



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th OCTOBER, 2022

IN THE MATTER OF:

+ **LPA 525/2022 & CM APPL. 40226/2022**

PAWAN KUMAR AND ORS

..... Appellants

Through: Mr. L. D. Joshi, Advocate

versus

DIVISIONAL COMMISSIONER DEPARTMENT OF REVENUE
GOVT OF DELHI AND ORS

..... Respondents

Through: Mr. Arun Panwar, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The instant Appeal is directed against the Order dated 29.07.2022 (*hereinafter referred to as 'the Impugned Order'*), passed by the learned Single Judge of this Court in W.P. (C) 10736/ 2022. *Vide* the Impugned Order, the learned Single Judge has dismissed the Writ Petition refusing to interfere with the Order dated 30.06.2022 passed by the Respondent No. 1 herein, thereby confirming the Order of the learned District Magistrate (West) dated 24.09.2018 whereby the learned District Magistrate (West) had directed the Appellants herein to vacate the house bearing No. T-688, Gali No. 21, near Hanuman Mandir, Baljit Nagar, New Delhi – 110008 (*hereinafter referred to as the 'property in question'*).

2. The brief facts leading to this instant LPA are as under :



- a. That the Appellants No. 1 & 3 and Respondent No. 3 are the sons of the Respondent No. 2. Appellant No. 2 is the wife of Appellant No. 1. The Appellants herein are aggrieved by the Impugned Order and Order of Respondent No. 1 dated 30.06.2022 passed in Appeal No. 72/2019/1228-1232 under Rule 22 (3) (4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (*hereinafter referred to as 'the Rules'*).
- b. It is stated that the Respondent No. 2 and his sons along with their families have been residing in separate portions of the property in question, as demarcated between the families. It is stated that in 1995, the Respondent No. 2 gave one portion of the house to Appellant No. 1, and gave him liberty to construct and develop the area, for his residence. Appellant No. 2, i.e. wife of Appellant No. 1, constructed three floors where they live with their family. Appellant Nos. 1 & 2 live in their demarcated area of the property without interfering in the property of the other parties herein. Respondent No. 3 and his family are residing with Respondent No. 2. After allotting the property to Appellant No. 1, Respondent No. 2 had also allotted a portion of land in the subject property to his other sons.
- c. It is stated that the Appellants have been residing in their portion of the subject property for the past 24 years and the same can be substantiated on the basis of the electricity and water connections taken on their names.



- d. It is stated that on 04.03.2003, a settlement agreement was entered into between the parties, duly witnessed by 5 members of their locality. In terms of the said settlement, Respondent No. 2 has given the southern part of the property, till gate no. 1, to Appellant No. 3 herein and Appellant No. 3 had constructed and developed the said area with his own money for his residence. *Vide* the family settlement dated 04.03.2022, relevant portions of the subject property were demarcated to the Appellants for their use.
- e. It is stated that in 2018, Respondent No. 2, a senior citizen of about 86 years of age, filed an Eviction Petition, being. EVICTION (54)/ DCW/ 2018 under Section 5 read with 2(F) of the Maintenance and Care of Senior Citizens and Parents Act, 2007 (*hereinafter referred to as 'the Senior Citizens Act'*) before the District Magistrate (West), seeking eviction of his two sons, i.e. Appellants No. 1 & 3. The eviction petition was filed on the ground that Appellants No.1 & 3 were not maintaining and taking care of their old father. *Vide* Order dated 24.09.2018, District Magistrate (West) had directed the Appellants herein to vacate the subject property on the ground of ill-treatment and non-maintenance of Respondent No. 2 herein.
- f. Aggrieved by the Order dated 24.09.2018, passed by the District Magistrate, the Appellants herein filed an appeal before the Divisional Commissioner, who is the Appellate Authority under the Rules. Before the Divisional Magistrate, it was contended that the property in question, from which



the Appellants herein are sought to be evicted, is neither a self-acquired property of the Respondent No.2 nor is it ancestral property of the Respondent No.2 and, therefore, Appellants cannot be evicted from the property. Learned Divisional Magistrate held that the issue regarding the ownership/title of the property would be decided in a civil suit by the Civil Courts. Learned Divisional Magistrate, after taking into consideration the fact that the Respondent No.2 herein, who is above 80 years of age, is being ill-treated by his children and daughter-in-law and is being dragged into civil litigations and is being harassed by them, upheld the Order of the District Magistrate directing the Appellants herein to vacate the property in question.

