, originally having only a single storey construction, was purchased by respondent No.2 from the funds provided by his father. Later on, out of the funds of aforesaid two entities viz M/s Vashishth Industrial Products and M/s Vashishth Forging, further construction of first and second floor was carried out by late husband of the petitioner. The house in question thus became joint property of the family. Unfortunately, petitioner's husband died untimely in the year, 2003. She continued to reside in the house in question with her children. There was no complaint whatsoever, from any quarters. She took proper care of her father in law-respondent No.2, being an old person. Even marriage of her two daughters was solemnized from the house in question.

7. All of a sudden, respondent No.2 on 08.12.2017 filed a complaint under 2007 Act against the petitioner, followed by another dated 15.12.2017, alleging harassment and maltreatment by her. Based on averments of complaint, reply thereto and the written submissions filed by the parties, impugned order dated 26.11.2018 has been passed by respondent No.1/Tribunal leading to the writ petition before this court.

8. Respondent no.2 in his written statement/affidavit has asserted that the house in question is his self-acquired, out of his own funds, vide registered sale-deed dated 25.05.1982. None else contributed in its acquisition/purchase. At the time of its purchase, late husband of petitioner was a minor. He was studying in DAV College, Chandigarh. The ground floor of the house in question was partly occupied by respondent No.2 and his wife.

While second floor of the house was constructed in the year 1983 by

respondent No.2. Late son (petitioner's husband) of respondent No.2 joined him at Ludhiana sometime on or around 04.06.1983, when he was also inducted as a partner in the firm which was predominantly set up by respondent No.2.

9. Qua family business, it is claimed that on her retirement from the firm in year 1988, all dues of petitioner qua the firm stood satisfied and extinguished. She cannot, therefore, now claim any rights in the firm. That too, after about 20 years. Respondent no.2 denies that the petitioner served her aged parents-in-law. Rather, it is averred that after death of her husband, the conduct of petitioner was quite deplorable. She left the house in suspicious circumstances and was later found in the company of one Brijender Kumar. In order to cover up her relationship, petitioner lodged a case under Sections 376 and 506 IPC on 14.11.2004 at Police Station Ludhiana. But later, during trial she resiled from her statement, resulting into acquittal of said Brijender Kumar.

10. It is further pleaded by respondent no.2, that despite the shabby conduct of petitioner, respondent No.2 bore all the expenses of marriage of his two grand-daughters i.e. daughters of petitioner which took place in years 2011 and 2017, respectively. Son of petitioner has also been sent abroad (Australia) for his higher studies and his expenses too were/are borne by respondent No.2. It is averred that the petitioner has, in fact, herself admitted/stated this position in her own complaint (Annexure R-2/3) filed under Protection of Women from Domestic Violence Act.

11. Respondent No.2 states that all the aforesaid responsibilities were undertaken by him out of his moral duty, without any legal obligation. However, the petitioner, on the other hand, without any legal right, with a view to usurp the property of respondent No. 2, wrongly started claiming her right over it. Petitioner herself is a lady of means and she along with her son is

living a lavish life. Referring to her investments (Annexure R-2/4 and R-2/5), it is averred that during September to March of 2017-18 she made huge investments running in lakhs, in mutual funds, shares and insurance policies. The petitioner's husband bequeathed her all his properties and cash of Rs.29,000,00/- by virtue of his will dated 04.06.2003. Allegedly, petitioner has also acquired and is owner of various moveable and immoveable properties in and around Ludhiana.

12. Respondent no.2 further states that his other sons namely, Sumesh and Umesh were also residing in the house in question. Respondent No.2, his late wife and petitioner were staying at ground floor and others on the floors above the house. But, on account of nuisance created by petitioner, one of the sons of respondent No. 2 has left the house and started living separately. The petitioner has allegedly created highly tense atmosphere in the house so that the other son should also leave and the entire house comes to her. The only motive of the petitioner is to grab the self-acquired properties of respondent No.2, including the house in question.

13. Respondent no.2 states that in a bid to achieve her evil design, petitioner started extending threats to respondent No.2 to kill him by strangulation, if 1/3rd share in the properties was not given to her. She would also hurl abuses on him. Complaints dated 08.12.2017(Annexure R-2/11) and 14.12.2017(Annexure P-2/12) were, therefore filed by him (respondent No. 2). Being annoyed therewith, petitioner filed a civil suit against respondent No.2 for declaration claiming 1/4th share in the house in question. She sought injunction qua her dispossession from the room which is stated to be in her exclusive possession. That apart, she instituted various other proceedings against respondent No.2 and his family members. The conduct of the petitioner is beyond tolerance and respondent No.2 apprehends danger to his life from

petitioner and as such he does not want to keep her in his self acquired property.

14. It is asserted that respondent No.2 has rightly invoked the provisions of 2007 Act, which ousts and bars the jurisdiction of Civil Court in such matters. It is averred that in the light of aforesaid facts and situation, the Tribunal after satisfying itself about existence of justifiable and cogent reasons, as provided in the 2007 Act, has rightly and validly ordered eviction of petitioner from the house in question. Thus, dismissal of petition has been prayed for.

15. In her replication, the petitioner controverted averments made in the written statement and reiterated those of petition. It was asserted that the construction above the ground floor of the house in question was raised by the husband of petitioner with his hard earned money. After the death of her husband, petitioner has every right to stay in the house, which (then single storey) was purchased from ancestral funds. It is denied that the petitioner is woman of means. Rather, it is stated that she is not even in a position to make her both ends meet.

