

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-5799-2020(O&M)
Date of decision : 07.03.2024

Deepak Kumar and another

... Petitioners

Versus

District Magistrate-cum-Appellate Tribunal, Hoshiarpur and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kashmir Singh, Advocate
for the petitioner.

Ms.Neha Sonawane, DAG, Punjab.

Mr.Jasbir Singh Mor, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for setting aside the impugned order dated 05.12.2019 (Annexure P-4) passed by respondent no.1 whereby the petition filed by respondent no.2 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the 2007 Act”) has been allowed.

2. Brief facts of the present case are that respondent no.2, who is the mother of petitioner no.1, had filed an application under Section 23 of the 2007 Act for evicting the petitioners from the house situated at Guru Arjan Dev Nagar, Piplanwali, District Hoshiarpur bearing khasra no.71//1 (6-0), 71//10 (8-0), 71//11/1 (5-10) measuring 5 marlas. It was specifically pleaded in the said application that respondent no.2 was 62 years of age and

was also an exclusive owner of the property in question and the jamabandi with respect to the property in question was also annexed. It was further stated in the abovesaid application that respondent no.2 had no source of income and was physically and mentally weak and the petitioners, had on 23.04.2019, abused respondent no.2 and had thrown her out from the house in question and had thereafter even threatened respondent no.2 with dire consequences if she tried to enter the house in question, regarding which respondent no.2 had given an application to the SHO, Model Town, Hoshiarpur and a photocopy of the same was also annexed with the application for eviction. It was specifically pleaded in the application for eviction that the present petitioner no.1 was earning a handsome income as they were running a medical shop and thus, the maintenance to the tune of Rs.20,000/- was also claimed by respondent no.2 in addition to the prayer for directing the petitioners to vacate the premises in question. A reply (Annexure P-2) was filed to the said application in which the fact that respondent no.2 was a senior citizen and was the mother of petitioner no.1 was not disputed. Even the fact that respondent no.2 was not residing with the petitioners and that there was a complaint filed by respondent no.2 before the SHO was also not disputed. The authorities under the Act, vide order dated 05.12.2019, allowed the said application and directed the petitioners to be evicted from the house in question. In the said order, it was observed that respondent no.2 was the owner of the property in question and there was a dispute between the parties which was apparent from the fact that respondent no.2 had given a complaint to the police department and there were other proceedings pending between the parties and the petitioners used to misbehave with respondent no.2 and were not providing

for the basic needs of the respondent no.2. It is the said order, which has been challenged by the petitioners before this Court.

3. Learned counsel for the petitioners has submitted that in the present case, the petitioners had filed a civil suit (Annexure P-3) against respondent no.2 and the father of petitioner no.1 and other persons, for permanent injunction for restraining the defendants therein from dispossessing or interfering with the possession of the petitioners in the property in question and in the said plaint, a plea with respect to the oral family settlement had been taken. It is submitted that once the said civil suit is pending, the present application was not maintainable and should have been rejected on the said ground alone. It is further submitted that respondent no.2 had also filed a suit for mandatory injunction against the present petitioners seeking eviction from the house in question and the said civil suit is pending and thus, on the said ground also, the application filed by respondent no.2 under the 2007 Act is not maintainable. It is next argued that the order of eviction has been passed in the present case by an incompetent authority and as per the judgment of the Coordinate Bench of this Court in ***CWP-4744-2018*** titled as ***“Simrat Randhawa vs. State of Punjab”***, ***decided on 23.01.2020***, the authorities have no power to evict the licensee or any person living in the house and the LPA against the same has been filed and the same is pending. It is prayed that on the basis of said arguments, the impugned order deserves to be set aside and the application filed by respondent no.2 deserves to be rejected.

