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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11723-2024
Date of decision: 20.05.2024

Anita Jain

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amarbir Singh Pahwa, 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 mandamus directing respondent No.2 to decide the petition titled as “Anita Jain Vs. Amit Jain” (Annexure P-1) filed by the petitioner under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
2. Learned State Counsel has pointed out that the State of Punjab has passed the latest instructions dated 18.12.2023, as per which, all prayers including the prayer of eviction and maintenance are to be filed before the Maintenance Tribunal-cum-SDM. It is further submitted that the said instructions dated 18.12.2023 have been considered by this Court in case bearing No.CWP-27195-2023 titled as “Gurdial Singh Vs. State of Punjab



and others” and have been reproduced in the same. The said instructions No.37848 dated 18.12.2023 are 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 State Counsel has submitted that in the present case, the petitioner has filed the petition before the Deputy Commissioner and the same has been apparently marked to the Additional District Magistrate who is not the competent authority to decide the same after the judgment passed by the Coordinate Bench of this Court in the case of “Simrat Randhawa Vs. State of Haryana and others”. It is further submitted that in case the petitioner files a fresh petition as per the instructions dated 18.12.2023, the SDM-cum-Maintenance Tribunal would consider the same, in accordance with law.

4. Learned counsel for the petitioner has submitted that in view of the same, he seeks permission of this Court to withdraw the present writ petition as well as petition dated 06.01.2020 (Annexure P-2) with liberty to



the petitioner to institute a petition in accordance with the latest instructions of the State of Punjab dated 18.12.2023 and has prayed that in case of her doing so, the competent authority be directed to consider the same as expeditiously as possible.

5. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is dismissed as withdrawn and the petitioner is also permitted to withdraw the petition dated 06.01.2020 (Annexure P-2). The petitioner is also granted liberty to institute a petition in accordance with the latest instructions of the State of Punjab dated 18.12.2023 and in case of her doing so, the competent authority is requested to consider and decide the same as expeditiously as possible, in accordance with law after hearing all the parties concerned.

20.05.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No