

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

(101)

CWP-26035-2023

Date of decision: - 29.11.2023

Sheela Devi

....Petitioner

Versus

**District Collector cum Presiding Officer under Maintenance
Tribunal, Gurugram and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Parmod K. Parmar, Advocate
for Mr. Ashish Yadav, Advocate, for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or directions especially in the nature of mandamus directing respondent No.1 to entertain and to decide the petition filed by the petitioner under the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 and Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'Act of 2007') for evicting respondent No.2.

2. On 20.11.2023, this Court was pleased to pass the following order: -

“Learned counsel for the petitioner has submitted that in the present case, an application had been filed by the petitioner under the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 before the District Magistrate with a prayer for protecting her life and property and with a further prayer for directing private respondent

no.2 to vacate the first floor of the house in question owned by the petitioner. It has been pleaded in paragraph 11 of the present petition that instead of passing an order on the said application, the authority had shown a document to the present petitioner stating that the authority cannot take any further action on the same and reference in this regard has been made to the letter (Annexure P-9) issued by the Director General, Social Justice, Empowerment, Welfare of SC & BC and Antyodaya (SEWA) Department, Haryana to all the District Magistrates, State of Haryana to stop from proceeding further in pursuance of the action plan on account of the judgment passed by a coordinate Bench of this Court in CWP-4744-2018 titled as “Simrat Randhawa vs. State of Punjab and others”. It is submitted that it is incumbent upon the authority to pass an order and the matter cannot be kept in limbo merely on the basis of some letter. It is further submitted that the Hon’ble Supreme Court in 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 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.”

It is further submitted that this Court in the case titled as “Ravi Kumar vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others” reported as 2023(4) RCR Civil 81 had upheld the eviction order and placed reliance upon the said judgment of the Hon’ble Supreme Court (Smt.S.Vanitha) and LPA-1387-2023 filed against the order of this Court has been dismissed on 19.10.2023.

Learned State counsel is directed to get the following instructions:-

i) Whether after passing of the judgments of the Hon’ble Supreme Court in Smt.S.Vanitha’s case (supra) and of this Court in Ravi Kumar’s case (supra), which has been upheld by the Hon’ble Division Bench of this Court in LPA-1387-2023, the authorities are still not passing orders in cases wherein prayer for eviction has been made and if so, the reasons for the same.

ii) Whether the letter (Annexure P-9) issued by the Director General, Social Justice, Empowerment, Welfare of SC & BC and Antyodaya (SEWA) Department, Haryana has any legal basis or not.

iii) Whether, irrespective of the position of law, since it is the duty of the authority under the Act to pass an order and not to simply keep an application seeking eviction pending, then as to why the authority concerned has not passed an order on the same?

Adjourned to 29.11.2023.

To be taken up after the urgent matters.

(VIKAS BAHL)
JUDGE

November 20, 2023”

3. Learned State counsel in pursuance of the above-said order has produced a copy of letter/instructions dated 29.11.2023, issued by the Director General, Social Justice, Empowerment, Welfare of SCs & BCs and Antyodaya (SEWA) Department, Haryana, Chandigarh, which is

taken on record and has been marked as 'Mark A'. The relevant portion of the said letter is reproduced herein under: -

“From

*Director General
Social Justice, Empowerment, Welfare of SCs & BCs and
Antyodaya (SEWA) Department,
Haryana, Chandigarh*

To,

*Advocate General, Haryana
The Hon'ble Punjab and Haryana High Court
Chandigarh*

No.21754 OAH/SEWA/2023 Dated 29-11-2023

Subject: CWP No. 26035 of 2023 titled as Smt. Sheela Devi Vs District Collector-cum-Presiding Officer under Maintenance Tribunal, Gurugram and ors.