4. Learned counsel for respondent no.2, on the other hand, has submitted that vide order dated 09.08.2021, the Civil Judge (Jr. Div.), Hoshiarpur, had rejected the application filed by the petitioners under Order

39 Rules 1 and 2 CPC in the civil suit for permanent injunction filed by the petitioners after observing that the petitioners have failed to establish that there is a prima facie case in favour of the petitioners. It is submitted that in the said order, which has been annexed as Annexure R-2/1 along with the reply filed by the respondent no.2, it was observed that the house in question is admittedly owned by the present respondent no.2. It is stated that in the present case, it is not disputed that respondent no.2 is the owner of the property and is also a senior citizen and there is a dispute between the parties and thus, for the protection of the rights of respondent no.2, respondent no.2 has a right to file an application for eviction and on the said aspect, reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors.*** reported as 2021(5) SCC 730. It is further stated that merely because a suit for mandatory injunction has been filed by respondent no.2 would not disentitle respondent no.2 to institute proceedings under the 2007 Act which is a special Act giving special rights to a senior citizen. It is submitted that it is a matter of settled law that a Special Act provides for special rights to an individual and in case the person fulfills the ingredients required for the purpose of getting the relief under the said Act, then merely because some other proceedings have also been instituted would not disentitle the said person from getting the relief under the special Act.

5. This Court has heard the learned counsel for the parties and has perused the paper book and finds that the present petition is meritless and deserves to be dismissed for the reasons, which have been detailed hereinafter.

6. It is not in dispute that respondent no.2, who is the mother of petitioner no.1, is a senior citizen. The said fact has not been disputed before this Court and at any rate, a perusal of paragraph 1 of the application (Annexure P-1) would show that it has been specifically stated that respondent no.2 was 62 years of age, a fact that was not disputed in the reply (Annexure P-2). The fact that respondent no.2 is also the owner of the property, is also not disputed before this Court and in paragraph 2 of the application, the fact with respect to respondent no.2 being the owner, had specifically been mentioned and it has also been stated that the same is supported by the relevant jamabandi. Even a perusal of the order dated 09.08.2021, passed in the civil suit filed by the petitioners against respondent no.2 and other persons, would show that in paragraph 4, it has been observed that admittedly the house in dispute was under the ownership of respondent no.2. Moreover, no document has been shown to this Court to indicate that respondent no.2 is not the owner of the property or that the petitioners are the owners of the property. The facts of the present case would also show that admittedly there was a dispute between the parties. A perusal of the pleadings in application (Annexure P-1) and reply (Annexure P-2) would show that an application was moved by respondent no.2 before the SHO, Model Town, Hoshiarpur, which fact was not denied in the reply and the only plea taken in the reply is that the said application filed by respondent no.2 was false. Civil suits have also been filed between the parties even as per the plea of the petitioners. It is the specific case of respondent no.2 that she was thrown out of the house in question by the petitioners after abusing and maltreating her and thereafter the petitioners did not permit respondent no.2 to live in the house in question and

threatened her with dire consequences in case respondent no.2 entered the house in dispute. It has not been disputed before this Court that respondent no.2 is not residing in the house in question. It is also the case of respondent no.2 that she is an old person having no source of income and is mentally and physically weak. Thus, in order to ensure the protection of respondent no.2, it is necessary to evict the present petitioners. In the order dated 05.12.2019 (Annexure P-4), it was observed by the authorities that respondent no.2 is the owner of the property in question and the petitioners have misbehaved with respondent no.2 and did not provide her with basic needs and thus, the authorities have rightly passed the order of eviction.

7. The Hon'ble Supreme Court in the case of ***Smt. S Vanitha*** (supra), had observed that a Tribunal constituted under the Senior Citizens Act, 2007 (hereinafter, "2007 Act") has the authority to pass an order of eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent and that, the eviction in other words would be an incidence of the enforcement of the right to maintenance and protection. Relevant part of para No.25 of the said judgment is reproduced herein below: -

“xxx xxx xxx xxx xxx xxx

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.”

8. In the abovesaid judgment, the Hon'ble Supreme Court had taken into consideration the legislative scheme of the 2007 Act & reference was also made to Chapter V of the 2007 Act which provides for “protection of life and property of senior citizens”. The objects of the 2007 Act which included a need to give more attention to the care & protection of older persons was also taken into consideration. It was observed that the procedure to be followed by the Tribunal is of a summary nature. The contesting claim of both the parties to the effect as to whether the authorities under the 2007 Act have the jurisdiction to entertain the proceedings for eviction was also noticed. The relevant part of paragraph No.6, paragraphs 15, 16, 17 in their entirety as well as relevant portion of Paragraphs 19 and 20 of the abovesaid judgment are reproduced as under: -

“xxx xxx xxx xxx xxx xxx

6. The appellant specifically raised an objection to the jurisdiction of the authorities to entertain the proceedings seeking her eviction from the premises. She submitted that while the Senior Citizens Act 2007 provides for the maintenance of a senior citizen or a parent, there is no provision envisaging an order of eviction, and that the authorities had no jurisdiction to direct her removal from the premises.

