

102 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-27518-2022

Date of decision: December 01, 2022

Khajanchi Singh

....Petitioner

Vs

Deputy Commissioner-cum-Appellate Tribunal, Kaithal & ors..Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Pawan Attri, Advocate for the petitioner

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Rajbir Sehrawat, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for quashing the impugned order dated 08.04.2022 (Annexure P-4), passed by respondent No. 1, whereby the petitioner and his brother were directed to vacate the house in question within two days from the date of receipt of the order and they were also directed to deposit Rs.3,000/- each per month in the bank accounts of respondents No. 2 and 3.

Precisely, facts of the case are that respondents No. 2 and 3/parents approached the Tribunal with the assertions that they are the permanent residents of village Keorak, Tehsil and District Kaithal. They have a residential house measuring 95 square yards. The petitioner had taken over the possession of the said house and had shunted respondents No. 2 and 3 out of the said house after giving them beatings. The petitioner and his two other brothers (*pro forma* respondents No. 4 and 5) had been harassing and giving beatings to the respondents. In one such incident,

respondent No. 3 (mother) had even suffered injury on the fore-head, which led to stitches. Moreover, the petitioner and pro forma respondents No. 4 and 5 had refused to maintain the respondents-parents. Asserting these facts, an application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was moved by the respondents No. 2 and 3 for getting maintenance from all their sons and for getting back possession of the house in question by evicting the petitioner. On the said application, the authority summoned the petitioner and respondents No. 4 and 5 herein. However, despite several notices, they did not appear before the Tribunal. Accordingly, an ex-parte order dated 09.02.2021 was passed and the petitioner and his brothers/pro forma respondents No. 4 and 5 were directed to pay Rs.1,500/- each per month to the respondents. Since the awarded maintenance amount was very less and no order qua vacating the house in question was passed, therefore, the respondents/parents, filed the appeal against the order passed by the Tribunal. Allowing the said appeal, the order dated 08.04.2022 (Annexure P-4) has been passed by the appellate authority, whereby eviction of the petitioner and his brother have been ordered and they have been directed to deposit Rs.3,000/- each per month in the bank accounts of respondents No. 2 and 3/parents before the 10th day of every month. Hence, the present writ petition, challenging the said order.

Arguing the case, counsel for the petitioner has submitted that the petitioner was wrongly proceeded against ex-parte vide order dated 09.02.2021. The petitioner was never served with the notice by the Tribunal. Counsel has further submitted that the house in question is within the *lal dora* of village Keorak, therefore, the respondents cannot claim to be

owners and, therefore, the petitioner could not have been ordered to be evicted from the house. Counsel for the petitioner has also submitted that a village survey was conducted, in which the petitioner is shown to be the owner of the said house, therefore, the respondents-parents had no right to get the eviction order passed against the petitioner. It is also submitted by counsel for the petitioner that the house in question is the only residential house of the petitioner. Hence, it is not justified to order eviction of the petitioner.

After having heard counsel for the petitioner and after having perused the case file, this Court does not find any thing wrong or unjust in the impugned order, warranting intervention. So far as the proceedings against the petitioner being ex-parte is concerned, it is categorically mentioned in the impugned order itself that several notices were sent to the petitioner and despite that; the petitioner had chosen not to appear before the authority to contest the proceedings. Now, the petitioner cannot take a somersault and start questioning the validity of the said order. Therefore, this Court does not find anything wrong in the petitioner being proceeded ex parte. Although counsel for the petitioner has also submitted that the house in question is within the *lal dora* of the village, therefore, the respondents-parents cannot claim ownership of the said house, however, it is not even in dispute that the said village house belongs to the family of the petitioner but it was not purchased or acquired by the petitioner by any other mode of transfer of ownership. Needless to say that the parents of the petitioner had come in the world prior to the petitioner, therefore, if there is any ownership of the house within the family of the petitioner and the

respondents, then obviously, it has to be with the parents of the petitioner. As against their children, the parents can definitely claim a title over the house in question. Moreover, under the Act, the senior citizen is entitled to protect any interest in property. Therefore, even if the parents were not the recorded owners, still, they can protect their possession. The petitioner cannot claim ownership over the house in question by any means, unless he pleads that the said house was either constructed or created by himself. However, no such pleading has ever been raised by the petitioner that the house in question was either constructed or created by him only. It is the positive case of the respondents-parents; which has gone uncontested, that they are the owner of the house in question. Therefore, the petitioner cannot, now, question the assertions made by the respondents without their being any evidence in his favour. Even the argument that this is the only residential house available to the petitioner is of no significance because the respondents/parents are having the first right to reside in the said house, being the old age parents. If the petitioner is not having any other accommodation under his ownership then it is for him to arrange for another accommodation for himself. For the convenience of the petitioner, the parents cannot be deprived of their right to live in their residential house.

In view of the above, finding no merits, the present writ petition is dismissed.

(Rajbir Sehrawat)
Judge

December 01, 2022
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No