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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7441/2021, CM APPLs. 23432/2021 & 12588/2022**

SMT. SARASWATI DEVI Petitioner
Through: **Mr. Vineet Rana, Adv.**

versus

SH. GANGA RAM SHARMA & ORS. Respondents
Through: **Mr. Manish Sangwan, Adv.**
Mr. Shashi Pratap Singh, Ms.
Abhilasha, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER
23.09.2022

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1. The petitioner who is the widowed daughter-in-law of the senior citizens has instituted these proceeding challenging the orders dated 20 October 2020 passed by the District Magistrate and 09 July 2021 passed by the Divisional Commissioner. In terms of the former order, the District Magistrate while taking cognizance of the complaint made by the senior citizens had proceeded to frame directions for the eviction of the petitioner. That order has come to be confirmed by the Divisional Commissioner in appeal.

2. The senior citizens are stated to have petitioned the District Magistrate and invoked the provisions of the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007**¹ asserting that they have been victimized by the petitioner who used to ill-treat them and had also refused to maintain them. They had alleged in the complaint that the deceased

¹ The 2007 Act



husband of the petitioner had gone into a state of depression on account of alleged indiscretions committed by the petitioner while they were married. It was further alleged that the marital relations had broken down and the husband of the petitioner ultimately passed away on 17 December 2013. They had further alleged that the petitioner used to not only torture and mentally harass them, she was also prone to using abusive language. They had further asserted that the petitioner used to harass them staking a claim in the property and threaten that she would ensnare them in criminal cases. Ultimately and faced with the aforesaid, they are stated to have abandoned the house and shifted in with their elder son.

3. During the course of proceedings before the District Magistrate, the Sub-Divisional Magistrate is stated to have been tasked with undertaking the requisite enquiry as contemplated under the 2007 Act read with the **Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009**². In the first report of 13 March 2018, it was noted that the petitioner had alleged that the senior citizens along with the elder son essentially wanted to throw her out of the property and deprive her of her rights. In the second report which was drawn and submitted on 6 August 2019, the authority had noted down the statement of the senior citizens that they were forced to vacate the house on account of the negligent behavior of the petitioner. It also came to be recorded in this report that the neighbors had corroborated the statement of the petitioner who had contended that apart from her in laws, she had only one married elder sister as a close relative. Yet another report was placed on the record of the proceedings pending before the District Magistrate on 11 August 2020 where the senior citizens are reported to have asserted that the petitioner used to quarrel with

² The 2009 Rules



them incessantly on the issue of partition of the property and irked by their desire to bequeath the entire property to the younger daughter-in-law.

4. Upon taking into consideration the entire material which stood placed on the record, the District Magistrate firstly held that it was the senior citizens who must be recognized to be the owners of the property in question. It was further observed that the conduct of the petitioner in the courtroom itself appeared to border on the “*dramatic*”. Taking into consideration, the mental disturbance being caused by the petitioner to the senior citizens, the District Magistrate came to conclude that they must be conferred the right to peacefully live out their remainder years in their own property. On an overall consideration of the aforesaid, the authority proceeded to issue directions for the petitioner to vacate the property.

5. The petitioner is thereafter stated to have filed an appeal where the defenses which were taken before the District Magistrate were reiterated. The Divisional Commissioner while considering the aforesaid pleas as well as the reliance placed by the petitioner on the judgement of the Supreme Court in **S. Vanitha versus Deputy Commissioner, Bengaluru Urban District and Ors.**³ found that no justification existed for interfering with the order passed by the District Magistrate. Insofar as the decision in **S. Vanitha** is concerned, the Divisional Commissioner noted that the same would have no application to the facts of the present case since this was not a cause where a daughter-in-law was asserting a right of residence on account of matrimonial discord. The Divisional Commissioner also alluded to the unsavory incident which is stated to have occurred before the District Magistrate while he was considering the original complaint. It ultimately

³ 2020 SCC OnLine SC 1023



proceeded to uphold the order of the District Magistrate taking into consideration that the senior citizens had been compelled to leave their own house and since the mother- in-law was suffering from the last stages of cancer, the ends of justice would warrant the petitioner being asked to vacate the property.

6. Learned counsel appearing for the petitioner had principally argued that since the premises in question would constitute a “*shared household*”, she would be entitled in law to reside therein in light of the dictum laid down by the Supreme Court in **S. Vanitha**. He also drew the attention of the Court to the various reports which had been submitted in the proceedings before the District Magistrate to highlight the fact that no evidence of ill-treatment or harassment had come to be established. In view of the aforesaid, it was his submission that the orders passed and impugned here are liable to quashed and set aside.

