



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

Date of decision: 29th NOVEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 14264/2022 & CM APPL. 43557/2022 , 54680/2022, 5841/2023, 10015/2023, 27048/2023, 30068/2023, 40809/2023**

NARENDER KUMAR @ NEERAJ & ORS Petitioners

Through: Mr. Pankaj Vivek, with Mr. Atul Tripathi and Mr. Himanshu Chuch, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS Respondents

Through: Mr. Anupam Srivastava, ASC for GNCTD with Ms. Sarita Pandey, Advocate for R-1 & 2.
Respondent No.3 in person.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition has been filed challenging the Order dated 08.09.2022 passed by the Appellate Authority of Divisional Commissioner whereby the Appellate Authority has set aside the Order dated 13.10.2021 passed by the District Magistrate (West) and has directed the eviction of the Petitioners herein (Respondent therein) from the property bearing A-32, Janta Colony, Near Tagore Garden, New Delhi-110027 (*hereinafter referred to as 'property in question'*). The Appellate authority by the Impugned Order also restrained the Petitioner from entering the property in question without the permission of the Respondent No.3 herein (Appellant therein).



2. The facts, in brief, leading to the filing of the present writ petition which has been summarised by the Court of District Magistrate which is the authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as 'Senior Citizens Act'*) are as under:

3. The Applicant/Respondent No.3 herein filed an application against one Smt. Neelam Rani and the Petitioners herein claiming that the said Smt. Neelam Rani is his wife and the other Petitioners are the children of Smt. Neelam Rani and the daughter in law - Suman who were residing at the property in question. It is stated by the Applicant/Respondent No.3 herein that he is the absolute owner of the property in question and the fact that he is the owner of the property is evident from the Khasra Girdawri which is in his name. It is stated that Smt. Neelam Rani, who was the widow of Sh. Prem Prakash, married the Applicant/Respondent No.3. It is stated that Smt. Neelam Rani and her children were living with the Applicant/Respondent No.3 in the property in question.

4. It is stated since the children of Smt. Neelam Rani were indulging in criminal activities, a notice was received from ACP, Tilak Nagar in the address of the property in question in the name of the Applicant/Respondent No.3 which demonstrates that the property in question belongs to the Applicant/Respondent No.3. It is also stated that the Custom Authorities from Indira Gandhi Airport, New Delhi conducted search on the property in question of the Applicant/Respondent No.3 in the presence of witnesses and prepared a Panchnama showing that the said property is in the possession of the Applicant/Respondent No.3. It is also stated that the water and electricity connections of the property in question are also in the name of Applicant/Respondent No.3.



5. It is stated that a suit for possession was filed in the year 1985 by one Kanwal Nain Aneja against the Applicant/Respondent No.3, Smt. Neelam Rani and Shri Virender Kumar in respect of property in question wherein a written statement was filed by Smt. Neelam Rani and Shri Virender Kumar jointly wherein it was stated that the Applicant/Respondent No.3 was the lawful owner and in the actual possession of the property in question which was purchased by the Applicant/Respondent No.3's father from one Chanda etc. It is stated that the said suit was dismissed by the Civil Court on 16.09.1984.

6. It is stated that since Smt. Neelam Rani and the Petitioner were harassing the Applicant/Respondent No.3, he approached this Court by filing a writ petition bearing No.4637/1996 wherein interim protection was granted to the Applicant/Respondent No.3 by this Court *vide* Order dated 31.03.1997. It is stated that, thereafter, the Applicant/Respondent No.3 was thrown out of the property in question by Smt. Neelam Rani and her children and did not allow him to reside in the said property. It is stated that the property in question is in illegal custody of the Petitioner herein and, therefore, the Applicant/Respondent No.3, who is a Senior Citizen, approached the forums under the Senior Citizens Act read with the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2009, as amended from time to time, for getting possession of the property in question back. It is stated that the Applicant/Respondent No.3 married Smt. Neelam Rani and after the said marriage Smt. Neelam Rani was residing at the property in question. It is stated that since there was some problem, an FIR bearing No.299/1981 was lodged by Smt. Neelam Rani at P.S. Rajouri Garden wherein Smt. Neelam Rani shown herself as the wife of the



Applicant/Respondent No.3 herein. In the statement before the Tehsildar, Rajouri Garden, the Applicant/Respondent No.3 has also stated that Jyoti Mala @ Mala daughter of Smt. Neelam Rani was living with the Applicant/Respondent No.3 and the Applicant/Respondent No.3 got married her in the year 1985. It is stated that the children of Smt. Neelam Rani assaulted and harassed the Applicant/Respondent No.3 and, therefore, he had to vacate the property in question.

