

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(201)

**2024:PHHC:019225
CWP-3383-2019
Date of Decision: 12.02.2024**

Sarika Rani

--Petitioner

Versus

District Magistrate-cum-Appellate Tribunal
& another

--Respondents

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL.

Present:- Mr. R.K. Gupta, Advocate for petitioner.

Ms. Palika Monga, DAG, Haryana.

Mr. A.K. Kansal, Advocate for respondent no.2.

VIKAS BAHL.J (Oral)

This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 02.01.2019 (Annexure P-7) passed by the Appellate Tribunal-cum-District Judge, Jind and order dated 07.06.2018 (Annexure P-5) passed by the Prescribed Authority-cum-Sub Divisional Magistrate, Jind, whereby petitioner was evicted from the matrimonial home.

2. Learned counsel for the petitioner has referred to the order dated 06.02.2019 passed by a Coordinate Bench of this Court at the time of issuance of notice of motion, which reads as under:-

“The challenge in the instant petition is to the order dated 07.06.2018 (Annexure P-5) passed by the Sub Divisional Magistrate, Jind, and in terms of which an application moved by respondent No.2 under the provisions of Maintenance and Welfare of Parents and Senior Citizen, Act 2007, has been accepted and the petitioner herein has been

ordered to be evicted from the premises in question. Further challenge is to the order dated 02.01.2019 (Annexure P-7) passed by the Appellate Tribunal-cum District Magistrate, Jind, affirming the order of eviction dated 07.06.2018 passed by the SDM, Jind.

Petitioner herein is the daughter-in-law of respondent No.2.

It is inter alia contended that the application moved by respondent No.2 on 12.02.2018 was itself not maintainable as respondent No.2, had not attained the age of 60 years as on such date. The definition of senior citizen under Section 2 (h) of the Act has been adverted to which means any person being a citizen of India and who has attained the age of 60 years or above. In support of such contention, counsel has adverted to the application that respondent No. 2 had filed earlier in point of time on 23.02.2017 (Annexure P-2) seeking the same very relief and which had been dismissed on the ground that the date of birth of respondent No.2 reflected in the matriculation certificate issued by the Board of School Education, Haryana is 11.03.1958. It is argued that the second application seeking identical relief was instituted on 12.02.2018 and which has led to the passing of the impugned eviction order and as on 12.02.2018 also respondent No.2 had not attained the age of 60 years. That apart a contention has been raised that the filing of the application seeking eviction of the petitioner is not bona fide inasmuch as a matrimonial dispute is pending between the petitioner and her husband. Husband has already filed a divorce petition in November 2016 and the mother-in-law/respondent No.2 has filed the application seeking eviction without even impleading her own son and using the same as a device to oust the daughter-in-law.

Notion of motion returnable for 25.04.2019.

Eviction of the petitioner shall remain stayed till further orders.”

3.

It is argued by learned counsel for the petitioner that there are

three points for setting aside the impugned orders. The first being that the respondent no.2 had not attained the age of 60 years on the date when the application was filed. The second being that the application was filed to evict the daughter-in-law in view of the dispute of the daughter-in-law with her husband. The third plea taken is that the application was filed under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens, Act 2007 (hereinafter to be referred to as “the 2007 Act) and the said power of eviction has been struck down by a Coordinate Bench of this Court in the case of ***Simrat Randhawa Vs. State of Punjab and others*** and in the LPA filed against the same there is no stay.

4. Learned State counsel has referred to the instructions dated 29.11.2023 issued by the Director General, Social Justice, Empowerment, Welfare of Scs & Bcs and Antyodaya (SEWA) Department, Haryana, Chandigarh and the relevant portion of which reads as under:-

“From

*Director General
Social Justice, Empowerment, Welfare of SCs & BCs and
Antyodaya (SEWA) Department,
Haryana, Chandigarh*

To,

*Advocate General, Haryana
The Hon'ble Punjab and Haryana High Court
Chandigarh*

No.21754 OAH/SEWA/2023 Dated 29-11-2023

*Subject: CWP No. 26035 of 2023 titled as Smt. Sheela Devi Vs
District Collector-cum-Presiding Officer under
Maintenance Tribunal, Gurugram and ors.*

*With reference to your D.O. No.3679 dated 23.04.2023 on
subject cited above, it is submitted that the Hon'ble High Court, passing the
orders dated 29.11.2023 in the subject captioned writ petition, raised some
queries on the following points:*