16. Heard learned counsel for the parties and with their able assistance gone through the pleadings as well as other material placed on record by respective parties.

17. Ms. Promila Nain, learned counsel for petitioner, strenuously argued that impugned order is not sustainable. It is liable to be set aside, *inter alia*, on the ground that Tribunal does not have any power to pass any ejectment/eviction order. Tribunal is meant only for providing maintenance to senior citizen. She argued that even otherwise, no opportunity of adducing any evidence was given to the parties in support of their assertions. Only on vague

vacate the house. Before directing so, respondent No.1 did not even satisfy himself qua the genuineness of the wild and absurd allegations leveled by respondent No.2. By merely taking into account the wishes of respondent No.2, ejectment of petitioner has been ordered.

18. Learned counsel for the petitioner would argue that provisions of 2007 Act and subsequent notification dated 27.11.2014 (comprehensive action plan framed by the State Government) are not applicable to the case in hand. The same can be invoked only if some property is transferred by a senior citizen to his child/relative, which is not the case herein. According to petitioner's learned counsel, the provisions of 2007 Act are though benevolent in nature, but respondent No.2 cannot be granted undue enrichment at the cost of a poor widow.

19. It is argued that the petitioner being widowed daughter-in-law has every right to live in house in question. It is also moral duty of respondent No.2 to maintain his widowed daughter-in-law and his grandson/respondent no.3. The petitioner would be rendered homeless, if she is to vacate the house in question. At the same time, respondent No.1 failed to appreciate that originally a single storey house in question was purchased by respondent No.2 from the funds provided by his father and later, its first and second floor were constructed out of the joint funds by the husband of the petitioner. It is thus not an exclusively owned or self-acquired property of respondent No.2.

20. It is also the stand of the petitioner that complaints against *proforma* respondent No.3 i.e. grandson (son of the petitioner) were withdrawn by respondent No.2 during the proceedings before the Tribunal below. The petitioner is since living with her son, respondent No.1 has no authority to evict a mother from the portion of house where her son is residing. That too, without the consent of her son. Hence, setting aside of impugned order has been sought.

21. Learned counsel for the petitioner, argued that complaint under 2007 Act was filed under a full fledged conspiracy. Before filing the impugned complaint, two complaints dated 08.12.2017 and 15.12.2017 were filed just to create evidence. As a matter of fact, from 17.11.1987 to 08.12.2017, there was no complaint by any of the family member against the petitioner. It is not believable that widowed daughter in-law who remains good for 33 years with her father in law and other family members even after the death of the her husband will suddenly become intolerable, when she herself is alone, 53 years old and suffering from age related ailments.

22. Learned counsel for the petitioner further argued that though petitioner was partner in family business firm M/S Vashisht Forging and was retired therefrom, but till date nothing has been given to the petitioner despite specific clause 2 in the retirement deed which reads as under:-

“That the balance sheet of the firm shall be prepared as on date and the capital accounts made upto date and it has been decided between the continuing and the retiring parties that in lieu of retirement, she shall withdraw his capital as and when desired by her.”

23. She submitted that petitioner and her husband were running the family business, which is fraudulently taken over by respondent No.2 and other two sons by making her retire. After the death of husband of the petitioner in 2003, petitioner was made to sit at home and her signatures used to be obtained by respondent No.2. Believing him as father and head of family, the petitioner signed each and every paper, blank or printed, without even reading. Neither any moveable nor any immoveable assets of petitioner's husband were ever partitioned or given to the petitioner.

24. Learned counsel for the Petitioner would submit that reliance placed by respondent No.2 on 'Will' of her husband dated 04.06.2003 is but a sheer camouflage to deprive the petitioner of her share in the properties.

Elaborating, she submitted that 'Will' was got registered by the respondent No.2, by misleading the petitioner. The same is already under challenge by the petitioner, being surrounded by suspicion. Referring to plot of land as per Jamabandi of year 1999-2000 located at Mundiankalan, Tehsil and District Ludhiana, as mentioned in the 'Will', she submitted that on the date of Will, the husband of the petitioner was not even owner of the said land. The recital of the same in his Will is, therefore, not genuine.

25. She further submitted that it is totally wrong that the expenses incurred for the marriage of daughters of petitioner were borne by respondent No.2. Rather petitioner arranged to get her daughters married from her own sources. She also incurred huge expenses in sending her son abroad. Now that she has become penniless, she is sought to be ejected even from the house in question.

26. Petitioner has stated that, on the other hand, respondent no.2 is a man of means and resources. He is having number of FDRs of approximate value of Rs.6.00 Crores and various bank accounts. Besides, he is having properties of more than Rs.20.00 Crores. Whereas, the petitioner is not having any source of income to maintain herself and no place to go and live. Except one plot measuring 72 sq. yards, in a slum area, which too was purchased by sister of the petitioner in petitioner's name for meager amount just to extend help, the petitioner is not having any other property. The petitioner is ready to give the same also to respondent No.2.

