

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

(107)

CWP-25091-2023

Date of decision: - 07.11.2023

Naresh Kumar and another

....Petitioners

Versus

**The Appellate Tribunal, Maintenance & Welfare of Parents and
Senior Citizens Act, 2007 and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Arpandeep Narula, Advocate, for the petitioners.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 04.08.2021 (Annexure P-4) passed by respondent No.2 vide which the petitioners had been ordered to vacate House No.1639, Near Sector-32, Prem Puri (VPO Jharsa Road), Gurugram. Challenge is also made to the order dated 26.09.2023 (Annexure P-7) passed by respondent No.1 vide which the appeal against the order dated 04.08.2021 (P-4) has been dismissed.

2. Brief facts of the case are that respondent No.3, who is 72 years old father of petitioner No.1, had filed an application (Annexure P-1) under the Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred to as "Act of 2007") for directing the petitioners to hand over the physical possession of the house in question.

In the said application, it was stated by respondent No.3 that he is a senior citizen and is also an Indian Air Force Veteran. In paragraph 3 of the said application, it was specifically stated that he is the owner of the property in question. It was further averred that the petitioners have made the life of respondent No.3 unbearable/miserable as they do not give respect to him and use foul language and say filthy words and have even tried to hit respondent No.3 on various occasions by different objects. It was further averred that the petitioners have given oral warnings to respondent No.3 to throw him out from his own house. In paragraph 8 of the said application, it was stated by respondent No.3 that he had ousted petitioner No.1 from his property through advertisement in a national newspaper i.e. Dainik Jagran on 24.09.2019 and a copy of the said advertisement was annexed along with the said application. In paragraph 9, it was stated that petitioner No.1 is a car mechanic/technician and is using the residential premises for commercial purposes, thus, creating disturbance in peaceful living of respondent No.3 and other family members. In paragraph 10 of the application, a reference was made to a complaint given by respondent No.3 to the police against the petitioners and a copy of the said complaint was annexed as Annexure A-2. It was stated in paragraph 14 that all the efforts of conciliation at the family level have failed due to adamant attitude of the petitioners. A joint reply (Annexure P-2) was filed by the petitioners to the said application and in the said reply the fact that respondent No.3 is a senior citizen and also is the owner of the property was not disputed as the contents of paras No.1 and 3 of the application were stated to be matter of record. The filing of the complaint by the

father to the police was not disputed and it was averred in paragraph 10 of the said reply that the complaint was based on false and frivolous grounds.

3. The District Magistrate, Gurugram vide order dated 04.08.2021 allowed the said application of respondent No.3 and directed the petitioners to vacate the house in question. A perusal of the said order would show that in paragraph No.2, it was observed that the matter was sent to the Sub Divisional Officer (Civil), Badshahpur for verification of title and as per the said verification, respondent No.3 was found to be the owner in possession of the property in question, vide registered sale deed dated 22.02.1973. In paragraph 6, it was specifically mentioned that the matter had been sent for mediation and both the parties were directed to appear before the ADR Centre, Courts Complex, Gurugram on 12.01.2021, but the ADR Centre had sent a report with the remarks that the mediation between the parties had remained unsuccessful and accordingly, the order of eviction was passed. Thereafter, the petitioners had filed a petition bearing CWP-18313-2021 before this Court, which on the objection of respondent No.2 and the State to the effect that there was an alternative remedy available to the petitioners, was withdrawn by the petitioners with liberty to seek the alternative remedy in accordance with law. The appeal filed by the petitioners was dismissed vide order dated 26.09.2023 (Annexure P-7) on the ground that since the order dated 04.08.2021 had been passed by the District Magistrate, Gurugram and the appeal was also listed before the same authority, the same could not be heard by him and accordingly, the appeal was held to be non-maintainable

by the appellate Tribunal.

4. Learned counsel for the petitioners has raised three arguments to challenge the orders passed by the authorities below. The first argument raised by learned counsel for the petitioners is that the property in question is un-partitioned Joint Hindu Family Coparcenary property, thus, respondent No.3 is not entitled to evict the petitioners. The second argument raised by learned counsel for the petitioners is that there is a family settlement between the parties by virtue of which share of respondent No.3 in the house in question has further been given to four sons of respondent No.3, which includes petitioner No.1 and on the said ground also, petitioners cannot be evicted from the property in question. In support of the said argument, the petitioner has relied upon affidavits (Annexures P-12 and P-13). The third argument raised by learned counsel for the petitioners is to the effect that a petition for eviction is not maintainable, inasmuch as, a Co-ordinate Bench of this Court in case titled as Simrat Randhawa Vs. State of Punjab and others, passed in CWP-4744 of 2018 has set aside the action plan and LPA against the same has been filed, but there is no stay operation of the said judgment. Learned counsel for the petitioners has further pointed out that as per the order dated 26.09.2023 (Annexure P-7), the appeal is not maintainable and it has been observed by the Appellate Tribunal that the appeal is not maintainable since the Appellate Tribunal constitutes the District Magistrate and even the first order dated 04.08.2021 was passed by the District Magistrate and at the time of earlier withdrawal of the petition, learned counsel for the petitioner was not aware that the Appellate

Tribunal is constituted by the District Magistrate himself and the fact was also not brought to the notice of the Court. It is submitted that in view of the same, the petitioners may be permitted to challenge the order dated 04.08.2021 before this Court.