With reference to your D.O. No.3679 dated 23.04.2023 on subject cited above, it is submitted that the Hon'ble High Court, passing the orders dated 29.11.2023 in the subject captioned writ petition, raised some queries on the following points:

- i) Whether after passing of the judgments of the Hon'ble Supreme Court in Smt.S.Vanitha's case (supra) and of this Court in Ravi Kumar's case (supra), which has been upheld by the Hon'ble Division Bench of this Court in LPA-1387-2023, the authorities are still not passing orders in cases wherein prayer for eviction has been made and if so, the reasons for the same.*
- ii) Whether the letter (Annexure P-9) issued by the Director General, Social Justice, Empowerment, Welfare of SC & BC and Antyodaya (SEWA) Department, Haryana has any legal basis or not.*
- iii) Whether, irrespective of the position of law, since it is the duty of the authority under the Act to pass an order and not to simply keep an application seeking eviction pending, then as to why the authority concerned has not passed an order on the same?*

With regard to this, it is submitted that the Government of India had enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The erstwhile Social Justice & Empowerment Department was a nodal department to implement the provisions of

the said Act. The erstwhile Social Justice & Empowerment Department, being a nodal department, notified the Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The State Government, through the erstwhile Social Justice & Empowerment Department, introduced an Action Plan, 2015 vide which the District Magistrates in the State of Haryana were empowered to pass the eviction orders to protect the property of the senior citizens/parents. The State Government vide notification dated 01.01.2023 merged the Welfare of Scheduled Castes and Backward Classes Department with the erstwhile Social Justice & Empowerment Department and name of the erstwhile Social Justice & Empowerment Department has been substituted with the Social Justice, Empowerment, Welfare of Scheduled Caste and Backward Classes and Antyodaya (SEWA) Department, Haryana. Further, the point-wise response of the said queries is herein under:-

i) It is submitted that as per provisions of section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the State Government is empowered to constitute a Maintenance Tribunals to decide the cases pertaining to maintenance of senior citizens. Pursuant thereto, the Maintenance Tribunals and Appellate Tribunals under Rule 3 of the Haryana Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 had been constituted by the State of Haryana with the composition as mentioned therein. Accordingly, the said Tribunals have been constituting/re-constituting, time to time, by the State of Haryana by way of issuing gazette notification. Section 23 of the said Act already empowers the tribunals to declare the transfer of property as void, at the option of such senior citizen, in case it appears to the tribunal that the transfer of property made by the senior citizen, by way of gift or otherwise, was influenced by fraud/coercion/under undue influence. Section 23 of the said Act is reproduced as under.

"Transfer of property to be void in certain circumstances

1. Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of

property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

2. *Where any senior citizen has a right to receive maintenance out of an estate and such estate or part, thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*

3. *If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."*

Even, in S.Vanitha Vs the Deputy Commissioner, Bengaluru Urban District and Others the Hon'ble Apex Court has also observed that the power to order of eviction is construed in the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 i.e. right to receive maintenance out of an estate.

The relevant portion of the judgment is reproduced as under:-

"...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..."

Whereas, power of eviction had been conferred by the State Government to all the District Magistrates in the State of Haryana, by

notifying an Action Plan, 2015 vide notification dated 26.05.2015 but the same was struck off to the extent of Clauses 1 to 3 ie. (1) Procedure for eviction from property/residence building belonging to/occupied by senior citizens/parents, (2) Eviction order from property/residential building of senior citizens/parents and (3) Enforcement of orders by a coordinate bench of the Hon'ble High Court by passing the judgment dated 23.01.2020 in CWP No. 4744 of 2018 titled as Simrat Randhawa Vs State of Punjab & Others and there is no stay in operation of judgment dated 23.01.2020 in LPA No. 702 of 2021 titled as State of Haryana and Others Vs Simrat Randhawa filed by the State of Haryana.

In the present matter in hand, an application has been made before the District Magistrate for eviction and the District Magistrate is unable to pass the eviction orders as the Action Plan, 2015, under which he was empowered to evict, has already been struck off, as mentioned above.

