

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

**CWP-567-2021 (O&M)
Date of Decision: 27.09.2022**

Savita Kalra

..... Petitioner

Versus

District Magistrate, Gurugram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Gurmohan Singh Bedi, Advocate,
for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana,
for respondents No.1 and 2.

Mr. Tushaar Madaan, Advocate,
for respondents No.3 and 4.

Mr. Mansur Ali, Advocate,
for respondent No.5.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the ex parte order dated 10.10.2019 (Annexure P-4) passed by respondent No.1, vide which the application of respondents No.3 and 4 filed Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act of 2007'), has been allowed and the petitioner along with her children has been directed to vacate the house; as also quashing of the order dated 16.12.2020 (Annexure P-8) passed by respondent No.1, whereby the application of the petitioner for setting aside ex parte order has been dismissed; and it is also prayed that during the pendency of the present

petition, the operation of the impugned order dated 10.10.2019 (Annexure P-4) and the dispossession of the petitioner from the demised premises may kindly be stayed.

The facts, which has come on record, are that the property in question is, undisputedly, in the name of respondent No.3-Senior citizen. The impugned order dated 10.10.2019 (Annexure P-4) has been passed in his favour by ordering the eviction of the son of the respondent No.3 and the petitioner, who is the daughter-in-law. That order has been challenged by way of the present petition.

Arguing the case, the learned counsel for the petitioner has submitted that the petitioner being a daughter-in-law cannot be ordered to be evicted from the house in question because she also has rights under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the D.V. Act of 2005'). Therefore, the claim of the petitioner under the D.V. Act of 2005 cannot be prejudiced by any order passed under the Act of 2007. Hence, the impugned order deserves to be set-aside. Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court rendered in **S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District and others, 2020 SCC OnLine SC 1023** and submitted that the order passed by respondent No.1 be ordered to be set aside.

On the other hand, learned counsel for respondents No.3 and 4 has submitted that the petitioner is being paid an amount of Rs.40,000/- per month, in compliance of the order passed by the competent court under the D.V. Act of 2005. Therefore, any order passed under the Act of 2007, by

any means, does not affect the rights of the petitioner under the D.V. Act of 2005. Learned counsel has further submitted that the petitioner has been creating untoward situation because of her adultery with one Amit Gupta. The petitioner herself had moved a complaint before the police at Police Station Sector 65, Gurugram in that regard and claimed back her objectionable photographs and videos from Mr. Amit Gupta. Therefore, respondents No.3 and 4 had exercised their rights under the Act of 2007 to protect their life and property. The impugned order has rightly been passed. Hence, the petition deserves to be dismissed.

Having heard learned counsel for the parties, this Court finds that there is no illegality in the course of action adopted by respondents No.3 and 4. Respondents No.3 and 4 have only exercised their statutory rights and the statutory authority has passed the order as required under the Act of 2007. Therefore, per se, there is no illegality in the impugned order; as such.

Although, learned counsel for the petitioner has stressed upon the judgment passed by Hon'ble the Supreme Court rendered in S. Vanitha's case (supra) to contend that the daughter-in-law could not be evicted from the house of the father-in-law, however, this Court finds that the emphasis of the said judgment is not to embolden the daughter-in-law to create any obnoxious situation for the senior citizen-father-in-law and then to claim immunity from the operation of the provisions of the Act of 2007. The essence of the said judgment is with regard to the protection of the rights of the daughter-in-law, as available to her under the D.V. Act of 2005. Therefore, in the above said case, even the Apex Court has not passed an

order determining the right of residence of the daughter-in-law in the house of the father-in-law; as such. Rather, the Apex Court has granted liberty to the daughter-in-law to avail her remedies under the D.V. Act of 2005 by granting her a time period of one year. In the present case, undisputedly, the petitioner has already availed her legal rights and remedies under the D.V. Act of 2005. The said proceedings are stated to be pending before the Appellate Court after the trial Court having granted maintenance amount of Rs.40,000/- per month to the petitioner. Undisputedly, the said amount is being paid by respondents No.3 and 4 to the petitioner. Therefore, there is no more conflict left between the remedies available to the petitioner under the D.V. Act of 2005 and the remedies available to respondents No.3 and 4 (senior citizens) under the Act of 2007.

Although, the learned counsel for the petitioner has raised argument qua validity of the ex-parte proceedings, however, since on merits itself, the petitioner is found not having any case made out in her favour and her rights as available to her under the D.V. Act of 2005 are to be protected separately, therefore, the argument of the learned counsel for the petitioner against the order proceeding against ex-parte also does not carry much weight.

In view of the above, finding no ground to interfere with the impugned orders passed by respondent No.1, the petition is hereby dismissed and the impugned orders passed by respondent No.1 are upheld. However, it is clarified that anything emerging in the present proceedings, in itself would not stand in the way in the course of action under the D.V. Act

of 2005 while determining the rights of the petitioner within the scope of the said Act.

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Since the main case has been dismissed on merits, therefore, these applications are dismissed as having been rendered infructuous.

(RAJBIR SEHRAWAT)
JUDGE

27.09.2022
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No