5. This Court has heard learned counsel for the petitioners and has perused the paper-book.

6. The fact that respondent No.3 is a senior citizen has not been disputed before this Court. Moreover, a perusal of the memo of parties would show that respondent No.3 is stated to be 72 years of age. In paragraph No.1 of the application/complaint (Annexure P-1) it was specifically averred by respondent No.3 that he is a senior citizen and the said fact has not been denied in para No.1 of the reply on merits, wherein, it has been stated that the contents of para No.1 of the petition are matter of record. The fact that the petitioner is the owner of the property in question has been specifically averred in para No.3 of the said application (Annexure P-1), the relevant of portion of which is reproduced herein below: -

“3. That the complainant is the owner of the house no.1639, Near Sector-32, Prem Puri (Jharsa Road), Gurugram, Haryana-122001. That the house tax receipt is hereby attached with the complaint which was paid by the complainant.”

7. In the joint reply filed by the petitioners, the said aspect has not been denied and rather it had been stated that the same is matter of record. Para No.3 of the reply (Annexure P-2) is reproduced herein below: -

“3. That the contents of para No.3 of the petition are matter

of record. However, the house tax and other charges of the house is being borne by the answering respondents.”

8. During the course of arguments, learned counsel for the petitioners has fairly stated that even as per the sale deed dated 22.10.1973 (P-3) relied upon by the petitioners, the petitioners are not shown to be the owners/co-sharers in the same and it is respondent No.3 along with his three brothers, who had purchased the property for due consideration and the present property in question is a part of the said property which has come to the share of respondent No.3. The above-said pleadings and facts as well as the sale deed dated 22.10.1973 (P-3) prove beyond doubt that respondent No.3 is the owner of the property in question and the petitioners are neither co-sharers or have any right of ownership in the same. The first argument raised by learned counsel for the petitioners to the effect that the petitioners cannot be evicted from the property in question as the property is un-partitioned Joint Hindu Family Coparcenary property is completely misconceived. It has not been disputed by learned counsel for the petitioners that no such plea had been taken in the reply (Annexure P-2) and rather averments in para 3 of the application to the effect that respondent No.3 is the owner of house in question has not been disputed and it is stated to be matter of record and thus, the plea now sought to be raised before this Court is beyond pleadings. Neither any documents, much less, a document of title was produced by the petitioners before the authorities or has been annexed before this Court to even remotely show that the property was inherited by respondent No.3 from his forefathers and rather the sale deed dated

22.10.1973 (P-3) in fact show that it is respondent No.3 along with his brothers, who had purchased the property for a valuable consideration from a third party and thus, it cannot be said that the property is un-partitioned Joint Hindu Family Coparcenary property. Moreover, there is no adjudication by any Court of competent jurisdiction i.e. civil Court that the property in question is un-partitioned Joint Hindu Family Coparcenary property and the petitioners are coparceners in the same. In summary proceedings, like the present proceedings, it is the pleadings of the parties and the document of title which is to be considered by the authority. Thus, seeing from any angle, respondent No.3 is the owner of the property and the petitioners cannot be stated to be having any ownership rights in the property in question and respondent No.3 has every right to evict the petitioners from the property in question and thus, the first argument raised by learned counsel for the petitioners is rejected.

9. The second argument raised by learned counsel for the petitioners to the effect that there was a family settlement between the parties and thus, respondent No.3 could not evict the petitioners also deserves to be rejected. It has been fairly stated by learned counsel for the petitioners that no plea nor any document with respect to any family settlement was made/annexed in the reply, to the application filed, on behalf of the petitioners before the authorities. The plea thus raised before this Court is beyond pleadings before the authorities. Reliance placed upon two affidavits (Annexure P-12 and P-13) also does not further the case of the petitioners in any way. Apart from the fact that the said affidavits, as admitted by learned counsel for the petitioners, were neither

part of the reply nor part of the record before the authorities below. A perusal of the affidavit of respondent No.3 (Annexure P-12) would in fact go against the petitioners, inasmuch as, in the said affidavit, respondent No.3 has in addition to the fact of his ownership and ownership of his three brothers has further stated that respondent No.3 had got a shop built in his share of land and the same was constructed for petitioner No.1. The said document in fact shows that apart from ownership of the land, respondent No.3 had also built up the shop. The affidavit (Annexure P-13) is only a self serving affidavit of petitioner No.1 and has no legal value and petitioner No.1 cannot be stated to be the owner of the property in question on the basis of the self serving affidavit. Thus, the plea of family settlement which is argued before this Court is apparently baseless. Moreover, as it has been stated herein above that in summary proceedings, it is the document of title and pleadings which is to be considered by the authorities, more so, when there is no adjudication by any Court of competent jurisdiction i.e. civil Court on the aspect that the petitioners have any right in the property in question.