27. While commenting upon the legality and validity of impugned order, learned counsel for the petitioner submitted that the same is arbitrary and non-speaking. The impugned order has been passed without appreciation of facts, evidence and/or enquiry. In fact, respondent No.2 has not even claimed any relief under Section 23 of 2007 Act. His application is only for eviction of

petitioner. Whereas, word “eviction” is nowhere mentioned in 2007 Act. Hence, the alleged complaint itself is not maintainable.

28. Referring to Section 22 of 2007 Act, learned counsel for petitioner would argue that, words “comprehensive action plan” as employed by Parliament have been at length dealt by this Court in the case of **Simrat Randhwa Vs. State of Punjab and others**¹. Eviction is alien to the statute and accordingly a Single Bench of this Court has already struck down the comprehensive action plan in which eviction words were also inserted/introduced, same being contrary to the parent Act, she would argue. Speaking for this court, She pointed out that in the judgment *ibid*, Rajiv Narain Raina, J.(as he then was), *inter alia*, held/observed as under while quashing the comprehensive action plan in **Simrat Randhwa case**:-

“(Para 111):-The State Government is not the legislative policy maker for the protection of property of senior citizens from its own Assembly but on the other hand is only an implementer of the enacted policy of Parliament in the MWPSA Act. As far as life of senior citizen is concerned the States are exclusively empowered by the relevant Schedules in the Constitution to maintain law and order. The Punjab Government must be pinned down to act within the circumference of the parent Act. The Court is advised by binding precedents delivered from the Supreme Court to avoid reading personal visions of equity, compassion, sympathy, empathy, kindness, altruism, benevolence and understanding in a case in favour of one or the other party, however much the court might want to indulge would render the decision and the decision-making process critically sick if the Action Plan does not confer authority to evict on the Maintenance Tribunal. Even beneficial legislation can't be stretched beyond the confines of the law and to the breaking point in the grave matter of eviction beyond the provisions of the Parent Act. It is a matter of jurisdiction conferred by law. Jurisdiction in its simplest terms means the limits of authority conferred by law to decide a dispute by a binding decree.

(Para 117) (i). Clauses 1 to 3 of The Punjab Action Plan, 2014 are ultra vires the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and The Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 and are accordingly struck down as unconstitutional.

(ii). *The Action Plan arbitrarily introduces a concept foreign to the scheme in MWPSC Act, that is, “eviction” or ejection [in this case, of the daughter-in-law] and is therefore, declared arbitrary, unreasonable, oppressive, harsh and unconstitutional and contrary to the doctrine of the Rule of Law and Separation of Powers as the basic features of the Constitution of India and thus violate oppressively Articles 14 and 300A against those who possess tangible and intangible rights that can be determined only by the civil court. This principle would also apply to the Haryana Action Plan, 2015 as it is a mirror image of the Punjab Action Plan, 2014 and suffers from the same infirmities. Only because the Haryana Action Plan has been notified in the name of the Governor will not save it so far as eviction is concerned. “*

29. Learned counsel further relying on **Anand Kumar Aggarwal and Anr. vs Ashok Kumar Agarwal**², submitted that Calcutta High Court also dealt the issue with regard to the eviction under 2007 Act. It has been held that right of eviction could not be read into Act of 2007 Act. Sabyasachi Bhattacharyya, J. speaking for Calcutta High Court held as under:-

“37. As far as the scheme of the Act of 2007 is concerned, Section 23 is very specific in its scope and indicates what category of transfers are envisaged therein, by the expression “transferred by way of gift or otherwise”. Such an expression can only indicate transfers as contemplated in the Transfer of Property Act, 1882, more so, in the absence of any specific definition of the terms ‘transfer’ in the Act of 2007 itself, The Transfer of Property Act is the general law operating in the field and has to be resorted to the context. The said Act of 1882 does not contemplate licence as a mode of transfer. In fact, the line of judgments is well settled as to licence involving no transfer of exclusive title or even rights to the property and being always subject to the will of the licensor, albeit by due process of law. Since the remedy of due process of law is already provided in an eviction suit before Civil Courts as well as Sections 5 and 6 of the Specific Relief Act, such a remedy cannot be conferred upon the Maintenance Tribunal which may not be manned by a judicial person, having specific legal training and experience to adjudicate legal rights, but by an executive. “

30. She also cited Kerala High Court case titled **C. K. Vasu Vs. The Circle Inspector of Police**³, wherein P.N. Ravindran, J. held as below :-

“The Tribunal constituted under the Act can only pass an order for maintenance of a senior citizen or the parent unable to maintain himself if the Tribunal is satisfied that there was neglect

²2019 (1) RCR (Civil) 507

VIVEK PAHWA ³WP (c) 20850 of 2011, High Court of Kerala At Ernakulam
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or refusal on the part of the children or relatives to maintain him. The Act does not empower the Tribunal constituted under the Act to grant the reliefs prayed for in Ext.P2, one of which is to evict the fourth respondent and his family members from the residence where the petitioner whichhe is residing. The only other relief sought in Ext.P2 is to prevent his children from trespassing into his house and from causing bodily injury. That is also a matter on which the Tribunal cannot grant any relief.”

31. She also relied upon a **Division Bench of Delhi High Court** in case titled **Navneet Arora Versus Surender Kaur And Ors.**⁴ Wherein, after advertng to the facts of the case, Pradeep Nandrajog, J. (as he then was) opined as under-

“119.....Navneet never left the joint family house. She was residing in the house when her husband died. She continued to residence there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared household cannot be negated.”

