

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

101

CWP No.26286 of 2019 (O&M)
DATE OF DECISION: 29th SEPTEMBER, 2022

Kidar Nath

.... **Petitioner**

Versus

Deputy Commissioner, SAS Nagar (Mohali) and others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ashwani Sharma and Mr. Ajaivir Singh, Advocates
for the petitioner.

Mr. Sandeep, Addl. Advocate General, Punjab.

Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate
Mr. Nitin Sachdeva and Mr. Rajat Sheokan, Advocates,
for respondent Nos.3 and 4.

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RAJBIR SEHRAWAT, J. (Oral)

CM-1328-CWP-2020

This is an application for placing on record the written statement along with copies of Annexures R-3/1 to R-3/15 on behalf of respondent Nos.3 and 4.

For the reasons mentioned in the application, the same is allowed. Written statement along with Annexures R-3/1 to R-3/15 filed on behalf of respondent Nos.3 and 4 are taken on record.

CM-8085-CWP-2020

This is an application for placing on record the replication to the written statement filed on behalf of respondent Nos.3 and 4 along with its Annexures P-33 to P-36.

For the reasons mentioned in the application, the same is allowed. Replication to the written statement filed on behalf of respondent Nos.3 and 4 along with its Annexures P-33 to P-36 are taken on record.

Main Case

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing/setting aside the order dated 27.03.2019 (Annexure P-24) and further for quashing of order dated 13.08.2019 (Annexure P-28) as passed by respondent No.2, with certain other prayers made in the present petition.

The facts, as have been mentioned in the present petition, are that the petitioner-Senior Citizen, who is now deceased, asserted that he was owner of House No.13, measuring 180 Sq.yards situated in the area of Golden City Enclave, Sector-4, Mundi Kharar, Mohali. The petitioner had permitted the respondent Nos.3 and 4 to occupy a portion of the house in question. However, since respondent Nos.3 and 4 did not maintain the petitioner properly, rather, had started harassing him by initiating frivolous litigation and through all other possible means, therefore, for protecting his life and property, he did not want them to reside with him. Accordingly, the petition was filed by the petitioner claiming that the respondent Nos.3 and 4 be evicted from the house in

question. That petition was allowed by the Tribunal, vide order dated 07.12.2017. However, the respondent Nos.3 and 4 asserted that although the petition preferred by the senior citizen was only qua eviction from the ground floor, yet, the order of eviction was passed qua eviction from the entire house. Therefore, the respondent Nos.3 and 4 had moved an application for correction of the order. Accordingly, the correction of the order was done by the Tribunal, vide order dated 01.02.2018. Thereafter, the said eviction order was executed by the authorities on 03.05.2018. After the order had been executed, the respondent Nos.3 and 4 had filed writ petition bearing CWP No.13984 of 2018 challenging the orders passed by the Tribunal, as well as, claiming therein that the respondents be directed to put the petitioners in possession of the second floor of the house in question. However, that writ petition was dismissed, vide order dated 01.11.2018 and the orders passed by the Tribunal were upheld. Challenging the said order passed by the learned Single Bench, the respondent Nos.3 and 4 had preferred LPA No.1905 of 2018. However, that LPA was dismissed as withdrawn. But while permitting the respondent Nos.3 and 4 to withdraw the said LPA, they were granted liberty to approach the authorities for any un-redressed grievance. Taking a cue from the said order, the respondent Nos.3 and 4 had filed the application before the Tribunal that the possession of the second floor of the house be restored to the respondent Nos.3 and 4 because the same was wrongly taken away from them during the process of execution; despite the order of the Tribunal having been clarified to the extent that the eviction was to be done only from the ground floor of the house in question. That application filed by the respondent Nos.3 and 4 has been

allowed by the Tribunal and the Tribunal has held that since the respondent Nos.3 and 4 were having the material to show regarding payment of electricity bill and property tax etc., therefore, they have proved that they were in possession and they could not have been evicted from the second floor, rather, they should have been permitted to retain the possession of the second floor of the house in question, particularly, when the order of the Tribunal was only qua the eviction from the ground floor. Pursuant to this order, the action is being taken by the authorities for making the respondent Nos.3 and 4 to enter on the second floor of the house. It is challenging the said order and the action of the authorities, that the present petition has been filed. However, during pendency of the present petition, the petitioner-senior citizen has died.

