

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

CWP-15409-2017

Date of Decision: 01.04.2022

SANJAY KUMAR

...Petitioner

Versus

APPELLATE TRIBUNAL-CUM-DISTRICT MAGISTRATE AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Saurabh Garg, Advocate
 for the petitioner.

Ms. Kirti Singh, D.A.G., Haryana.

Mr. D.R. Bansal, Advocate
for respondent No.3.

ARUN MONGA, J. (ORAL)

Petition herein is for issuance of an appropriate writ, order or direction in the nature of *certiorari* or otherwise seeking to quash the order dated 22.08.2016 (Annexure P-5) passed by Sub Divisional Magistrate (Civil), Kaithal, in his capacity as Maintenance Tribunal under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 as well as order dated 23.05.2017 (Annexure P-8) passed by respondent No.1 i.e. the Appellate Tribunal-cum-District Magistrate, Kaithal.

2. Short controversy involved herein is that respondent No.3 is the mother of the petitioner, who is her only son. She has three more daughters who are stated to be married. Alleging that the son had not been taking care of her, she filed the Eviction proceedings under Section 23 of the Act *ibid*. Respondent no.3-mother claims to be the owner of the shop in question as well as joint family land to the extent of share of respondent No.3 therein.

As regards the shop, the same is concededly under the possession and use of the petitioner. Though he claims that the same was rented to him but respondent No.3 alleged that petitioner had illegally and forcibly occupied her shop. The rival claims of the parties are not worthy adjudication herein, which requires evidence. It is the short issue qua the jurisdiction of respondent No.2, who had entertained the eviction proceedings under Section 23 in the teeth of Section 22 of the Act *ibid*, which is as below :-

“22. Authorities who may be specified for implementing the provisions of this Act.—(1) The State Government may, confer such powers and impose such duties on the District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

3. Learned counsel for the petitioner also relies on judgment of this Court rendered in ***Amar Chand Sharma and Anr. vs Presiding Officer-cum-District Magistrate-cum-Chairman and Ors., AIR 2017 Punjab and Haryana 213***, wherein speaking for this Court, my learned brother Rakesh Kumar Jain, J. as he then was held as below :-

“4. xxxxxx So far as the protection of life and property of the senior citizen is concerned, Section 22(2) provides that “the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.” Section 23 of the Act deals with the property which is transferred by a senior citizen with the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and in case such transferee refuses or fails to provide such amenities and physical needs, the transferor may file an application before the Tribunal for the purpose of declaration of said transfer as void. In order to make Section 22(2) workable, the Haryana Government framed the rules called the Haryana Maintenance and Welfare of of Parents and Senior Citizens Rules, 2009 (for short 'the

Rules). Rule 24 of the said Rules provides for the action plan. Action plan for the State of Haryana was notified on 26.05.2015 in which clause 2(i) deals with the procedure for eviction from the property/residential building belonging to/occupied by senior citizens/parents. According to this provision, in case of receipt of any complaint regarding life and property of senior citizens by different department/NGOs/Social Workers, the help line for senior citizens and District Magistrate himself, it shall be forwarded to the District Magistrate of the concerned district for further action. The District Magistrate shall immediately forward such complaint/application to the concerned Sub Divisional Magistrate for verification of title of the property and facts of the case through Revenue Department/concerned Tehsildar/Spot Inspection within 15 days from the date of receipt of such complaint/application. The Sub Divisional Magistrate shall immediately submit his/her report to the concerned District Magistrate for final orders within 21 days from the date of receipt of complaint/application. Thereafter if the District Magistrate is of the opinion that any son or daughter of legal heir of a senior citizen/parents are in unauthorised occupation of any property as defined in the Act, then he would evict the said person in the manner prescribed.

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6. In my considered opinion, the application filed for seeking eviction can only be decided by the District Magistrate and not by the Tribunal. Thus, the question posed in this case is decided in favour of respondent No.3 and against the petitioners. Accordingly this litigation from its very inception was without jurisdiction and the application filed by the petitioners for seeking eviction of respondent No.3 was also not maintainable before the Tribunal.”

4. I am in respectful agreement with the opinion rendered by my learned brother as above.

5. In the aforesaid premise, on that short ground alone, the writ petition deserves being allowed to the extent that respondent No.3 ought to have invoked the jurisdiction under Section 22 of the Act *ibid* by filing the eviction before the District Magistrate of the District.

6. Accordingly, the writ petition is allowed and order dated 22.08.2016 (Annexure P-5) passed by respondent No.2 and order dated 23.05.2017 (Annexure P-8) passed by respondent No.1 are held to be beyond jurisdiction and are accordingly set aside, with liberty to respondent

No.3 to seek appropriate remedy in accordance with the provisions of
Section 22 of the statute *ibid*.

7. Disposed of accordingly.

(ARUN MONGA)
JUDGE

01.04.2022
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No