*i) Whether after passing of the judgments of the Hon'ble Supreme
Court in Smt. S. Vanitha's case (supra) and of this Court in Ravi Kumar's*

case (*supra*), which has been upheld by the Hon'ble Division Bench of this Court in LPA-1387-2023, the authorities are still not passing orders in cases wherein prayer for eviction has been made and if so, the reasons for the same.

ii) Whether the letter (Annexure P-9) issued by the Director General, Social Justice, Empowerment, Welfare of SC & BC and Antyodaya (SEWA) Department, Haryana has any legal basis or not.

iii) Whether, irrespective of the position of law, since it is the duty of the authority under the Act to pass an order and not to simply keep an application seeking eviction pending, then as to why the authority concerned has not passed an order on the same?

With regard to this, it is submitted that the Government of India had enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The erstwhile Social Justice & Empowerment Department was a nodal department to implement the provisions of the said Act. The erstwhile Social Justice & Empowerment Department, being a nodal department, notified the Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The State Government, through the erstwhile Social Justice & Empowerment Department, introduced an Action Plan, 2015 vide which the District Magistrates in the State of Haryana were empowered to pass the eviction orders to protect the property of the senior citizens/parents. The State Government vide notification dated 01.01.2023 merged the Welfare of Scheduled Castes and Backward Classes Department with the erstwhile Social Justice & Empowerment Department and name of the erstwhile Social Justice & Empowerment Department has been substituted with the Social Justice, Empowerment, Welfare of Scheduled Caste and Backward Classes and Antyodaya (SEWA) Department, Haryana. Further, the point-wise response of the said queries is herein under:-

i) It is submitted that as per provisions of section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the State Government is empowered to constitute a Maintenance Tribunals to decide the cases pertaining to maintenance of senior citizens. Pursuant thereto, the Maintenance Tribunals and Appellate Tribunals under Rule 3 of the Haryana Maintenance and Welfare of Parents and Senior Citizens

Rules, 2009 had been constituted by the State of Haryana with the composition as mentioned therein. Accordingly, the said Tribunals have been constituting/reconstituting, time to time, by the State of Haryana by way of issuing gazette notification. Section 23 of the said Act already empowers the tribunals to declare the transfer of property as void, at the option of such senior citizen, in case it appears to the tribunal that the transfer of property made by the senior citizen, by way of gift or otherwise, was influenced by fraud/coercion/under undue influence. Section 23 of the said Act is reproduced as under.

"Transfer of property to be void in certain circumstances

1. *Where any senior citizen who, after the commencement of this Act, has 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."*

Even, in S.Vanitha Vs the Deputy Commissioner, Bengaluru Urban District and Others the Hon'ble Apex Court has also observed that the power to order of eviction is construed in the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 i.e. right to receive maintenance out of an estate. The relevant portion of the judgment is reproduced as under:-

"...25. 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..."

Whereas, power of eviction had been conferred by the State Government to all the District Magistrates in the State of Haryana, by notifying an Action Plan, 2015 vide notification dated 26.05.2015 but the same was struck off to the extent of Clauses 1 to 3 i.e. (1) Procedure for eviction from property/residence building belonging to/occupied by senior citizens/parents, (2) Eviction order from property/residential building of senior citizens/parents and (3) Enforcement of orders by a coordinate bench of the Hon'ble High Court by passing the judgment dated 23.01.2020 in CWP No. 4744 of 2018 titled as Simrat Randhawa Vs State of Punjab & Others and there is no stay in operation of judgment dated 23.01.2020 in LPA No. 702 of 2021 titled as State of Haryana and Others Vs Simrat Randhawa filed by the State of Haryana.

In the present matter in hand, an application has been made before the District Magistrate for eviction and the District Magistrate is unable to pass the eviction orders as the Action Plan, 2015, under which he was empowered to evict, has already been struck off, as mentioned above.