While arguing the case, learned Senior counsel for the petitioner has submitted that even the corrected order passed by the Tribunal in the original proceedings related to the eviction of the respondent Nos.3 and 4 from the ground floor only. Therefore, there was no reference in the order of the authorities qua eviction of respondent Nos.3 and 4 from the second floor. As a ploy to get some order in their favour, the respondent Nos.3 and 4 had even claimed the possession of the second floor of the house in the writ petition filed by them, however, the same was not accepted. Not only that, even a special application to that effect was moved by the respondent Nos.3 and 4 in the said writ petition. However, even in that application, no order qua restoration of the possession of the second floor to the respondent Nos.3 and 4 was passed. So far as the liberty granted in LPA by the Division Bench is concerned, that related only to the return of the household articles, which

were found in house at the time of taking possession in execution proceedings and which the present petitioners themselves are offering to the respondent Nos.3 and 4 and have made a prayer in the present petition to that effect; as well. Hence, it is submitted that the second floor of the house has never been in question in the proceedings. Rather, the second floor of the house was on rent with a tenant. The second floor of the house was vacated by the tenant on 03.05.2018 and the possession of the same was handed over to the petitioner-senior citizen. Therefore, the possession of the second floor had not come to the senior citizen through any proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the Act), rather the same had come on account of vacation of the same by the tenant. Learned counsel has further submitted that the impugned order passed by the Tribunal qua restoring the possession in favour of the respondent Nos.3 and 4 is patent excess of exercise of the jurisdictions. The Tribunal under the Act does not have power to adjudication upon the right of the children independent of the claim raised by the senior citizen. Such children have only a right to question the claim raised by the senior citizen but they cannot get independent declaration of their own rights qua possession or otherwise in the property which, undisputedly, is owned by the senior citizen. If any such right is to be claimed by anyone of the children of the senior citizen, the same has to be decided by the Civil Court, and not by the Tribunal under the Act.

Qua survival of the claim of the legal representatives of the senior citizen after his death, learned counsel for the petitioner has submitted that since the possession had been restored to the senior

citizen, therefore, the possessory right of the property in question will devolve upon the legal representatives of the senior citizen. To that extent, the petition does not abate and the legal representatives of the senior citizen have right to continue with the present petition. Learned counsel for the petitioner has relied upon the judgment rendered in the case of ***Custodian of Branches of BANCO National Ultramarino Versus Naline Bai Naique, Civil Appeal Nos.1154-1155 (N) of 1974, decided on 28.04.1989***, to submit that the legal representatives of the senior citizen represent their estate, therefore, they have a right to continue with the present petition. In the present case, since all the legal representatives of the senior citizen minus the respondent Nos.3 and 4 were in exclusive possession, therefore, only they have a right to continue with the present petition to the exclusion of the respondent Nos.3 and 4.

On the other hand, learned Senior counsel for respondent Nos.3 and 4 has submitted that since the right of senior citizen was in the nature of personal right qua maintenance and the eviction right was also emerging from the non-fulfillment of the right of the maintenance, therefore, even the right to seek eviction would have to be deemed to be a personal right. Accordingly, the present petition stands abated with the death of the senior citizen. Hence, no further order can be passed in the matter. Learned counsel has relied upon the judgment rendered by Kerala High Court in the case of ***Antony Scaria Versus The District Collector, Kottayam and the Maintenance Appellate Tribunal, Collectorate and others, 2020 (3) KLT 436***, as well as, order dated 02.05.2022 passed by a co-ordinate Bench of this Court in ***CWP No.4020 of 2019***, and it is

pointed out that the case; in which a co-ordinate Bench of this Court had passed the order holding the petition to have abated; related to an eviction order only and despite there being an eviction order, the Court had ordered that the proceedings stands abated. Qua the other aspects on merits, it has come on record that respondent Nos.3 and 4 were paying the electricity bill and property tax of the entire house, therefore, the possession of the second floor of the house was required to be continued with respondent Nos.3 and 4 because the order of eviction passed by the Tribunal was only regarding the ground floor. However, the respondent Nos.3 and 4 were wrongly deprived of the possession of second floor of the house. Therefore, the Tribunal has only rectified the mistake committed by the executing team of the Officers by restoring the possession of the second floor of the house to the respondent Nos.3 and 4. The action of the Tribunal in this regard is fully justified because the liberty was granted by the Division Bench in the LPA; to approach the Tribunal for their grievance, including the grievance of restoration of the second floor of the house and, therefore, the order passed by the Tribunal qua restoration of the possession of the second floor of the house to respondent Nos.3 and 4 is perfectly within the scope of the proceedings as permitted by the Division Bench in LPA. Qua the aspect of the second floor being under tenancy, it is asserted by learned counsel for respondent Nos.3 and 4 that, undisputed position is that two rooms of the second floor were rented out to the tenant by respondent Nos.3 and 4 only. Therefore, when the possession of the said portion is vacated by the tenant, that shall be deemed to have come to respondent Nos.3 and 4 only. Hence, even by this fiction of law, the respondent Nos.3 and 4

continued to be in possession of the second floor of the house, which was wrongly taken away by the team of the executing officers. To buttress his claim, learned counsel for respondent Nos.3 and 4 has submitted that it is not even in dispute that the second floor of the house was constructed by respondent No.3 after the property had been transferred by them in the name of the senior citizen. This fact was so admitted even by the senior citizen in his statement dated 22.06.2017 made before the NRI Cell, which has been placed on record in the present petition. Hence, the senior citizen himself had not laid his claim over second floor of the house in his petition moved before the Tribunal. Learned counsel has further submitted that it is not even in dispute that the main gate of the house at the ground floor itself was locked by the executing staff, therefore, this would include dis-possession of respondent Nos.3 and 4 from the second floor of the house; as well.

