

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

201

CWP-12350-2017 (O&M)

Date of decision: 14.10.2022

Karnail Singh

..Petitioner

Versus

The District Magistrate Union Territory Administration Chandigarh and
others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vijay Sharma, Advocate,
for the petitioner.

Mr. J.S. Dahiya, Advocate
for respondent No.3.

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RAJBIR SEHRAWAT, J (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or directions especially in the nature of certiorari for quashing of order dated 20.04.2017 (Annexure P-1) passed by respondent No.1 with certain other prayers made in the present petition.

Counsel for the petitioner has submitted that the order passed by the District Magistrate is totally imperfect. In fact, the application filed by the petitioner has neither been accepted nor been rejected. The District Magistrate has desired the parties to make an attempt of settlement between the parties themselves. In that situation, the District Magistrate should have posted the case after three months and in the eventuality of parties not settling the dispute, the final order should have been passed. However, the application has been disposed of by the District Magistrate only by leaving matter to the discretion of the parties and with a direction

to police to visit the house of the petitioner to secure his liberty. Even that direction of the District Magistrate has not been complied with, because the police has never visited the house of the petitioner to verify as to whether petitioner ever lived peacefully in his own house. Therefore, the matter deserves to be remanded to the District Magistrate for reconsideration and decision afresh.

On the other hand, counsel for the respondents has submitted that the husband of respondent No.3 is not colluding with the petitioner. In fact, there has been litigation between the parties under The Protection of Women from Domestic Violence Act, 2005 (for short 'the D.V. Act'). In those proceedings, the competent Court has even granted right of residence to respondent No.3 by granting right to reside in one room and also to use kitchen in the same house. Therefore, eviction of respondent No.3 from the house in question has already been stayed by virtue of the order of the competent Court exercising jurisdiction under the D.V. Act. Therefore, the proceedings before the District Magistrate are futile exercise.

Having heard the learned counsel for the parties, this Court finds that the District Magistrate should have passed a clear cut order determining the right of the senior citizen on the application moved by him. However, the order passed by the District Magistrate is ambivalent leaving the dispute open as it is, as the application filed by the petitioner has neither been accepted nor been rejected. Therefore, the District Magistrate deserves to reconsider the entire issue afresh; and pass the clear cut order accepting or rejecting the application of the petitioner.

In view of the above, the impugned order is set aside. The matter is remanded to the District Magistrate, UT Chandigarh, for passing fresh order on the petition moved by the petitioner-senior citizen, after affording an opportunity of hearing to the concerned parties, including to the daughter-in-law.

However, as has come on record, the daughter-in-law has already been granted right to reside in some portion of the said house by the competent Court under the D.V. Act, therefore, any order passed by the District Magistrate would take into account the rights of respondent No.3 as determined in the proceedings under the D.V. Act qua her right of residence.

Disposed of in the above terms.

14.10.2022

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(RAJBIR SEHRAWAT)
JUDGE