

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(211)

CWP-14224-2022

Date of decision: - 03.11.2023

Sarita Sareen

....Petitioner

Versus

District Magistrate Kapurthala and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Mandeep S. Sachdev, Advocate
for the petitioner.

Mr. Kunal Muthreja, AAG, Punjab.

Mr. Paras Talwar, Advocate
for respondent No.2.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 03.11.2020 (Annexure P-6) passed by respondent No.1 whereby petition filed by the petitioner under Section 23 of the Maintenance and Parents and Senior Citizen Act, 2007 read with Rules (hereinafter referred to as 'Act of 2007') for ejectment of respondent No.2 from the shop in dispute has been dismissed.

2. Learned counsel for the petitioner has submitted that the petition filed by the senior citizen has been dismissed solely on the ground that a Co-ordinate Bench of this Court had struck down the power of eviction. It is submitted that the Hon'ble Supreme Court in case titled

as “Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors., reported as 2021(15) SCC 730, had observed that a Tribunal constituted under the Senior Citizens Act, 2007 has the authority to pass an order of eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent and that , the eviction in other words would be an incidence of the enforcement of the right to maintenance and protection. Relevant part of para No.25 of the said judgment is reproduced herein below: -

“xxx xxx xxx xxx xxx xxx

25. The substance of sub-section (2) of Section 23, as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a “right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen, where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection.”

3. Learned counsel for the petitioner has further submitted that this Court in CWP-15170-2023 titled as “Ravi Kumar Vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others, decided on 20.07.2023, after taking into consideration the judgment of the Hon'ble Supreme Court in Smt. S. Vatnitha's case (supra) had upheld an order of eviction passed therein by the authorities under Act of 2007. The relevant

portion of the said judgment is as under: -

“9. In the said judgment, the Hon'ble Supreme Court had taken into consideration the legislative scheme of the 2007 Act & reference was also made to Chapter V of the 2007 Act which provide for “protection of life and property of senior citizens”. The objects of the Act which included a need to give more attention to the care & protection of older persons was also taken into consideration. It was observed that the procedure to be followed by the Tribunal was of a summary nature. The contesting claim for both the parties to the effect as to whether the authorities under the Act have the jurisdiction to entertain the proceedings for eviction was also noticed. Relevant part of Paragraph No.6; Paragraphs 15, 16, 17 in their entirety as well as relevant portion of Paragraphs 19 and 20 of the above judgment are reproduced as under: -

xxx xxx xxx xxx xxx xxx

6. **The appellant specifically raised an objection to the jurisdiction of the authorities to entertain the proceedings seeking her eviction from the premises. She submitted that while the Senior Citizens Act 2007 provides for the maintenance of a senior citizen or a parent, there is no provision envisaging an order of eviction, and that the authorities had no jurisdiction to direct her removal from the premises.**

C. **Legislative scheme: Senior Citizens Act, 2007**

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15 The rival submissions will now be analysed.

16 Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act 2007 which have a bearing on the present controversy. “Maintenance□ is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment. In defining the expression “property”, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property”. Overriding effect is given to the provisions of the enactment by Section 3. Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior

Citizen”.

17. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“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.

xxx xxx xxx xxx xxx xxx

19. xxx xxx xxx Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance.

20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7 is of a summary nature as provided in Section 8(1) and with all the powers of a Civil Court, as provided in Section 8(2).

xxx xxx xxx xxx xxx xxx xxx”

4. Learned counsel for the petitioner has stated that LPA-1387-2023 filed against the said judgment has also been dismissed. It is, thus, prayed that the impugned order be set aside and respondent No.1 be directed to decide the case afresh.

5. Reply by way of an affidavit filed on behalf of respondent No.2 today in the Court and the same is taken on record. A copy thereof has been supplied to learned counsel for the petitioner.

6. Learned counsel appearing for respondent No.2 has submitted that there are several ground taken in the reply (Annexure P-2) filed before the authorities to show that the petition filed by the senior citizen deserves to be dismissed on merits.

7. This Court has heard learned counsel for the parties and has perused the paper-book.

8. The District Magistrate, Kapurthala, vide order dated 03.11.2020 had dismissed the petition filed by the senior citizen for eviction only on the ground of non-maintainability of the said petition under the Act of 2007 read with the rules. The Hon'ble Supreme Court in in *Smt. S. Vanitha's case (supra)* (the relevant portion of which is reproduced hereinabove) had observed that a Tribunal constituted under the Senior Citizens Act, 2007 has the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent and that an order of eviction would in other words be an incidence of the enforcement of the right to maintenance and protection. The said judgment has been followed by this Court in *CWP-15170-2023* titled as “*Ravi Kumar Vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others*”, decided on 20.07.2023 (the relevant portion of which is reproduced hereinabove) while upholding the order of eviction passed by the authorities under the Act of 2007 and the LPA-1387-2023 filed against the said order has also been dismissed.

9. Keeping in view the above-said facts and circumstances, the present petition is partly allowed and the impugned order dated 03.11.2020 (Annexure P-6) is set aside and respondent No.1 is directed to

decide the petition filed by the petitioner for eviction on merits, in accordance with law, as expeditiously as possible.

10. It would be open to both the parties to raise all the pleas as available to them before respondent No.1.

11. It is made clear that this Court has not opined on the merits of the case and respondent No.1 would decide the matter independently, in accordance with law.

November 03, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes