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

CWP-7593-2024
Date of decision: 04.04.2024

Krishana Devi

...Petitioner

Versus

Sub Divisional Magistrate-cum-Maintenance Tribunal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Ridhi Bansal, Advocate and
Ms. Sidhi Bansal, Advocate for the petitioner.

Mr. TPS Walia, AAG, 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 quashing the instructions dated 17.02.2023 (Annexure P-1) issued by respondent No.2 and with further issuance of directions to respondent No.1- Sub Divisional Magistrate-cum-Maintenance Tribunal to decide the application filed by the petitioner under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter to be referred as “the 2007 Act”).
2. Learned State Counsel has submitted that the Instructions dated 17.02.2023 have been superseded by Instructions No.37848 dated 18.12.2023, relevant portion of the same is reproduced hereinbelow:-

“Department of Social Security and Women & Child Development, Punjab, Chandigarh, SCO No. 102-103, Sector 34A, 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 State Counsel has further pointed out that as per the said instructions, the SDM-cum-Maintenance Tribunal has the power to pass an eviction order in view of the provisions of Section 23 of the 2007 Act and also in view of the law laid down by the Hon'ble Supreme Court in the case ***Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors.***, reported as ***2021(15) SCC 730***. It is submitted that in the present case, apparently, confusion could have been there on account of the fact that although the application filed by the petitioner was before the correct authority i.e., the SDM-cum-Maintenance Tribunal but in the application, the provision of Section 22 of the 2007 Act has been mentioned and the provision of Section 23 of the 2007 Act has not been mentioned.

4. Learned counsel for the petitioner has submitted that in view of the same, the petitioner be permitted to file a fresh application before the SDM-cum-Maintenance Tribunal under the 2007 Act by incorporating the provision of Section 23 of the 2007 Act in the said application and has

further prayed that on the petitioner doing so, respondent No.1 be directed to decide the said application, as expeditiously as possible.

5. Learned State Counsel has submitted that in case, the said application is filed in accordance with the instructions dated 18.12.2023, respondent No.1 would consider the same, in accordance with law, and decide the same on merits, as expeditiously as possible.

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

- (i) It would be open to the petitioner to file an application in accordance with the instructions dated 18.12.2023 before the Maintenance Tribunal.
- (ii) The Maintenance Tribunal would decide the said application on merits after hearing all the parties concerned and would also take into consideration the instructions dated 18.12.2023 in deciding the said case.
- (iii) The said application would be considered and decided, as expeditiously as possible.

7. This Court has not opined on the merits of the case and respondent No.1 would consider the said application after hearing all the parties concerned, in accordance with law.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

04.04.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No