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

Date of decision: 25th April, 2023

+ **W.P.(C) 14718/2021 and CM APPL. 11628/2022**

SHRI SURESH CHANDER SHARMA & ANR. Petitioners

Through: Mr. Rohit Kumar, Adv. with
Petitioner No.1 in person. (M:
9873597224)

versus

**DIVISIONAL COMMISSIONER DEPT. OF REVENUE GOVT. OF
DELHI & ANR. Respondents**

Through: Mr. Shourya Dasgupta, Adv. for Mr.
Shadan Farasat, ASC for R-1. (M:
8017061359)

Ms. Rachita Garg, Advocate
alongwith Mr. Nipun Katahar,
Advocate for GNCTD. (M:
7838066417)

Mr. Kartik Kaushal, Adv. for R-2
with R-2 in person with her brother
and father.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present is an unfortunate case which demonstrates the manner in which children are harassing the parents in respect of the parents' property, even while being of sufficient means and not even in need of the same.
3. The parents Petitioner No. 1-Shri Suresh Chander Sharma and the Petitioner No. 2-Smt. Shashi Prabha Sharma have filed the present petition challenging the impugned order dated 15th September, 2021 passed by the

Divisional Commissioner ('DC'). By the said order, the Eviction Order passed by the District Magistrate (South West) ('DM') dated 22nd January, 2021 under Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (*hereinafter*, "2009 Rules") has been partially modified. Vide the said order, the DM had directed Respondent No. 2-Ms. Jyoti Sharma and Mr. Paras Sharma-her husband to vacate the property bearing no. C-4C/316, Janak Puri, New Delhi-110058 ('*said premises*'). However, in appeal, the eviction qua the son has been upheld and the eviction order qua the daughter in law has been set aside.

4. The Petitioners had preferred a complaint under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter*, "*Senior Citizens Act*") on 22nd February, 2020 against Mr. Paras Sharma, son of the Petitioners and Respondent No. 2 - Ms. Jyoti Sharma, daughter in law. A joint reply dated 8th October 2020 was filed by them before the DM, and vide order dated 22nd January, 2021, the DM had passed the Eviction Order in the following terms.

"On perusal of the facts and circumstances of the present case and after hearing the contentions of both the parties, as well as taking into consideration of report of the SDM (HQ) and above mentioned judgements passed by Hon'ble High Court of Delhi, it is observed that the complainants have been physically as well as mentally tortured by the respondents. Further, the respondents have failed to give any proper and justifiable ground/logical reasons to remain/reside in the "property" which is self acquired by the complainants.

CONCLUSION:

In view of the above, this court directs the respondents to vacate the property bearing no.C-4C/316, Janak Puri, New Delhi- 110058.

The respondents are directed not to interfere in the peaceful living & possession of the “property” of the complainants and also not to cause any physical or verbal harassment to the complainant and his family.

The SDM (Dwarka) and the Concerned SHO, are directed to render the requisite assistance to the appellant in the execution of these orders.”

5. The clear finding of the DM was that the parents were physically as well as mentally tortured by the son and daughter in law, and there is no reason for them to remain in the said premises owned by the Petitioners, which is a self-acquired property.

6. The Respondents filed an appeal against the said order of the DM before the DC, which was disposed of by the impugned order dated 15th September, 2021. The Respondent No. 2-daughter in law, however, relied upon the orders passed by the Id. MM (Mahila Court, Dwarka) on 19th July, 2021 in the matter titled ***Jyoti Sharma v. Suresh Chandra Sharma*** bearing ***MC No. 353/20*** wherein the stay of the DM order was granted by the Id. Mahila Court by relying upon the judgment of the Supreme Court in ***Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District [2020 SCC OnLine 1023]***. Under such circumstances, the eviction was restricted to the son-Mr. Paras Sharma and in respect of the Respondent No. 2-daughter-in-law, the eviction order was set aside. The operative portion of the order dated 15th September 2021 of the DC is set out below:

“13. The respondents i.e. the parents specifically pleaded that they are victims of ill-treatment and

harassment at the hands of the appellants and they are not even allowed to enter their own house which is a self-acquired property of the respondents and on one occasion they entered with the help of police officials and even disowned the appellants from their movable and immovable property by publishing in the newspaper. The respondent further submitted that the appellants are in collusion with each other. This appellate authority finds force in the respondents' contention that the appellants are in collusion with each other as the photographs placed on record substantiate the contentions of the respondents. Also, it is an admitted fact that the appellants are residing together. It is also relevant to note that in order to mislead this appellate authority, appellants filed two different appeals to show that the appellant Smt. Jyoti having matrimonial discord with her husband Sh. Paras but on simple perusal of the appeals, anyone can evaluate that the appeals have been drafted by the same lawyer.

14. So far as the contention of the appellant Paras that District Magistrate has not considered the photograph of injury caused to him by the respondents. This appellate authority is of the view that it does not seem to be inflicted by the old age parents too but this appellate authority is refraining from making any further comments in this regard as has no jurisdiction and appellant Paras has every right to approach Hon'ble Criminal Courts for the same. Another contention of the appellant Paras is that he used to work in government on contract basis and due to covid-19 pandemic he has lost his job and is presently unemployed. This appellate authority is of the view that this is no ground to set aside the eviction

order that too when appellant is misbehaving with his own parents while residing in their house. It is also emphatically argued by the appellant that the suit property is the Joint Hindu Family property and he had contributed for the purchase of the suit property by giving all his earnings to the respondents. This appellate authority is not inclined as appellant failed to show a single document to substantiate his contention, moreover it is now the settled law that the parents /Senior citizens can file eviction application before the District Magistrate in respect to property having interest also which is also fortified by the Hon'ble High Court in ample of its decision and herein this case the property documents are in the name of respondents. Moreover, if the appellant Paras has contributed amount he has the remedy to approach Hon'ble Civil Court as under the provisions of the Act and amended Rules, we do not have the jurisdiction to decide the title dispute."

7. Heard. In the present petition, notice was issued on 21st December, 2021 and the pleadings have been completed. An application for early hearing vide **CM APPL. 1638/2023** was filed by the Petitioners wherein a specific stand was taken by the Petitioners that the son has already shifted out of the said premises and even the Respondent No. 2-daughter in law and minor grandson are not living in the said premises. The photographs of the said premises from the outside and from the roof of the said premises have been placed on record to show that there is lack of any occupation/human habitation of the said premises. Reliance is also placed upon electricity bills and water bills from January 2023 to February 2023 to show that the consumption is minimal, which, in fact reveals that nobody is occupying the

said premises.

8. Today, the father - Petitioner No.1 is present before the Court. The Respondent No. 2 - daughter in law along with her brother and father is also present. On a specific query from the Court, as to whether the premises is lying locked or not, initially on behalf of the Respondent No. 2 an impression was sought to be conveyed that the Respondent No.2 continues to reside in the premises. However, upon being queried from the Respondent No.2 by her own Id. Counsel Mr. Kartik Kaushal, it was revealed during the course of proceedings that the Respondent No.2 is no longer in the occupation of the premises. In fact, the family members of Respondent No.2 tried to give an impression to the Court that Respondent No.2 ought not to reveal the complete facts before the Court.

9. The present is a classic case, which shows how the senior citizens and parents are being unnecessarily harassed. The Respondent No.2 obviously does not require the said premises in question. Even the son has already shifted out of the said premises. The son is also stated to be in the real estate business, and is earning a reasonable amount. The son and Respondent No. 2-daughter in law are also not estranged from each other and they are together as is evident from the joint reply, which has been filed in the petition before the Id. Mahila Court. In the said order, the DC noticed that the son and daughter in law Petitioners' case did not find any merits. In fact the DC has arrived at a finding that the Respondents are in collusion with each other though a misleading impression was sought to be conveyed that they are estranged. There was also no document to show that the son had any right in the property. Thus, in the present case, there are concurrent findings of the DM and the DC in favour of the Petitioners. Under these

circumstances, continuation of the harassment of parents would not be permissible, even in terms of the settled law including in *S. Vanitha (supra)* and *Satish Chandra Ahuja v. Sneha Ahuja*, [2020 (11) SCALE 476]. Both these judgments have been recently considered by this Court in *Shuchi Goel v. Shashi Goel* [2023:DHC:2533]. The relevant extract of the said judgment is set out below:

“29. The above orders of the Family Court, DM and the DC show that the Petitioner has not only been indulged in the ill-treatment of her in laws but also her own child. There are allegations of violence by the Petitioner against her daughter, which were confirmed by the daughter to the Judge in the Family Court. Moreover, the parents-in-law are senior citizens, who are suffering from various medical ailments and are living in the said premises. The Petitioner and Respondent No. 2-husband are at complete loggerheads and the minor child is currently being taken care of by the Respondent No. 2 and is studying in a boarding school in Mussoorie. The documents showing the payment of fee etc. have also been placed on record. The Petitioner has been fully taken care of by the substantial maintenance amount of Rs.1 lakh that is being paid to the Petitioner.