C. Legislative scheme: Senior Citizens Act, 2007

xxx xxx xxx xxx xxx xxx

15 The rival submissions will now be analysed.

16 Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act 2007 which have a bearing on the present controversy. “Maintenance is defined in an inclusive manner to “incorporate, among other things, provisions for food, clothing, residence, medical

assistance and treatment. In defining the expression “property”, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property”. Overriding effect is given to the provisions of the enactment by Section 3. Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” **while Chapter V is titled “Protection of Life and Property of Senior Citizen”.**

17. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that aging has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time – consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

xxx xxx xxx xxx xxx xxx

19. xxx xxx xxx Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance.

20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7 is of a summary nature as provided in Section 8(1) and with all the powers of a Civil Court, as provided in Section 8(2).

xxx xxx xxx xxx xxx xxx”

9. The abovesaid judgment has been followed by this Court in **CWP-15170-2023** titled as **“Ravi Kumar Vs. Deputy Commissioner-cumAppellate Tribunal, Jhajjar and others”**, decided on 20.07.2023 while upholding the order of eviction passed by the authorities under the Act of

2007 and the LPA-1387-2023 filed against the said order has also been

dismissed. The reliance placed upon the judgment passed by a Coordinate Bench of this Court in *Simrat Randhawa's* case (supra) would not further the case of the petitioners in the light of the judgment of the Hon'ble Supreme Court in *Smt. S Vanitha's* case (supra). Moreover, in the present case, the application has been filed under Section 23 of the 2007 Act which provision has not been set aside by any Court. Also, once this Court has come to the conclusion that the case of respondent no.2 is meritorious and the petitioners have no right in the property and thus, this Court while exercising the powers under Article 226 of the Constitution of India, in the interest of justice, would not interfere with an order of eviction passed against the petitioners by the authorities under the 2007 Act.

10. The reliance sought to be placed upon the civil suit filed by the petitioners against respondent no.2 and the father of petitioner no.1 as well as other persons for permanent injunction does not in any way further the case of the petitioners and rather goes against the petitioners inasmuch as in the said case no injunction has been granted in favour of the petitioners and rather as per the order dated 09.08.2021 (Annexure R-2/1) (page 57 of the paper book), the application filed by the petitioners under Order 39 Rules 1 and 2 CPC has been dismissed and it has been observed that the petitioners did not have a prima facie case and further, in paragraph 4, it has been observed that admittedly the house in dispute is under the ownership of defendant no.1 therein, who is respondent no.2 herein. At any rate, the pendency of the said civil suit does not further the case of the petitioners. Even the arguments raised on behalf of the petitioners to the effect that a civil suit for mandatory injunction has been filed by respondent no.2 against the petitioners for eviction does not in any way call for allowing the writ

petition and setting aside the impugned order inasmuch as it is the matter of settled law that in the case of special Act, such as the 2007 Act, if certain rights to certain categories of individual has been granted, then the said individual cannot be restrained from invoking and enforcing the said rights on the ground that there are alternate remedies or proceedings either available or pending. Once the said individual has chosen to invoke their special rights under the special Act and once the parameters required to grant the relief under the said Act are fulfilled by the said individual, then they could not be denied the relief solely on the ground of other pending proceedings.

11. In the present case, the respondent no. 2 being a senior citizen filed an application before the competent authority under the 2007 Act which was in accordance with law and which fulfilled all the ingredients as required under the Act for the grant of relief and thus, the competent authority after considering the case of the respondent no. 2 has rightly passed the order dated 05.12.2019 (Annexure P-4) which deserves to be upheld.

12. Keeping in view the abovesaid facts and circumstances, the present petition being meritless deserves to be dismissed and is accordingly dismissed.

13. Pending application(s), if any, stand disposed of in view of the abovesaid order.

(VIKAS BAHL)

JUDGE

March 07, 2024

Davinder Kumar

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