Hence, the Maintenance Tribunals can pass the eviction orders in view of provisions of Section 23 of the said Act as there is no bar at the same but the District Magistrates can not pass the eviction orders on account of judgment dated 23.01.2020 in Simrat Randhawa's case (Supra).

ii) It is submitted that as mentioned above the power of eviction was assigned to the District Magistrates in the State of Haryana by virtue of the Action Plan, 2015 by the State Government but the same was struck off to the extent of Clauses 1 to 3 by the Hon'ble Bench of Justice Rajeev

Narain Raina vide judgment dated 23.01.2020 passed in CWP No. 4744 of 2018 titled as Simrat Randhawa Vs State of Punjab & Others. The said judgment has been challenged by this department by way of filing an LPA No. 702 of 2021 titled as State of Haryana and Others Vs Simrat Randhawa but the Division Bench of the Hon'ble High Court did not stay the same. Despite of this, the eviction orders were being passed by the District Magistrates as per mandates of the said Action Plan. Therefore, this department, being nodal department to implement the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has issued a letter dated 19.01.2023 to all the District Magistrates in the State of Haryana to stop the proceedings of eviction under the Action Plan, 2015 to the extent of Clauses 1 to 3 in light of the judgment dated 23.01.2020 passed in Simrat Randhawa's case (Supra), only to avoid the contempt proceedings against the said judgment. Next date of hearing has been fixed by the Hon'ble High Court in LPA No. 102 of 2021 is 06.02.2024. It is clarified here that this department never issued the directions to the Maintenance Tribunals not to do proceed with for eviction under Section 23 of the said Act.

iii) It is submitted that the District Magistrates in the State of Haryana were empowered to pass the eviction orders under the Action Plan, 2015 notified by the State Government vide Notification dated 26.05.2015 and they were duty bound to do so but they have been deprived of the said powers as the said Action Plan to extent of Clauses 1 to 3 is not in existence due to passing of judgment dated 23.01.2020 passed in Simrat Randhawa's case (Supra). Even, despite of filing an LPA No.702 of 2021) there is no stay in the said judgment, till date. Thus, the District Magistrates cannot entertain and decide the applications seeking eviction in exercising the powers conferred to them under the said Action Plan on account of setting aside the same in Simrat Randhawa's case (Supra).

Therefore, you are requested to kindly apprise the Hon'ble High Court in respect of all the said facts.

sd/-

*Joint Director Social Justice, Empowerment,
Welfare of SCs & BCs and Antyodaya (SEWA)
Department, Haryana, Chandigarh”*

5. Learned State counsel has submitted that the Maintenance

Tribunal has the power to pass eviction order in view of Section 23 of the 2007 Act and also in view of the law laid down by the Hon'ble Supreme Court in ***Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors., reported as 2021(15) SCC 730***, para 25 of which, has been reproduced in the said letter/instructions. It is further submitted that since the action plan of 2015 has been set aside by the Co-ordinate Bench of this Court and there is no stay of the said judgment in the LPA filed by the State and the private parties, thus, the District Magistrates in the State of Haryana, who were empowered to pass orders of eviction under the action plan, are not entertaining the said petitions in order to avoid contempt proceedings. It is submitted that in view of the law laid down in **S. Vanitha's case (supra)**, relevant portion of which has been reproduced in the said instructions, the Maintenance Tribunal can pass an eviction order in view of the provisions of Section 23 of the Act of 2007 and the above-said judgment, after taking into consideration the relevant factors, in accordance with law.

6. Learned counsel appearing for respondent no.2 has submitted that the petitioner is now more than 60 years of age and has thus submitted that the impugned orders be set aside but respondent no.2 be granted liberty to file an application under Section 23 of the 2007 Act in accordance with the above said instructions taking all pleas including the prayer for eviction. It is submitted that as far as the pleas of the petitioner on the merits of the case are concerned, the said aspect be kept open to be finally adjudicated by the competent authority before whom the application under Section 23 of the 2007 Act would be filed. It is further submitted that since respondent no.2 is an old person, thus, the authorities be directed to consider the application expeditiously.

7. Learned counsel for the petitioner in rebuttal has submitted that the present order should not be construed as an order expressing the merits of the case and all the pleas of the petitioner be kept open.

8. Keeping in view the above said facts and circumstances and also the fact that on the date when the application was filed, respondent no.2 was not 60 years of age, the impugned orders dated 7.6.2018 and 2.01.2019 are set aside and respondent no.2 is granted liberty to file a fresh application under Section 23 of the 2007 Act in pursuance of the instructions dated 29.11.2023 issued by the Director General, Social Justice, Empowerment, Welfare of SCs & BCs and Antyodaya (SEWA) Department, Haryana, Chandigarh. In case any such application is filed, the Maintenance Tribunal is directed to decide the same as expeditiously as possible. It is, however, made clear that it would be open to both the parties to raise all the pleas available to them in accordance with law in the proceedings which would be initiated by respondent no.2 before the Maintenance Tribunal under Section 23 of the 2007 Act.

9. Petition is disposed of in the above terms.

(VIKAS BAHL)
JUDGE

12.02.2024

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No