

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106)

CWP-13505-2021

Date of Decision : July 26, 2021

Sudershan Kumar

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arnav Kumar, Advocate, for the petitioner.

Ms. Shubhra Singh, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Present writ petition has been filed challenging the order dated 24.02.2021 (Annexure P-1) passed by the Additional District Magistrate, Ambala exercising powers under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred as '2007, Act').

As per the averments made in the petition, the petitioner is a senior citizen, who has four sons and two daughters, all of whom are married. Respondent No.3 is one of the sons of the petitioner. According to the petitioner, a residential vacant plot being House No.504 was given to the petitioner by his late father Karam Chand and the construction on the said plot was raised by the petitioner from his own resources. Petitioner alongwith his family resided in the said house.

The father of the petitioner also resided in the same village in his own house i.e. House No.563. After the death of the father of the petitioner in the year 2018, the petitioner alongwith one of his son Rajesh

Kumar and his family shifted to the said house No.563. Being a joint family, there used to be disputes between the sons and as per the allegations of the petitioner, his sons used to insult him and his wife.

It is an admitted fact that the petitioner was living in a separate house in House No.563 in the same village and respondent No. 3 alongwith his wife were living in another house i.e. House No.504. Petitioner wanted to shift to the house No.504 where respondents No.3 and 4 were living on the ground that the house No.563, which initially belonged to the father of the petitioner and is being occupied by him now, is in a depleted form and needed renovation.

An application was filed by the petitioner under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 seeking eviction of his son and daughter-in-law from the house they were residing in. The application filed by the petitioner was dismissed by the Additional District Magistrate, Ambala vide order dated 24.02.2021 (Annexure P-1). The said order is under challenge in the present petition.

Learned counsel for the petitioner argues that though it has been admitted that the petitioner is living separately from respondents No.3 and 4 but as he wanted the possession of the said house No.504, he has filed the present petition and being the owner of the said house and a senior citizen, he has full right to get the house vacated. Learned counsel for the petitioner submits that merely having another accommodation cannot be a ground to deny the benefit to the petitioner regarding eviction of respondents No.3 and 4 and Tribunal was bound to pass the order of eviction once the application has been made by the petitioner under 2007,

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

The admitted facts are that the private respondents and the petitioner are living in the separate accommodations. It is further admitted that the petitioner is a pensioner and also has agriculture land from where he is earning sufficient to lead a dignified life. In the whole of the petition, there is not even a single averment that in order to live a dignified life as envisaged under Article 21 of the Constitution of India, the petitioner needs assistance of his children.

The only prayer of the petitioner is for eviction of respondents No.3 and 4 from the premises i.e. House No.504 where they are residing on the ground that the petitioner is the owner of the said premises and being senior citizen has full right for getting the respondents evicted from the said premises.

The question with regard to the jurisdiction of District Magistrate for exercising power under 2007, Act so as to order eviction came for consideration before a Division Bench of this Court in **LPA No.1588 of 2014 titled as Major Harmohinder Singh (Retd.) versus State of Punjab and others, decided on 14.10.2014.** The Division Bench after appreciating the provisions of 2007, Act, held that the reason behind the enactment of 2007, Act is to ensure that the senior citizens lead a dignified life and are not dependent upon the children for the same and in case, they need help to maintain themselves, the children have to make all efforts to maintain them. As per the Division Bench in **Major Harmohinder Singh's case (supra)**, the further intent of 2007, Act was to ensure that the children do not dupe their parents, who are senior citizens by first getting property

belonging to them transferred in their name and thereafter neglecting them so as to term the said transfer as a fraud and obtained by misrepresentation. Section 5 and Section 23 of 2007, Act are clear in this regard.

The Division Bench further held that there is no provision under 2007, Act, which entitles a Magistrate to pass an order of eviction even on the application filed by a senior citizen. The relevant paragraph of the said judgment is as under:-

“In the facts and circumstances of the instant case, we are not in agreement with the aforesaid contention. We have gone through the Rules of 2012, framed by the Punjab Government, under sub-sections (1) and (2) of Section 32 of the Act of 2007. In our opinion, these Rules are comprehensive Rules, which deal with the object of the Act of 2007 and give sufficient mechanism to take care of the maintenance of senior citizens and protect their life and property. Not only a Tribunal has been constituted, but an Appellate Authority has been provided to hear grouses of the senior citizens with regard to their maintenance, including protection of their life and property. A complete mechanism in this regard has been provided. Under Rule 22 of the Rules of 2012, the District Magistrate has to ensure that life and property of senior citizens of the district are protected. The District Magistrate has ample power under the Cr.P.C., to protect a person, who is in possession of a property. If a person, who is in settled possession of a property, has been illegally dispossessed, the District Magistrate has ample power under the Cr.P.C., to protect possession of such person. But the District Magistrate, in our opinion, cannot be empowered to evict a person, who is in possession of a property for a long time. Such person can be dispossessed by following due process of law. If the District Magistrate is permitted to summarily evict such person, it will cause great injustice to the person, who is in settled

possession. He may be in possession under some right.”

