

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

(104)

CWP-20504-2023

Date of decision: - 15.09.2023

Krishan and another

....Petitioners

Versus

The Deputy Magistrate-cum-Appellate Tribunal, Panipat and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Nagar Singh, Advocate
for Mr. Nishant Raj Ghangas, Advocate
for the petitioners.

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 06.07.2023 (Annexure P-5) passed by respondent No.1, vide which eviction order from the residential house in question has been passed against the petitioners.

2. Sole argument raised by learned counsel for the petitioners is that since the petitioners do not have any other house, thus, the impugned order dated 06.07.2023 (P-5) be set aside and the petitioners be permitted to reside in the said house in question.

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

4. Respondent No.5-Darshna Devi, who is a widow of 70 years

of age and is the mother of the petitioners, had filed an application under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for directing the eviction of the petitioners from the house in question and to hand over the physical possession of the same and also to pay a sum of Rs.5,000/- per month each i.e. total Rs.10,000/- per month as maintenance /allowance and Rs.22,000/- as litigation expenses. In the application, it was averred by respondent No.5 that vide sale deed dated 16.12.1989, she was the owner of the house in question, which was built in 100 sq. yards and the present petitioners, along with the third son of respondent No.5 i.e. Sanjay, were living in the said house. It was further averred that the present petitioners did not bear any expense for her maintenance and the petitioners were drunkards and also used to steal household articles from the house for buying liquor and that the petitioners used to utter filthy language when talking to respondent No.5 and also maltreated her and whenever respondent No.5 tried to make them understand, they would pick fights and give beatings to her due to which the image of respondent No.5 had been diminished in the locality. It was further averred that the petitioners have been threatening to throw respondent No.5 out of the house and on account of the same, respondent No.5 was living in fear in the house. Further averments were made to the effect that the petitioners were earning Rs.30,000/- per month each and were not maintaining respondent No.5 and were also not discharging any social obligation towards their sisters. On the basis of the said pleas, prayer for eviction and maintenance had been made in the said application.

5. Reply to the said application was filed by the petitioners and

in the said reply, pleas were taken, which clearly showed that there was a dispute between the parties and it was not possible for the petitioners and respondent No.5 to live in the same house. In paragraph 2 of the said reply, it was stated that respondent No.5 was very clever, mischievous and an adamant lady and expert in creating drama to show her illness. The fact that respondent No.5 was the registered owner of the house in question was not disputed, although, the plea sought to be raised was that the house was purchased from the funds of joint family regarding which, there is nothing on record to substantiate the same. The fact that respondent No.5 was a senior citizen and is a widow, was not disputed and has also not been disputed before this Court. The Sub-Divisional Magistrate-cum-Chairman under Maintenance and Welfare of Senior Citizens Tribunal, Panipat held that respondent No.5 was a senior citizen of 70 years of age and had purchased and constructed the house in question and it was the present petitioners who were residing in the house with her and were misbehaving with her and yet did not order the eviction of the petitioners and only directed the present petitioners and the third son of respondent No.5 to pay Rs.2,000/- each to respondent No.5. The relevant portion of the said order dated 11.12.2019 is reproduced herein below: -

“On perusal of the record and after hearing both the parties, I have reached on this conclusion that the appellant is senior citizen aged 70 years. The applicant has purchased and constructed this house by her own hard working. The respondents are living with the applicant in her house. The respondents are misbehaving with the applicant badly. Neither the respondents are giving any maintenance and nor giving any expenses of medicines to the applicant for her

illness. Therefore, after the applicant and respondents, I reached to the conclusion, I ordered that the respondent No.1 and 2 and Sanjay third son of applicant that they pay Rs.2,000/- each to the applicant as maintenance in cash or be deposited in her bank account. The file be consigned to the record room.”

6. Thereafter, petitioners did not file any appeal against the said order and thus, the said order became final against the petitioners. Respondent No.2 filed an appeal and the Deputy Commissioner-cum-Appellate Tribunal, Panipat, after taking into consideration the submissions made and the fact that respondent No.5 was the owner of the property in question and had constructed a double storey house with her hard earned money and that the petitioners could reside in the house only with the consent of respondent No.5 and that the petitioners never served respondent No.5 even in her old age, ordered the eviction of the petitioners from the house.

7. From the above-said facts and circumstances, it is apparent that respondent No.5 is a 70 year old widow lady and is the mother of the petitioners and is the owner of the property in question, vide sale deed dated 26.12.1989 and was being maltreated and not being taken care of by the petitioners. In the reply filed by the petitioners, pleas were taken by them to the effect that respondent No.5 is a clever, mischievous and adamant lady and an expert in creating drama to show her illness, which shows that the petitioners have no respect for their mother (respondent No.5). The Sub-Divisional Magistrate-cum-Chairman under Maintenance and Welfare of Senior Citizen Tribunal, Panipat after specifically observing that the petitioners have been misbehaving with respondent

No.5 and that respondent No.5 is a senior citizen and is the owner of the house and yet chose not to pass the eviction order, which was necessary for the protection of respondent No.5, as it is apparent that it is not possible for the petitioners and respondent No.5 to live in the same house.

8. 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 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 provides for “protection of life and property of senior citizens”. The object 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 is 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”

10. Keeping in view the above-said facts and circumstances and the law laid down in the above-said judgment and also in order to ensure protection of respondent No.5, eviction of the petitioners is necessary and it is irrelevant whether the petitioners have any house or not, as it is the right of respondent No.5 which is to be seen under the Act and once the

ingredients to claim the said right are established, as in the present case, then, it is incumbent upon the authorities to have passed the order of eviction, which has been done by the Deputy Commissioner-cum-Appellate Tribunal, Panipat, vide order dated 06.07.2023 and the same being legal & in accordance with law deserves to be upheld and this Court does not find any merit in the present writ petition and the same deserves to be dismissed and is accordingly, dismissed.

September 15, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes