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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th January, 2023

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W.P.(C) 9915/2020

SMT DULLI BISWAS

..... Petitioner

Through: Mr. Gaurav Kumar, Advocate with
Petitioner in person and her husband
(M: 9971279779).

versus

THE DIVISIONAL COMMISSIONER & ORS. Respondents

Through: Ms. Hetu Arora Sethi, ASC for R-1
(M: 9810268590).
Mr. V.S. Kamra, Advocate for R-2 to
5.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner and her husband - Mr. Anil Biswas who are both senior citizens, have four children i.e., two sons and two daughters. All four children, along with their family members, are stated to be living in property bearing No.WE-30, Gali No.9, Mohan Garden, Pipal Road, Uttam Nagar, New Delhi (*hereinafter, "subject property"*).
3. The Petitioner and her husband live on the ground floor with one daughter Ms. Anjali Biswas and a granddaughter. The first floor is occupied by the second daughter Ms. Ranjana Biswas and her family. The second floor and third floor was in the occupation of the two sons Mr. Ashok Biswas and Mr. Aseem Biswas and their families at the time of filing of the present writ petition. However, during the pendency of the petition, Aseem

Biswas and his family is stated to have shifted out. There are various disputes that have arisen between the parties and complaints have been filed by the Petitioner and her husband against their children.

4. The present petition has been filed by the Petitioner seeking quashing of the impugned order dated 22nd February, 2020 passed by the Appellate Court of the Divisional Commissioner, Department of Revenue, GNCTD (*hereinafter, "ld. Divisional Commissioner"*), by which the appeal filed by the Petitioner was dismissed on the ground that the same is barred by limitation.

5. In this writ petition, vide order dated 17th February, 2021, this Court had directed the parties to explore a comprehensive resolution of dispute and had accordingly impleaded all the children of the Petitioner including her daughters and their husbands. The parties had also appeared in a virtual hearing before the court. After hearing them, an *interim* arrangement was also directed with the consent of the parties. The relevant portion of the order dated 17th February, 2021 is set out below:

"3. The Petitioner and her son, Respondent No.2 - Mr. Ashok Biswas have appeared before Court. A comprehensive resolution of the disputes amongst the family members would require to be explored. Ms. Ranjana Biswas is already impleaded as Respondent no.5. Mr. Aseem Biswas, who was a party before the DM and the tribunal is impleaded as Respondent No.6. Ms. Anjali Biswas – the other daughter is impleaded as Respondent no. 7. Mr. Anil Biswas the husband of the Petitioner is impleaded as Respondent No.8. Amended memo of parties be filed within a week.

4. After interacting with the parties, it is deemed appropriate to also direct Mr. Anil Biswas, i.e., the

husband of the Petitioner, to remain present in Court on the next date, along with his daughters.

5. After interacting with the parties today, with consent of parties, the following directions are being passed in order to maintain peace and tranquility between the family members.

i. Mr. Ashok Biswas who is present along with his wife and infant daughter, assures this Court that he would not misbehave with his mother and father in any manner whatsoever. He also undertakes not to cause any disruption or obstruction in the laying of the Indraprastha gas line in the premises. He shall be bound by the said undertakings.

ii. Occupants of the various floors are permitted to get the Indraprastha gas line installed in their respective floors, after paying the necessary charges. None of the parties shall obstruct or disrupt installation of the Indraprastha gas line in any floor.

iii. Insofar as the terrace is concerned, since the water tanks and other amenities are located there, the door to the terrace shall be repaired and a lock shall be installed. The keys for the same shall be three in number – one each with the Petitioner, one with the daughter occupying the First floor and the third key with Mr. Ashok Biswas and Aseem Biswas who are jointly residing in the Second floor. Neither party shall obstruct the others from accessing the terrace.

iv. If the Petitioner wishes to install a CCTV camera, she shall get the same installed without any obstruction by any of the parties residing in the building.

6. The SHO, PS Mohan Garden shall place on record a status report in respect of the complaints which have been lodged by the parties against each other. The

SHO shall also pay regular visits to the premises in order to ensure that peace is maintained between the family members. If any obstruction is caused by any of the parties in the present petition, strict action would be liable to be taken.”

