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

+ **W.P.(C) 2768/2020 & CM Nos. 9693/2020, 14357/2020**

SMT. RANJIT KAUR Petitioner
Through Ms.Kamlesh Mahajan, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through Mr.T.S. Nanda and Mr.Ashish
Ghumber, Advs. for R-1.
Mr.Kabir S.Gosh, Adv. for R-2.
Ms.Renuka Arora, Adv.for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **29.07.2020**

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner challenging the order dated 27.02.2020 passed by the Divisional Commissioner/Respondent no.1 in Appeal No.PA/Div. Comm./Appeal No. 92/2018/Sec-16/668-671, titled, ***Smt Jaspreet Ghura v. Smt Ranjeet Kaur Ghura & Sh. Maninder Singh.***
3. By the Impugned Order, the Divisional Commissioner has set aside the order passed by the District Magistrate (Central) dated 04.02.2019 and remanded the case back for fresh consideration. The Impugned Order records the following as a reason for the remand:

“20. This appellate court is of the opinion that the verification report is not proper in terms of aforesaid Rules as the legal provision requires verification of both aspects i.e title of the property and facts of the case by the SDM. A careful inquiry/verification should have been conducted by the SDM

covering both aspects as in her complaint before District Magistrate the respondent no. 1 has inter-alia stated that she is suffering from her old age problems but nobody to look after her and she wants her property back so as to get rent from the property or sell the property to fulfill her necessities of old age. In this case from the field report it was clear that the applicant (respondent no. 1 herein) was living separately. The aspects related to the need of property in question as mentioned in her application including the aspect whether she needed the property in question to cater her needs and maintenance vis-a-vis her financial condition should have been verified. The verification report is sketchy. For example it is even not clear in the report where the husband of appellant i.e the respondent no.2 herein was residing, as the applicant/respondent no.1 had sought the eviction of respondent no. 2 from suit property but he was not found in the suit property and it was stated by appellant that he was residing with mother. In the verification report it has not been ascertained as to exactly where the respondent no. 2 is residing.”

4. The learned counsel for the petitioner submits that the Impugned Order cannot be sustained inasmuch as the SDM report as also the order dated 04.02.2019 of the District Magistrate clearly records that the petitioner is the owner of the property in dispute. She submits that once this factor is proved, the fact whether the petitioner requires this property for maintenance or is otherwise ill-treated loses all its significance.

5. I cannot accept the arguments of the learned counsel for the petitioner. In the present case, the petitioner is admittedly living separately in a separate residence from the respondent nos.2 and 3. There is a matrimonial dispute between the respondent nos.2 and 3. In such circumstances, it would also be

relevant to consider whether the mechanism under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules framed thereunder has been *bonafidely* taken by the petitioner or has been taken only at the behest of the respondent no.3, that is, son of the petitioner, to oust the daughter-in-law. In fact, it was the case of the respondent no. 2 that the respondent no. 3 is residing with the petitioner.

6. Another relevant factor in these proceedings should have been that while the petitioner states that the property in dispute would be sold or rented out by her for her maintenance, she does not make her grandson and/or granddaughter, who are admittedly major as on the date of filing of the Eviction Petition and are residing in the same property as the respondent no.2, parties to the eviction proceedings. It may be a separate thing that in the purported execution of the order dated 04.02.2019 passed by the District Magistrate, even the grandson and granddaughter of the petitioner were evicted. How this could be done is anybody's guess!

7. The order dated 04.02.2019 passed by the District Magistrate on the eviction petition filed by the petitioner was rather sketchy and in fact, based on surmises and conjectures. The relevant finding of the District Magistrate is reproduced hereinbelow:-

“20. From perusal of the records, this court is convinced, that the applicant Smt. Ranjit Kaur Ghura is indeed the absolute owner of the property in question. It is also established that the respondents have failed to maintain or take care of the applicant in her old age and the very fact that she has to approach this tribunal at this juncture of her life to evict her son and daughter in law from her property to sustain herself, itself, is sufficient to

comprehend the amount of agony she is put to at this age. In such a situation the applicant definitely has the right to evict her son or her daughter or any of her legal heirs from her property and decide as to what she desires to do with the property so as to take care of her basic necessities including medical attention.”

8. In the peculiar facts of the present case, the inference which the District Magistrate sought to draw from the mere filing of the eviction proceedings itself could not have been drawn.

9. It is also to be noted that the petitioner, pursuant to her own undertaking as recorded in the order dated 22.10.2019 of this Court passed in LPA 547/2019 filed by her, has kept the property vacant since the eviction of the respondent no.2 therefrom. In fact, while challenging the Impugned Order by way of the present petition, the petitioner herself insisted that the *Status Quo* be maintained with respect to the subject property. This again would be a relevant consideration to be taken into account by the District Magistrate while deciding the Eviction Petition filed by the petitioner on remand as it prima facie shows that the petitioner is in no need to either sell or rent out the subject property for her maintenance.

10. I therefore, do not find it appropriate to interfere with the impugned order.

11. The question of law as to the status and relevance of the report of the SDM under Rule 22(3)(1)(ii) of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules is left open. This is so because in the

present case, neither the SDM nor the DM carried out the exercise of verifying the facts alleged by the petitioner in her complaint before the DM.

12. The petition is dismissed with cost quantified at Rs.15,000/-.

NAVIN CHAWLA, J

JULY 29, 2020/Arya