32. Learned counsel for the petitioner relied upon Section 19 Hindu Adoptions and Maintenance Act, 1956 to contend that a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law, provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance.

33. In the alternative, as a last resort, Ms. Promila Nain suggested that petitioner is even ready to shift at first floor of the house despite her feet problem. She submitted that the house in question is three floored big house. There are two alternate stairs and entries to the house. Petitioner can be given one entry from any side by closing the other side for her with no interference.

Petitioner being widow has no shelter, no means to survive and maintain herself at this juncture of her life.

34. Per contra, Ms. Shubhreet Kaur, learned counsel for respondent No.2 vehemently opposed the above submissions of learned counsel for the petitioner. She argued that no material has been placed on record to even prima facie show that the house in question was purchased by respondent No.2 from the funds received from his father and/or was later constructed out of the joint funds of both the entities (M/s Vashishth Industrial Products and M/s Vashishth Forging). As such, the plea of petitioner to that effect is bereft of any merit. According to her, the house in question is self-acquired property of respondent No.2 and he can utilize the same in the manner he likes. It is only on account of misconduct of petitioner that respondent No. 2, an 82 years old man is seeking eviction of the petitioner from the house in question. Because of the tense atmosphere created by the petitioner, her presence in the house in question is totally unbearable for respondent No.2. The petitioner was/is living in the house after the death of her husband, only as a licensee of respondent no.2.

35. She stoutly defended the impugned order and argued that the Tribunal was well within its powers to order eviction of the petitioner from the house in question. It is the duty of District Magistrate to ensure that the life and property of a senior citizen is protected so as to live peacefully, with security and dignity. In support of her contentions, she has relied on Division Bench judgment of this Court in the case of **Justice Shanti Sarup Dewan, Chief Justice (Retired) Vs. Union Territory, Chandigarh**⁵, wherein speaking for this court, Sanjay Kishan Kaul, CJ (as his lordship then was in this Court) held as under :-

“37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No. 1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an overriding effect qua any other enactment in view of Section 3 of the said Act. Infact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No. 1. Infact, that is the very objective of respondent No. 7.

38. Though it is not directly relevant but it is not even as if respondent no. 7 is without a roof over his head as he is a beneficiary of a gift from his father-appellant No. 1 of a plot which was sold, smaller plot purchased and constructed upon and the house is lying vacant. What can be a greater travesty of justice in this situation where respondent No. 7 insists that he will not stay in his own house built by him lying vacant, but insists on staying with his parents who do not want him or his family to live with them. We don't have the slightest of hesitation in coming to a conclusion that all necessary directions can thus be made under the said Act to ensure that the appellants live peacefully in their house without being forced to accommodate respondent No. 7.”

36. She further relied upon a judgment of Coordinate Bench in the case of **Sharmila Vs. State of Punjab**⁶, wherein Daya Chaudhary, J. held as below :-

“9. It is apparent from the said order that the house, in dispute, was purchased by respondent No. 4 and the same is her self-acquired property. Petitioner could not produce any evidence to show that any amount was paid by her at the time of purchase of that house. Even it could not be proved on record that the husband of the petitioner was having any share in that property or any family settlement was there between the parties.”

26. It is a settled proposition of law that daughter-in-law cannot be said to have a right in the house of father-in-law/mother-in-law who lodged a complaint, where litigation is pending between the parties and in the present case, the FIR was registered at the instance of respondent No. 4. No evidence has been placed on

record to claim the ownership of the house, whereas, as per definition of the property under Section 2(f) of the Act, 2007, any right or interest in such property is also included under the definition of property. The right of the petitioner over the house, in dispute, is totally misbelieved by considering the definition of property as provided under Section 2(f) of the Act, 2007. It is clear that the property means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and even includes rights or interest in such property.”

37. She also relied on a decision of this Court in **Manmohan Singh Versus U.T. Chandigarh**⁷, wherein Paramjeet Singh, J.(as he then was) held as under:-

“The provisions of the Act provide for protection of the property of the senior citizens. Respondent no.3 and his family appear to have taken possession of house with an oblique motive to grab the property in question and is in possession of the same against the wishes of the petitioner - owner. Admittedly, respondent no.3, his wife and children started residing in the house in question with the permission of the petitioner and at the most are licencees. The licence stands terminated the moment petitioner conveyed the respondents and his family members to termination of the licence. There is no vested right in the licensee(s) to remain in possession of the property of the petitioner. Although petitioner has approached civil court for ejectment of respondent no.3 under the compelling circumstances, may be due to wrong advice. The remedy under the Act is summary in nature and the provisions of the Act have overriding effect qua any other enactment in view of Section 3 of the Act. The jurisdiction of civil court is barred in view of Section 27 of the Act.”

38. Further reliance has been placed on a judgment of this court in the case of **Sanjeev Kumar Vs. District Magistrate**⁸, wherein Harinder Singh Sidhu, J. held as under:-

“16. The Division Bench held that the right of exclusive possession of a self owned property by a registered document of title can be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 even though Rules had not been framed.”

