

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.110

LPA-257-2024 (O&M)

Date of decision: 06.02.2024

Naresh Kumar and another

....Appellants

Versus

The Appellate Tribunal, Maintenance and Welfare of Parents and Senior
Citizens Act, 2007 and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Arpandeeep Narula, Advocate
for the appellants.

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DEEPAK SIBAL, J. (Oral)

1. Respondent No.3 is about 72 years old. He is the father of appellant No.1 and father-in-law of appellant No.2. Respondent No.3 filed an application before the District Magistrate, Gurugram (for short – the Magistrate) under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short – the Senior Citizens Act). Through his application respondent No.3 sought the eviction of the appellants from the house that he owned.

2. In his application the grounds taken by respondent No.3 were that he was a senior citizen who had retired from the Indian Air Force; he owned the property from which he was seeking the appellants' eviction; the appellants had made respondent No.3's life miserable; on several occasions, the appellants had used foul language and said filthy words to him as also

attempted to physically beat him; the appellants used to threaten respondent No.3 that they would throw him out from his own house; appellant No.1 is a car mechanic/technician and was using the property in question (a residential property) for commercial purposes; thus, creating nuisance in the peaceful life of respondent No.3; a complaint had been made by respondent No.3 to the police against the appellants through which he had sought protection of his life and liberty which he felt threatened at the hands of the appellants and that respondent No.3 had also got published a public notice regarding him having ousted the appellants from his life/property.

3. On being put to notice, the appellants filed a joint reply through which they did not deny that respondent No.3 was a senior citizen. However, the rest of the allegations made by respondent No.3 were denied.

4. The Magistrate through his order dated 04.08.2021 allowed respondent No.3's application with a further direction to the appellants to vacate the house in question. The Magistrate passed his order not only after considering the rival claims but also getting the averments with regard to respondent No.1's ownership and possession of the property in question verified by the Sub-Divisional Officer (Civil), Badshahpur and referring the contesting parties for an unsuccessful mediation before the Alternative Dispute Redressal Centre, Courts Complex, Gurugram.

5. The appellants challenged the order of the Magistrate through filing of a writ petition before this Court being **CWP-18313-2021 – Naresh Kumar and another vs. The District Magistrate, Gurugram and another,** which was disposed of on 26.09.2023 relegating the appellants to avail of their remedy of filing an appeal. The appellants then filed an appeal but since the

appeal was listed before the Magistrate who had earlier ordered the appellants' eviction the same was held to be not maintainable. In these circumstances, the appellants again knocked the doors of this Court to challenge therein the order (s) of the Magistrate through which their eviction had been ordered.

6. Before the learned Single Judge the appellants raised the following issues:-

- (i) That the property in question was un-partitioned Joint Hindu Family Coparcenary property and therefore, respondent No.3 was not entitled to maintain his application seeking the appellants' eviction;
- (ii) the appellants relied upon a family settlement under which the property in question had come to appellant No.1's share disentitling respondent No.3 from maintaining his application filed under the Senior Citizens Act; and
- (iii) that under the Senior Citizens Act there was no provision empowering the Magistrate to order eviction. Such powers had been given to the District Magistrates by the State of Haryana through the Haryana Action Plan-2015 (for short – the Action Plan) which Action Plan had been declared to be unconstitutional by a learned Single Judge of this Court through a judgment dated 23.01.2020 passed in **CWP-4744-2018 titled as Simrat Randhawa vs. State of Punjab and others**. Against the judgment of the learned Single Judge an intra court appeal being **LPA-702-2021 – State of Haryana vs. Simrat Randhawa and others** had been filed by the State of Haryana in which only notice had been

issued with no interim stay. Therefore, the order passed by the Magistrate to evict the appellants from the property in question was without jurisdiction.

7. Through judgment dated 07.11.2023, a learned Single Judge of this Court considered the aforesaid first and second grounds taken by the appellants on facts and rejected them. Qua the third ground, the learned Single Judge relied on a judgment of the Supreme Court in **Smt. S. Vanitha vs. The Deputy Commissioner Bengaluru Urban District and others, (2021) 15 SCC 730** and a judgment of this Court dated 20.07.2023 passed in **CWP-15170-2023 - Ravi Kumar vs. The Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others**, to hold that on an application filed by a senior citizen under the Senior Citizens Act if the Magistrate, after notice to all concerned, is convinced that the senior citizen is not being maintained properly by the occupant of his estate, the Magistrate has the power to order the occupant's eviction.

8. The judgment of the learned Single Judge dated 07.11.2023 is the subject matter of the challenge through the present intra court appeal.

9. Learned counsel for the appellants submits that in the instant appeal he presses only one of issues raised before the learned Single Judge which is that on an application filed by a senior citizen under Section 23(2) of the Senior Citizens Act seeking therein possession of the property owned by him there is no provision under the Senior Citizens Act which gives any power to the Magistrate/Tribunal to order eviction of the occupant from the senior citizen's property. In the State of Haryana such power had been given to the Magistrate through The Haryana Action Plan-2015 which has been held to be

unconstitutional by a learned Single Judge of this Court in Simrat Randhawa's case (supra). In the intra court appeal filed by the State in Simrat Randhawa's case (supra) there being no interim stay, the learned Single Judge, through the impugned judgment has erred to uphold the appellants' eviction from the property in question.