Having heard the counsel for the parties, this Court finds that the original proceedings were, undisputedly, initiated by the petitioner-senior citizen. Even the proceedings upto the execution of the order were conducted during his life time. Not only that, the proceedings before the High Court in the writ petition and in the LPA filed by the respondent Nos.3 and 4 happened during the life time of the senior citizen. Thereafter, the senior citizen had filed the present petition. However, during the pendency of the present petition, the petitioner-senior citizen has expired. Therefore, first question which is to be addressed by this Court is; whether the petition at all survives to be carried on by all or anyone of the legal representatives of the deceased senior citizen.

With reference to the above proposition, it would be appropriate to have reference to the provisions contained in the Act qua the rights of the senior citizen, which are contained in Sections 2(b), 2(k), 4, 19, 22 and 23, which are reproduced herein below:

“2. Definitions- In this Act, unless the context otherwise requires, -

xxx xxx xxx xxx
(b) *"maintenance" includes provision for food, clothing, residence and medical attendance and treatment;*

xxx xxx xxx xxx
(k) *"welfare" means provision for food, health care, recreation centres and other amenities necessary for the senior citizens.*

4. Maintenance of Parents and Senior Citizens.-

(1) *A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—*

i. parent or grand-parent, against one or more of his children not being a minor;

ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) *The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.*

(3) *The obligation of the children to maintain his or her parent extends to the needs of*

such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

- (4) *Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:*

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

19. Establishment of oldage homes.-

- (1) *The State Government may establish and maintain such number of oldage homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent.*
- (2) *The State Government may, prescribe a scheme for management of oldage homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.*

Explanation.- *For the purpose of this section, “indigent” means any senior citizen who is not having sufficient means, as*

determined by the State Government, from time to time, to maintain himself.

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 a 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.*

23. *Transfer of property to be void in certain circumstances.-*

- (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of*

the transferor be declared void by the Tribunal.

- (2) *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*
- (3) *If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”*

A bare perusal of the above provisions shows that the main right conferred upon the senior citizen under this Act, primarily, is to get maintenance from the children or the persons who are liable to maintain the senior citizen or to ensure his physical or emotional well-being. As a modality to fructify the said right and to enjoy his life at the expense of his own property, other rights have been created by way of enabling the senior citizen to get the transfer of the property made by him in favour of the children annulled, as well as, authorizing the government to make schemes to ensure the protection of the life and property of the senior citizen. The process of eviction of the children from the property is only one of the derivatives from the right conferred upon the senior citizen under Section 23 (2) of the Act. Therefore, in essence, the right conferred upon the senior citizen is in the nature of personal right; except in certain

situations when the exercise of the personal right has already led to creation or restoration of property rights in favour of senior citizen under the ordinary property laws. Needless to say that when the children reside in the house of the parents, they do not acquire any property rights in the said property except to the extent recognized by law. This has been so held by this Court in the judgment rendered in ***CWP No.9919 of 2016 titled as Satwant Singh and another Versus Deputy Commissioner-cum-District Magistrate, U.T. Chandigarh and another, decided on 18.02.2022***. Keeping the above said propositions of law, it is clear that the right of the senior citizen would be in the nature of personal right where the order passed by the authorities under the Act related to only grant of maintenance. In that event the right of senior citizen shall stand exhausted with his death. Therefore, any proceedings would stand abated. Even in a case wherein enforcement of right to get maintenance, the proceedings are initiated by the senior citizen but that has not led to any cancellation of the transfer deed, and the senior citizen dies before cancellation of the transfer deed as such. In that situation as well, it shall be deemed that the personal right of maintenance has not fructified into any property right in favour of senior citizen. Therefore, in these two situations, the petition and the proceedings initiated by the senior citizen shall abate on his death. However, if in the proceedings initiated by the senior citizen the transfer deed is cancelled and thereafter the senior citizen dies, then the property rights vested in senior citizen would again come under the scope of the ordinary property law or the law of succession. Therefore, in that situation, the proceedings initiated by the senior citizen would not abate in case of his death and the affected legal

representatives or successor-in-interest would have a right to continue with the proceedings which were initiated during the life time of the senior citizen. Right to own the property on cancellation of transfer cannot be restricted to be a personal right. Title of property as such is inheritable or transferable.