39. She also relied on Division Bench observations of Delhi High Court in case titled **Darshna Vs. Govt. of NCT of Delhi &Ors.**⁹ arising out of

⁷ 2016(1) RCR(Civil) 838

⁸CWP No. 18414 of 2015, decided on 22.09.2015

⁹LPA No. 537 of 2018 decided on 03.10.2018- **2018(252) DLT 618**

an eviction order passed by Tribunal and upheld by Single Judge. Speaking for the Court V. Kameshwar Rao, J. held as under:-

“13. Keeping in view the objective of the Act and it is high-time that senior citizens/parents are allowed to live in peace and tranquility, the orders passed by the Maintenance Tribunal and the learned Single Judge cannot be faulted. The Appeal is dismissed.”

40. Ms. Shubhreet Kaur, thus, sought dismissal of the petition.

41. I shall now proceed with my narrative/discussion and opinion.

42. First the intent of the framers of the applicable law, which is reflected from the introductory parliamentary debate/speech in Lok Sabha on The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 by the Minister of Social Justice and Empowerment (Shrimati Meira Kumar) who introduced the Bill on 20.03.2007, inter alia, stating as below :-

“Xxxxxx..... That the Bill is to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith and incidental thereto, be taken into consideration.

Xxxxxx

Another thing which happens is that sometimes some family member of the elderly or their own children or grand children, adopted children or step children or some other relative swept of these elderly into giving away or writing the properties of elderly in their names. They show them that once they are given the property, they will be looking after them and sometimes they threaten them to write the property in their names and these parents find themselves cast aside, nobody is there to look after them. In that case, the property will revert to them. This is another provision in the Bill.”

Bill was adopted and passed into an Act No. 56 of 2007 of the Parliament. The essential purpose underlying the Act thus is “welfare” of parents/senior citizens as guaranteed under the Constitution of India. In order to achieve the same, steps including reversion of the title of the property back to the senior citizen which was earlier given away by him/her are also contemplated.

43. In tune with intent as above, statement of objects and reasons for the enactment of the MWPSA Act, 2007 speak of the need to give more attention to the care and protection for the older persons and to provide for institutionalization of a suitable mechanism for the protection of life and property of older persons. Likewise, the preamble of the Act states that enactment is to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto.

44. Some of the provisions of the Act and Rules framed thereunder by State of Punjab which are relevant and discussed in succeeding part of the judgment are reproduced herein below for ready reference :-

Sections 2(f), 22, 23 and 27 of 2007 Act read as under:-

“2. In this Act, unless the context otherwise requires:-

Xxxx

(f) ‘property’ means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property”

22(1) *The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer; subordinate to him, who shall exercise all or any of the powers and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.*

(2) *The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.*

23(1) *Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*

(2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced*

against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections(1) and (2); action may be taken on his behalf by any of the organization referred to in Explanation to sub-section(1) of section 5.

27. No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.”

Rules 3 and 22 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules 2012, framed by the State Government, provide as below:-

“3. Procedure for filing an application for maintenance and its registration. –

(1) An application for maintenance shall be made in Form 'A' (to which a court fee stamp of rupees five shall be affixed).

(2) On receipt of an application made under sub-rule (1), the Presiding officer shall cause,-

(a) Its essential details to be entered in a Register of Maintenance claim cases, to be maintained in such a manner as the State Government may specify by an executive order; and

(b) Notwithstanding any thing contained in rule 4, its acknowledgment in Form 'B' to be given to the applicant or his authorized representative in case of delivery by hand, but if sent by post, the acknowledgment shall also specify the registration number of the application.

(3) Where a Tribunal suo moto takes cognizance of a maintenance claim, the Presiding officer shall, after ascertaining fact, get Form 'A' completed as accurately as possible, through the Staff of the Tribunal, and shall as far as possible, get it authenticated from the senior citizen, or the parent concerned, or any person or organization authorized by him as the case may be, and shall cause the same to be registered in accordance with clause(a) of sub-rule (2).

22. Duties and Power of the District Magistrate. –

(1) The District Magistrate or any other officer authorized by him in this behalf when the local limits of his jurisdiction shall perform the duties and exercise powers mentioned in sub rules (2) and (3) so as to ensure that the provision of the act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to -

- (i) ensure that life and property of senior citizens of the district are protected and they are able to live with a sense of security and dignity;*
 - (ii) over see and monitor the work of the maintenance Tribunal and the Maintenance officer of the district with a view to ensuring timely and fair disposal of application for maintenance and execution of Tribunal orders;*
 - (iii) Oversee and monitor the working of old age homes in the district so as to ensure that they conform to the standards laid down by the guidelines issued in this respect by the Government from time to time.*
 - (iv) ensure regular and wide publicity of the provisions of the act and the central and the State Government programmes for the welfare of senior Citizen;*
 - (v) Encourage and co-ordinate with panchayats municipalities Nehru Yuwa Kendras, Educational Institutions and especially National Service Units, Organizations, Specialist experts, activities etc, Working in the district so that their resources and effort are effectively utilized for the welfare of senior citizen of the district.*
 - (vi) ensure provision of timely assistance and relief senior citizen in the event of natural calamities and other emergencies;*
 - (vii) ensure periodic sensitization of officers of various Department and Local Bodies associated with the welfare of senior citizen towards the needs of such citizens and the duties of the officers towards such senior citizen;*
 - (viii) review the progress of investigation and trial of cases relating to senior citizen in the district, except in cities having a Police Commissioner.*
 - (ix) ensure that adequate number of prescribed application forms for maintenance are available with Panchayats , Post Offices, Block Development Officer, Tehsil Offices, Collectorate and Police Station etc.*
 - (x) promote establishment of dedicated helplines for senior citizens at the district headquarter; and*
 - (xi) perform such other function as the State Government may by order assign to the District Magistrate in this behalf from time to time.*
- (3) With a view to performing the duties mentioned in sub-rule (2) the District Magistrate shall be competent to issue such direction not inconsistent with these rules the Act and general guidelines of the State Government as may be necessary to any Government and statutory agency or body working in this district and especially to the following-*
- (a) Officers of the State Government in the Police Department, Health and Family Welfare Department, Information and Public Relations Department and the department dealing with the welfare of senior citizen;*