7. The Petitioner herein filed a reply stating that the Applicant/Respondent No.3 herein is not the owner of the property in question. It is stated that the property in question was purchased by Sh. Prem Prakash, who is the father of the Petitioner and the Husband of the Smt. Neelam Rani, from M/s Mohan company through its proprietor Sh. Sudarshan Mohan S/o Sh. M. C. Mohan by way of a valid sale purchase document executed in the year 1972. It is stated that the property in question was bequeathed by Sh. Prem Prakash in favour of Smt. Neelam Rani on 10.04.1975 and Sh. Prem Prakash passed away on 03.12.1983. It is stated that Smt. Neelam Rani passed away on 27.09.2015 and since then the Petitioners being the legal heirs have been residing in the property in question. It is stated that the Khasra Girdhawri produced by the Applicant/Respondent No.3 is a forged and fabricated document. It is further stated that the Applicant/Respondent No.3 had filed a suit being No.288/92 and new C.S. No.96090/16 for permanent injunction before the Court of Senior Sub Judge, Tis Hazari Court, Delhi against one Kanwal Nain Aneja, Shiv Darshan @ Sudarshan @ Babbu, Smt. Neelam Rani, Virender Kumar, Narender Kumar @ Neeraj and Harish Kumar @ Kakka which was dismissed *vide* Order dated 28.10.2016. The said Order has not been



challenged. Various documents have been produced by the Petitioners to show that Smt. Neelam Rani is the wife of Sh. Prem Prakash and not the wife of the Applicant/Respondent No.3 as claimed by him.

8. The authority under the Senior Citizens Act places reliance on the statement given by the Applicant/Respondent No.3 before the Tehsildar, Rajouri Garden wherein it was stated that the property in question was purchased by the father - Late Sh. Mool Chand of the Applicant/Respondent No.3 in the year 1955 and since then he has been staying in the said property.

9. The District Magistrate, after relying on the death certificate of Sh. Prem Prakash and other documents, held that Smt. Neelam Rani was married to Sh. Prem Prakash and there is no document to show that Sh. Prem Prakash had given divorced to Smt. Neelam Rani. The District Magistrate also held that there is no document to show the proof of marriage between the Applicant/Respondent No.3 and Smt. Neelam Rani, and therefore, the relationship between the Applicant/Respondent No.3 and Smt. Neelam Rani is doubtful. The District Magistrate also stated that the SDM could not verify the title of the property in question since the Applicant/Respondent No.3 was not residing in the said property. It is stated that other than Khasra Girdawari, no other title deed has been produced by the Applicant/Respondent No.3 to show that he is the owner of the property in question. The District Magistrate was of the opinion that the marriage is in dispute and the Applicant/Respondent No.3 has not been able to establish the title of the property in question. The District Magistrate, therefore, held that the Petitioners herein are not the children of Applicant/Respondent No.3 herein, the petition under the Senior Citizens Act is not maintainable at the



instance of the Applicant/Respondent No.3 herein and consequently, the petition was rejected *vide* Order dated 13.10.2021 by the District Magistrate.

10. The aforesaid Order dated 13.10.2021 passed by the District Magistrate was challenged by the Applicant/Respondent No.3 herein before the Appellate Authority. The Appellate Authority, after considering the documents before it, was of the opinion that the Applicant/Respondent No.3 was in the possession of the property in question and this conclusion was arrived at by the Appellate Authority on the basis of the revenue record of Khasra Girdawari, water and electricity connections and Gas bills, Ration Card, LIC policy and various court summons etc. The Appellate Authority held that the suit which had been filed by the Applicant/Respondent No.3 was dismissed for default, and therefore, the fact that the Applicant/Respondent No.3 was in the possession of the property in question cannot be disputed. The Appellate Authority was of the opinion that the civil suit filed by one Kanwal Nain Aneja against the Applicant/Respondent No.3, Smt. Neelam Rani and Shri Virender Kumar in respect of property in question was dismissed, thereby indicating that the possession of the property in question was with the Applicant/Respondent No.3. It was held that since the Applicant/Respondent No.3 has been able to establish that he was in the possession of the property in question, he is entitled to maintain the petition under the Senior Citizens Act, and therefore, the Appellate Authority allowed the petition *vide* Order dated 08.09.2022.

11. It is this Order dated 08.09.2022 which is under challenge in the instant writ petition.

12. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought in to provide for more effective provisions for the



maintenance and welfare of parents and senior citizens. Section 4 of the said Act provides that a senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, is entitled to make an application under Section 5 under the Act or in case of parent or grand-parent, against one or more of his children not being a minor or in case of a childless senior citizen, against such of his relative referred to in clause (g) of section 2 and it is the obligation of the children or relative, as the case may be, to maintain the senior citizen. The *sine qua non* of the Act is that the children or the relative in case of childless senior citizen must have an obligation to maintain the senior citizen and without such a relationship, an application under the Senior Citizens Act is not maintainable.

13. This Court has gone through the written submissions filed by the Applicant/Respondent No.3. It has been stated by the Applicant/Respondent No.3 that the documents relied upon by the Petitioners should not be looked into by this Court because these documents have been filed by the Petitioners for the first time in the writ petition.

14. Most of these documents relied upon by the Petitioners do find mention in the Orders of the Forums mentioned above. The documents relied upon by the Petitioners are the documents which have been issued by the authorities and which can be gone into by a Writ Court while entertaining the writ petition.

15. In the facts of the present case and the material on record before this Court indicates that Smt. Neelam Rani is the wife of Sh. Prem Prakash and the same is evident from the death certificate of Smt. Neelam Rani, Ration Card of Smt. Neelam Rani and electoral rolls of the area. In all these documents, it is shown that Smt. Neelam Rani is the wife of Sh. Prem



Prakash. Though, in certain documents Smt. Neelam Rani has shown herself as the wife of the Applicant/Respondent No.3 but in the absence of any proof of marriage, the affidavits cannot be taken into account to come to a categorical conclusion that Petitioners herein are the step children of the Applicant/Respondent No.3 herein. The relationship between the Applicant/Respondent No.3 and the Petitioners has to be proved only by leading documents and evidence and without such documents and evidence, the Applicant/Respondent No.3 could not invoke the provisions of Senior Citizens Act. The Appellate Authority was, therefore, wrong in assuming jurisdiction without it being conclusively established that the Petitioners are the step children of the Applicant/Respondent No.3. The Applicant/Respondent No.3 is basing his case on title of the property in question and seeking eviction of the Petitioners for which purpose, he has to file a suit for eviction. The provisions of Senior Citizens Act cannot be invoked for the purpose of evicting some person from the property when the person who is in sought to be evicted is not a child of the senior citizen. The Applicant/Respondent No.3 has filed a suit for injunction which has been dismissed for non-prosecution. The only document shown by the Applicant/Respondent No.3 is a Khasra Girdawari to claim the ownership on the property in question. The Applicant/Respondent No.3 has shown certain other documents like letters from various authorities, water and electricity connections etc., which does show that the property in question was in the possession of Applicant/Respondent No.3. However, mere possession cannot establish ownership. The correct remedy for the Applicant/Respondent No.3 is only to file a suit for declaration of title for the purpose of evicting the Petitioners even though they are in the unlawful



possession of the property in question and the provisions of Senior Citizens Act cannot be invoked against the persons who are not legally obliged to maintain the Senior Citizen under the provisions of Senior Citizens Act. The application of the Applicant/Respondent No.3 was, therefore, misconceived.

16. It is always open for the Applicant/Respondent No.3 to file an application seeking possession of the property in question and this Court is not expressing any opinion as to whether the Applicant/Respondent No.3 is the owner of the property in question or not. The findings given by this Court are only limited to the issue as to whether the Applicant/Respondent No.3 could invoke the provisions of Senior Citizens Act read with the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2009, as amended from time to time, for the purpose of evicting the Petitioners herein who according to the Applicant/Respondent No.3 are the step children inasmuch as the Applicant/Respondent No.3 had married the mother of the Petitioners i.e., Smt. Neelam Rani without there being any conclusive proof.

17. In view of the above, the instant writ petition is allowed and the Order dated 08.09.2022 passed by the Appellate Authority of Divisional Commissioner is hereby set aside. Pending applications, if any, stand disposed of.

18. After the hearing was concluded and the matter was reserved, the Applicant/Respondent No.3 mentioned the matter by sending an application by post to the High Court address in the name of the Judge praying for dismissal of the writ petition on various grounds. This Court has gone through the said application. The plea taken in the application is not tenable. Though this Court is of the opinion that the process adopted by the Applicant/Respondent No.3 in sending the application by post to the High



Court address in the name of the Judge is highly improper. However, considering the age of the Applicant/Respondent No.3, this Court is not inclined to take any action against the Applicant/Respondent No.3 for the said conduct.

SUBRAMONIUM PRASAD, J

NOVEMBER 29, 2023

S. Zakir