The same question again came for consideration before a Coordinate Bench in **CWP No.4744 of 2018 titled as Simrat Randhawa versus State of Punjab and others, decided on 23.01.2020.** The Coordinate Bench in a exhaustive judgment by taking into consideration the provisions of 2007, Act held that eviction is not permissible under the 2007, Act by a District Magistrate. The relevant paragraph of the said judgment is as under:-

“117. For the variety of reasons recorded above, and upon a consideration of the entire case, this Court is inclined to answer the issue framed, holding that:-

(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 MWPSA 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.

(iii) The Punjab Action Plan, 2014 is at the most in legal

status equal to a notified Government Order or an Office Memorandum devised outside the Parent Act and the Punjab Rules, 2012 lending power to evict and the District Magistrate acting as a Maintenance Tribunal under Section 7 to decide “upon the order for maintenance under section 5” of the MWPSC Act does not possess the draconian power of eviction from property. It is non-statutory for eviction and therefore impermissible and unsustainable in law.

(iv) The Action Plan has not been prescribed in the Rules and to the extent of eviction and thus it is beyond the powers delegated by Parliament in the MWPSC Act. The Punjab Action Plan is an executive order and the District Magistrate does not possess the power of eviction. The Action Plan is open to wide abuse of the process of law in the hands of the executive.

(v) The stand of the Union of India is accepted as the correct legal position that power of eviction was not visualized, intended or enacted in the Parent Act by Parliament nor can be entrusted to the Maintenance Tribunal.

(vi) The Act did not authorize the State Government and its officers for executing a summary procedure for eviction to subvert substantive rights, disabilities and obligations under the MWPSC Act and the actionable rights under the personal civil law, to the peril of the respondent, where neither maintenance nor neglect nor transfer of property is involved.

(vii) The Maintenance Tribunal is not an Eviction Tribunal. Eviction can take place only in accordance with procedure established by law and by reading in the Act rights to property under Article 300-A of the Constitution as explained by the Supreme Court in K.T.Plantation case as a ground of challenge, that is, the Rule of Law as part of the basic structure and Separation of Powers albeit there is no absolute rigidity in the dividing lines of the three pillars of a

democratic republic and the State.

(viii) The MWPSC Act does not provide for relief of eviction simpliciter, but at best as a consequential relief under Section 23 of the Act for void transfers.

(ix) It appears not to have been the intention of Parliament to create a law on title based eviction under the Act, let alone a summary procedure for eviction and, on the other hand operates where senior citizens have been taken advantage of or exploited by people or family to grab their property with ulterior motives and leave them in a lurch in their old age with no succour and redemption available.

(x) Notwithstanding it is illegal and arbitrary, The Action Plan does not lay down any guidelines to control, guide or supervise such extreme harsh and tyrannical quasi judicial powers by the District Magistrate. In that sense it does not qualify as a “comprehensive action plan” in section 22(2) of the Act.

(xi) Protection is for only those defined in “children” [s.2 (a)] or family, who have actionable claims to property and subsisting rights in property of senior citizen duly asserted in a court of law. However, the wide meaning of “property” in section 2 (f) is for purposes of maintenance and section 23 of the Act.

(xii) The wide definition of “property” in section 2 (f) in the MWPSC Act covering both self acquired and ancestral property including rights or interests in such property is for purposes of maintenance and welfare of senior citizens and cannot be imported for eviction through the Punjab Action Plan.; as also for declarations of transfers of property to be rendered void in certain circumstances under section 23 of the Act. These aberrations and callousness of children and their neglect of senior citizens for their maintenance and welfare of their physical and emotional needs, the Maintenance Tribunal as a speedy remedy can alone manage to the exclusion of the

civil courts.

(xiii) The argument that aggrieved party has remedy of writ petition under Article 226 and 227 of the Constitution and therefore there is a substantial safeguard against arbitrary, illegal and erroneous orders open to correction in certiorari is rejected. For one, the remedy is discretionary and extraordinary and not plenary of the kind the civil and appellate courts traditionally exercise. The remedy of civil suits under the Code of Civil Procedure, 1908 is more wholesome than the jurisdiction under the writ jurisdiction under the Constitution as it admits recording of evidence in proof of facts. The writ remedy comes into play after eviction, when enforcement of the order is also in the hands of the executive with the police at its command. The Action Plan in eviction is unfair, arbitrary, unreasonable and oppressive as against family member [and not a foreigner to the family unit or rank outsider] and is excessive and therefore unconstitutional. It cannot be used as a tool for eviction and in abuse of the process of the law.