- g. Thereafter, the Appellants herein approached this Court by filing W.P.(C) 10736/2022 challenging the Order dated 30.06.2022 passed by the Respondent No.1 herein. The learned Single Judge, *vide* Order impugned herein held that the purpose of the Senior Citizens Act is aimed at ensuring that the senior citizens are able to enjoy their twilight years in peace without facing the spectre of continuous bickering and quarrels amongst siblings which would necessarily disrupt their tranquil existence that the legislation seeks to protect.
- h. It is this Order which has been assailed in the instant Appeal.

3. Mr. L. D. Joshi, learned Counsel for the Appellants, had laid great emphasis on the fact that the application of Respondent No.2 herein could not have been entertained for the reason that the property in question does



not belong to him. He states that the property in question is neither self-acquired or ancestral property and the Respondent No.2 himself is an encroacher/trespasser on the property in question. He further contends that the Respondent No.2 is earning a substantial amount of money through rents and, therefore, he is not dependent on the Appellants herein for his survival. He further states that the Appellants herein have spent money in development of the property in question and, therefore, they could not have been asked to vacate the property in question and that too in a summary proceeding.

4. *Per contra*, Mr. Arun Panwar, learned Counsel appearing for the Respondent No.2, contends that the sons of the Respondent No.2 have made it extremely difficult for him to continue to live peacefully in the property in question. He states that the Respondent No.2 is being harassed and humiliated by the family of the Appellants herein. He states that he has been a constant victim of bickering by the Appellants and their wives. He states that the decision of the Authorities below and the learned Single Judge are in consonance with the aims and objectives of the Senior Citizens Act and, therefore, the Orders do not require any interference by this Court.

5. Heard the learned Counsels appearing for the parties and perused the material on record.

6. The Senior Citizens Act was promulgated to provide for maintenance and welfare of senior citizens, to ensure that the children/grand-children do not neglect their parents, push them to penury and/or desert them. The purpose of the Act was to provide a speedy remedy for senior citizens and for this purpose Tribunals were constituted. Under Section 8 of the Senior Citizens Act, these Tribunals have the power to conduct summary proceedings. Section 32 of the Act gives powers to the State Government to



frame rules for fulfilling the object of the Act. In exercise of the powers contained under the Act, Government of Delhi has brought out Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009; Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment Rules 2016) & Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment Rules 2017). Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 has been amended by Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment Rules 2016) and Rule 22(3) of the Rules has further been amended by Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment Rules 2017), the same reads as under:

“22. Action plan for the protection of life and property of senior citizens. -

.....

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

(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such 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 21 days from the date of receipt of the complaint/application.*

(iv) *The Deputy Commissioner/ District Magistrate during summary proceedings for the protection of senior citizen/parents shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/ District Magistrate 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 property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate 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 issue thereof.”

7. A perusal of the abovementioned rules show that in Delhi, a senior citizen can make an application before the Deputy Commissioner/District Magistrate for eviction of his/her son/daughter/legal heir from property of



any kind whether movable or immovable, ancestral or self acquired, tangible or intangible, including his rights or interests in such property on account of ill-treatment. Rule 22(3)(iv) of the abovementioned Rules provide that if the Deputy Commissioner/ District Magistrate, during the summary proceedings, is of the opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and is/are ill treating him/her and yet is occupying the property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted from such property then the Deputy Commissioner/District Magistrate shall issue 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. The Rules further provide that after enquiry, the children can be evicted.

8. Respondent No.2 herein filed an application under the Senior Citizens Act contending that his two sons and daughter-in-laws are constantly harassing and humiliating him and that he fears for his life and, therefore, they should be evicted. The District Magistrate, after considering all aspects of the case, came to the conclusion that the fears expressed by the Respondent No.2 herein, who is above 80 years of age, are genuine and for his welfare it is necessary that the Appellants herein are evicted from the property in question.

9. As rightly pointed out by the authorities below and by the learned Single Judge of this Court the exercise under the Senior Citizens Act is not to ascertain the title of the property in question. The enquiry is limited to see as to whether the senior citizen is being harassed by his children or not and if the senior citizen is harassed then for his/her welfare it is necessary that



the children/legal heirs are asked to evict the property. The proceedings which are summary in nature are not to decide the title of the property. In view of the above, the principle contention of the Appellants herein that the Respondent No.2 is not the owner of the property in question is insignificant. Any right which the Appellants want to establish has to be established under the Civil Code by filing a suit before the Civil Court.