10. The third argument of learned counsel for the petitioners to the effect that the petition for eviction is not maintainable in view of the law laid down by the Co-ordinate Bench of this Court in *Simrat Randhawa* (supra) also deserves to be rejected.

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.”

11. 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

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”

12. Even appeal bearing LPA-1387-2023 filed against the said judgment has also been dismissed.

13. Thus, in view of the law laid down by the Hon'ble Supreme Court, the petition filed for eviction by respondent No.3/senior citizen and owner of the property is maintainable and the argument of learned counsel for the petitioners deserves to be rejected.

14. It would also be relevant to note that a Co-ordinate Bench of this Court in case titled as “Mamta Sharma Vs. Additional Deputy Commissioner-cum-Maintenance Tribunal and others”, reported as **2021(1) R.C.R. (Civil) 287**, had observed as under: -

“48. In view of above position, I am of the opinion that the Tribunals under the Act have jurisdiction to entertain complaint of a senior citizen and enforce his rights for protection of life and “property” against transgression by his children and relatives.

49. Learned counsel for the petitioner has albeit contended that the Tribunal under the Act has no jurisdiction to protect the rights of senior citizens over their property, against transgression/violation by their children and/or relatives. That, to my mind, would be contrary to, negate and defeat the spirit, object and intent of the Parliament as expressed in the statement of the objects and reasons, the preamble and spirit of provisions of the Act. Protection of the property would of course include right to have peaceful and exclusion possession and enjoyment of the property in question, even if it means the ouster of others, subject to statutory parameters being in favor of the senior citizen.

50. To repeat, in Justice Shanti Sarup Dewan case supra, Division Bench of this Court held as under:-

“It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No. 1. In fact, that is the very objective of respondent No. 7”.

51. Similar seems to be the intent of the petitioner herein knowing fully well that respondent no.2 is an 82 years old man while she is 53 years and time is on her side.

52. The aforesaid judgment of Division Bench of this Court was rendered even when there was no comprehensive action plan framed under the Act by the State Government. Division bench thus establishes that a senior citizen can not be compelled/forced against his wishes to keep his son/daughter or any other relative in his own property, even when there was no comprehensive action plan framed by the State Government, as envisaged under the Act.

53. Relying on aforesaid Division Bench, subsequently a Single Bench in Sanjeev Kumar Vs. District Magistrate, U.T. Chandigarh 10, too held thus:-

“16. The Division Bench held that the right of exclusive possession of a self owned property by a registered document of title

can be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 even though Rules had not been framed.”

54. No doubt, in *Simrat Randhwa, supra*, a Single Bench of this Court struck down the Clauses 1 to 3 of The Punjab Action Plan, 2014. None the less, the aforesaid relevant provisions in the parent Act of 2007 and statutory Rules framed thereunder stand unaffected and are very much in force. ***The said judgment of the learned Single Judge Bench, in my respectful opinion, would not take away the effect of or wash out the earlier subsisting Division Bench judgment of this Court in Shanti Sarup Dewan case. It has been categorically held therein, that even in the absence of and de hors any action plan providing for eviction under the 2007 Act, that all necessary directions can be made under the Act, to ensure that the parents live peacefully in their house without being forced to accommodate their children.”***

15. LPA-854-2020 against the said judgment has been withdrawn, vide order dated 01.06.2023.

16. In the present case, it is necessary to uphold the order of eviction for adequate protection of the senior citizen/respondent No.3. In the application (Annexure P-1), a specific reference has been made by respondent No.3 to a complaint having been moved by him to the police authorities, for the protection of his life and liberty. It was also averred in para No.8 of the said application that respondent No.3 has ousted the petitioners from the property in question and the same has been advertised in a national newspaper i.e. Dainik Jagran on 24.09.2019 and a copy of the said advertisement had also been annexed. A specific averment has been made by respondent No.3 in para No.9 of the application that petitioner No.1 is a car mechanic/technician and is using the residential premises for commercial purpose creating disturbance in the peaceful

living of respondent No.3 and other family members. Further, averments have been made in para 4 of the application to the effect that the petitioners use foul language and even tried to hit respondent No.3 on various occasions by different objects and had also given warnings to respondent No.3 to throw him out from the house in question. A perusal of page 45 of the paper-book where the arguments raised by counsel for the petitioners had been noticed by the Tribunal, it has been observed that the petitioners had argued that a complaint was filed by petitioner No.2 herein against the brother of petitioner No.1 herein to the Police Commissioner, Gurugram and it is on the said bases, respondent No.3 has filed the application/complaint. The same also clearly shows that there is dispute in the family and thus, there are sufficient grounds to show that eviction of the petitioners is necessary for protecting the life and liberty of respondent No.3. Since the appeal filed by the petitioners before the appellate Tribunal has been dismissed vide order dated 26.09.2023 on the ground that the same was not maintainable, thus, this Court has considered the challenge of the petitioners to the order dated 04.08.2021 and finds the same is misconceived.

17. Keeping in view the above-said facts and circumstances, the order dated 04.08.2021 being legal and in accordance with law, deserves to be upheld and the present writ petition being meritless deserves to be dismissed and accordingly, the same is dismissed.

November 07, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes