

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(103)

CWP-15170-2023

Date of decision: - 20.07.2023

Ravi Kumar

....Petitioner

Versus

Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ravinder Rana, Advocate, for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the order dated 14.09.2022 passed by the Maintenance Tribunal-cum-Sub Divisional Magistrate, Bhadurgarh, District Jhajjar (Annexure P-3), whereby, the application under Section 22 of the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'Act of 2007') moved by respondents No.3 and 4 has been allowed. Challenge is also to the order dated 09.05.2023 passed by the Appellate Tribunal-cum-Deputy Commissioner, Jhajjar, whereby the appeal filed by the petitioner has been dismissed.
2. Learned counsel for the petitioner has submitted that the impugned orders are illegal and deserves to be set aside on two grounds, firstly that the property in question i.e., House No.125, Gali No.2,

Shankar Garden, Line Paar, Bahadurgarh, Tehsil Bahadurgarh, District Jhajjar is not exclusively owned by respondent No.3 and the petitioner has a share in the same as the same is ancestral property inherited by the respondent No.3 from his forefathers. Secondly, it is submitted that respondents No.3 and 4, who are the mother and father of the present petitioner, are residing in House No.124, which belongs to the brother and sister of the petitioner and are not residing in the house from which the eviction is sought, which is House No.125 and thus, respondents No.3 and 4 have no right to seek eviction of the petitioner from the said House No.125.

3. This Court has heard learned counsel for the petitioner and has gone through the paper-book.

4. Respondents No.3 and 4, who are both senior citizens, have filed an application/complaint (Annexure P-1) under the Act of 2007 with the averments that they are the old parents of the present petitioner and that respondent No.3 had purchased a plot measuring 100 sq. yards at Shankar Garden, Line Par Bahadurgarh, District Jhajjar, vide sale deed No.9524 dated 23.03.2007 and constructed a house on the said plot with his hard earned money and the water and electricity connection were also in his name. Copy of the sale deed and bills of water and electricity were annexed alongwith the application (Annexure P-1) by respondents No.3 and 4, as is apparent from para No.2 of the said application. It was further averred in the said application that respondents No.3 and 4 had facilitated the marriage of their son i.e., petitioner No.1 with respondent No.5, namely, Manisha, but after some time, the petitioner and his wife

(respondent No.5) started quarrelling with respondents No.3 and 4 and started pressurizing them to execute sale deed of the house in question in favour of petitioner and respondent No.5 and to harass respondents No.3 and 4, the petitioner and respondent No.5 had filed a complaint dated 03.08.2019 in the Police Station. It was further averred that neither the petitioner had ever paid the electricity bill or the water charges nor provided any basic amenities such as food, cloth and medicine to his old parents. In para No.6 of the application, it had been specifically averred that on 18.03.2022, petitioner and respondent No.5 began quarrelling with respondents No.3 and 4 and had beaten up respondent No.4 and the whole incident was recorded in a CCTV camera. The details of subsequent harassment suffered by respondents No.3 and 4 have been mentioned in para No.7 of the said application. It was also averred that the petitioner was in unauthorized possession of the house in question and inspite of several requests, neither the petitioner was leaving the house nor was providing basic amenities to respondents No.3 and 4. In para No.11 of the application, it was stated that the petitioner was doing the job of a Guest Teacher (Math) and was earning a handsome salary which fact was not denied either in the reply or before this Court. Importantly, in para No.13 of the application, it was stated that respondents No.3 and 4 were permanent residents of House No.125 and in reply to the said para in the written statement, it had been stated that the same is a matter of record. The fact that a dispute had taken place on 18.03.2022 and the police came to the house on the said date was also not disputed, although, the petitioner had given his own version of the said incident. In para No.8 of

the written statement, it was specifically stated that sale deed was in the name of respondent No.3 and no plea was taken in the said written statement that the property was an ancestral property and rather, the plea taken was that the petitioner had contributed money for purchasing the house in question, although, no proof with respect to the same was attached.

