

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

Date of decision: 10th APRIL, 2023

IN THE MATTER OF:

+ **LPA 583/2022**

SMT. SARASWATI DEVI

.... Appellant

Through: Mr. Kamal Mohan Gupta, Mr. Amber Shehbaz Ansari, Mr. Gorakh Nath Yadav and Mr. Moh. Aslam Khan, Advocates.

versus

SH. GANGA RAM SHARMA & ANR

..... Respondents

Through: Mr. Manish Sangwan, Advocate along with Respondent No.1 in person.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present LPA has been filed seeking setting aside of the Order dated 23.09.2022 passed by the learned Single Judge in WP (C) 7441/2021. Through this impugned Order, the Ld. Single Judge has upheld and confirmed the order dated 09.07.2021 passed by the Ld. Divisional Commissioner/Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act 2007 ("Senior Citizens Act, 2007") and its amended rules in Appeal no. 267/2020 which in turn rejected the appeal of the Appellant herein preferred against order dated 20.10.2020 passed by the Ld. District Magistrate who took cognizance of the complaint and allowed the application filed by the Respondent No. 1 herein under the Act, ordering for eviction of the Appellant from property at Plot No.8-A, Block- A-1, Venoba Bhawe Enclave, Main Bahadur Garh Road, Nazafgarh, Delhi-

110043 (“disputed property”). The Appellant herein is the widowed daughter-in-law of the Respondent No. 1. This appeal, at present, is in the third round of litigation.

2. Shorn of details, the facts leading to the present LPA are as follows:-

- i. The Appellant herein, Saraswati Devi, is the widowed daughter-in-law of Sh. Ganga Ram Sharma (Respondent No. 1 herein). The Appellant consummated her marriage with the Respondent’s younger son namely, Sh. Bhawani Shankar Sharma in 2004.
- ii. In 2010, the parents-in-law sold the ancestral property at Tri Nagar, and acquired the present property from the sale proceedings of the ancestral property.
- iii. The disputed property at Nazafgarh which is also the Appellant’s matrimonial home, is described to consist of two floors, with two rooms, a kitchen and a bathroom on each floor. It is stated that the parents-in-law are in occupation of the second floor, while the appellant herein and her deceased husband resided in one of the rooms on the ground floor. The Appellant’s husband died of multiple organ failure on 17.12.2013.
- iv. It appears that after the Appellant’s husband’s death, relations between the parties deteriorated and turned acrimonious. The Respondent continued to reside on the ground floor in the disputed property. With time, it is stated that disputes between both parties became un-resolvable on account of the discord between them.
- v. On 04.02.2019, the Respondent No. 1 herein, filed an application before the Ld. District Magistrate being the designated authority under the Maintenance and Welfare of Parents and Senior Citizens Act and Rule 22(3)(i) of its accompanying rules as amended from

time to time, for getting his daughter in law evicted from the property in question on the grounds ill treatment and non maintenance. The Respondent in the complaint has stated that him along with his family were being subjected to constant mental and physical torture, and harassment, at the hands of the Appellant herein.

- vi. Ld. District Magistrate (South West) took cognizance of the application in case no. 1/5/2019 and initiated summary proceedings. *Vide* Orders dated 16.05.2019 and 03.07.2019, the SDM, HQ, was directed to conduct enquiries into the matter and submit a report with their findings. The SDM, HQ duly submitted enquiry reports after conducting enquiries at the location of subject property and returned his findings in submitted a report in the enquiry, after visiting the suit premises and conducting enquiries.
- vii. Thereafter, the SDM submitted another enquiry report as directed by the Ld. District Magistrate, wherein it is opined that the property be equally divided between the Appellant herein and the Respondents, to avoid any conflict in the future.
- viii. The Ld. District Magistrate framed directions for eviction of the Appellant herein *vide* an order dated 22.10.2020, on the grounds of non-maintenance and ill treatment of the Respondent in-laws. Further, the Ld. District Magistrate noted that Appellant was the cause of great mental disturbance to her parents-in-law and routinely issued threats of making out a false case of harassment, and has thereby caused her parents-in-law to leave their self-acquired subject property. The order also observes that the

Appellant's ulterior motive is to get the suit property transferred under her own name.

