

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

Date of decision: 10th APRIL, 2023

IN THE MATTER OF:

+ **LPA 126/2023 & CM APPLs. 8276/2023, 8277/2023, 8278/2023**

ASHOK BISWAS S O ANIL BISWAS AND ANR Appellants

Through: Mr. Pawan Prakash Pathak, Mr.
Monu Kumar, Advocates

versus

THE DIVISIONAL COMMISSIONER DEPARTMENT OF
REVENUE GOVT OF NCT DELHI AND ORS Respondents

Through: Mr. Gaurav Kumar, Advocate for R2,
R-3 and R-4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The instant LPA has been filed for setting aside the Order dated 23.01.2023, passed by the learned Single Judge in W.P. (C) 9915/2020. The learned Single Judge *vide* the Order impugned herein has directed the Appellants herein to vacate the property situated at WE-30, Gali No. 9, Mohan Garden, Pipal Road, Uttam Nagar, New Delhi (*hereinafter referred to as 'the property in question'*).

2. Shorn of details, the facts leading to the present LPA are as follows:

- i) Appellant No.1 is the son of Respondents No.2 & 3 herein and Appellant No.2 herein is the wife of Appellant No.1. It is stated that in 2005, land admeasuring 77 sq. yards was bought by Respondent No.2 and at the time of purchase, the property

consisted of a temporary structure, however, in 2016, four floors were built on the property in question and the Appellants herein along with Respondents No.2 to 6 have been living in the property in question for the last 6 years as part of a joint family setup. It is stated that Respondent Nos.2 & 3 along with their daughter - Respondent No.4 are in occupation of the ground floor of the building. The first floor is occupied by Respondent No.5 who lives in the house with her husband. The second floor is occupied by the Appellants herein and the third floor is occupied by Respondent No.6, who is the son of Respondents No.2 & 3.

- ii) It is stated that due to his violent and troublesome behaviour, Appellant No.1 was disowned by Respondents No.2 & 3 in 2008.
- iii) It is stated that Respondents No.2 & 3 were convinced to revive cordial relations with their son, i.e. Appellant No.1 herein. It is stated that in 2016, the task of overseeing and completing reconstruction work with respect to the subject property, which comprised of construction of additional floors above the ground floor was assigned to daughter Smt. Ranjana Biswas. After the work was completed, the Appellants began residing on the second floor of the property forcefully and without prior permission of the Respondents No.2 & 3. It is stated that both the sons of Respondent No.2 pressurized him to register the second floor of the property in question in their name. It is stated that due to violent behaviour of Appellants herein the

relations between Appellants herein and Respondents No.2 & 3 deteriorated and turned acrimonious.

- iv) It is stated that on 19.07.2017, Respondent No.2 once again disowned Appellant No.1 herein and sought his eviction from the property in question on account of ill treatment, coercion, making false threats, physical and mental torture and being fearful of their personal safety by filing an application under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to “the Senior Citizens Act”*) and Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment Rules) 2010 (*hereinafter referred to as “the Delhi Rules”*) before SDM, Kapashera. It is stated that on 07.02.2018, the matter was amicably settled between the parties and the application was closed by SDM, Kapashera. It is stated that on account of ill-treatment at the hands of Appellants herein, Respondents No.2 & 3 requested the SDM, Kapashera to reopen the case of eviction of Appellants herein and the case was subsequently reopened.
- v) It is stated that multiple complaints have been made by both sides before the Police authorities alleging *inter-alia* instances of ill treatment, physical and mental abuse, and torture. It is stated that Appellant No. 2 filed a complaint under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as “the DV Act”*) alleging that Respondents No.2 & 3 are subjecting her to physical and mental abuse in her matrimonial home. Further,

Appellant No.1 herein filed a Civil Suit bearing CS No.598/18 seeking mandatory and permanent injunction. *Vide* Order dated 22.12.2018, Trial Court granted interim protection from to Appellants No.1 & 2 herein and vide order dated 13.08.2018 the learned SDM, Kapashera, dismissed the application of Respondents No.2 & 3 for eviction of the Appellants herein.

- vi) Being aggrieved by the lack of recourse, Respondent No.2 preferred an appeal under Rule 22(3)(4) of the Delhi Rules read with the Senior Citizens Act before the Ld. Principal Secretary-cum-Divisional Commissioner (hereinafter referred to as the 'Appellate Authority'), which was dismissed *vide* order dated 22.02.2020, primarily on the ground that the appeal was filed beyond the prescribed period of limitation under Section 16 of the Maintenance Act, i.e., after a period of 60 days, and was hence liable to be dismissed on this ground alone.
- vii) Thereafter, Respondent No.2 herein filed W.P. (C) 9915/2020 seeking a writ/order/direction to set aside the order dated 22.02.2020, passed by the Ld. Appellate Authority and for issuance of directions for eviction of the Appellants herein from the subject property. In the course of writ proceedings, it was the main grouse of the Respondent No.2 herein that the Ld. Appellate Authority has erred in dismissing the appeal without considering the reason for delay, which was that the Respondent No. 2 was undergoing treatment for thalassemia. It was also submitted that the subject property is registered under the name of Respondent No. 2 and was acquired solely by the

Respondents No.2 & 3 without any assistance from their children, and therefore, the contention of Appellants herein, with regards to the subject property being a jointly acquired property with equal rights subsisting with the contributors, ought not to survive. Particular stress was also pressed in the submission that the children fraudulently got the Respondent No. 2 to sign a contribution agreement.

- viii) It is stated that during the pendency of the Writ Petition, the Appellants herein caused obstructions and hindrances when personnel from IGL Limited turned up at the subject property for installation of gas pipelines, which has been recorded in a complaint dated 25.02.2021, to the SHO, PS Mohan Garden filed by the Respondent No. 3.
- ix) During the course of hearing of the Writ Petition, on 17.02.2022, learned Single Judge made an endeavour to bring upon a settlement between the parties. A consent order was passed by the learned Single Judge on 17.02.2021 which, even though has been reproduced in the judgment impugned herein, is once again being reproduced for the sake of convenience:

"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.”

- x) A reading of the impugned judgment reveals that even after the consent order was passed, Respondents No.2 & 3 were being targeted by the Appellants herein and were being punished for approaching courts and were not being permitted to live peacefully in their house. Learned Single Judge, after seeing the conduct of the parties, allowed the Writ Petition by observing that the Appellants herein have shown scant respect to the interim arrangements directed by the Court *vide* order dated 17.02.2021 and that despite the directions of the court, the Appellants herein have continued to misbehave with the Respondents No.2 & 3 herein and have not permitted them even

to install a separate Indraprastha gas line on the their floor and even the basic necessities such as use of water tank are being objected to by the Appellants herein.

xi) It is this Order which has been challenged by the Appellants before this Court.

3. Learned Counsel for the Appellant contends that the Order passed by the learned Single Judge virtually nullifies the interim injunction granted by a competent Court to the Appellants herein in a validly instituted suit. He further states that the Appellants have contributed substantial amount of money towards the construction of the property in question and they cannot be evicted from the same. He states that the only method for eviction of the Appellants, as stated by the learned Metropolitan Magistrate, in its order dated 22.12.2018 while disposing of the suit for injunction filed by the Appellant No.1 herein, is by filing a suit by following due process of law. He also submits that the Senior Citizens Act cannot be used by the Respondents No.2 & 3 as a tool for eviction. He also states that the Respondents No.2 & 3 are under the spell of their daughter who has poisoned their minds against other siblings. He states that the order of the learned Single Judge has not taken into account the role played by the daughter of the Respondents No.2 & 3 who is poisoning the minds of her parents.

4. *Per contra*, Respondent No.2, who appears in person, states that she and her husband are old and ailing and that the Appellants herein have made their lives miserable and are torturing the old couple.

5. When this Court suggested the parties to sit together and settle the matter, Respondent No.2, who appears in person, submitted that everything

has been tried but the Appellants herein have not mended their ways and are constantly torturing the old couple both physically and mentally.

6. Heard Ld. Counsel for the parties and perused the material on record.

7. Undoubtedly, learned Metropolitan Magistrate, Mahila Courts, Dwarka Courts, *vide* order dated 22.12.2018 has passed an order restraining Respondent No.2 & 3 herein from dispossessing the Appellants herein from the property in question without following the due process of law. Relevant portion of the Order dated 28.05.2018, passed by the learned Metropolitan Magistrate, Mahila Court- 02, Dwarka Courts in CC No.16191/18 and Order dated 22.12.2018, passed in CS No. 598/18 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"

8. The Senior Citizens Act was enacted to deal with the problems faced by the senior citizens, particularly widowed women, who were not being looked after properly by their families and were forced to spend their twilight years all alone and were exposed to emotional neglect and to lack of physical and financial support. The object of the Act is actually to cast an obligation on the persons who inherit the property of children or their aged parents/relatives to maintain such aged parents/relatives. The purpose of the Act is to provide a suitable mechanism for the protection of life and property of the older persons.

9. Government of Delhi has framed Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment Rules), 2009. Rule 22(3)(1) of the said Rules reads as under:

“22. Action plan for the protection of life and property of senior citizens. –

xxx

(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.

(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.

(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.

(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 referred to as 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.

(v) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.”

10. The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment Rules), 2009 has been upheld by the Division Bench of this Court in **W.P.(C) 347/2018**, titled as Aarshya Gulati (Through: next friend Mrs. Divya Gulati) And Ors v. Government of NCT of Delhi and Ors. Therefore, a process has been prescribed under the Senior Citizens Act and the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment Rules), 2009 for senior citizens to seek eviction of their children from their property in case they are being ill-treated by their children. It, therefore, cannot be said that the Appellants herein are being evicted without following the due process of law. Rule 22 of the Delhi Rules stipulates a procedure for eviction of children by parents who are being subjected to cruelty or are being ill-treated by them.

11. The learned Single Judge, after looking into the conduct of the parties and after assessing the situation has taken a view that the Respondents No.2

& 3, who are old parents, are being ill-treated by Appellants herein and, therefore, Respondents No.2 & 3 have full right to evict the Appellants herein from the property in question, which is in their name. It is for the Respondents to file an appropriate suit to establish that they have invested substantial amount of money in the construction of the property in question and get their rights declared. The Appellants cannot take shelter of the Order dated 28.05.2018, passed by the learned Metropolitan Magistrate, Mahila Court- 02, Dwarka Courts in CC No.16191/18 and Order dated 22.12.2018, passed in CS No. 598/18 and claim protection. There is no record to indicate that proceedings under the DV Act have been initiated by Appellant No.2 against her husband and her in-laws and she is also claiming her right of residence only through her husband. As has already been observed that the injunction which only protects the Appellants from being ejected without following due process of law cannot survive in view of Rule 22 of the Delhi Rules read with Senior Citizens Act. The judgment of the learned Single Judge, therefore, does not call for any interference.

12. Accordingly, the present appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

APRIL 10, 2023

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