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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th May, 2021
+ **W.P.(C) 5144/2021 & CM APPLs. 15766-68/2021**
MS. MAMTA Petitioner
Through: Mr. Durgesh Kumar Pandey & Mr.
Deepak Kumar, Advocates.
versus

THE STATE (GNCT OF DELHI) AND ORS Respondents
Through: Mr. Rizwan, Advocate for R-1 to 3 &
5.
Mr. Yashvardhan S. Soam, Advocate
for R-4.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by Ms. Mamta, the Petitioner, who is the daughter-in-law of Respondent No.4 - Mr. S. Krishnan Nath Rao, challenging the impugned order dated 12th April, 2021 passed by the Appellate Authority of the Divisional Commissioner under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Delhi Rules thereto.
3. The brief background is that the Petitioner was married to Respondent No.4's son - Late Mr. Sunder Ganesh Rao, who is stated to have committed suicide on 19th July, 2019. Initially, the Respondent No.4 had filed a petition for eviction under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, which was decided by the District Magistrate vide order dated 30th January/1st February, 2021. The findings of the District Magistrate in the said order were that the Respondent No.4 is the sole and

absolute owner of the suit property. The observation of the District Magistrate was that the Petitioner lived in the suit property i.e., House No.4, Gali No.15B, Prem Vihar, Nangli Dairy, Najafgarh, New Delhi along with her associate (boy friend) and in effect, the Respondent No.4 was not being allowed to live in his own property. The District Magistrate had accordingly directed the Petitioner herein to vacate the said suit property. The findings of the District Magistrate are set out herein below:

- “1. It is an admitted fact that the complainant is the sole and absolute owner of the suit property by virtue of a Registered GPA dated 19.10.2006.*
- 2. The only defense taken by the respondents is that she only exhibited only a copy of GPA in respect of the suit property, which has no legal value.*
- 3. That the complainant is being harassed by the respondent and her family.*
- 4. That the respondent along with her associates (boy friend Sachin S/o unknown, mother Subhlata W/o Late Balwan) are residing in the suit property without any legal right.*

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In view of the above observations, this court directs the respondents to vacate the property bearing House No. 4, Gali No. 158, Prem Vihar, Nagli Dairy, Najafgarh, New Delhi.

The respondents are directed not to interfere in the peaceful living & possession of the complainant in the suit property.

The SDM (Dwarka) to and the SHO concerned are directed to execute the present order.

This order should be executed after 30 days in terms of the Rule 22 Sub rule 3 Clause 3 of the Senior Citizen Rules 2009.”

4. The Petitioner thereafter challenged the said order before the Appellate Authority/Divisional Commissioner. Vide the impugned order dated 12th April 2021, the Divisional Commissioner has rejected the prayer for stay of the order of the District Magistrate on the following grounds:

“2. In reply, respondent argued that he is a senior citizen and out from his own house. He argued that the appellant is having extra marital affair/ illicit relation with some other person due to which his elder son i.e husband of the appellant committed suicide after caught appellant with some other person in a compromising position. He further argued that she and her associate has removed his articles against which he had made written complaint to the police. He stated that he was beaten up by the appellant and her associate when he caught red handed just after 13 days of the death of his son.

3. I have gone through the stay application and heard the parties on the stay application and also perused the impugned order.

4. The District Magistrate vide impugned order observed that her associate/boyfriend is residing in the suit property without any legal right. DM evicted the appellant on the ground of ill-treatment and harassment and on the report of the SDM that fortified the contentions of the complainant.

5. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Delhi Rules 2009 amended time to time, is a welfare legislation and balance of convenience lies in favour of respondents as the Senior Citizen Act and rules have been framed for the benefit and protection of senior citizens/Parents, so that they can spend their twilight years peacefully. Prima-facie, the present case does not seem to be the fit case for stay on the grounds stated by the applicant/appellant. Also the respondent showed video in his mobile that indicates that the appellant/ applicant is having extra marital

affair with some person and that video recording also contains the abusive language uttered by the applicant/appellant.”

6. In the light of the aforesaid facts and circumstances, the stay application of the appellant is hereby dismissed with the direction to the appellant to vacate the suit property.”

5. Ld. Counsel appearing for the Petitioner submits that the findings of the Divisional Commissioner are not valid, inasmuch as the Petitioner being the 50% owner of the property, cannot be evicted in this manner.

6. On behalf of the State/SDM - Mr. Rizwan, ld. Counsel points out the various findings of the Divisional Commissioner and submits that the present is no case for any discretion to be exercised, under Article 227 of the Constitution.

7. Heard ld. Counsels for the parties and perused the record.

8. In the present case, the Petitioner is the daughter-in-law of Respondent no.4. The marriage took place on 11th March 2007 and there are two children. The husband of the Petitioner is stated to have died under mysterious circumstances. The respondent no.4, filed a complaint under the Act and the DM called for a report from the SDM, under Rule 22(3). After perusing the said report, the SDM arrived at the conclusions set out above. Thereafter the Divisional Commissioner has also arrived at similar conclusions after viewing a video recording etc., wherein the Petitioner's friend is stated to be present and the Petitioner has used abusive language against the Respondent no.4. A perusal of the orders passed by the District Magistrate as also the Divisional Commissioner shows that the finding of both the authorities is that the Respondent No.4 is not being permitted to

reside in his own house and his belongings have been removed. Moreover, there are allegations of ill treatment and harassment of Respondent No.4.

9. Considering the concurrent findings of fact, given by both the District Magistrate and Divisional Commissioner, this Court is not inclined to entertain a challenge to the same in the present writ petition. The factual issues, if any, have to be gone into by the authorities concerned, and cannot be delved into in a petition under Article 227.

10. Accordingly, the petition is dismissed.

11. At this stage, Id. counsel for the Petitioner submits that the Petitioner has two minor children, and that the appeal is still pending. He prays that the appeal may be expeditiously disposed of. Accordingly, the Divisional Commissioner shall make an endeavour to dispose of the appeal expeditiously.

12. All pending applications are disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

MAY 4, 2021

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