

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

CWP-32298-2018(O&M)

Date of decision:-02.09.2021

Bhaskar and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Manohar Lall, Advocate
for the petitioners.

Mr.Sharad Aggarwal, AAG, Haryana
for respondent No.1.

Mr.Atul Goyal, Advocate
for respondent No.2.

H.S. MADAAN, J.

Case taken up through video conferencing.

Petitioners Bhaskar son of Sh.Dharam Pal and his wife Ruchi, both residents of House No.1956/2, Kaziwara near Krishan Temple, Ambala City have brought the instant petition under Articles 226/227 of Constitution of India against respondents i.e. State of Haryana, Department of Social Justice and Empowerment through District Magistrate-cum-Collector, Ambala and private respondent No.2

Dharampal, praying for issuance of a writ in the nature of certiorari for quashing the impugned order dated 27.11.2018 passed by District Magistrate, copy Annexure P1 by virtue of which application of respondent No.2 Dharampal has been accepted and eviction order has been passed against the petitioners.

As per the version of the petitioners, petitioner No.1 Bhaskar is son and petitioner No.2 Ruchi is daughter - in – law of respondent No.2 Dharampal; the petitioners got married in the year 2015 and were blessed with a female child, namely, Aaradhya in the year 2015; that father of respondent No.2, namely, Kanshi Ram was allotted a house bearing No.2526/2 Kaziwara, Ambala City by the Rehabilitation Department in the year 1955; Kanshi Ram during his life time had executed a will on 7.2.1996; he had purchased another house bearing No.1956/2, Kaziwara Ambala City in the name of his son Dharampal (respondent No.2) vide registered sale deed dated 12.1.1988; Kanshi Ram had expired on 22.2.1996 and after his death his two sons namely Sudarshan and Gulshan became owners of the house on the basis of will executed by him in their favour; that Neelam mother of petitioner No.1 had purchased house No.2526/2 from her brothers-in-law, namely, Sudarshan and Gulshan vide registered sale deed dated 27.5.2013; the house bearing No.2526/2 purchased in the name of petitioner No.1 was given on rent and the parties resided together in the house in question; that after birth of a female child, respondent No.2 along with his wife and unmarried son Rohit shifted to the house purchased by them, whereas petitioners continued living in the house in dispute; that respondent No.2 wanted to sell house bearing

No.1956/2 in which petitioner No.1 has been residing since his birth and petitioner No.2 since her marriage; the petitioner No.1 resisted such attempt stating that he was ready to make payment for the same; a panchayati agreement was scribed on 3.2.2017 in which it was settled that petitioners would pay a sum of Rs.5 lakhs besides giving cylinder, oven, inverter set to the respondent No.2 on 9.2.2017 and thereafter the house would be transferred in the name of petitioner No.1 through a gift deed; that petitioner No.1 then prepared a demand draft in the sum of Rs.3 lakhs vide No.099033 dated 16.2.2017, issuing cheque in the sum of Rs.2 lakh bearing No.84160 dated 25.2.2017 and offered those to respondent No.2, but he refused to accept the same and backed out of the family settlement; that Smt.Neelam mother of petitioner No.1 out of vengeance sold house No.2526/2 vide registered sale deed dated 17.8.2017 to deprive the petitioners of their rights to the house already in their possession, where they were putting up; that thereafter respondent No.2 moved an application under Section 22(2) of Maintenance and Welfare of the Parents and Senior Citizen Act, 2007(hereinafter referred to as the Act) on frivolous grounds stating that they had sold the house for clearing the debt of petitioner No.1; a few months prior he had offered to pay a sum of Rs.5 lakhs to respondent No.2 as per family settlement; that after selling house bearing No.2526/2, in which the respondent No.2 along with wife and younger son Rohit had been living, he intentionally took the other house on rent just to make out a case that they have no house to live in; that respondent No.2 has deposited the sale proceeds of the house in the banks and is having more than Rs.16 lakhs in the bank and post office accounts

getting handsome interest thereon; petitioner No.1 is employed as Stenographer on *ad hoc* basis on meagre salary of of Rs.16,000/- per month, which has not been paid to him from April 2018 on account of non-availability of funds by Government of Haryana; that respondent No.2 on instigation of his wife and son is bent upon to oust the petitioners without any rhyme or reason; petitioners have no other place to live; the application was moved by respondent No.2 just to get the petitioners ejected. According to the petitioners, they are not in unauthorized possession of the house; learned District Magistrate has erred in not going into the details of the case. In the end, the petitioners prayed that their petition be accepted.