- ix. Aggrieved by the order evicting the appellant, passed by the District Magistrate, the appellant preferred an appeal bearing no. 267/2020 before the Principal Secretary-cum-Divisional Commissioner being the Appellate Authority as per the Delhi Maintenance Rules. Before the Appellate authority, it was contended that the order directing eviction of the Ld. District Magistrate failed to consider that the disputed property had been acquired from sale proceeds of the ancestral property, and the Appellant being a legal heir of her deceased husband was entitled to her deceased husband's share in the property.
- x. In the course of appeal proceedings, the Ld. Divisional Commissioner considered the old age of the Respondent and their ailing health. The Ld. Divisional Commissioner also noted that the Appellant subjected her parents-in-law to constant mental and physical harassment and torture by issuing threats from time to time, to allegedly get the disputed property in her name, which forced the Respondent herein to move out of his own self acquired property. On the question of the disputed property, the Ld. Divisional Commissioner observed that the nature of property would have no bearing in an application for eviction of the applicant's son, daughter or legal heirs. As to the question rights of the Appellant herein for the use or possession of the disputed property was left open to be decided in civil suit proceedings.
- xi. Thereafter, the Appellant herein filed W.P. (C) 7441/2021 seeking quashing of the eviction order of the Ld. District Magistrate dated

20.10.2020 and the order of the Ld. Divisional Commissioner dated 09.07.2021 upholding said eviction order. The Appellant (Petitioner therein), at the outset, denied the allegations of mental and physical abuse made out in the complaint and submitted that it was the parents-in-law instead who would constantly subject her to abuse for the entire duration of her matrimonial life and even after. It was the case of the Appellant that the disputed property was not self-acquired as claimed by the Respondent herein. The disputed property which was acquired from joint family funds would qualify as a “shared property” as per its definition under Section 2(s) of Protection of Women from Domestic Violence Act, 2005 (“Domestic Violence Act, 2005”), and being such, the Appellant’s rights, *inter-alia*, to reside in such property could not be deprived from her. Reliance was placed on Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414 and it was submitted that Section 2(s) read with Sections 17 and 19 of the Domestic Violence Act, 2005 grants entitlement in favour of a woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.

- xii. The Ld. Single Judge *vide* the impugned order in WP (C) 7441/2021 had observed that the orders of the Ld. District Magistrate and that of the Ld. Divisional Commissioner had returned concurrent findings on the veracity of allegations of torture, mental harassment and ill treatment set out by the Respondent against the Appellant herein. Further, the Ld. Single Judge held that property disputes notwithstanding, the Appellant herein in the tribunal proceedings failed to submit any evidence to

prove that the Appellant had dutifully taken care of her senior citizen parents-in-law, and in light of this didn't interfere with terms of the eviction order dated 20.10.2020 or the order of the Ld. Divisional Commissioner dated 09.07.2021 confirming the eviction of the Appellant herein from the disputed property.

xiii. The present appeal came up for hearing before this Court on 03.11.2022 and it was suggested by the Court that some arrangements can be made for the Appellant to stay separately and that the Respondent would be able to pay for one year's rent so that some alternate arrangements can be made. Learned Counsel for the Appellant sought for a day's adjournment and the matter was listed to 04.11.2022. On 04.11.2022, the matter was passed over on the first call and on the second call in the afternoon, the following Order was passed by this Court:

1. The present LPA arises out of an Order dated 23.09.2022 passed by the learned Single Judge in W.P.(C) No.7441/2021.

2. The facts of the case reveal that the Appellant herein is a widowed daughter-in-law of Respondent No.1/Senior Citizen. An application under the Delhi Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was preferred by Respondent No.1 herein and an Order dated 22.10.2020 was passed by the District Magistrate, directing the daughter-in-law to vacate the premises in question.