7. Countering the aforesaid submissions, learned counsel appearing for the respondent Nos. 1 and 2 argued that the reliance placed on **S. Vanitha** is wholly misconceived since the premises cannot possibly be viewed as a shared household bearing in mind the fact that the petitioner is the widowed daughter-in-law. Learned counsel also referred to the allegations leveled by the senior citizens and which had, according to them, caused their deceased son to go into depression. It was also highlighted that the two authorities had concurrently found that the petitioner had mentally tortured the senior citizens, failed to take care of them and the admitted fact that they were ultimately constrained to leave their own house. In view of the aforesaid, it was his submission that the challenge raised lacks substance and the writ petition is consequently liable to be dismissed.



8. For the purposes of evaluating the rival submissions which have been noted above, it would be apposite to briefly advert to some of the salient provisions contained in the 2007 Act and the 2009 Rules. As is manifest from a reading of the Preamble of the 2007 Act, the said enactment came to be promulgated to guarantee and safeguard the welfare of parents and senior citizens. Section 5 of the aforesaid enactment enables a senior citizen to apply for maintenance from his children and relatives. In terms of Section 9, the Tribunal upon being satisfied that the charges of neglect and refusal to take care of the needs of the senior citizen are established, it may proceed to frame directions requiring the children and relatives of the senior citizen to pay a monthly allowance. The Act in terms of Section 11 thereof further empowers the Tribunal to enforce orders of maintenance that may be passed.

9. The 2009 Rules came to be promulgated in order to give effect to the provisions of the Act. Rule 22(3) of those Rules which deals with the power of the Tribunal to evict, is extracted hereinbelow:-

“22. Action plan for the protection of life and property of senior citizen:

[(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents, –

(i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate(DM) of his district for eviction of his son and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.

(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of



the case within 15 days from the date of receipt of such application.

(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/ DM for final orders within 21days from the date of receipt of the complaint/application.

(iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/ DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The notice shall—

- (a) specify the grounds on which the order of eviction is proposed to be made ; and
- (b) require all persons concerned, that is to say, all persons who are ,or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof.

(2) Eviction Order from property/residential building of Senior Citizens/Parent. —



- (i) If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated;
- (3) Enforcement of Orders,
 - (i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;
 - (ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.
 - (iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.
 - (iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.
- (4) Appeal



- (i) The appeal against the order of Dy. Commissioner/DM shall lie before Divisional Commissioner, Delhi.
- (ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

10. The Court firstly takes up the issue relating to the applicability of the decision in **S. Vanitha**. It may, at the outset be noted that while certain allegations have been leveled with respect to marital discord, no proceedings under the **Protection of Women from Domestic Violence Act, 2005**⁴ were ever instituted by the petitioner. Undisputedly, there is also no order of protection made under the aforesaid enactment in terms of which the right of the petitioner of residence in the shared household may be countenanced and recognised. **S. Vanitha** was a decision which principally dealt with situations where competing interests and the rights and liabilities of parties as flowing from the PWDV Act and the 2007 Act may come before the Tribunals constituted under the 2007 Act. **S. Vanitha** exposits the exercise of balancing of interests that must be undertaken by Tribunals in case such a composite dispute comes to be laid before them. The quintessence of **S. Vanitha** is evident from the following extracts of that decision: -

“38. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the

⁴ The PWDV Act



Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

39. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups



who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.”

11. The Court notes that in the absence of any protective order of residence and an allegation having been leveled either against the husband or the senior citizens, the reliance placed on **S. Vanitha** appears to be clearly misplaced. Regard must also be had to the fact that the concept of a shared household as provisioned for under the PWDV Act, is essentially to secure the right of residence of an estranged wife while litigation is ongoing. The provisions in that regard incorporated in that enactment are essentially to ensure that the wife is not left in a state of destitution and thrown out of the marital home to fend for herself. Those principles cannot be countenanced to extend even to situations where the marriage itself may have come to be annulled, dissolved or where it no longer subsists. The Court bears in mind the admitted fact that the husband of the petitioner has unfortunately passed away and that no issues were borne out of that marriage. Viewed in light of the above, the Court finds that the reliance placed on S. Vanitha is clearly misplaced.

12. Having further conferred due consideration on the material that was placed before the District Magistrate as well as the Divisional Commissioner, the Court notes that both the authorities had concurrently found substance in the allegations of mental torture, ill-treatment and harassment as made against the petitioner here. The findings returned by the aforementioned two authorities had also alluded to the fact that it was perhaps the asserted claim of the petitioner over the property which may have been the cause for the disputes and acrimony between the parties. In



any case, the facts as recorded by the two authorities establishes that ultimately the senior citizens were constrained to abandon their own house and move to the residence of the elder son. In the entire course of proceeding as they unfolded before the two authorities, the petitioner failed to lay any evidence or establish that she was dutifully looking after the interest of the senior citizens or taking care of them.

13. In view of the aforesaid facts, this Court is of the considered opinion that the view as taken by the authorities while considering the complaint made under the 2007 Act warrants no interference by the Court under Article 226 of the Constitution.

14. The writ petition along with pending applications consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

SEPTEMBER 23, 2022/*neha*