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

Date of decision: 20th December, 2022

+ **W.P.(C) 17386/2022 & CM APPL. 55358/2022, 55359/2022**

KARTIKA GROVER

... Petitioner

Through:

Mr. Vaibhav Sinha, Advocate.

versus

STATE OF NCT OF DELHI AND ORS

... Respondents

Through:

Mr. Ripin Sood, Advocate for R-1
Ms. Aditya Goel, Ms. Manisha
Agrawal Narain, Ms. Rakshita Goyal,
Mr. Sandeep Singh Somaria,
Advocates for R-2&3 (M-
9818427971)

Mr. Sunil Dutt Dixit, Mr. Sandeep for
R-4, Advocates. (M-9312832910)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition challenges the impugned order dated 22nd November, 2022, passed by the Id. Principal Secretary-cum-Divisional Commissioner. The order was passed in an appeal filed by Mrs. Kartika Grover/Petitioner and her husband, Mr. Nitin Grover/Respondent No.4, against the order of the Id. District Magistrate (North West) passed on 25th August, 2020, under the Delhi Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter "MWPSA"*). Vide the said order of

the Id. DM, the Petitioner/daughter-in-law was evicted from the premises being Ground Floor, SU - 151, Pitampura, New Delhi-110088 (*hereinafter* “*subject property*”).

3. Mrs. Kartika Grover and Mr. Nitin Grover were married on 13th February, 2007. The couple was blessed with a girl child on 19th January 2009. The allegation of the Petitioner is that she was thrown out of her matrimonial house/subject property in 2012. However, with the help of the local police, she submits that she has re-entered the matrimonial house in the year 2015. The position as on date is that the father-in-law and mother-in-law/Respondent Nos.2&3 are no longer living in the subject property; they live in a small accommodation at Shalimar Bagh which is 32 sq. mts.

4. It is the case of the parents-Respondent Nos.2&3 that their son and daughter-in-law are in collusion with each other. They submit that the son and daughter-in-law misbehaved with them, abused them, and started pressurizing them to transfer the subject property, and vacate the same. In these circumstances, Respondent Nos.2&3, submit that they, along with the then-75 year old mother of Respondent No.2, were driven out of the subject property and forced to stay in another smaller property in Shalimar Bagh. Therefore, the parents filed a complaint before the Id. District Magistrate under the MWSCPA, which was finally disposed of by the impugned order evicting the Petitioner.

5. Ld. Counsel for Respondent Nos.2&3 further submits that there is no complaint which has been filed against the in-laws either under Section 498A IPC or under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter* “*DVA*”). They submit that in fact, in a complaint filed by the Petitioner before the Court of Chief Metropolitan Magistrate, North-

West, RHC/Mahila Court (*hereinafter* “Mahila Court”), Respondent Nos.2&3 have been deleted as accused. There are also no divorce proceedings which are pending. This according to the Respondents would show that there is collusion between the son and daughter-in-law. Ld. Counsel further submits that the mother-in-law suffers from Arthritis and the father-in-law is a heart patient. Both of them wish to occupy the ground floor subject property at Pitampura, as the Shalimar Bagh property where they are currently residing, is a very small property. They wish to use this second property for rental purposes for earning income in their old age. It is also alleged that the Petitioner herself is not in occupation of the subject property as is evident from the electricity bills of the last few months, where the consumption is shown to be very minimal and hence they are ‘NO PAYMENT BILLS.’

6. Mr. Vaibhav Sinha, Id. counsel appearing for the Petitioner, has submitted that there is a domestic violence complaint filed by the Petitioner before the Mahila Court against her husband, bearing CRN Number DLNW02-004063-2016. However it is admitted that there are no divorce proceedings, as the Petitioner is interested in saving her marriage with Respondent No.4.

7. Upon being queried by the Court, the Petitioner also submits that her husband is a Chartered Accountant practising in Delhi. It is also not in dispute that the Petitioner herself is a post-graduate who was working in the Shri Ram School as a receptionist till two years ago. However, she claims that she is currently unemployed. It is not disputed by the Petitioner that her in-laws are not residing in the suit property since November, 2009 and are living in a much smaller property at Shalimar Bagh.