3. The order passed by the District Magistrate was affirmed by the Divisional Commissioner vide Order dated 09.07.2021, against which the daughter-in-law preferred a writ petition bearing W.P.(C) No.7441/2021 and the learned Single Judge dismissed the Writ Petition vide Order dated

23.09.2022.

4. *The fact remains that the daughter-in-law has to move out of the house belonging to Respondent No.1/Senior Citizen. It has also been brought to the notice of this Court that during the pendency of the Writ Petition, the mother-in-law of the Appellant herein passed away and it is now only the old father-in-law who wishes to reside in the premises in question.*

5. *Efforts were made by this Court to unite the father-in-law and daughter-in-law, and they were requested to live together in the same premises. However, they are not ready to stay together in the same premises. The Appellant herein has finally agreed that in case a sum of Rs.2,500/- per month is paid to her for alternative accommodation for a period of one year, she would be ready to withdraw the present LPA.*

6. *It has also been stated by the Appellant herein that rent for a period of one year be paid to her in advance and that she shall also have liberty to select the premises of her choice. Resultantly, she prays for withdrawal of the present LPA subject to the aforesaid terms and conditions.*

7. *The Respondent/father-in-law, who is present in Court has accepted the same and undertakes to transfer a sum of Rs.30,000/- to the account of the Appellant. Let the amount be transferred within 15 days and, thereafter, within 15 days, the Appellant shall vacate the premises in question.*

8. *The present order has been passed with the consent of the parties and is without prejudice to the rights and contentions of the parties.*

9. The petition is disposed of as withdrawn, with the aforesaid observations. Pending applications, if any, stand disposed of.

xiv. Thereafter, an application being CM.APPL. 56519/2022 was filed on behalf of the Appellant for recalling of the Order dated 04.11.2022 passed by this Court on the ground that no instructions had been given by the Appellant to her Counsel and the Order was passed without any authority. This Court on 23.12.2022 recalled the Order dated 04.11.2022 and the appeal was heard finally on merits.

3. Learned counsel for the Appellant, at the outset, submits that the complaint under the Senior Citizens Act, 2007 was filed by the Respondent herein with an ulterior motive to oust the Appellant herein from the disputed property, which according to the Appellant is not a self-acquired property of the Respondent and being as such, the Appellant contends that neither the Ld. District Magistrate nor the Ld. Divisional Commissioner appreciated the Appellant's statutory right under provisions of the Domestic Violence Act, 2005 to reside on the disputed property. It was further argued that the statutory right of residence in the Domestic Violence Act, 2005, which was sought to be stifled by getting the Appellant evicted from the subject property, is derived from the right of residence of a wife in a shared household defined under Section 2(s) and Section 19 of the Domestic Violence Act. Heavy reliance was placed on the decision of the Apex Court in S. Vanitha v. The Deputy Commissioner, **2020 SCC OnLine 1023**, to submit that the tribunal in adjudicating a composite dispute such as the present one, failed to consider that competing interests of parties claiming reliefs under the Domestic Violence Act and the Senior Citizens Act ought to have been given due consideration and be balanced in a way so as not to

deprive the Appellant herein of her statutory right of shared residence as per Sections 2(s) read with 17 of the Domestic Violence Act. It was also held by the Apex Court that Section 3 of the Senior Citizens Act could not be construed to nullify the right of a woman to a shared household under Section 17 of the Domestic Violence Act. Reliance was placed on paragraph Nos. 38 and 39 of S. Vanitha (supra) to submit that the Appellant who has been residing in her matrimonial home cannot be ousted in summary proceedings initiated under the Senior Citizens Act, as allowing the provisions of Senior Citizens Act to prevail over and override the effect of provisions of Domestic Violence Act, 2005 would defeat the purpose for which the parliament enacted the latter legislation. It is therefore submitted that the Domestic Violence Act, 2005 being in the nature of a social welfare legislation must be read and construed harmoniously with the Senior Citizens Act, and the competing rights of both parties must be given due consideration.