10. This Court, at this moment, is not going into the question as to whether the Senior Citizens Act provides for over-riding a decree or a finding of the Civil Court regarding the title of the property. The Appellants have not been able to show any semblance of right, title or interest superior to that of Respondent No.2 over the property in question and in absence of any such assertion, the Orders of the authorities below and the learned Single Judge of this Court cannot be found fault with.

11. A Single Bench of this Court in its Order dated 08.07.2022 in **W.P. (C) 9757/2022** titled as Mr. Neeraj Bhasin v. Divisional Commissioner, Delhi & Ors, which was consequently upheld by a Division Bench of this Court *vide* Order dated 25.08.2022 in LPA 446/2022, has observed as under:

“9. From the recordal of submissions as noted above, it is manifest that the parties have raised various questions touching upon their respective civil rights claimed in relation to the property in question. However, those questions, in the considered opinion of this Court, at this stage if not irrelevant must be viewed as subservient and secondary to the principal consideration of proceedings under the Act, namely, the security and maintenance of a senior citizen. It would be apposite to extract the Statement of Object and Reasons of the Act which reads thus: -



“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;



(d) setting-up of old age homes in every district.

4. The Bill seeks to achieve the above objectives.”

10. The Court also bears in mind the following pertinent observations as were entered in Arshiya Gulati (Through: Next Friend Mrs. Divya Gulati) & Ors. v. Govt. of NCT of Delhi & Ors., [261 (2019) DLT 373]:-

“60. Now the question is whether the State Government could have formulated a summary procedure for eviction. We must bear in mind the objective for which the Parliament has enacted the Act, that is because of withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support which clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection of the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, a need was felt to have simple, inexpensive and speedy mechanism for parents / senior citizens to claim maintenance. The Act also provide for protection of the life and property of the senior citizens / parents. The “protection of property” must be understood to mean where a senior citizen retains the property in his name and possession for his welfare and well being.



61. So, the objective of the Act being, to provide inexpensive and speedy procedure for the protection of life and property of the senior citizens from the children / legal heirs, who are expected to maintain parents / senior citizens by providing the basic amenities and physical needs but refuse or fail to maintain / provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a ground for parents / senior citizens to seek eviction of children / legal heir from the property, which is the only way for them to seek protection of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their children / legal heirs. Further, a senior citizen cannot knock the door of civil Court to fight a legal battle to obtain the possession of the property as the jurisdiction of the Civil Court is barred under Section 27 of the Act. In this regard, we may refer to the judgment of the Punjab and Haryana High Court in the case of Justice Shanti Sarup Dewan, Chief Justice (Retd.) and Anr. (supra) wherein in para 37 it is held as under:

“37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an over-riding effect qua any other enactment in view of Section 3 of the said Act. In fact, the Civil Court has



been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus LPA No. 1007 of 2013 (O&M) required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No.1. In fact, that is the very objective of respondent No. 7.”

11. As is evident from the above, the principal objective of the Act is to make effective provisions for the maintenance and welfare of parents and senior citizens. These are senior citizens who are left to fend for themselves all alone in the dusk of their lives, have been exposed to years of emotional neglect and receive no financial or emotional support from their children and heirs. Therefore, Courts and authorities administering the provisions of the Act are obliged to confer paramount consideration on these issues. Regard must also be had to the fact that the word “property” under the Act is defined to mean property of any kind whether moveable or immoveable, ancestral or self-acquired and includes rights or interests in such property. It would therefore clearly follow that a senior citizen may claim a right of exclusive residence even though he or she may be only able to establish a “right” or “interest” in such property even if such right or interest be lower than an



exclusive ownership right. Ultimately, the authorities under the Act are obliged to take into consideration the mental and physical well-being and security of the senior citizens and pass appropriate orders of protection bearing in mind the predominant purpose of the Act.”
(emphasis supplied)

12. In view of the above, this Court is not inclined to interfere with the findings of the learned Single Judge that for peaceful existence of the Respondent No.2, who is fearing for his life, it is necessary for the Appellants herein, who have not been able to prove any right superior to the right of the Respondent No.2 on the property in question, to evict the premises. The findings arrived at by the learned Single Judge are in consonance with the Senior Citizens Act which has been brought for the welfare of the senior citizens. Going into the nature of right/title/interest of the parties in the property in question, at this juncture, would be counter-productive for the objectives of the Senior Citizens Act. Any right/title/interest in the property in question can be established by the Appellants herein only through proper proceedings and by adducing evidence in a Suit before the Civil Court.

13. Accordingly, the Appeal is dismissed along with the pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

OCTOBER 14, 2022

Rahul