10. Learned counsel for the appellants has been heard and with his able assistance the record of the case has also been perused.

11. At the outset we may note that the application filed by respondent No.1 under Section 23(2) of the Senior Citizens Act has not been questioned before us on the factual averments contained therein. The only issue raised on behalf of the appellants is that while considering an application filed by respondent No.1 under Section 23(2) of the Senior Citizens Act, the Magistrate/Tribunal had no power to order the appellants' eviction.

12. Section 23 of the Senior Citizens Act proceeds in the following terms:-

“23. Transfer of property to be void in certain circumstances.—(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may

be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

13. As per Section 23(1) if a senior citizen, after the commencement of the Senior Citizens Act, has transferred his property, subject to the condition that the transferee, in lieu of the transfer, shall provide to the senior citizen basic amenities and fulfill his physical needs but after such transfer the transferee fails to fulfill the condition(s) of the transferor then the transfer shall be deemed to have been made by fraud/coercion/under undue influence and therefore, liable to be cancelled at the will of the transferor.

14. Section 23(2) covers a situation where a senior citizen has a right to receive maintenance out of an estate. If any right or interest in that estate or part thereof is transferred, the senior citizen would have the right to receive maintenance against the transferee. If the transferee curtails such right, the senior citizen can get his right to receive maintenance enforced against the transferee through the Tribunal. During the course of enforcement of such right, if it is necessary to ensure the senior citizen's well being, the Tribunal would have the power to order eviction of the transferee from the senior citizen's estate or part thereof. The exercise of such power by the Tribunal would be to ensure the senior citizen's maintenance and/or protection. To hold otherwise would not further the objects behind the Senior Citizens Act. However, the power to order eviction by the Tribunal can be resorted to only

after notice to the transferee and consideration of his claim, if any and that the right of maintenance under Section 23(2) cannot be enforced if the transfer of the senior citizen's estate is for consideration or without notice of the transferor's right in his estate.

15. In this regard, the following observations by the Supreme Court in Smt. S. Vanitha's case (supra) may be usefully referred:-

“Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Sub-section 1, in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right. Now,

Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely “where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...”. On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression “such estate or part thereof is transferred”. Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the pre-existing right). Arguably, the language of sub-section (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Another distinction between sub-Section (1) and sub-Section (2) of Section 23 must also be noticed. Under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer

shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression “transfer” would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of [Section 2\(f\)](#) which defines the expression property to include “rights or interests in such property”. The expression „transfer“ not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of [section 23](#) speaks of the enforcement of the “right to receive maintenance” which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under [Section 9](#) of the Act.

17. The substance of sub-Section (2) of [section 23](#), as submitted by the Second and Third respondents, is that the Tribunal had the jurisdiction to pass an order directing the eviction of the appellant who is their daughter-in-law. According to the submission, the power to order eviction is implicit in the provision guaranteeing a right to receive maintenance out of an estate” and the enforcement of that right. In supporting the submission, they have referred to the view which has been taken by several High Courts, indicating that the Tribunal may order the eviction of a child or a relative from the property of a senior citizen,

where there has been a breach of the obligation to maintain the senior citizen. The Tribunal under the Senior Citizens Act, 2007 may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent. Eviction, in other words would be an incident of the enforcement of the right to maintenance and protection. However, this remedy can be granted only after adverting to the competing claims in the dispute. It is necessary to recapitulate that the situation in the present case is that the eviction was sought of the daughter-in-law, i.e. the appellant.” (emphasis supplied)

16. The law laid down by the Supreme Court in **Smt. S. Vanitha's case (supra)** was followed by a learned Single Judge of this Court in his judgment dated 20.07.2023 passed in **CWP-15170-2023 titled as Ravi Kumar vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others**. An intra court appeal filed against the judgment of the learned Single Judge being **LPA-1387-2023 – Ravi Kumar vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others** was dismissed on 19.10.2023 by a Division Bench of which one of us, Deepak Sibal, J. was a member. The following observations in the judgment of the Division Bench in **Ravi Kumar's case (supra)** read as under:-

“10. The learned Single Judge has also rightly referred to law laid down by the Supreme Court in **Smt. S. Vanitha Vs. They Deputy Commissioner Bengaluru Urban District & others, (2021) 15 SCC 730**, wherein it has been held by the Apex Court that the Tribunal constituted under the 2007 Act may have the authority to order an eviction, if it is necessary and expedient to ensure the maintenance and protection of senior citizens or parents and that, the

eviction, in other words, would be an incidence of the enforcement of the right to maintenance and protection. The Hon'ble Supreme Court in the case supra also took into consideration the objects of the 2007 Act which included a need to give more attention to the care and protection of persons in their twilight years.”

17. In the light of the above, in the facts of the present case, in spite of there being the judgment of the learned Single Judge in **Simrat Randhawa's case (supra)** declaring the Haryana Action Plan-2015 to be unconstitutional, the learned Single Judge is found to have committed no error to hold that the Tribunal/Magistrate had the power to order the appellants' eviction from respondent No.1's house and that such power has been rightly exercised to ensure the maintenance and protection of respondent No.1.

18. Dismissed.

19. All pending miscellaneous applications, if any, also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

February 06, 2024
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No