- (b) Maintenance Tribunal and the Conciliation Officer;*
- (c) Panchayats and Municipalities; and*
- (d) Education Institutions.*

(4) In order to implement the provision of the act the District Magistrate or an officers authorized by him in this behalf not below the rank of sub-divisional Magistrate shall have the power to refer the case of a senior citizen who may be considered "indigent" to the Tribunal.

(5) In case of any danger to the life or the property of a senior citizens it shall be the duty of the District Magistrate or the officer authorized by him to protect the senior citizen from the said danger.

(6) In case a senior citizen requires protection or is destitute it shall be the duty of the District Magistrate or the Officer authorizes by him provide shelter to him in an old age home being run by the State Government or a Non Government Organization.

(7) In case of emergency the District Magistrate or the officer duly authorized by him shall also make suitable arrangements for medical care of abandoned and indigent senior citizen."

45. Perusal of the said statutory provisions read with Rules framed thereunder would show that the jurisdiction of the Tribunal under the Act is restricted to enforcement of the protection/rights of senior citizens only against the senior citizens' children and relatives, as defined. If someone other than the children and relatives as defined violates/transgresses any such rights of senior citizens, the Tribunal under the Act has no jurisdiction. In such cases, the senior citizens, like others, have to seek remedy, if available under any other law.

46. Section 22(2) provides that the State Government shall prescribe a comprehensive plan for protection of life and property of senior citizen. Section 27 bars the jurisdiction of civil court in respect of any matter to which any provision of this Act applies. Rule 22 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules 2012, framed by the State Government under the enabling provision in Section 32 of the Act mandates inter alia that it shall be the duty of the District Magistrate to ensure that life and property of senior citizens of the district are protected and they are able to live with a

sense of security and dignity. This Statutory provision is in consonance with and furtherance of the spirit, object and intent of the Parliament as expressed in the statement of the objects and reasons, the preamble and content of the Act.

47. Now let us look at the picture from another angle. Section 23(1) of the Act mandates that where any senior citizen, who after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or undue influence and shall at the option of the transferor be declared void by the Tribunal. By necessary implication, the power of the Tribunal to declare the transfer as void and restore ownership includes the power to restore possession of the property to the senior citizen. It would be against logic and common sense to say that while the Tribunal has the larger power under the Act to restore ownership and possession of the property but it does not have the power only to evict the senior citizens' child or relative in illegal occupation of his property and restore its possession to the senior citizen, which is just a part of larger power to declare the transfer as void and restore ownership including possession of the property to the senior citizen..In my opinion, the statutory protection/provision under the Act ibid would be meaningless, if thereunder, a senior citizen cannot peacefully possess and enjoy his property and protect it from illegal occupation or trespass by a child or relative.

48. In view of above position, I am of the opinion that the Tribunals under the Act have jurisdiction to entertain complaint of a senior

citizen and enforce his rights for protection of life and “property” against transgression by his children and relatives.

49. Learned counsel for the petitioner has albeit contended that the Tribunal under the Act has no jurisdiction to protect the rights of senior citizens over their property, against transgression/violation by their children and/or relatives. That, to my mind, would be contrary to, negate and defeat the spirit, object and intent of the Parliament as expressed in the statement of the objects and reasons, the preamble and spirit of provisions of the Act. Protection of the property would of course include right to have peaceful and exclusion possession and enjoyment of the property in question, even if it means the ouster of others, subject to statutory parameters being in favor of the senior citizen.

50. To repeat, in **Justice Shanti Sarup Dewan** case supra, Division Bench of this Court held as under:-

“It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No. 1. In fact, that is the very objective of respondent No. 7”.

51. Similar seems to be the intent of the petitioner herein knowing fully well that respondent no.2 is an 82 years old man while she is 53 years and time is on her side.

52. The aforesaid judgment of Division Bench of this Court was rendered even when there was no comprehensive action plan framed under the Act by the State Government. Division bench thus establishes that a senior citizen can not be compelled/forced against his wishes to keep his son/daughter or any other relative in his own property, even when there was

no comprehensive action plan framed by the State Government, as envisaged under the Act.

53. Relying on aforesaid Division Bench, subsequently a Single Bench in **Sanjeev Kumar Vs. District Magistrate, U.T. Chandigarh**¹⁰, too held thus:-

“16. The Division Bench held that the right of exclusive possession of a self owned property by a registered document of title can be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 even though Rules had not been framed.”