6. As per the amended memo of parties filed pursuant to the aforementioned order of this Court, the following parties have been arrayed as Respondents in the present petition:

- Respondent No.1 – Divisional Commissioner, Department of Revenue, GNCTD
- Respondent No.2 – Sh. Ashok Biswas (S/o the Petitioner)
- Respondent No.3 – Smt. Astha Biswas (W/o Sh. Ashok Biswas)
- Respondent No.4 – Sh. Probir Kumar (H/o Smt. Ranjana Biswas)
- Respondent No.5 - Smt. Ranjana Biswas (D/o the Petitioner)
- Respondent No.6 - Sh. Aseem Biswas (S/o the Petitioner)
- Respondent No.7- Smt. Anjali Biswas (D/o the Petitioner)
- Respondent No.8 – Sh. Anil Biswas (H/o the Petitioner)

7. Post the passing of the order dated 17th February, 2021 counter affidavits have been filed by the Respondent Nos. 2 & 3 as also Respondent Nos. 4 & 5. A status report has also been filed by the SHO, PS Mohan Garden.

8. Ld. Counsel for the Petitioner who is accompanied by the Petitioner and her husband, submits that despite specific orders of this Court on 17th February, 2021, the ill treatment of the Petitioner and her husband is continuing at the hands of their son and daughter-in-law i.e. Respondent Nos. 2 and 3. Further, they have not allowed the Petitioner and her husband to install the separate Indraprastha gas line in terms of para 5(i) of the order

dated 17th February, 2021. The Petitioner who is present in Court submits that Respondent Nos. 2 & 3 do not allow her to use the water tank. Whenever any person comes from the gas agency to install the gas connection, they are turned away with abuses by the said Respondents.

9. Ld. Counsel for the Petitioner submits that since the passing of the order dated 17th February, 2021, the second son i.e Respondent No.6 - Sh. Aseem Biswas is stated to have vacated the third floor of the subject property. However, due to the conduct of Ashok Biswas and his wife, the Petitioner is unable to even give out the said third floor on rent. In view of the continued misbehaviour, the Petitioner and her husband are unable to also rent out the one room accommodation which exists on the ground floor of the subject property. He submits that the status report filed by the SHO Mohan Graden shows that complaints from both sides have been filed including several complaints made by the Petitioner and her husband to the local police. He further submits that the Petitioner and her husband have been regularly subject to physical abuse by the Respondent Nos. 2 & 3.

10. Ld. counsel for the Petitioner urges before this Court that the dismissal of the Petitioner's appeal by the Id. Divisional Commissioner vide the impugned order dated 22nd February, 2020 on the ground of delay is not justified inasmuch as the Petitioner is suffering from Thalassemia and Thyroid and had to undergo medical treatments for the same leading to delay in filing the appeal. Further, the Respondent Nos. 2 & 3 do not permit the parents to live peacefully in their own property. Under such circumstances, the appeal of the Petitioner is liable to be allowed and was unjustly dismissed.

11. Mr. Kamra Id. Counsel for the Respondent Nos. 2 – 5 submits that due to the contribution made by the Respondent No.2 for the construction of the subject property he would not be liable to be evicted as he has rights in the property. He further submits that the complaints of ill treatments have been filed by both sides which is clear from the SHO's report.

12. Mr. Kamra, Id. Counsel submits that Respondent No.2 has preferred an injunction suit bearing no. **CS No. 598/18** titled **Ashok Kumar Biswas v. Duli Biswas and Ors.** and vide order dated 22nd December, 2018 the Id. Civil Judge (SCJ-cum-RC), Dwarka has granted him interim protection from dispossession. He submits that the subject property is the matrimonial home of Respondent No.3, thus she enjoys her rights in the subject property as per the judgment in **Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors., 2020 (14) SCALE 210**. Further, Respondent No.3 has preferred a domestic violence case wherein vide order dated 28th May, 2018 passed by the Metropolitan Magistrate, Mahila Court- 02, Dwarka Courts, Delhi she has been given protection from eviction from the subject property.

13. Mr. Kamra, Id. Counsel further submits that insofar as the daughter and son-in-law i.e. Respondent No.5 and Respondent No.4 are concerned, a collaboration agreement has been entered into with the parents, wherein it has been recognised that Respondent No.5 would be entitled to one floor in the subject property. Finally, insofar as the other son i.e. Respondent No.6 – Aseem biswas is concerned, he has not been living in the subject property since 2018.

