

23.07.2021

Ct. No.13

Sl. No.95

pk/akd

W.P.A. 10835 of 2021 [via video conference]

[Ramapada Basak & Anr. -Vs- The State of West Bengal & Ors.]

Mr. Sobhan Majumder

... .. for the petitioners

Mr. Raja Saha

Mr. Simanta Kabir

... for the State

It is submitted by the learned advocate for the State and the Officer-in-charge, Taherpur Police Station that the order dated 12th July, 2021 has been carried out and the private respondents have been escorted out of the premises of the writ petitioners.

Learned counsel for the writ petitioners confirms the same. There is also a letter in writing dated 20th July, 2021 issued by the writ petitioners to the Officer-in-charge, Taherpur Police Station confirming the above.

It is now well settled that the children and their spouses living in the senior citizen's house are at best "licensees". Such licence comes to an end once the senior citizens are not comfortable with their children and their families. This principle has also been followed by the Delhi High Court in in WP(C) 2761/2020 (Sandeep Gulati Vs. Divisional Commissioner), decided on 13.03.2020 and the Punjab and Haryana High Court in the cases of (a) Manmohan Singh Vs. U.T. Chandigarh and Ors. (Case No. 1365/2015), (b) Samsher Singh Vs. District Magistrate, U.T. Chandigarh (Case No. 2017 CWP 6365) and (c)

Gurpreet Singh Vs. State of Punjab (Case No. 2016(1) RCR (Civil) 324)

Two issues would come up for consideration. The first of which is the availability of alternative remedy under the provisions of the Maintenance and Welfare of Parents Senior Citizens Act, 2007. The other is a right of a daughter-in-law of residence to be provided by either the husband or the father-in-law, if directed by a competent court under the provisions of the Domestic Violence Act, 2005.

The Hon'ble Supreme Court in the case of **S. Vanitha Vs. Deputy Commissioner, Bangaluru Urban District and Ors.** reported in **2020 SCCOnline SC 1023** has said that since both, the Senior Citizens Act, 2007 as also the Domestic Violence Act, 2005 are special legislations, the two must be construed harmoniously and applied suitably by a writ court hearing a plea of the senior citizens that they do not want their children to live with them. At paragraphs 35-40 the Hon'ble Supreme Court has elaborately dealt with the principle under the headline "**E. Harmonising competing reliefs under the PWDV Act 2005 and Senior Citizens Act 2007**". In particular at paragraph 38 the Court held as follows:

38. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the

mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.”

(emphasis added)

In the instant case, it is seen that no right of residence has been sought under any Statute by the daughter-in-law.

Hence, this Court is of the view that there is no impediment in allowing exclusive residentiary rights to the senior citizens and to direct eviction of the son and daughter-in-law.

On the question of alternative remedy, this Court is conscious of the principles laid down by the Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trademark** reported in **(1998) 8 SCC 1** and upheld recently in the year 2021 in the case of **Radha Krishan Industries Vs. State of Himachal Pradesh and Ors.** reported in **2021 SCCOnline SC 334.**

However, the right of senior citizen to exclusively reside in his own house, must be viewed from the prism of Article 21 of the Constitution of India. To compel a senior citizen to approach either a civil court (the jurisdiction of which is any way barred under Section 27 of the 2007 Act) or take recourse to a special Statute like the 2007 Act would in most cases be extremely erroneous and painful for a person in the sunset days of life. This Court is therefore of the view that the principle of alternative remedy cannot be strictly applied to Senior Citizens and a Writ Court must come to the aid of a Senior Citizen in a given case.

A nation that cannot take care of its aged, old and infirm citizens cannot be regarded as having achieved complete civilization.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)