8. On behalf of the husband/Respondent No.4, it is submitted that he is already paying sufficient amount for taking care of the education of his child. However, it is admitted that at the moment, no maintenance is being paid by him.

9. Heard. The complaint filed by Respondent Nos.2&3 was dismissed by the Id. District Magistrate vide order dated 27th June, 2019. A second complaint was filed before the Id. District Magistrate which was again dismissed on 25th August, 2020. The said order came to be challenged before the Id. Divisional Commissioner, which has been decided by the impugned order dated 22nd November, 2022. The operative portion of the order reads as under:

“38. The Maintenance and Welfare of parents and Senior Citizen Act and amended Rules framed thereunder is a welfare legislation enacted for the benefit and protection of Senior Citizens/Parents, so that they can spend their twilight years peacefully as the safety of the senior citizen is prime objective of the Act and amended Rules and herein this case it is an admitted position that the suit property is the self-acquired property of the appellants. It is also an admitted position that appellants are forced to live in a small house which they have purchased for letting out so as to have their source of income in their old age and are not living in the suit property which they have purchased for their old age and are required due to medical issues. Therefore this appellate authority is of the view that it would be in the interest of justice if appellants resides in their own house peacefully without interference of anyone. No one has the right or interest to reside against their wishes.

39. But as the respondent no.2 has claimed that there is matrimonial discord and she has minor daughter and her DV case is pending against

respondent no.1, although respondent no.1 have no right in the suit property. This appellate authority is of the view that it would be also in the interest of justice that the respondent no.2 and her minor daughter residential rights shall also be protected till any further orders from the DV Court and thus she shall be provided with the alternate accommodation of equivalent status in the light of the judgment of Hon'ble Delhi High Court passed in Vinay Varma Vs. Kanika Pasricha. The relevant para is reproduced herein below:

“3.... If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son-in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act. 4....if the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in-laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her”.

40. Thus keeping in view the facts and circumstances of the case, the impugned order is hereby set-aside with the directions to the respondents to vacate the suit property subject to the condition that respondent no.2 and her minor daughter shall be provided with alternate accommodation of equivalent

status within a period of 15 days by the appellants and respondent no.1 together.”

10. Thus, the findings of the Id. Divisional Commissioner are briefly as under:-

- (i) That the parents have been forced to live in a small house which they have purchased. This has left them without any source of income at their old age as the second property, intended to earn rental income, is being blocked by their own living.
- (ii) That there is matrimonial discord which is alleged by the Petitioner, however there are no divorce proceedings pending between the son and the daughter-in-law.

11. The Id. Divisional Commissioner has on the basis of the background facts and the findings recorded by him, directed the Petitioner to vacate the subject property, subject to the condition that she and her minor daughter be provided an alternate accommodation of equivalent status.

12. At the outset, it is noticed by this Court that in a large number of cases, parents are unable to enjoy the immoveable properties purchased by them during their lifetime owing to matrimonial discord between their children and their spouses – predominantly son and daughter-in-law.

13. The rights of the 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., the 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 grand-daughter. 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 effect 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 ignored and have to be harmoniously construed. The relevant observations of the Supreme Court are as under:

*“... 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.”

14. This issue has also been considered previously in ***Satish Chandra Ahuja v. Sneha Ahuja, 2020 (11) SCALE 476*** wherein the Supreme Court was dealing with a dispute between in-laws and son on the one hand, and the daughter-in-law on the other hand. A suit for injunction was filed by the father-in-law against the daughter-in-law without impleading the son. The daughter-in-law, who was having marital disputes with her husband, had in her defence claimed that the New Friends Colony residence, which was her matrimonial home, would be a “shared household” in terms of Section 2(s) of the DVA, and accordingly she could not be evicted from the same. The Trial Court had passed a decree of eviction under Order 12 Rule 6 of CPC, against the daughter-in-law, in the said suit. The High Court had set aside the decree passed by the Trial Court and remanded the matter for fresh adjudication. The said decision of the High Court was challenged before the Supreme Court. The Supreme Court, in this background, held that the right to residence, as provided to the daughter-in-law under Section 19 of the DVA, is not an indefeasible right, and hence the Court has to balance the rights of the parties. The observations of the Supreme Court are as under:

“83. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under

Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties.”