14. Ms. Hetu Arora Sethi, Id. Counsel on behalf of the police, submits that the record would show that there was an earlier settlement which was

entered between the parties on 7th February, 2018. However, the disputes between the parties continued and various complaints and counter complaints were filed. The SHO-PS Mohan Garden visited the subject property and considered the nature of the disputes. According to the SHO it is a matter of division of property between the parties.

15. At this stage, the Court is only considering the eviction petition which was filed by the Petitioner against the Respondent Nos. 2 & 3 before the Id. District Magistrate (SW) and not any criminal complaints. The daughter and son-in-law had not been impleaded parties of the said eviction proceedings, the present petition would, therefore, be restricted to Respondent Nos. 2 & 3 – i.e., Ashok Biswas and his family.

16. The District Magistrate (SW), vide his order dated 13th August, 2018 considered the matter and came to the conclusion that since there is a separate staircase whereby access is available to the various floor of the subject property as also the order dated 28th May, 2018 passed by the MM, Mahila Court- 02, Dwarka Courts in favour for the Respondent No.3, the petition for eviction is liable to be dismissed. The relevant part of the order passed by the District Magistrate (SW) is as under:

“I have gone through the above matter, it is clear that the respondents have contributed in the development of the suit property and there is a separate access to the various floors by a stair case without going through the house of the complainant situated on the upper ground floor. One of the respondent namely Smt. Astha has already obtained stay against dispossession from Hon’ble court of Metropolitan Magistrate, Dwarka.

In view of the above fact, I don’t find any merits in the application of the appellant, Smt.Dulli Biswas for

eviction of the respondents from the 2nd floor of the suit property bearing No. WE-30, Gali No.9, Mohan Garden, Pipal Road, Uttam Nagar, New Delhi and hereby dismiss the appeal. The appellant is at liberty to approach the competent court for redressal of her complaints.”

17. In the appeal, the Id. Divisional Commissioner vide the impugned order dated 22nd February, 2020 dismissed the Petitioner’s appeal in view of the same being filed beyond the period of limitation.

18. This Court has heard the matter from time to time. As is evident from the order dated 17th February, 2021, several of the parties and family members had appeared virtually before this Court on the said date. After interacting with the parties, an *interim* arrangement with the consent of the parties was passed on the said date which is extracted above. The subsequent conduct of the parties has also now been considered in terms of the submission made by the Id. Counsels for the parties. The Petitioner and her husband are also present in Court. Clearly, there is no dispute as to the ownership of the property is concerned as the same vests with the Petitioner and her husband i.e., the parents.

19. The Court has perused the order dated 28th May, 2018 passed by the MM, Mahila Court- 02, Dwarka Courts as also the order dated 22nd December, 2018 passed by the Id. Civil Judge (SCJ-cum-RC), Dwarka. The same reads as under:

“CC No.,16191/18

Astha Biswas v. Duli Biswas

28.05.2018

Memo of appearance filed on behalf of all the respondents.

Ld. Counsel for complainant has prayed for restrain order against the respondents submitting that respondents are intending to dispossess the complainant from the second floor of the property.

On inquiry respondent no.1 has admitted that complainant is living on the second floor of the property no. WE-30, Gali No.9. Monan Garden, Peepai Road, Uitam Nagar. She further states that she has started appropriate proceedings to get the property vacated from the complainant and her husband.

As the complainant is living in one floor of abovesaid property, the respondents are restrained from dispossessing the complainant without following due process of law.

Copy of order be given dasti to both parties.

CS No. 598/18

Ashok Kumar Biswas v. Duli Biswas and Ors

Date: 22.12.2018

Submissions heard on the application w/O XXXIX R 1 & 2 CPC. The present suit is filed by the plaintiff for permanent and mandatory injunction, wherein, defendant no. 1 is the mother, defendant no. 2 is brother of the plaintiff and defendant no. 4 is his sister, whereas, defendant no. 3 is wife of defendant no. 2, meaning thereby, it is a family dispute. It is submitted by the plaintiff that he has contributed a huge amount for the purchase as well as construction of the suit property but all the defendants are acting in collusion with each other and trying to get the plaintiff dispossessed from the same as they are continuously asking for money and threatening him on daily basis. Police complaint has already been made in this regard.

It is informed by Ld. counsel for defendants that defendant no. 2 and 3 have already left the premises 4-5 months back. On this statement plaintiff submits that

defendant no. 2 and 3 are being forcefully ousted out by defendant no. 1 from the suit property. It is admitted that defendant no. 2 and 3 are not threatening the plaintiff right now as they are not available in the premises. In the present application for interim injunction, plaintiff is seeking restraining order against the defendants for not dispossessing him and his wife from the suit property i.e. WE-30, Second Floor, Gali No. 9, Mohan Garden, Pipal Road, Uttam Nagar, New Delhi-110059 without following due process of law and also not to create any third party interest in the same.

In view of the whole facts and circumstances of the present case, when admittedly plaintiff is having possession of second floor of the suit property, a prima facie case is made out in favour of plaintiff, defendant no. 1 and 4 are hereby restrained from dispossessing the plaintiff from the second floor of the suit property and also from creating any third party interest till the final disposal of the suit till further orders.

*This order does not constitute a reflexion on the merits of the present case. **It is clarified that this order does not put a bar upon defendant no. 1 and 4 from following due process of law to obtain possession from the plaintiff or file a separate suit in this regard.** This order is not operative against defendant no. 2 and 3.*

Now, to come up for filing reply, if any, and for arguments to the application u/O VII R 11 CPC on 26.02.2019.

Both the parties are directed to appear in person before the court and bring the original documents on the NDOH so that admission denial of the documents can be conducted. Copy of this order be given dasti to both the parties.

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20. Both these orders are clear to the effect that Respondent No. 2 & 3 cannot be dispossessed without following due process of law.

21. Recently, in **W.P.(C) 17386/2022** titled **Kartika Grover v. State of NCT of Delhi & Ors.** this Court had occasion to consider the judgement of **Smt. S. Vanitha (supra)** as also similar judgements being **Satish Chandra Ahuja v. Sneha Ahuja, 2020 (11) SCALE 476, Vinay Verma v. Kanika Pasricha and Ors., 265 (2019) DLT 211** and **Aarti Sharma & Anr. v. Ganga Saran (RSA 14/2021)**. This Court vide order dated 20th December, 2022 in **Kartika Grover (supra)** held as under:

“13 .The rights of the daughter-in-son and daughter-in-law and the senior citizens who are in-laws, have been the subject matter of several decisions of the Supreme Court and of this Court. The latest decision of the Supreme Court in this regard is Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors., 2020 (14) SCALE 210 ,wherein the overlap between the two statutes i.e. DVA and the MWSCPA has been considered and the Supreme Court has held that the provisions of the two statutes need to be construed harmoniously. In that case, disputes arose between both the in laws on the one hand, and the daughter-in-law, on the other. The in-laws had preferred an application under the MWSCPA and obtained orders for eviction of their daughter-in-law and granddaughter. This was upheld by the ld. Division Bench of the Karnataka High Court, which held that the remedy of the daughter-in-law to seek maintenance and shelter, lies only against the husband i.e., the son, and accordingly the eviction order was valid. This judgment of the Karnataka High Court was challenged before the Supreme Court. The Supreme Court considered the right of residence given to the daughter-in-law under the DVA, as also the relevance of the provisions of the MWSCPA, holding that the intention of the legislators would be to read the said two legislations harmoniously, as both deal with the salutary aspects of public welfare and interest. It held that the MWSCPA cannot have an overriding in all

situations irrespective of competing entitlements of a woman in a “shared household”, as the same would defeat the purpose of the DVA. The provisions of both the statutes cannot be harmoniously construed.

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17. Thus, the settled position is that the DVA and the MWSCPA must be construed harmoniously, and the relationship between the son and daughter-in-law must also be considered, among other factors, while deciding the dispute.”

22. It is observed that an eviction petition filed under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (*hereinafter, “Senior Citizen Act”*) is a proceeding which follows the due process of law. Rule 22(3)(1)(i) and (iv) of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, entitles a senior citizen to seek eviction of his son, daughter or his legal heirs on account of ill-treatment. These rules were framed for protecting the life and property of senior citizens. The said rule is an aid to the Section 22 of the Senior Citizen Act which expressly provides that State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Thus, if the Court comes to the conclusion that the Respondent No. 2 & 3 are not entitled to any rights in law and an eviction order is passed under the said Act, the aforementioned orders would not come in the way of the eviction order. The said provisions are as under:

“Section 22 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007

22. Authorities who may be specified for implementing the provisions of this Act

(1) The State Government may, confer such powers and impose such duties on a District Magistrate as may be

necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.