4. The Senior Citizens Act, 2007 was enacted with the objective to provide a mechanism to secure maintenance and ensure welfare of senior citizens left bereft of support, financial or otherwise. The Act being a social legislation, ought to be construed liberally and its provisions should be implemented in light of the aims and objectives with which the Act was enacted, which for all intents and purposes in the immediate case herein is to ensure that a senior citizen without any semblance of support is not further deprived of his property and so that there is no threat to their life.

5. The Government of Delhi through enactment of Delhi Maintenance and Welfare of Parents and Senior Citizens Amendment Rules, 2016, incorporated Rule 22(3)(1) in exercise of powers conferred by Section 32 read with Section 2(i) to the Senior Citizens Act, 2007. Rule 22 of the Delhi

Maintenance and Welfare of Parents and Senior Citizens Rule lays down an action plan for protection of life and property of senior citizens. Under Rule 22(3)(1) a senior citizen may make an application for eviction of their son/daughter/legal heirs from their self-acquired or ancestral properties, before the District Magistrate. The same reads as under:

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

xxx

(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."

6. The Respondent No. 1 herein filed an application for eviction of the Respondent herein under Rule 22(3)(1)(i), being aggrieved by the constant mental and physical harassment at the hands of the Appellant herein. It is pertinent to note here that no instances of domestic violence were reported by the Appellant till the time the eviction complaint was filed by the Respondent No. 1 and any proceedings under Domestic Violence Act were initiated by the Appellant herein.

7. The short question that arises for consideration is that in the facts and circumstances of the present case, when the Appellant had not invoked the provisions of Domestic Violence Act were the Courts below justified in passing the Order of eviction.

8. It is a well settled rule that while interpreting the provisions of a statute, the Courts must bear the objectives and purposes for which the statute was enacted. In the present case, as already discussed above, it emerges that the Senior Citizens Act, 2007 and the Rules enacted thereunder as amended from time to time were enacted for the protection of interests of senior citizens. Rule 22(3)(1) of the Delhi Senior Citizens Rules provides for a comprehensive procedure for eviction from the property of a senior citizen residing in Delhi. Sub-rule (iv) of Rule 22(3)(1) provides that the authority on taking cognizance of a complaint for eviction may initiate summary proceedings and conduct enquiries to satisfy themselves to conclusively order for eviction of a son, daughter, or legal heir from the property of a senior citizen, self-acquired or ancestral, on the grounds of non-maintenance and ill treatment.

9. The present case appears to squarely fall within the contours of a situation envisaged under the Senior Citizens Act and its Rules amended from time to time. On a perusal of the orders of the authorities and the impugned order of the Ld. Single Judge, there are multiple findings that confirm the allegations made against the Appellant herein of constant abuse, making threats, meting out physical and mental torture, and of an abdication of responsibilities to maintain the senior citizen Respondent herein.

10. Even though the question of inconsistency between the Domestic Violence Act and the Senior Citizens Act does not arise in the present case as at the time when the Respondent No.1 had initiated the proceedings under the Senior Citizen Act, no proceedings were initiated under the Domestic Violence Act. It would be pertinent to refer to Bank of India v. Ketan Parekh, (2008) 8 SCC 148, wherein the Apex Court was seized of the question that of resolving inconsistencies between non-obstante provisions

pertaining to seizure of property under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 and The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Apex Court observed as under:

“28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993.” (emphasis supplied)

11. In S. Vanitha (supra), the Apex Court relied on the above-mentioned observation in Ketan Parekh (supra) in the context of determining which of the non-obstante clauses of the two legislations in question herein, i.e., the Domestic Violence Act, 2005 and the Senior Citizens Act, 2007, would prevail in event of inconsistencies/repugnancy between the two. The Apex Court while relying on Bank of India v. Ketan Parekh, (2008) 8 SCC 148, rendered the following observation:-

“Principles of statutory interpretation dictate that in the event of two special acts containing non obstante clauses, the later law shall typically prevail. In the present case, as we have seen, the Senior Citizen's Act 2007 contains a non obstante clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonize, not excise.”