5. The Sub-Divisional Magistrate-cum-Maintenance Tribunal, Bahadurgarh, after considering the entire matter, vide order dated 28.09.2022, ordered the eviction of the petitioner and respondent No.5 and further directed the petitioner and his brother Mukesh Kumar to give Rs.10,000/- each to respondent Nos.3 and 4 for their maintenance. While passing the said order, it was observed (at page 46) that the CCTV footage was presented by respondents No.3 and 4 in a laptop and was shown to the Court. The appeal filed by the petitioner was dismissed by the Appellate Tribunal, Jhajjar, vide order dated 05.08.2023. While dismissing the said appeal, the submission of respondents No.3 and 4 to the effect that the plot in question was purchased for Rs.1,25,000/- vide sale deed No.9524 dated 23.03.2007 was noticed. It is the said orders dated 14.09.2022 and 09.05.2023, which have been challenged before this Court. From a perusal of the pleadings as well as the orders passed, it is apparent that respondents No.3 and 4 are old parents of the petitioner and are senior citizens and respondent No.3 is the owner of the property in question by virtue of the sale deed No.9524 dated 23.03.2007, which is a document of title. It is further apparent that there are specific instances of fights breaking out in the house and with respect to one incident dated

18.03.2022, there is CCTV footage also and it is, thus, apparent that on account of the presence of the petitioner in the house in question, there is a threat to the life and liberty of respondents No.3 and 4. The petitioner has no right in the property owned by respondent No.3 and is thus, in unauthorised occupation and has been rightly evicted from the premises in question by the authorities. This Court does not find any infirmity or illegality in the orders passed by the authorities and the same deserve to be upheld.

6. The argument raised by learned counsel for the petitioner with respect to the property being ancestral, is devoid of merit and the same is rejected for the following reasons: -

(i) In Para No.2 of the application, it has been specifically stated by respondents No.3 and 4 that respondent No.3 had purchased the property by virtue a sale deed dated 23.03.2007 and that water and electricity connections were also in the name of respondent No.3 and copies of the sale deed and bills of water and electricity connection were attached with the application as Annexure P-1. The plea with respect to the property being ancestral was not raised in the reply dated 05.09.2022 filed by the petitioner, rather, in para 8 of the said reply, it has been admitted that the sale deed was in the name of respondent No.3. Even before this Court the fact that the sale deed is in the name of respondent No.3 has not been disputed.

(ii) No document or material has been annexed alongwith the

present writ petition to show that the property was ancestral, in which the petitioner had any right.

- (iii) Plea raised in para No.8 of the written statement (Annexure P-2) is to the effect that the present petitioner had contributed in purchasing the house in question which was purchased in the name of respondent No.3 and thus, the plea of the property being ancestral is contrary to the said plea. Even the said plea of the petitioner of having contributed money, has not even remotely been substantiated either before the authorities or before this Court. At any rate, since the document of title i.e., registered sale deed, is in the name of respondent No.3 and the same has not been set aside by any Competent Court of Law, it is respondent No.3, who is owner of the property and has every right to file an application under the Act of 2007.

7. With respect to the second argument of learned counsel for the petitioner to the effect that respondents No.3 and 4 are residing in House No.124, whereas, the petitioner is residing in House No.125, it would be relevant to note that in para No.13 of the application, it had been specifically stated by respondents No.3 and 4 that they are residents of House No.125. In reply on merits to para No.13, it had been stated that the same is a matter of fact and is thus not disputed. Para no.13 of the application filed by respondents No.4 and 5 as well as para No.13 of the reply filed by the petitioner are reproduced herein below: -

“13. That the applicant is permanent resident of H.No.125,

Gali No.2, Shanker Garden, Line Par, Bahadurgarh, Distt. Jhajjar, hence the Hon'ble Tribunal got jurisdiction to try and decide the present application.”

“13. That the para No.13 of the petition is matter of fact hence no need to reply”

From a perusal of the above, it is apparent that the pleas raised by learned counsel for the petitioner before this Court are contrary to their pleadings before the authorities and are unsubstantiated and thus, deserves to be rejected and are accordingly rejected.

8. Before parting with the present order, it would be relevant to note that although no plea with respect to the maintainability of a petition seeking eviction under the Act of 2007, has been raised before this Court by the petitioner, but it would be apposite to note 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 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 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.”

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*

xxx xxx xxx xxx xxx xxx

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”

10. Keeping in view the above-said facts and circumstances, this Court find no merits in the present writ petition and the same deserves to be dismissed and is accordingly, dismissed.

July 20, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes