

CWP-25738-2019(O&M) 1

2023:PHHC:123754

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-25738-2019(O&M)

Date of decision : 20.09.2023

Amandeep Singh and another

... Petitioners

Versus

Maintenance Tribunal-cum-Additional Deputy Commissioner (General)
Khanna, and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Aakash Singla, Advocate for
Mr.Sherry K. Singla, Advocate
for the petitioners.

Mr.Ferry Sofat, Addl.A.G. Punjab
for respondent no.1.

Mr.Kailash Chander, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 30.07.2019 (Annexure P-5) passed by respondent no.1 whereby the petition under Section 22 and 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “Act 2007”) for the eviction of the petitioner from the house in question, has been allowed.

2. On 15.09.2023, this Court was pleased to pass the following order:-

“Learned State counsel has submitted that as per the short reply by way of affidavit dated 23.08.2023, filed on behalf of respondent No.1, an appeal would lie against the impugned order before the appellate

Tribunal, as, in the said affidavit, it has been stated that in District Ludhiana, the powers under The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 have been distributed between two Tribunals.

The relevant part of the said affidavit with respect to the said stand is reproduced herein below: -

“2. That in this regard it is humbly submitted that in the District Ludhiana, the powers under The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 have been distributed between two Tribunals i.e. the first Tribunal is presided over by the Sub Divisional Magistrate, wherein only the cases pertaining to maintenance of parents and senior citizens are considered. The second Tribunal is presided over by the concerned Additional District Magistrate wherein the cases pertaining to eviction of negligent children from the property of the senior citizens/parents are decided.

3. That in compliance of the provisions of The Maintenance and Welfare of Parents & Senior Citizens Act, 2007, the District Magistrate, Ludhiana vide his office letter No.9588-89/P.B. Dated 02.12.2016 had authorised the Additional Deputy Commissioner (G), Khanna to dispose of the cases pertaining to eviction of properties of senior citizens/parents from their children. Copy of the order dated 16.03.2018 passed by Deputy Commissioner Ludhiana is enclosed as Annexure R-1/T.

4. That as per the provisions of Section 15 of The Maintenance and Welfare of Parents & Senior Citizens Act, 2007, each district has an Appellate Tribunal which is presided over by an officer not below the rank of District Magistrate. As per the provisions of Section 16 of The Maintenance and Welfare of Parents & Senior Citizens Act, 2007 an appeal lies before the Appellate Tribunal against the impugned order passed by the Tribunal.”

Learned counsel for the petitioner prays for an adjournment to get instructions in the matter.

Adjourned to 20.09.2023.

To be taken up at 12.00 noon.

September 15, 2023”

3. Learned State counsel has submitted that as per the instructions from the Deputy Commissioner, Ludhiana, an appeal would lie against the impugned order.

4. Learned counsel for the petitioners has submitted that in view

of the stand taken by the respondent State, the petitioners be permitted to withdraw the present petition with liberty to file an appeal before the Deputy Commissioner under Section 16 of the Act 2007 and has submitted that since the petitioners have been pursuing the present petition, then in case the said appeal is filed within a period of one month from today, the appeal be not dismissed solely on the ground of limitation. It is further prayed by learned counsel for the petitioners that the interim order dated 13.09.2019 staying the eviction of the petitioners be continued for the said period of one month.

5. Learned counsel appearing for the private respondent has submitted that they have no objection to the same but the grant of said stay order or the continuance of the same by this Court should not be construed as an expression on the merits of the case and further continuance of the interim order should be considered by the appellate authority, in accordance with law, uninfluenced by the stay order granted by this Court.

6. It would be relevant to mention that the appeal at the instance of the petitioners, who are not senior citizens, would be maintainable in view of the law laid down by the Hon'ble Division Bench of this Court in ***Paramjit Kumar Saroya Vs. Union of India and another***, reported as ***2016(3) RCR (Civil) 146***.

7. Keeping in view the above, the present petition is dismissed as withdrawn with liberty to the petitioners to file a statutory appeal under Section 16 of the Act 2007 before the Deputy Commissioner, Ludhiana, in accordance with the stand taken by the State and in case, the said appeal is filed within a period of one month, then the appellate authority would not dismiss the same solely on the ground of limitation and also on the ground

of maintainability and the interim order dated 13.09.2019 shall continue to operate upto 20.10.2023 and further continuance of the same would be considered by the appellate authority, in accordance with law uninfluenced by the interim order granted vide order dated 13.09.2019 and also the continuance of the same by this Court.

8. It is made clear that this Court has not opined on the merits of the case and the same would be considered independently, in accordance with law, after hearing all the concerned parties.

9. Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

September 20, 2023
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No