30. The present clearly is a case, which is covered by the recent orders of this Court in Kartika Grover v. State of NCT of Delhi & Ors. being W.P.(C) 17386/2022 dated 20th December, 2022. In the said decision, the Court has considered the judgments of the Supreme Court in Satish Chand Ahuja (supra) and S. Vanitha (supra) and has concluded as under:

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“46. However, later decisions of various High Courts have, while giving divergent opinions on the concept of ‘shared household’, followed one uniform pattern in order to protect the

daughter-in-law and to provide for a dignified roof/ shelter for her. The question then arises as to whether the obligation of providing the shelter or roof is upon the in-laws or upon the husband of the daughter-in-law i.e., the son. Some broad guidelines as set out below, can be followed by Courts in order to strike a balance between the PSC Act and the DV Act:

1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son's/ daughter's family.

2. If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.

3. If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son- in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.

4. If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her.

5. In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life

and also put the property to use for their generating income and for their own expenses for daily living.

6. If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband." 16. This Court has subsequently considered the two statutes and relied upon Vinay Verma (supra) to decide another case being Aarti Sharma & Anr. v. Ganga Saran [RSA 14/2021, decided on 24th August, 2021], where the husband and wife were not estranged from each other. In the said decision, this Court had upheld the eviction of the daughter-in-law and husband.

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. 18. In the present case, the first notable feature that there is no domestic violence complaint against the in-laws. It is also noted that the inlaws are of advanced age and they are deprived of using their second property for rental income. It is also noticed that the husband is well-qualified and he is capable of maintaining his wife and daughter. Under such circumstances, there would be no justification in allowing the daughter-in-law to continue to occupy the subject property which is admittedly owned by

the in-laws, when clearly an alternative accommodation can be provided to her.”

31. In the facts of the present case, there are no allegations of domestic violence against the in-laws i.e Respondent No.1 and her husband. In fact, there are allegations of ill-treatment of the in-laws by the Petitioner and the same is also confirmed by the above order of the DC. Repeated orders of the Mahila Court, Family Court, the DM and the DC lead this Court to the only conclusion i.e. the Petitioner’s interest has been sufficiently safeguarded by the payment of Rs.1 lakh per month maintenance and the senior citizens are entitled to enjoy their property in the twilight of their life.

32. In these facts and circumstances, and in light of the judgment of this Court in Kartika Grover (supra), this Court does not deem fit to interfere in the order passed by the DC dated 27th October 2022. Therefore, the present writ petition is devoid of merits and the same is, accordingly, dismissed.”

10. Under such circumstances, the DC’s order, to the effect that the eviction *qua* Respondent No. 2-daughter in law stands set aside, is reversed. The DM order dated 22nd January 2021 directing eviction of both the Respondent No. 2 and the son of the Petitioners is upheld.

11. The Petitioners are free to occupy the said premises bearing No. C4C/316, Janak Puri, New Delhi-110058 henceforth.

12. Considering the nature of the matter and the fact that the Respondent No.2 has a minor son, this Court is not taking any action against the Respondent No.2 and her family members for making misleading and incorrect statements before the Court.

13. The Court appreciates Mr. Kartik Kaushal, Id. Counsel for the Respondent No.2, who upon being queried, has made a sincere attempt to

place the true facts before the Court, despite the fact that there was an attempt on behalf of the Respondent no.2 to mislead the court.

14. The concerned DM (South-West) shall open the said premises within the next one week and hand over the possession to the Petitioners. If there are any belongings of the son or daughter in law, they shall be allowed to remove the same. In order to ensure that there is no disturbance caused, the DM shall open the said premises in the presence of the parties, on 1st May, 2023 at 11:30 am.

15. The present order be communicated to the concerned DM. Mr. Abhinav Singh, Id. Counsel, who is present in Court, is requested to inform the concerned DM of the order passed today.

16. The petition, along with all pending applications, is disposed of in the above terms. *Dasti.*

PRATHIBA M. SINGH
JUDGE

APRIL 25, 2023
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