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Rule 22(3)(1)(i) and (iv) of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017.

(3)(1) Procedure for eviction from property/ residential building of Senior Citizen/Parents -

(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self- acquired, tangible or intangible and include rights or interests in such property on account of his non- maintenance and ill-treatment.”

(iv) The Deputy Commissioner/ District Magistrate during summary proceedings for the protection of senior citizen parents,/ shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/ District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill-treating him and yet is occupying the property of any kind whether movable or immovable, ancestral or self-acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate shall issue in the manner hereinafter

provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.”

23. Insofar as the question as to whether there has been harassment to the Petitioner and her husband is concerned, the Senior Citizen Act is clear to the effect that wherever there is misconduct by the children, parents would always be entitled to seek eviction on the ground of ill treatment and other grounds in the Act.

24. For the last several years, Respondent No. 2 & 3 have been living in the property. However, the admitted position is that no maintenance has been paid. The only ground on which eviction is opposed is that Respondent No. 2 has contributed to the construction in the property. Without going into the question as to whether the contribution has in fact been made or not, the settled position in law is that even if any of the siblings or the children have made contributions to constructions, the same would not result in any ownership in the subject property. The said position of law has been reiterated by this Court in **CS(OS) 720/2010** titled ***Usha Rani Gautam & Or. v. Devender Gautam***. The relevant part of the said judgement is as under:

“CS(OS) 720/2010 titled Usha Rani Gautam & Or. v. Devender Gautam

“If the defendant made some contribution for construction being raised on the aforesaid property, that would make no difference as far as the title of the suit property is concerned, as such contribution in construction would not confirm any right upon the defendant in the title of the property and it would be

taken only either as a gift or loan from him to his mother who admittedly was the owner of the property.”

25. Under these circumstances, the ground that the contribution has been made for constructions would not be a valid ground to defend an eviction petition under the Senior Citizen Act. If the said contribution is established in appropriate proceedings after leading evidence, then the consequences may follow.

26. In so far as the appeal being barred by limitation is concerned, the impugned order itself records that the delay is beyond 60 days. The reason given by the Id. Counsel for the Petitioner is that the Petitioner had to visit the hospital frequently for blood transfusion as also the Petitioner and her husband had to visit Orissa, their native village owing to a previous medical issue. This in the opinion of the Court is a valid ground for condonation of delay.

27. Further, Respondent Nos. 2 & 3 have also shown no respect to the *interim* arrangements directed by this Court vide order dated 17th February, 2021. The same can be seen from the fact that despite the directions of this court, they have continued to misbehave with the Petitioner and her husband and have not permitted to install a separate Indraprastha gas line on the Petitioner's floor. Even the basic necessities such as use of water tank is being objected to by Respondent Nos. 2 & 3. Thus, this Court has no doubt that the Petitioner and her husband are being subjected to ill treatment by Respondent Nos. 2 & 3.

28. Under these circumstances and considering the complaints and counter complaints, it is recognised by this Court that the Petitioner and her husband have a right to live in peace in their own property. Under these

circumstances and facts extracted above, Respondent Nos. 2 & 3 are directed to vacate the subject property and an order of eviction is passed against them.

29. Respondent No. 2 & 3 shall vacate the subject property and hand over the possession peacefully to the Petitioner and her husband by 28th February, 2023 failing which the SHO-PS Mohan Garden shall ensure that the possession of the floor which is under the occupation of Respondent Nos. 2 & 3 is handed over to the Petitioner without any obstructions.

30. At this stage the Id. Counsel for the Respondent Nos. 2 - 5 submits that there is a family arrangement between the parties. This is disputed by Id. Counsel for the Petitioner. In view thereof, the SHO-PS Mohan Garden shall pay regular visit to the subject property to ensure safety and security of the Petitioner and her husband.

31. With these observations, the present petition with all pending applications, if any, is disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 25, 2023
MR/kt