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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14020-2022
Date of decision: 25.01.2024

Prithvi Singh Saini

...Petitioner

Versus

Maintenance Appellate Tribunal, Hisar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr Ashok Arora, Advocate for the petitioner.

Mr. Amandeep Joshi, DAG, Haryana
for respondent No. 1.

Mr. Lajpat Rai Sharma, Advocate for
Mr. Vivek Khatri, Advocate
for respondent No. 2.

Respondent No. 3 proceeded against *ex parte*
vide order dated 27.09.2022.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 19.03.2021 (Annexure P-4) passed by the Deputy Commissioner, Hisar.
2. Learned counsel for the petitioner has submitted that the petitioner had filed an application under Section 5(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred

to as “The Act”) and the rules framed thereunder before the Sub-Divisional Officer, Hisar exercising the power of the Maintenance Tribunal and in the said application, a prayer was made against respondent Nos. 2 and 3 to pay maintenance with a further prayer for directing them to vacate the house in question. It is further submitted that a reply (Annexure P-3) to the said application was filed by respondent No. 2 but the impugned order dated 19.03.2021 has been passed by the Deputy Commissioner, Hisar. It is further submitted that the petition filed should have been decided by the Maintenance Tribunal. It is submitted that the entire aspect has been clarified by 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 which, it has been specifically stated that even an eviction order can be passed by the Maintenance Tribunal in view of the provisions of Section 23 of the Act and the said order cannot be passed by the District Magistrate in view of the law laid down by the Coordinate Bench of this Court in **CWP-4744-2018** titled as **“Simrat Randhawa vs. State of Punjab and others”**. It is further submitted that in view of the said instructions, the order dated 19.03.2021 be set aside and the case be remanded back to the Maintenance Tribunal for final adjudication.

3. Learned State counsel appearing on behalf of respondent No. 1 has not disputed the instructions dated 29.11.2023 and has submitted that all the prayers with respect to the maintenance as well as eviction would lie before the Maintenance Tribunal.

4. A perusal of the report of the registry would show that respondent No. 3 has been served but however, no one has appeared on behalf of respondent No. 3 and thus, he was proceeded against *ex parte* vide order dated 27.09.2022.

5. Learned counsel for respondent No. 2 has filed reply in the Court and the same has been taken on record. He has submitted that in case, the matter is remanded back, then, the matter be decided after considering all the pleas raised by respondent No. 2 in the reply filed by respondent No. 2 before the authorities.

6. This Court has heard learned counsel for the parties and has perused the record.

7. The instructions dated 29.11.2023 issued by the Director General, Social Justice, Empowerment, Welfare of SCs & BCs and Antyodaya (SEWA) Department, Haryana, Chandigarh, which are not disputed, are reproduced hereinbelow:-

“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 ie. (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”*

8. A perusal of the above letter would show that as per the stand of the State, the Maintenance Tribunal has the power to pass an eviction order in view of the provisions of Section 23 of the Act of 2007 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. The stand of the State is 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 further clear that in view of the law laid down in **S. Vanitha's case (supra)**, relevant portion of which has been reproduced in the said instruction, as per the stand of the State, 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.”

9. A perusal of the paper-book would show that the application for maintenance and for eviction was filed by the petitioner before the Sub Divisional Officer, Hisar exercising the powers of the Maintenance Tribunal and even the reply by respondent No. 2 was filed before the said authority. It is the Maintenance Tribunal which has the jurisdiction to pass the order of maintenance and eviction and thus, the impugned order passed by the Deputy Commissioner is without the jurisdiction and deserves to be set aside and is accordingly, set aside and the matter is remanded to the Maintenance Tribunal with the following directions:-

(i) Pleadings which have already been filed by the parties would be taken as the pleadings in the present case and the counsel for the parties appearing before the Maintenance Tribunal would complete the record by filing the copy of the application as well as reply before the said Authority in case the said Authority does not have the record of the case.

(ii) The parties are directed to appear before the Maintenance

Tribunal on 05.02.2024.

(iii) The Maintenance Tribunal would then proceed in the matter in accordance with law, subsequent to the stage of filing of the pleadings and would adjudicate the matter after considering the pleas raised by all the parties concerned and also taking into consideration the instructions dated 29.11.2023 which have been reproduced hereinabove.

10. It is made clear that this Court has not opined on the merits of the case and the Maintenance Tribunal would independently decide the same in accordance with law as expeditiously as possible.

25.01.2024
Mehak

(VIKAS BAHL)
JUDGE

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