54. No doubt, in *Simrat Randhwa*, supra, a Single Bench of this Court struck down the *Clauses 1 to 3 of The Punjab Action Plan, 2014*. None the less, the aforesaid relevant provisions in the parent Act of 2007 and statutory Rules framed thereunder stand unaffected and are very much in force. The said judgment of the learned Single Judge Bench, in my respectful opinion, would not take away the effect of or wash out the earlier subsisting Division Bench judgment of this Court in **Shanti Sarup Dewan case**. It has been categorically held therein, that even in the absence of and *de hors* any action plan providing for eviction under the 2007 Act, that all necessary directions can be made under the Act, to ensure that the parents live peacefully in their house without being forced to accommodate their children.

55. Reference may also be had to *Balbir Kaur V. Presiding Officer-cum-S.D.M. cum Maintenance & Welfare Tribunal and others*¹¹. Pre dicta therein, it is the duty of the District Magistrate to ensure that the life and property of the senior citizen of the District are protected and they are able to live with security and dignity. This is an independent right conferred upon the senior citizen(s) irrespective of the fact whether the person who has

¹⁰**CWP No. 18414 of 2015**, decided on 22.09.2015

threatened or endangered the life and property of such senior citizen(s) is related to him/her/them or not. Though, 'relationship' has a nexus with maintenance, which is dealt in Chapter II (Maintenance) but the same has no connection with protection, which is dealt in Chapter V (Protection of life and property) of the Act, 2007. It was accordingly held that an application u/s 22 of the Act would be maintainable against any person.

56. In Dinesh and another v. Deputy Commissioner-cum-District Magistrate and others¹², petitioners/son and daughter-in-law gained entry into the house by force. On the basis of the compromise arrived at, due to the intervention of the police, they were permitted to live temporarily in the portion in dispute. This court held that it is the subjective satisfaction of owner-parents regarding their wish to permit the petitioners therein to stay in their house as licensee or to seek their eviction in case they are not satisfied with their conduct. Parents would be the last persons to have any *malafide* against their children. If the parents feel humiliated and harassed, it is only in those circumstances that the extreme step of approaching the police or launching proceedings under the Act is taken. Petitioners were thus directed and granted two months time to vacate the premises.

57. In somewhat similar case as herein viz. Hamina Kang v. District Magistrate (U.T.), Chandigarh¹³, contention that eviction can be ordered only against the son, daughter or legal heirs and not against a daughter-in-law was negated. It has been held by this court that latter part of Rule 3(1)(iv) itself, which is in relation to issuance of show cause notice is not limited to son, daughter or legal heir, but requires issuance of such notice to "*all persons concerned to show cause why an order of eviction should not*

¹²2017(2) L.A.R. 148 (P&H)

¹³2016(1) L.A.R. 397(P&H)

be issued against them/him/her". Similarly, as per Rule(3)(1) (v)(b), such notice shall *"require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in, the property/premises"* to show cause against the notice. In Rule 3(2) (i), the Eviction order from the property/residential building of Senior Citizen/Parent may be passed *"directing that the property/ residential building shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof"*. Rule 3(3)(i) which deals with enforcement of eviction orders, again is that if any person refuses or fails to comply with the order of eviction' then the District Magistrate or any person on his behalf *'may evict that person from the premises in question and take possession'*. It was held that the eviction order can be passed against any person who is in unauthorized occupation of the property of the Senior Citizen/Parent. The first part of Rule 3(1) (iv) which mentions only son and daughter or legal heir cannot control the above referred specific provisions and limit their operation and effect. Furthermore, in Hamida Kang *ibid*, qua rights of daughter in law under Domestic violence Act, this court observed that house in question which was owned by father-in-law of the petitioner was not a "shared household" in which the petitioner has any right of residence which can be enforced under the 2005 Act. Same is the position of the petitioner herein. It was held in such circumstances, there was no question of the 2007 Act being used at cross purposes with the 2005 Act. Daughter-in-law was directed by the court to vacate House within one month.

58. Adverting to other aspects, as pleaded and argued on behalf of petitioner, it is the case of the petitioner that the house in question which at the relevant time was single storey was purchased by respondent No.2 from the funds

received from his father. Later, out of the joint funds of both the family entities (M/s Vashishth Industrial Products and M/s Vashishth Forging), construction in the shape of first and second floor was raised by the husband of the petitioner on the house in question. Thus, the house in question became joint property of the family. However, except for the bald assertion of the petitioner, no document/material has been produced to show that the house was purchased with funds received from father of respondent No. 2 and that the further construction was made with joint funds. As against this, respondent No. 2 claims that the house in question was purchased by him out of his own funds vide registered sale-deed dated 25.05.1982 and none else contributed in that. At that time husband of petitioner was minor and was studying in DAV College, Chandigarh. The ground floor of the house in question was partly occupied by respondent No.2 and his wife being self acquired property. While second floor of the house was constructed in the year 1983 by respondent No.2. It was thereafter that before marriage, the petitioner's husband (son of respondent No.2) came to Ludhiana and he was inducted as a partner in the firm on 04.06.1983 which was predominantly set up by respondent No.2. It is not denied by the petitioner that at the time of construction (before marriage), her husband was a student and had no income. In these circumstances, this Court is inclined to hold that while passing the impugned order, respondent No. 1 rightly proceeded on the premise that the house in question was the property owned by respondent No. 2.