12. In Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609, the Apex Court held that while construing portions of a statute that courts must lend rational interpretation to consider the statute as a whole and, and give importance to the purpose for which such statute was enacted. The Apex Court in this context observed as under:

“231. During the last several years, the “golden rule” has been given a go-by. We now look for the “intention” of the legislature or the “purpose” of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and

consistency within the law as a whole and to avoid undesirable consequences.”

(emphasis supplied)

13. The aims and objectives of the Senior Citizens Act, 2007 is to “provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto”. Having perused the materials on record and having gone through the orders of the authorities and of the Ld. Single Judge in W.P. (C) 7441/2021, it is evident that the eviction order which was sought to be quashed in the writ proceedings was passed after considering *inter-alia*, enquiry reports submitted in the summary proceedings, from which it can be inferred that on account of the Appellant’s ill treatment and non-cooperation, the only recourse left for the Respondent No. 1 was to seek for the Appellant’s eviction from the subject property.

14. Recently, this Court in **W.P.(C) 17386/2022** titled Kartika Grover v. State of NCT of Delhi & Ors., after considering the judgment of the Apex Court in Smt. S. Vanitha (supra) has held as under:

“13 .The rights of the daughter-in-son and daughter-in-law and the senior citizens who are in-laws, have been the subject matter of several decisions of the Supreme Court and of this Court. The latest decision of the Supreme Court in this regard is Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors., 2020 (14) SCALE 210 ,wherein the overlap between the two statutes i.e. DVA and the MWSCPA has been considered and the Supreme Court has held that the provisions of the two statutes need to be construed harmoniously. In that case, disputes arose between both the in laws on the one hand, and the daughter-in-law, on the other. The in-laws had

preferred an application under the MWSCPA and obtained orders for eviction of their daughter-in-law and granddaughter. This was upheld by the Id. Division Bench of the Karnataka High Court, which held that the remedy of the daughter-in-law to seek maintenance and shelter, lies only against the husband i.e., the son, and accordingly the eviction order was valid. This judgment of the Karnataka High Court was challenged before the Supreme Court. The Supreme Court considered the right of residence given to the daughter-in-law under the DVA, as also the relevance of the provisions of the MWSCPA, holding that the intention of the legislators would be to read the said two legislations harmoniously, as both deal with the salutary aspects of public welfare and interest. It held that the MWSCPA cannot have an overriding in all situations irrespective of competing entitlements of a woman in a “shared household”, as the same would defeat the purpose of the DVA. The provisions of both the statutes cannot be harmoniously construed.

17. Thus, the settled position is that the DVA and the MWSCPA must be construed harmoniously, and the relationship between the son and daughter-in-law must also be considered, among other factors, while deciding the dispute.”

15. As stated earlier, the Senior Citizens Act was enacted to deal with the problems faced by the senior citizens particularly widowed women who were not being looked after properly by their families and were forced to spend their twilight years all alone and were exposed to emotional neglect and to lack of physical and financial support. The object of the Act is actually to cast an obligation on the persons who inherit the property of children or their aged parents/relatives to maintain such aged parents/relatives. The purpose of the Act is to provide a suitable mechanism for the protection of life and property of the older persons.

16. As stated earlier, in the facts of the present case, there is no question of any conflict between the two enactments because at the time when the Respondents had approached the competent forum under the Senior Citizens Act, no case under the DV Act has been filed by the Appellant, therefore, the order of the Ld. District Magistrate ordering for the eviction of the Appellant; that of the Ld. Divisional Commissioner affirming the eviction order; and the impugned order of the Ld. Single Judge cannot be faulted, keeping in mind the aims and objectives of the Senior Citizens Act and its accompanying rules as amended from time to time. It would be pertinent to mention also that at this juncture, the Respondent No. 1 is bereft of any support and seeks only the right to reside in his property peacefully, he should not be subjected to the trials and tribulations thrown at him by the Appellant herein.

17. In light of the foregoing, and applying the law as mentioned above, we find no reason to interfere with the order of the Ld. Single Judge.

18. With these observations, the present appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

APRIL 10, 2023

hsk/ss