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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 28.09.2020

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W.P.(C) 7023/2020 & CM APPL. 23941/2020

POOJA MEHTA & ORS.

..... Petitioners

Through: Mr.Vijay Aggarwal, Mr.Naman
Joshi, Mr.Tarun Singla,
Mr.Mudit Jain, Ms.Samprikta
Ghosal, Ms.Barkha Rastogi,
Mr.Deepanshu Choithani,
Mr.Shailesh Pandey, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Gautam Narayan, ASC for
GNCTD for R-1 & R-2 with
Ms.Saumya Tandon, Adv.
Mr.Sandeep Sethi, Sr. Adv.
with Mr.Vaibhav Sethi, Adv.
for R-3 & R-4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been heard through video conferencing.
2. This petition has been filed by the petitioner praying for the following relief:-

“A. Issue a writ of mandamus against the Respondent Nos. 3-5 to restore the possession of the Petitioners in the Shared Household as existing till 20.09.2020 and direct the

Respondent No. 2 to ensure that the Respondent Nos. 3-5 do not obstruct or disturb the Petitioners taking possession or enjoying possession of the Shared Household;

B. Issue a writ of certiorari against the District Magistrate (South), Delhi through the Respondent No. 1, and quash and set aside the Impugned Order dated 18.9.2020 and the proceedings culminating in said Impugned Order;

C. Issue a writ of mandamus direct the Commissioner of Police, Delhi or a competent person duly appointed by this Hon'ble Court to enquire into the actions of the Respondent No. 2's officials on 20.9.2020, including physical and verbal abuse of law-abiding citizens and acting in excess of statutory mandate;"

3. Admittedly, the petitioners have been staying at the property, being Sai Naman Asher Estate, Bandh Road, Gadaipur, Mehrauli, New Delhi-110030, since atleast the year 2013. By an order dated 18.09.2020, on an application filed by the respondent nos. 3 and 4 herein, under the provisions of The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'Act') read with Rule 22(2) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as the 'Rules'), the District Magistrate (South) in Case no. 47/2019 titled ***Vijay Mehta and Anr. vs. Nanak Mehta and Anr.*** issued the following directions:-

“10. Using the powers entrusted to the undersigned under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, the application moved by the Petitioner is allowed and after examining all the documents/reports placed before the undersigned, I hereby order Sh. Nanak Mehta and Smt. Pooja Mehta, to evict from the property of Sh. Vijay Mehta and Smt. Manju Mehta, i.e. SAI NAMAN Asher Estate, Kh No. 638, Bandh Road, Gadaipur, Mehrauli, New Delhi, within 30 days from the date of receipt of this order on the ground of ill-treatment and threats made by them to the aged and hapless Petitioners. Directions issued to the Respondent to handover possession of the property to the Petitioners so as to lead a peaceful and secured life by the Petitioners. Deputy Commissioner of Police, South District, New Delhi is also requested to ensure implementation of the order in its true letter and spirit in handing over the peaceful possession of the property to the Petitioner by the Respondents. Accordingly, the application of the Petitioners is disposed of.”

(Emphasis supplied)

4. It is not denied by the learned counsels for the respondents that in execution of the above order, the petitioners were forcibly evicted from the above premises on 20.09.2020.

5. Though a case was sought to be built up by the respondent nos. 3 and 4 on the first date of hearing, stating that the petitioners left the

premises on their own volition, the same is clearly belied by a video clip played by the learned counsel for the petitioners during the course of the hearing, which has not been denied by the learned counsel for the respondent no. 2, who admits that the eviction took place forcibly through the intervention of the Delhi Police.

6. A reading of the above order dated 18.09.2020 clearly indicates that 30 days' time from the date of receipt of the order was given to the petitioners to evict from the property in question. The order, therefore, was not executable on 20.09.2020, when it was unlawfully executed by the respondent no. 2.

7. Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended, provides that an appeal against the order of the District Magistrate shall lie before the Division Commissioner. Rule 22(3)(3) of the Rules further provides the procedure for the enforcement of the order passed by the District Magistrate as under:-

(3)Enforcement of orders,

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;

(ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the

eviction order.

(iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.

(iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.

8. Clearly, therefore, the action of the respondent no. 2 in the present case was premature and completely unwarranted.

9. The learned senior counsel for the respondent nos. 3 and 4 submits that now that the petitioners have been evicted from the property in question, they not be put back into possession and the said respondents are willing to abide by any conditions put by this Court for the said purpose. He further submits that the respondent nos. 3 and 4 are aged and fear for their life and well being. He submits that there are various other police complaints also filed inter se between the petitioners and the respondent nos. 3 and 4 and therefore, it would not be a fit case for this Court to order the petitioners to be put back into possession.

10. I am unable to agree with the submissions made by the learned senior counsel for the respondent nos. 3 and 4. The respondent nos. 3 and 4 cannot gain out of an illegal act and equally, the petitioners cannot be made to suffer the consequence of an unlawful act. The parties have to be put back into the position where they were before such unlawful act was committed.

11. As noted hereinabove, admittedly, the petitioners have been residing in the property in question since atleast 2013. As far as the prayer of the respondent nos. 3 and 4 is concerned, the same can be addressed by directing the respondent no. 2 to ensure that peace is maintained by the parties during the period of the possession of the property by the petitioners.

12. The learned counsel for respondent nos. 1 and 2 submits that the said respondents took the action in question being guided by the observations of the District Magistrate as recorded in paragraph 5, 6 and 9 and the beneficial intent of the legislation.

13. I am not persuaded with the said arguments as the law does not permit the respondent to circumvent the law itself and take such premature action.

14. In view of the above, the present petition is disposed of directing that the petitioners would be entitled to be put back into possession of property in question with immediate effect. The Commissioner of Police shall hold an enquiry into the manner in which the petitioners were forcibly evicted and incase it is found that certain officers were guilty of dereliction of duty, appropriate action be taken against them. The petitioners shall file an appeal challenging the order dated 18.09.2020 of the District Magistrate, if so advised, without awaiting the expiry of the limitation period and within a period of two weeks from today. As and when such appeal is filed, the same shall be expeditiously considered by the Divisional Commissioner. The petitioner shall be entitled to pray for an order of

interim protection during the pendency of the appeal before the Divisional Commissioner, which shall also be considered by the Divisional Commissioner in accordance with law. The parties should also ensure peace in the integrum. The respondent no. 2 shall ensure that peace is maintained between the petitioners and respondent no. 3 and 4 and take appropriate action if any complaint is received from either party.

15. Though the learned counsel for the petitioner and the learned senior counsel for respondent nos. 3 and 4 had made submissions on merits of the disputes between the parties, this Court has intentionally restrained itself from making any comment on the same. It is therefore clarified that the appeal filed by the petitioners, if at all, shall be considered by the Divisional Commissioner remaining uninfluenced by any observation made in this order or the conduct of the parties post 18.09.2020, leading up to passing of this order.

16. There shall be no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 28, 2020/rv