(xiv) The wide import of the issues in the civil suit filed prior to coming into existence of the Action Plan and pending adjudication of civil rights of the petitioner and her children in litigation with the defendants are far too significant to be sacrificed to a sudden termination of long settled possession leaving them to litigate from the outside and after the event of eviction has been played out. I am of the opinion that Parliament never contemplated such a drastic situation in the MWPSA Act of what the Plan adventures to do and Parliament expressly limited itself to maintenance rights under Chapter II [ss. 4 to 18] and protection of reversing transfers and release deeds under section 23 [Chapter VI], which was a giant leap forward for the welfare of senior citizens against apathy of children inflicting physical and emotional neglect on their parents in old age. That is a pious duty and obligation of every

child and grandchild irrespective of caste, creed or religion recognized in the Constitution. The two elements i.e. maintenance rights and voidable transfers of property or are not present in this case nor were pleaded in the complaint that fired the present litigation.

(xv) The Act, the Rules and the Action Plans in the States of Punjab & Haryana [which are cut copy paste] cannot be viewed as a convenient and brutal tool in the hands of executive officers acting as Maintenance Tribunals, who are servants and agents of the State to evict the respondent 'right asserter' only on the specious ground of title and ownership in the applicant without anything more to do with the law.

(xvi) The Punjab Action Plan – 2014 does not have any statutory backing. It is well settled that every executive action must have legislative sanction. It has also not been issued in the name of the Governor or placed in the Assembly at any time till the present.

(xvii) Life is awfully complex and errant laws can often compound it. Each family is faced with its own peculiar situation that cannot be typified in one mould of the law for every family and their elders in the Action Plan to persuade this court to subscribe to the power of eviction in the District Magistrate on a transitory posting in the District. On the other hand the judicial courts are static and available on every working day for the litigating public. A family's own special needs, circumstances and expectations of each other are variables and their station in life, their social standing, their financial position can be vastly different that they cannot be measured on the same scale and with one brush of a heartless Government order in the Action Plan which Parliament did not devise. Parliament ordained a "comprehensive action plan" in section 22 (2) but the Plans are far from being comprehensive in nature. The Action Plan cannot cover all cases based on title alone when rights of spes successionis germinate with

conception as per the Hindu law [which are chances of succession] and mature on birth. India has to contend with unique personal laws of its many people of different religions and faiths. Therefore, each case has to be decided on its own facts and circumstances on the basis of evidence. Had the direction not come in Justice Shanti Swarup Dewan's case in September 2013, I dare say, the Action Plans of Punjab and Haryana may not have been born although it was a statutory duty neglected for years since the MWPSC Act was passed in 2007.

(xviii) Laws of land reform in India [making way to a modern nation free of feudalism was a great leap forward], such as abolition of titles and zimindaries, Land Ceiling, Surplus, granting tenancy rights to downtrodden marginal and toiling siris; the bonded labour and the tillers of land maturing rightfully into title and legal possession of land cultivated by them till the Republic day with the protection of Central and local laws and the peculiar and special principles of Hindu Law unparalleled across the globe etc, all of which have greatly contributed to a new social order impacting the landed aristocracy and 'big landowners' to device ways and means to save their properties from being taken over by the State's eminent domain by effecting dispossession from excess lands to be redistributed to the landless. This has led to complexities in litigation which happens only in India. Only Judges should handle this and not the executive officers of the State empowered under a notified and non statutory Government order to dispossess a daughter-inlaw, like the petitioner, of their lawful rights pressed in the civil courts of justice in accordance with law seeking declarations of status and those based on settled continuous possession-[as explained in Major Harmohinder Singh (supra)]."

A bare perusal of the above would show that neither by the Tribunal as envisaged under 2007, Act nor the Appellate Authority on an appeal preferred under Section 16 of the 2007, Act have jurisdiction to pass an order of eviction.

The only power with the Tribunal and the Appellate Authority is to grant the maintenance by taking into consideration the facts of each and every case and also to set aside the transfer of property in case, the senior citizen is able to prove that a fraud was played by the children while executing the said transfer of the property.

Learned counsel for the petitioner is unable to dispute the proposition of law stated hereinbefore.

Nothing has been cited in the defence to show that the senior citizen is entitled for eviction of his children and that too from another premises than the one where the said senior citizen is residing.

Keeping in view the facts and circumstances recorded hereinbefore, no ground is made out to interfere with the order dated 24.02.2021 (Annexure P-1) passed by the authorities exercising power under the 2007, Act.

Accordingly, the present writ petition is dismissed.

July 26, 2021
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No