On notice, the respondents put in appearance and filed written replies. Respondent No.1 filed short reply by way of affidavit of District Magistrate-cum-Chairperson, Appellate Tribunal, Ambala, who *inter alia* stated that she had passed the impugned order, which is quasi judicial in nature and this case be decided on merits. Whereas in the reply filed by respondent No.2 he has taken preliminary objections that petition is misconceived and a blatant attempt to overreach the process of this Court; the petitioners have not approached the Court with clean hands and have made misrepresentations, therefore, the petition deserves to be dismissed on that very ground. The observations made by the Hon'ble Apex Court in judgment **S.P. Chengalvaraya Naidu Versus Jagannath, AIR 1994 S.C. 853** are reproduced in support of the contentions that the person approaching the Court must do so with clean hands; a litigant is bound to produce all the documents executed by him, which are relevant

to the litigation and if he withholds a vital document in order to gain advantage, then he would be guilty of playing fraud on the Court as well as on the opposite party. He further submits that the judgments relied upon by the petitioners are not helpful to them because a judgment relied upon by counsel for the petitioners in case **Gulzar Singh Versus State of Punjab** i.e. CWP No.2710 of 2018 is not applicable to the facts of the present case and furthermore an LPA against the said order has been filed wherein notice of motion has been issued. According to the answering respondent, right from the beginning he along with his wife are residing in the house in question bearing No.1956/2; that about three months after marriage of petitioner No.1, he along with his wife petitioner No.2 had shifted to house bearing No.2526/2. It was only during the pregnancy of petitioner No.2 that petitioner No.1 insisted to shift back to the house No.1956/2 so that wife of answering respondent could assist petitioner No.2 during her pregnancy. Whereas both the petitioners with intention to grab property of answering respondent started harassing him to the extent of inflicting physical and mental cruelty. Since the year 2017, the answering respondent is residing in a rented accommodation bearing house No.2386/2, Kaziwara, Ambala City at monthly rent of Rs.4,000/- excluding water and electricity charges. Despite repeated requests by answering respondent, he was not allowed to enter the house in question since petitioner No.1, who was working as a Stenographer with the then SDM was able to yield influence through his office masters. Resultantly, the respondent No.2 constrained to file the petition, wherein a very detailed and well reasoned order has been passed directing the petitioners

to vacate the house in question. On merits the material averments in the petition have been controverted the stand taken in the preliminary objections has been reiterated, in the end praying for dismissal of the petition.

The petitioners filed rejoinder controverting the allegations in the written reply filed on behalf of respondent No.1, whereas reiterating the averments in the writ petition.

I have heard learned counsel for the parties besides going through the records.

It may be mentioned here that Dharampal son of Kanshi Ram, resident of House No.2386/2 Kaziwara, Ambala City had filed an application under Section 22(2) of the Act against his son Bhaskar and daughter-in-law Ruchi i.e. wife of Bhaskar, residents No.1956/2, Kaziwara near Krishan Temple, Ambala City contending that applicant and his wife are old illiterate couple and during their life time utilizing their savings. They had purchased House No.1956/2, Kaziwara near Krishan Temple, Ambala City and the house No.2386/2, Kaziwara, Ambala City. Few months earlier Dharampal (applicant) had sold one house for discharge loan of his son Bhaskar (petitioner No.1). At that time, Bhaskar and his wife Ruchi had assured that after selling the house and clearing their debts, they would vacate House No.1956/2. The applicant believed them and after selling the house cleared debt and at present respondent No.2 is residing in rented accommodation and when he asked the present petitioners to vacate the house then both of them started abusing them and threatening to kill them if spotted near the house. They

also threatened to take poison writing down their names being responsible for their deaths. The respondent No.2 was frightened. Report from Sub Divisional Officer (C), Ambala City had been called, who reported that Bhaskar and his wife are living in House No.360/1956 B-2 as per the record of the Municipal Corporation and House No.360/1956 B-2 is in the name of Sh.Dharampal. After hearing the parties and going through the record, learned Deputy Commissioner, Ambala concluded that respondent had not produced any document to prove that the ownership of the house is not in the name of the applicant, whereas according to report by Sub Divisional Officer (C) , the ownership is in the name of the applicant. Agreeing with report of Sub Divisional Officer (C), Ambala City and in light of provisions of the Act, the respondents (herein petitioners) were directed to vacate the house in question within 30 days and give its possession to the applicant Dharampal observing that if respondents do not comply with the order within stipulated period then the house be got vacated with police help and possession be handed over to the applicant.

Feeling aggrieved by the said order, petitioners Bhaskar and his wife Ruchi have brought the instant petition seeking quashing of impugned order dated 27.11.2018 passed by District Magistrate, Ambala.

Learned counsel for the writ petitioners have referred to two judgments first being **Simrat Randhawa Versus State of Punjab and others** passed in CWP No.4744 of 2018 on 23.1.2020. In this judgment after detailed discussion, The Punjab Action Plan, 2014 and Haryana Action Plan were held to be ultra vires of the Constitution and were struck down. It was observed that a Maintenance Tribunal under the Act has no

power of eviction. Some other observations had been made.

