

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CWP No.13338 of 2020 (O&M)
DATE OF DECISION: 05th SEPTEMBER, 2022

Harbans Singh Pathania

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.K. Arya, Advocate for the petitioner.

Mr. Sandeep, Addl. Advocate General, Punjab.

Mr. Ankit Grewal, Advocate for
Mr. Vaibhav Jain, Advocate for respondent No.3.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ, order or direction especially in the nature of Certiorari for quashing of order dated 30.01.2020 (Annexure P-3) passed by respondent No.2.

A bare perusal of the impugned order shows that the sole reason given by the Authority below is a decision of this Court rendered in the case of *Simrat Randhawa Versus State of Punjab and others, CWP No.4744 of 2018, decided on 23.01.2020*. However, the Division Bench of this Court in the case of *Gurpreet Singh Versus State of Punjab, 2016 (1) R.C.R. (Civil) 324* and in the case of *Smt. Raksha Devi Versus Deputy Commissioner-cum-District Magistrate, Hoshiarpur and others, CWP No.5086 of 2016, decided on 03.05.2018*, have already upheld the rights of Senior Citizen to get eviction either by way of

protection of his property under the scheme prepared under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the Act) or by way of cancellation of the transfer in terms of Section 23 of the Act. Therefore, the application filed by the Senior Citizen could not have been rejected by the Authority below as per the law laid down by two separate Division Benches in the above said cases.

Although, the Authority below has relied upon the judgment in *Simrat Randhawa* (supra), however a perusal of the said judgment shows that the said two Division Benches judgments have been mentioned in the judgment rendered in the case of *Simrat Randhawa* (supra), however, instead of following the same, the learned Single Judge has shown some disagreement with the judgment passed by the Division Bench on the ground of the case being decided by the Division Bench in limini and on the basis of the Govt. of India having filed some affidavit to explain the intention behind the provisions of the Act, and further, by observing that the Division Benches did not have the benefit of the kind of arguments which were raised before the learned Single Judge in *Simrat Randhawa* case (supra). However, none of these grounds could have been a ground not to follow the decision of the Division Benches. Needless to say that the Single Bench in *Simrat Randhawa* (supra) case has not held that the judgments passed by the Division Benches did not constitute a precedent because of being per-incurium or being suffering from sub-silentio. There is not even a pretention to distinguish the judgments of Division Benches on the facts of the cases. It is a plain and simple attempt at disagreement on the grounds mentioned above. However, in the humble view of this Court, even if some authority is

conceded in favour of the Single Bench to disagree with the Division Benches, still the reasons given by the Single Bench inspire no justification. Once the Division Bench had put a particular construction upon the provisions of the Act and the action plan of the State; by specifically noting the provisions and interpreting the same, then there was no scope left for not following the same only for the reason that such a judgment was passed by the Division Bench without issuing notice to the other side. Similarly, availability of some perceivingly better assistance from a lawyer through his more potent agreement; can also not be a ground to discard the earlier judgment of the Division Benches on the same legal aspect. Statedly better assistance, which could lead the Court to a possible different conclusion; may have provided an opportunity to the Single Bench to refer the matter for reconsideration by the Division Bench, but not for any disagreement with the judgment of the Division Bench at its own level; and to push the judgment of the Division Bench towards legal oblivion. Even the affidavit of the Central Government could not have been used by the Single Bench as an external aid for the purpose of construction of the provisions of the Act and for finding the intention of the legislation. If affidavit of the government of the day is taken as a valid & external tool for construction of statute and for finding intention of legislator then such a construction and intention runs the risk of undergoing metamorphosis every five years or so. Aspect of uncertainty involved in use of such a tool itself is sufficient to discard such an affidavit as an external aid in construction of statutes. Rather the appropriate Rule of construction to be applied in case of the present Act is the 'Mischief Rule' which would tend to suppress the mischief which

was sought to be remedied by the Act and would enhance the remedy available to the Senior Citizen under the Act. Precisely, this was the construction put in both the decisions of the Division Benches mentioned above. Therefore, the judgments passed by the Division Benches, obviously, were binding upon the Single Bench, leaving no scope for showing any disagreement.

In view of the above, following the judgments passed by the Division Benches of this Court in the cases of ***Gurpreet Singh*** (*supra*) and ***Smt. Raksha Devi*** (*supra*), the present petition is allowed. The petition filed by the petitioner before the District Magistrate is ordered to be allowed. Accordingly, the petitioner shall be free to obtain possession of the property mentioned in the present case.

However, it is clarified that the respondent No.3-daughter-in-law of the petitioner would not be precluded from exercising her rights under the Protection of Women from Domestic Violence Act, 2005, but in accordance with law, by invoking the competent authority under the said Act. To the extent, the rights of respondent No.3, if any, and as and when determined by the authorities under the Protection of Women from Domestic Violence Act, 2005, the order passed by this Court in favour of the petitioner shall be treated as ineffective.

The pending miscellaneous application, if any, is also disposed of as such.

05th SEPTEMBER, 2022
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>