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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4933-2024
Date of decision: 01.03.2024

Pawan Kumar Joshi

...Petitioner

Versus

Additional Deputy Commissioner-cum-Maintenance Tribunal and
another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aayush Gupta, Advocate for the petitioner.
Ms. Akshita Chauhan, DAG, Punjab.

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 order dated 08.02.2023 (Annexure P-8) passed by respondent No.1 whereby the petition filed by the petitioner under Section 22 read with Rule 1 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the 2007 Act”) read with Action Plan framed under Section 22 read with Rule 23 of the Punjab Maintenance and Welfare of Parents and Senior Citizen Rules, 2012 for vacation of the premises, has been dismissed.

2. Learned State Counsel has submitted that in view of the **judgment dated 23.01.2020** passed by the Coordinate Bench of this Court in **CWP-4744-2018 titled as Simrat Randhawa Vs State of Punjab & Others**, the eviction petitions filed under Section 22 of the 2007 Act read with the action plan are not being entertained and as per the instructions dated 18.12.2023, a senior citizen can file an application making prayer for eviction also under Section 23 of the 2007 Act and the same would be adjudicated by the Maintenance Tribunal. It is further submitted that the said instructions have been issued keeping in view the judgment passed by the Hon'ble Supreme Court in **Smt. S. Vanitha vs. The Deputy Commissioner Bengaluru Urban District & Ors.** reported as **2021(15) SCC 730** and also the judgment of this Court in **"Ravi Kumar vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others"** reported as **2023(4) RCR Civil 81**. It is further submitted that the SDM is now the Maintenance Tribunal and the appeal from the same lies before the DM which is discharging the duties of the Appellate Tribunal. Relevant portion of the said instructions No.37848 dated 18.12.2023, is reproduced hereinbelow:-

"Department of Social Security and Women & Child Development, Punjab, Chandigarh, SCO No. 102-103, Sector34A, Ph. 2602726, 2608746.

From

Additional Director

*Department of Social Security and
Women & Child Development,*

Punjab.

To

Advocate General, Punjab

The Hon'ble Punjab and Haryana High Court

Chandigarh.

No.37848 Dated 18.12.2023

Sub:- CWP No.27195 of 2023 titled as "Gurdial Singh vs State of Punjab and Others".

With reference to your D.O No. 39460 dated 13.12.2023 on subject cited above, it is submitted that the Hon'ble High Court passed the order dated 04.12.2023 in the subject captioned writ petition, raised some queries on the following points:-

- i) Whether even after passing of the judgments of the Hon'ble Supreme Court in Smt. S. Vanitha's (supra) and of this Court in Ravi Kumar's (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 No.S-34(S.S) 2023/2761-83 Chandigarh dated 08.02.2023 issued by the Joint Director (SS), Department of Social Security, Women and Child Development, Chandigarh, Punjab has any legal basis or not.*

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 Department of Social Security and Women and Child Development, Punjab is the nodal department to implement the provisions of the said Act. The Department of Social Security and Women and

Child Development, Punjab being a nodal department, notified the Maintenance and Welfare of Parents and Senior Citizens Rules, 2012. The State Government, through the Department of Social Security and Women and Child Development, Punjab, introduced an Action Plan, 2014 vide which the District Magistrates in the State of Punjab were empowered to pass the eviction orders to protect the property of the senior citizens/parents. Further the point-wise response to 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 empowering to constitute a Maintenance Tribunal to decide the cases pertaining to maintenance of senior citizens. Pursuant thereto, the Maintenance Tribunals and Appellate Tribunals under Rule 3 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 had been constituted by the State of Punjab with the composition as mentioned therein.

Accordingly, the said Tribunals have been constituting/reconstituting, time to time, by the State of Punjab 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 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 pass 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 Punjab by notifying an Action Plan, 2014 but the same was struck off to the extent of Clauses 1 to 3 which are reproduced as under:-

- (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 and 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, 2014, 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 in the same but the District Magistrate cannot pass the eviction orders on account of the 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 Punjab by virtue of the Action Plan, 2014 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 CPW No.4733 of 2018 titled as "Simrat Randhawa Vs. State of Haryana and others". The said judgment has been challenged by the State of Haryana 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, this, the eviction orders were being passed by the District Magistrates as per mandates of the aforesaid Action Plan. Therefore, this department, being the nodal department to implement the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has issued a letter dated 17.02.2023 to all the District Magistrate in the State of Punjab to stop the proceedings of eviction under the Action Plan, 2014 to the extent of Clauses 1 to 3 in the light of the judgment dated 23.01.2020, passed in Simrat Randhawa's case (supra), only to avoid contempt proceedings. The next date of hearing has been fixed by the Hon'ble High Court in LPA No.102 of 2021 as 06.02.2024. It is clarified here that this Department never issued the directions to the Maintenance Tribunals not to proceed with eviction matters

under Section 23 of the said Act.

(iii) It is submitted that the District Magistrates in the State of Punjab were empowered to pass the eviction orders under the Action Plan, 2014 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 in Simrat Randhawa's case (supra). Despite LPA No.702 of 2021, there is no stay on 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 as to the above facts.

*Additional Director
Department of Social Security and
Women & Child Development,
Punjab, Chandigarh"*

3. Learned counsel appearing on behalf of the petitioner has submitted that in view of the said instructions and in view of law laid down in the abovesaid judgments, the petitioner be permitted to withdraw the present writ petition with liberty to institute a petition under Section 23 of the 2007 Act making prayer for eviction in addition to the other prayers and has further submitted that in case of his doing so, the Maintenance Tribunal-cum-SDM be directed to decide the same de hors the observations made in the order dated 08.02.2023.

4. Learned State Counsel has further submitted that in case the

petitioner is granted liberty, then liberty be also granted to the private respondents to raise all the pleas as are available to them in case any such application is filed by the petitioner.

5. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is disposed of with the following directions:-

- (i) It would be open to the petitioner to file an application for eviction in addition to other pleas that he might wish to raise before the Maintenance Tribunal-cum-SDM.
- (ii) The Maintenance Tribunal would decide the same after hearing all the parties concerned and after giving due opportunity to file reply to the persons who have been made respondents in the said application.
- (iii) The Maintenance Tribunal would also take into consideration the instructions dated 18.12.2023 passed by the State of Punjab and decide the matter, in accordance with law.
- (iv) The Maintenance Tribunal would decide the case after taking into consideration the pleadings of both the parties and after giving due opportunity of hearing to both the parties without being influenced by the observations made in the order dated 08.02.2023 since, the said order was passed on a petition filed under Section 22 of the 2007 Act.

01.03.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No