Hence, the Maintenance Tribunals can pass the eviction orders in view of provisions of Section 23 of the said Act as there is no bar at the same but the District Magistrates can not pass the eviction orders on account of judgment dated 23.01.2020 in Simrat Randhawa's case (Supra).

ii) It is submitted that as mentioned above the power of eviction was assigned to the District Magistrates in the State of Haryana by virtue of the Action Plan, 2015 by the State Government but the same was struck off to the extent of Clauses 1 to 3 by the Hon'ble Bench of Justice Rajeev Narain Raina vide judgment dated 23.01.2020 passed in CWP No. 4744 of 2018 titled as Simrat Randhawa Vs State of Punjab & Others. The said judgment has been challenged by this department by way of filing an LPA No. 702 of 2021 titled as State of Haryana and Others Vs Simrat Randhawa but the Division Bench of the Hon'ble High Court did not stay the same. Despite of this, the eviction orders were being passed by the District Magistrates as per mandates of the said Action Plan. Therefore, this department, being nodal department to implement the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has issued a letter dated 19.01.2023 to all the District Magistrates in the State of Haryana to stop the proceedings of eviction under the Action Plan,

2015 to the extent of Clauses 1 to 3 in light of the judgment dated 23.01.2020 passed in Simrat Randhawa's case (Supra), only to avoid the contempt proceedings against the said judgment. Next date of hearing has been fixed by the Hon'ble High Court in LPA No. 102 of 2021 is 06.02.2024. It is clarified here that this department never issued the directions to the Maintenance Tribunals not to do proceed with for eviction under Section 23 of the said Act.

iii) It is submitted that the District Magistrates in the State of Haryana were empowered to pass the eviction orders under the Action Plan, 2015 notified by the State Government vide Notification dated 26.05.2015 and they were duty bound to do so but they have been deprived of the said powers as the said Action Plan to extent of Clauses 1 to 3 is not in existence due to passing of judgment dated 23.01.2020 passed in Simrat Randhawa's case (Supra). Even, despite of filing an LPA No.702 of 2021) there is no stay in the said judgment, till date. Thus, the District Magistrates cannot entertain and decide the applications seeking eviction in exercising the powers conferred to them under the said Action Plan on account of setting aside the same in Simrat Randhawa's case (Supra).

Therefore, you are requested to kindly apprise the Hon'ble High Court in respect of all the said facts.

*sd/-
Joint Director
Social Justice, Empowerment,
Welfare of SCs & BCs and Antyodaya (SEWA) Department,
Haryana, Chandigarh”*

A perusal of the above letter would show that as per the stand of the State, the Maintenance Tribunal has the power to pass an eviction order in view of the provisions of Section 23 of the Act of 2007 and also in view of the law laid down by the Hon'ble Supreme Court in **Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors., reported as 2021(15) SCC 730**, para 25 of which, has been reproduced in the said letter. The stand of the State is that since the action plan of 2015 has been set aside by the Co-ordinate Bench of this Court

and there is no stay of the said judgment in the LPA filed by the State and the private parties, thus, the District Magistrates in the State of Haryana, who were empowered to pass orders of eviction under the action plan, are not entertaining the said petitions in order to avoid contempt proceedings. It is further clear that in view of the law laid down in S. Vanitha's case (supra), relevant portion of which has been reproduced in the said instruction (Mark 'A'), as per the stand of the State, the Maintenance Tribunal can pass an eviction order in view of the provisions of Section 23 of the Act of 2007 and the above-said judgment, after taking into consideration the relevant factors, in accordance with law.

4. Learned counsel for the petitioner has submitted that since the petition (Annexure P-8) has been filed by the petitioner before the District Magistrate which as per the above stand of the State is not maintainable before the said authority and is maintainable before the Maintenance Tribunal, thus, the petitioner be permitted to withdraw the present writ petition with liberty to file a petition under Section 23 of the Act of 2007 before the Maintenance Tribunal after making all the necessary prayers including the prayer of eviction.

4. In view of the above, the present writ petition is dismissed as withdrawn, with the aforesaid liberty.

5. It is made clear that in case any such petition is filed before the Maintenance Tribunal, then, the same would be considered, as expeditiously as possible, independently, in accordance with law.

November 29, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No