The other judgment referred to by learned counsel for the petitioners happened to **Gulzar Singh Versus The State of Punjab and others** delivered in CWP No.2710 of 2018 on 7.2.2018. The concluding part of the judgment is as follows:

Thus, the application filed by the petitioner before the District Magistrate is totally misconceived as the District Magistrate does not have the jurisdiction to proceed against the daughter-in-law, whose husband is alive as she is not one of the heirs of her father-in-law (petitioner herein).

In view thereof, I do not find any merit to interfere in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

On the other hand, learned counsel for respondent No.2 has also referred to various judgments first being **Mamta Sharma Versus Additional Deputy Commissioner-cum-Maintenance Tribunal and others** delivered in CWP No.38040 of 2018 (O&M) decided on 5.11.2020. As per the facts of the said case a widowed daughter-in-law residing in the house belonging to her father-in-law had created highly tense atmosphere in the house with a motive to grab self-acquired properties of her father-in-law, whereas father-in-law had allowed her to stay in his house supporting and taking care of her and her children. On a petition having been filed by father-in-law under Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the same was allowed by Deputy Commissioner-cum- Maintenance Tribunal under Maintenance and Welfare of parents and Senior Citizens Act and widowed daughter-in-

law directed to vacate her matrimonial home. She had challenged that order by way of filing a writ petition, which was partly allowed, order directing eviction of the daughter-in-law was upheld though father-in-law was ordered to pay some amount to her to get alternate accommodation.

The second judgment referred to by learned counsel for respondent No.2 was **Major Singh Versus District Magistrate Patiala and others** in LPA No.120 of 2019(O&M) on 23.1.2019 by a Division Bench of this Court, wherein it was observed that under Section 22 of the Act when a widowed mother, who is a senior citizen was being harassed by her son to the extent that she had to lodge First Information Report and also approached High Court seeking protection of her life and liberty, that would totally frustrated the very purpose of enactment itself if any interference was done with the impugned order directing ejectment under the circumstances of the case.

Another judgment referred to by learned counsel for respondent No.2 was **Parmeshwari Devi and another Versus Appellate Authority-cum-District Collector, Fazilka and others** passed in CWP No.14740 of 2019 decided on 20.8.2019 wherein it was observed that when a senior citizen had transferred his landed property in favour of both his daughters hoping and expecting that they would look after her in old age but the daughters failed to discharge their obligations towards their mother, the order cancelling transfer deed in terms of Section 23 of the Act was upheld.

In another judgment **Dinesh @ Dinesh Kumar and another Versus District Magistrate, Yamuna Nagar and others** delivered in CWP

No.5620 of 2019 dated 7.3.2019, it was observed that when respondent a senior citizen sought ejectment of his son, grandson and grand daughter-in-law taking a stand that he was being harassed by his son and his family, then the eviction ordered on such application filed by senior citizen was upheld.

After hearing learned counsel for the parties and going through the authorities referred to by them, I find that admittedly the house in question is owned by Dharampal – respondent No.2. The petitioners themselves are not disputing this fact since as is clear from their pleadings because a Panchayati agreement had taken place between them and respondent No.2 on 3.2.2017 in which it was settled that petitioners would pay a sum of Rs.5 lakhs and hand over a cylinder, oven inverter set to the respondent No.2 on 9.2.2017, thereafter the house would be transferred in the name of petitioners through gift-deed. Copy of that written settlement has been attached as Annexure P2. According to the petitioners, they had got prepared a demand draft in the sum of Rs.3 lakhs and had prepared a cheque in the sum of Rs.2 lakhs handing over the same to respondent No.2 but respondent No.2 did not accept the same and backed out of family settlement. It means that respondent No.2 Dharampal continues to be owner of the house in question.

Now the question arises as to in which capacity, the petitioners are in possession of that house. As it transpires, their status is that of licensees. A licensee can remain in possession of the property belonging to licensor when licensor allows the licensee to retain the possession. The movement the licensor revokes the license and is desirous

of getting back the possession of the property from the licensee, the licensee is bound to hand over such possession to the licensor and cannot resist doing so. It is specific case of Dharampal that he and his wife have no independent place to reside and they have taken accommodation on rent and it is very difficult for them to pull on and in this old age, they have been put to a very difficult situation. The respondent No.2 Dharampal, a senior citizen has levelled specific allegations of harassment and maltreatment against the petitioners. Remedy of writ of certiorari is discretionary and extraordinary in nature. It is not a fit case to exercise power under Article 226 of the Constitution of India and to quash the impugned order by way of issuing writ of certiorari.

The instant writ petition is dismissed accordingly.

02.09.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No