59. Let us assume for a moment, without holding so, that the petitioner holds any share in the house in question or that she is entitled to rendition of business accounts and to recover any amount from respondent No. 2 or that she is entitled to any declaration qua will dated 04.06.2003 or that she is unable to maintain herself and to arrange for her residence and is

Adoptions & Maintenance Act or under the Protection of Women from Domestic Violence Act. Question arises whether or not any such rights can be claimed by or be granted to the petitioner in the petition filed by respondent No. 2 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ? The answer seems to be 'no'.

60. Preamble of the Act shows that the statute has been enacted to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto. Section 5 of the Act *ibid* shows that an application thereunder can be made only by a senior citizen (including parent) aged 60 years or above. The petitioner is not senior citizen and not even eligible to apply for any relief under the Act. This being the situation, the petitioner cannot claim or be granted any such relief under the 2007 Act *ibid*. If at all the petitioner has any such claim, she has to seek/pursue that remedy before appropriate Court/Tribunal. In fact, she has already filed few cases which are pending in Courts. Section 22 of the 2007 Act *inter alia* provides for the protection of property of the senior citizen.

61. Respondent No. 2 has stated that on account of nuisance created by petitioner, one of the sons of respondent No. 2 left the house in question and started living separately. The petitioner has created highly tense atmosphere in the house so that the other son should also leave the house and the entire portion of theirs comes to her. Her alleged motive is to grab the self-acquired properties of respondent No.2, including the house in question. It is apparent from the facts and circumstances of the case, that respondent No. 2 has been all along since the death of his son (petitioner's husband) in 2003, allowed the petitioner to stay in his house, supporting and taking care of the petitioner and her children. There seems substance in the submission of

learned counsel for respondent No. 2 that if the petitioner's attitude and behavior would have been appropriate, it is highly unlikely that now respondent No. 2, at this stage of his life when he needs to be looked after, especially having lost his wife too, would refuse to allow her to stay in his house. It must have been a galling in extreme that the respondent no.2, a well educated (M.Tech) self made man having set up successful business after taking voluntary retirement as General Manger, Industries, Government of Punjab, in the twilight of his life took the extreme step of instituting proceedings under the 2007 Act. *Ex facie*, it seems that the petitioner's behavior and attitude are intolerable/ unacceptable to respondent. I am not inclined to buy the argument on behalf of the petitioner that the son of the respondent No. 2, living in a portion of the same house, wants to grab the entire house and is using respondent No. 2 as a tool to throw the petitioner out of the house. Even otherwise, if respondent No. 2 who is past 80 years, does not want to allow the petitioner to further stay in his self acquired/owned house property, he cannot be compelled to keep the petitioner in his house.

62. As a result of the above discussion, I am of the opinion that there is nothing wrong or illegal in the impugned order and that, on merits, the present writ petition is liable to be dismissed.

63. However, during the course of arguments, respondent No. 2 who was present at the hearing by video conference submitted that he is 82 years and in the evening of his life he would rather buy peace instead of keeping mutual prejudices and is willing for an amicable settlement with the petitioner. Respondent No. 2 stated that he is supporting the petitioner's son (respondent No. 3) studying in Australia who after completion of education, is most likely to get gainfully employed and start earning well within five years, so as to be in a comfortable position to support the petitioner. He

(respondent No. 2) offered to pay to the petitioner a lump sum amount of Rupees Fifteen lakhs and to pay a monthly sum of Rs. 25,000/- for five years to her to live separately in a rented accommodation. This rapprochement gesture, approach and attitude of respondent No. 2 seem to be in the over all interest of the family, besides being reasonable and fair. However, learned counsel for petitioner submitted that respondent No. 2 is a man of means and resources, his offer for amicable settlement is grossly inadequate and that he can easily pay substantially more amount, commensurate with the needs and requirements of the petitioner. It does seem from the facts and circumstances of the case that respondent No.2 is in fairly good financial position. It is primarily an unfortunate family dispute of the widowed daughter-in-law with her aged father in law. In my opinion, an amicable settlement would go a long way in mitigating the agony of the family members and may even help them improving their future relations, which would be in the overall interest of all concerned. With that object in view, I think the offer of respondent No.2 needs to be suitably raised.

64. Accordingly, in exercise of powers of this Court under Article 226 of the Constitution of India, Respondent No. 2 is, therefore, directed to pay an initial amount of Rupees Two lakhs to the petitioner for arranging house hold goods and alternative accommodation to move out of his house. While vacating the disputed house, the petitioner can take along the house hold effects in her exclusive use, besides her own belongings. Respondent No. 2 shall pay her further a lumpsum amount of Rupees Twenty Five lakhs within one month from the date she vacates the house and also pay her a monthly sum of Rs.25,000/- for a period of six years from the date she vacates his house. The amounts thus paid shall be taken into account and adjusted in any other claims of the petitioner against respondent No. 2. It is ordered accordingly.

65. This Court hopes and expects that the petitioner and respondent No. 2 would take these directions in the spirit of mutual co-operation, give and take and to mitigate, further agony to themselves and the family.

66. The observations/ opinion recorded above are limited to the disposal of the present writ petition. The same shall not be taken as an expression of opinion regarding and shall have no effect on merits of any of the other cases between the petitioner and respondent No. 2. The courts concerned shall deal with and decide those other cases independently of and without being influenced by these observations/opinion.

67. With the aforesaid modifications/directions, the impugned order is upheld and the writ petition is partly allowed.

November 05, 2020
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No