Another aspect is the proceedings where no cancellation of the transfer of the property was sought or granted by the Tribunal but the eviction order was passed in favour of senior citizen and then the senior citizen dies; as is the case in the present matter. In that situation, the proceedings would not be always within the scope of the personal right of the senior citizen. Since, the possession had come to the senior citizen through the valid process of law during the life time of the senior citizen, therefore, the proceedings for protection of possessory rights of the legal representatives against a third party can definitely be continued; if at all; so contested by the person outside the lineage of the senior citizen. However, in a case where there are only the legal heirs of the senior citizen, the possession of the property which had come to the senior citizen during the process of law would again be deemed to be possession of all the legal heirs. Therefore, unless there is something otherwise to suggest anything else, the order of eviction is nullified so far as the legal heirs of the senior citizen are concerned. Hence, none of the legal heirs can draw extra benefit as against other legal heirs from the factum of transfer of the possession to the senior citizen during the proceedings under the Act. Therefore, the proceedings initiated by senior citizen shall stand abated as against his legal heirs. However, the situation would be different in case the wife of the senior citizen is one of the surviving legal

heirs. Since, the possession of the senior citizen is to be deemed to be the possession of his wife as well, therefore, handing over the exclusive possession to a senior citizen pursuant to an eviction order shall be deemed as handing over the possession to the wife of the senior citizen; as well. Hence; only the wife of the deceased-senior citizen can claim to be in exclusive possession of the property which was handed over to the senior citizen during his life time in execution of an eviction order; and not any other legal representatives of the senior citizen. Therefore, in case of possessory rights, only the wife of the senior citizen would be in a position to continue with the proceedings to retain possessory rights against the other legal representatives of the deceased-senior citizen. For inter-se disputes qua all other legal representatives of the senior citizen, the proceedings shall be deemed to have been abated with the death of the senior citizen. None of them can claim exclusive possession in his favour only by virtue of the possession having got by senior citizen during his life time. Therefore, any dispute inter-se the legal representatives of the senior citizen will have to be raised before the Civil Court by availing their respective legal remedies. Hence, it is held that the present petition stands abated except qua the rights of the wife of the senior citizen, namely, Raksha Rani, who herself is a senior citizen and has now got another independent right to get maintenance from the other legal representatives of the deceased-senior citizen. Hence, only her right of residence in the property; by way of protected possessory rights; is liable to be protected in these proceedings and nothing more.

So far as the merits of the case are concerned, since the proceedings already stands abated qua any inter-se dispute between the

legal representatives, therefore, none of the other legal representatives of senior citizen can raise any claim on the basis of any order passed in the proceedings initiated by the senior citizen. Qua the other legal representatives of the senior citizen, the matter would be taken back to the position as it existed on the date when the senior citizen had initiated the proceedings. Accordingly, they have to raise their claims, substantiate those claims and get decrees for the same; from the Civil Court qua their respective rights. Nothing said in these proceedings or any order passed in these proceedings can be taken either in favour of one of the legal representatives or against anyone of them. Hence, this Court does not find it necessary to delve upon the merits of the case as raised by learned counsel for the parties or qua their respective claims.

In view of the above, the present petition is dismissed as having been abated qua the claim of the legal heirs of the deceased-senior citizen; except his wife, who herself is a senior citizen.

Accordingly, while exercising powers under Article 226 of the Constitution of India, it is ordered and clarified that the wife of the senior citizen, namely, Smt. Raksha Rani, shall continue to occupy the ground floor of the house and she will have a right to reside at the ground floor throughout her life. None of the legal representatives of the deceased-senior citizen will be entitled to evict her from the house in question; for any reason whatsoever. All the Courts under the jurisdiction of this Court are restrained from passing any order of eviction against the wife of the deceased-senior citizen. It is further clarified and ordered that if the house in question is sold by the legal representatives of the deceased-senior citizen, jointly or severally, or transferred in any manner

otherwise, the transferee shall be deemed to have a notice of the liability to maintain the wife of senior citizen, namely, Smt. Raksha Rani, in terms of provisions contained in Section 23 (2) of the Act and he shall be liable to maintain her throughout her life.

Still further, it is clarified that nothing ordered or observed or written in the proceedings initiated by the senior citizen shall be taken in favour or adverse to any other rights of the other legal representatives of the deceased-senior citizen. All the legal representatives shall be at liberty to raise their respective claims and to substantiate them before the Civil Court, in accordance with law.

However, since even the petitioner-senior citizen himself had made a prayer for return of the household items taken into possession during the execution proceedings to the respondent Nos.3 and 4, as per inventory prepared at that time, to which even learned counsel for the petitioner does not have any objection, therefore, the authorities would be at liberty to return those household items to the respondent Nos.3 and 4 as per the inventory.

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

29th SEPTEMBER, 2022
'sandeep'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes