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

Date of decision: 01st AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 9910/2023 & CM APPL. 38147/2023**

JYOTI KUMAR

..... Petitioner

Through: Mr. Jatin Kumar & Mr. Manish
Kumar, Advocates along with
Petitioner in person

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel (Civil) for GNCTD
with Mr. Kartik Sharma, Advocate
Respondent No.2 – in person.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

1. *Vide* the present Writ Petition the Petitioner seeks to challenge the Order dated 02.06.2023, passed by Appellate Authority, Divisional Commissioner, affirming the Order dated 11.05.2022, passed by the District Magistrate, Shahdara, in Eviction No.26/2021 wherein the District Magistrate has directed the Petitioner herein to vacate the property No.R-X1075, Gali No.3, New Chand Mohalla, Gandhi Nagar, Delhi-32 (*hereinafter referred to as 'the property in question'*).

2. The facts of the case reveal that Respondent No.2 herein is the mother of the Petitioner herein. It is stated that Respondent No.2 filed a complaint dated 19.03.2021 with the District Magistrate, Shahdara, Delhi, stating that



she is aged about 62 years and is residing at the property in question. It is stated in the complaint that the husband of the Respondent No.2/Complainant passed away in 2004 leaving behind two sons and a daughter. It is stated in the complaint that the younger son of Respondent No.2/Complainant, who lives on the upper floor of the property in question with his wife, harasses her, beats her, threatens to kill her and wants her to vacate the property in question. The Respondent No.2/Complainant, approached the District Magistrate under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read with Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 praying for eviction of her younger son, i.e. the Petitioner herein, from the property in question.

3. The District Magistrate, *vide* Order dated 11.05.2022 held that the Complainant/Respondent No.2 herein, who is a senior citizen and a parent, was entitled to file the complaint under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as 'the Senior Citizens Act'*). It was further held by the District Magistrate that the property in question was owned by the husband of the Complainant/Respondent No.2 herein who passed away intestate and the Complainant and her children became equal owners of the property in question. The District Magistrate further held that the Report of the Sub-Divisional Magistrate, which was witnessed by two witnesses, corroborate the version of the Complainant that the Petitioner herein is harassing and ill-treating her. The District Magistrate, therefore, allowed the application of the Complainant/Respondent No.2 and directed the Petitioner herein to evict the property in question.

4. The said Order was challenged by the Petitioner herein before the



Appellate Authority, i.e. the Divisional Commissioner, Delhi. Material on record discloses that on 05.09.2022, in an application filed by the wife of the Petitioner herein, the Appellate Authority restrained Respondent No.2 from dispossessing the wife of the Petitioner herein from the property in question except in accordance with the orders of a competent Court. *Vide* Order impugned herein, the Appellate Authority affirmed the findings of the District Magistrate.

5. Learned Counsel appearing for the Petitioner submits that the Petitioner is prepared to compromise the matter. He places reliance on paragraph No.12 of the Order impugned herein to contend that Respondent No.2 was prepared to sell the property in question and give 1/4th share of the sale proceeds to the Petitioner herein. However, Respondent No.2, i.e. the mother of the Petitioner herein, who is present in Court, categorically stated that she is being ill-treated and harassed by the Petitioner and his wife and that she is not in a position to live with them. Since there is no chance of reconciliation this Court has proceeded further with hearing of the matter.

6. Material on record discloses that pursuant to the directions of the District Magistrate directing the Sub-Divisional Magistrate of the area to conduct an enquiry into the matter and file a report, a report dated 22.10.2021 was filed and the same reads as under:

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SDM REPORT

1. Factual facts of the case based on local enquiry?

With reference to the Letter No. F.1/DM/Shahdara/2021/756 dated 11.10.2021. It is to submit, that a local enquiry had been conducted of Smt. Sunita Rani w/o Lt. Sh. Subhash Chander R/o X-1075,



Gali No.3, New Chand Mohalla, Gandhi Nagar, Delhi-32. At the time of enquiry two neighbours informed that they know of Smt. Sunita Rani w/o Lt. Sh. Subhash Chander very well. Smt. Sunita Rani w/o Lt. Sh. Subhash Chander have 2 Sons & one Daughter and all are married. Smt. Sunita Rani w/o Lt. Sh. Subhash Chander is residing on First floor with his Elder son namely Deepak Kumar who is handicapped and his wife & son. Jyoti Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander and his wife Sonia with two children are residing on the Second Floor. Jyoti Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander and his wife Sonia always fight, abuse, beats and misbehave with Smt. Sunita Rani w/o Lt. Sh. Subhash Chander. Smt. Sunita Rani w/o Lt. Sh. Subhash Chander is a senior citizen and earns her livelihood through her widow pension of Rs.2500. And Ground Floor is on rent through which her Elder son who is handicapped is earning his livelihood. Jyoti Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander and his wife Sonia misbehave with Smt. Sunita Rani and her handicapped son Deepak Kumar and neither take care of his handicapped son Deepak Kumar. The above said property is in the name of Lt. Sh. Subhash Chander husband of Smt. Sunita Rani. So, she requested to get the above said property evicted from his Younger son namely Jyoti Kumar and his wife Sonia.

2. Details of person residing in the property?

- 1. Smt. Sunita Rani w/o Lt. Sh. Subhash Chander.*
- 2. Deepak Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander with his wife & son.*
- 3. Jyoti Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander with his wife & Children.*

3. Documents collected from the complainant w.r.t, ownership:



1. Copy of Sale Deed.

4. Witness name and Statement *(If any)

*Two neighbours namely Smt. Long Shri w/o Hari Singh & Smt. Tripta Mehta w/o Chunni Lal have given a written statement (Copy Enclosed) they know Smt. Sunita Rani w/o Lt. Sh. Subhash Chander R/o X-1075, Gali No.3, New Chand Mohalla, Gandhi Nagar, Delhi-32 very well. They informed that Smt. Sunita Rani w/o Lt. Sh. Subhash Chander have 2 Sons & one Daughter and all are married. Smt. Sunita Rani w/o Lt. Sh. Subhash Chander is residing on First floor with his Elder son namely Deepak Kumar who is handicapped and his wife & son. Jyoti Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander and his wife Sonia with two children are residing on the Second Floor. **Jyoti Kumar S/o Smt. Sunita Rani w/o Lt. Sh. Subhash Chander and his wife Sonia always fight, abuse, beats and misbehave with Smt. Sunita Rani w/o Lt. Sh. Subhash Chander and his elder Son. So, they want the above said property to be evicted from her younger son Jyoti Kumar & Daughter in Law Sonia.*** (emphasis supplied)

7. A perusal of the report of the Sub-Divisional Magistrate shows that Petitioner herein and his wife fights, abuses, beats and misbehaves with the Respondent No.2 herein. The findings of the Sub-Divisional Magistrate are based on the statement made by two independent witnesses.

8. Heard the Counsels and parties and perused the material on record.

9. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought into force to provide a more effective provision for maintenance and welfare of parents and senior citizens, a right which is guaranteed and recognized under the Constitution of India. The Statement of Objects and Reasons of the Act indicates that there is a provision under the



Code of Criminal Procedure under which parents can claim maintenance from the children but the procedure is time consuming and expensive and, therefore, it is stated that simple, speedy and inexpensive mechanism be provided whereunder maintenance can be claimed by the suffering parents from the children.

10. The State of NCT of Delhi has brought out the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016. Rule 22 (2) & (3) of the Rules, 2016 gives powers to the District Magistrate to pass an Order of eviction in case it is found that the senior citizens are being ill-treated and are not being maintained by their children.

11. A Division bench of this Court in a Judgment dated 30.05.2019 passed in **W.P.(C) 347/2018** in the case of “Aarshya Gulati and Ors vs. Government of NCT of Delhi and Ors” has stated that the objective of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is to provide inexpensive and speedy procedure for the protection of life and property of the senior citizens from the children / legal heirs, who are expected to maintain parents / senior citizens by providing the basic amenities and physical needs but refuse or fail to maintain / provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a ground for parents / senior citizens to seek eviction of children / legal heir from the property, which is the only way for them to seek protection of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their children / legal heirs. It was further observed that a senior citizen cannot be expected to knock the door of Civil Courts to file a legal battle to obtain possession of the property.



12. A Division bench of this Court in a Judgment dated 22.02.2018 passed in **LPA 783/2017** in the case of “Shadab Khairi & Anr vs. The State & Ors” has observed as under:

“20.At the outset, we had elaborated on how beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare State. The object for which the Act as well as the subject Rules, extracted hereinabove, were brought into force, namely, for the welfare of parents and senior citizens and for protection of their life and property, leave no manner of doubt that the Maintenance Tribunal constituted under the Act has the power and jurisdiction to render the order of eviction.”

13. The High Court of Madras in L. Lokesh vs. Chariman cum Managing Directions, Tamil Nadu Generation and Distribution Corporation Ltd and Ors, **2019 SCC OnLine 2713** has observed as under:

“7. (6) (vii) ...it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children.”

14. The proceedings under the Senior Citizens Act are summary in nature. Section 22 of the Senior Citizens Act gives power to the District Magistrate to pass an order of eviction.

15. As the purpose of the Senior Citizens Act is to ensure the well being of the parents so that they are not harassed by person who are duty bound to take care of them, this Court does not find any infirmity neither with the



Order of the Magistrate, who has taken the decision to evict the Petitioner herein from the property in question on the basis of the report of the Sub-Divisional Magistrate, nor with the Order passed by the Appellate Authority, affirming the Order passed by the District Magistrate.

16. The contention of the learned Counsel for the Petitioner that before the Appellate Authority it was stated by Respondent No.2 that she is prepared to sell the property in question and give 1/4th share of the sale proceeds to the Petitioner herein and, therefore, the matter be compromised and the Petitioner be given his share of the property, cannot be accepted.

Paragraph No.12 of the Order impugned herein reads as under:

“12. The respondent during the arguments, informed that she offered appellant to sell off the property in question and everyone take their respective share i.e 1/4th each of the sale proceeds so that everyone can live peacefully. But appellant objected for selling the property and claimed that he is the co-owner and without his permission property cannot be sell. She fairly stated before this appellate authority that she has nothing to do with the share of appellant and he may take the same by selling the property in question as she and her physically handicapped child won't be able to live in the same premises with appellant and his wife due to their cruel behaviour.”

17. A perusal of the abovementioned Order shows that the offer given by Respondent No.2 was not accepted by the Petitioner at that point of time on the ground that he is the co-owner of the property in question. Once having rejected the said offer, now it is not open for the Petitioner to contend that he is prepared to accept the same. However, the Petitioner can approach the Civil Court by filing a suit for partition in order to claim his share of the



property.

18. Looking at the attitude and the conduct of the Petitioner, as is evident from the report of the Sub-Divisional Magistrate, this Court is not inclined to interfere with the Order passed by the Appellate Authority.

19. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stand dismissed.

SUBRAMONIUM PRASAD, J

AUGUST 01, 2023

Rahul