15. The dispute between in-laws and children has repeatedly been faced by this Court as well. In the judgment of ***Vinay Verma v. Kanika Pasricha and Ors., 265 (2019) DLT 211***, which has also been relied upon by the Id. Divisional Commissioner in the impugned order, the following guidelines were given by this Court:

“46. However, later decisions of various High Courts have, while giving divergent opinions on the concept of ‘shared household’, followed one uniform pattern in order to protect the daughter-in-law and to provide for a dignified roof/ shelter for her. The question then arises as to whether the obligation of providing the shelter or roof is upon the in-laws or upon the husband of the daughter-in-law i.e., the son. Some broad guidelines as set out below, can be followed by Courts in order to strike a balance between the PSC Act and the DV Act:

- 1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son’s/ daughter’s family.*
- 2. If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.*
- 3. If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son- in-law from their premises. In such circumstances, the obligation of the*

husband to maintain the wife would continue in terms of the principles under the DV Act.

4. If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the inlaws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her.

5. In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.

6. If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-inlaw, however, for a reasonable period they would have to provide some shelter to the daughter-inlaw during which time she is able to seek her remedies against her husband."

16. This Court has subsequently considered the two statutes and relied upon *Vinay Verma (supra)* to decide another case being *Aarti Sharma & Anr. v. Ganga Saran [RSA 14/2021, decided on 24th August, 2021]*, where

the husband and wife were not estranged from each other. In the said decision, this Court had upheld the eviction of the daughter-in-law and husband.

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.

18. In the present case, the first notable feature that there is no domestic violence complaint against the in-laws. It is also noted that the in-laws are of advanced age and they are deprived of using their second property for rental income. It is also noticed that the husband is well-qualified and he is capable of maintaining his wife and daughter. Under such circumstances, there would be no justification in allowing the daughter-in-law to continue to occupy the subject property which is admittedly owned by the in-laws, when clearly an alternative accommodation can be provided to her.

19. Moreover, from the facts it also appears, that though there are allegations made by the daughter-in-law that the son and parents are in collusion, no proceedings are actually pending for divorce, maintenance, custody, etc. Thus, the position appears to be contrary to what is stated by the Petitioner. Be that as it may, even if it is presumed that there is a dispute between the son and daughter-in-law, there is an obligation upon the son to maintain his wife subject to any decision that may be given by the competent forum in respect of maintenance, etc. However, as against the parents, no notice has been issued under the DVA. Ld. Counsel for the Petitioner submits that this is because they were living separately by then.

20. Under these circumstances, this Court notes that it would be in the

fitness of things to permit the parents/Respondent Nos.2&3 to exercise their rightful ownership of the subject property, subject to the Petitioner being given alternate accommodation or monthly payment towards alternate accommodation.

21. After hearing submissions of the parties, Id. counsel for the Petitioner submits that the Petitioner may be paid a sum of Rs.20,000/- as monthly rental for enabling the Petitioner to find an alternate accommodation.

22. In the facts and circumstances of this case, by applying the guidelines laid down in *Vinay Verma (supra)*, considering that the husband is willing to maintain his wife, it is directed as under:

- (i) Respondent No.4 - the husband shall pay a sum of Rs.20,000/- per month, on or before the 10th of every month, which shall be credited directly to the Petitioner's bank account. The details of the said bank account shall be provided by the Id. counsel for the Petitioner to the Id. counsel for the Respondent No.4, within five days.
- (ii) The Petitioner shall handover vacant and peaceful possession of the subject property by 15th January, 2023, to the parents i.e., Respondent Nos.2 and 3, after clearing all the dues payable on the subject property by the Petitioner, such as electricity/water charges/etc.

23. If there is any default by Respondent No.4 in making monthly maintenance payment, the Petitioner is permitted to approach the Court of Chief Metropolitan Magistrate, North-West, Rohini Courts, Delhi, i.e., the Mahila Court where the Petitioner's complaint is stated to be pending.

24. The present petition is disposed of in these terms, along with all

pending applications.

25. Copy of the present order be sent to the Court of Chief Metropolitan Magistrate, North-West, Rohini Courts, Delhi, i.e., the Mahila Court where the Petitioner's complaint bearing CRN Number DLNW02-004063-2016, is stated to be pending.

PRATHIBA M. SINGH, J

DECEMBER 20, 2022

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