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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18026-2020
Date of decision: 29.01.2024

Balwan Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Anil Kumar Bhardwaj, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana
for respondent Nos. 1 and 2.

Mr. Govind Mor, Advocate for
Mr. Harender Singh, Advocate
for respondent No. 3.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 15.09.2020 (Annexure P-5) passed by the District Magistrate, Jhajjar.
2. Learned counsel for the petitioner has submitted that as per the letter/instructions dated 29.11.2023, issued by the Director General, Social Justice, Empowerment, Welfare of SCs & BCs and Antyodaya (SEWA), Department, Haryana, Chandigarh, the District Magistrate does not have power to pass the order of eviction 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*” and the said eviction petition is

to be filed before the Maintenance Tribunal in view of the Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (hereinafter referred to as “The Act,2007”). It is further submitted that in view of the said instructions, the impugned order dated 15.09.2020 (Annexure P-5) be set aside and the petitioner be granted liberty to move a fresh application before the Maintenance Tribunal under Section 23 of the Act, 2007 making all prayers including the prayer for eviction.

3. Learned State counsel has not disputed the said instructions dated 29.11.2023.

4. Learned counsel appearing on behalf of respondent No. 3 has submitted that in case the petitioner is being granted liberty to file a fresh application before the Maintenance Tribunal, then respondent No. 3 also be granted liberty to raise all pleas to oppose the said application as available to her in accordance with law. It is further submitted that the petitioner was directed to deposit an amount of Rs.25,000/- in favour of respondent No. 3 as litigation expenses with the registry of this Court and the said draft, which has been deposited, has become invalid on account of lapse of time and thus, the petitioner be directed to make a fresh draft so that the same can be paid to respondent No. 3 as litigation expenses.

5. Learned counsel for the petitioner, in rebuttal, has submitted that he would submit a fresh Demand Draft for an amount of Rs.25,000/- within a period of one month from today before the registry of this Court and would have no objection in case the same is handed over by the registry to respondent No. 3 or the counsel appearing on behalf of respondent No. 3.

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

7. The relevant portion of the instructions dated 29.11.2023 is reproduced hereinunder:-

“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. Keeping in view the abovesaid facts and circumstances and also the instructions dated 29.11.2023, the impugned order dated 15.09.2020 (Annexure P-5) is set aside and the writ petition is disposed of with the following directions:-

(i) It would be open to the petitioner to move an application under

Section 23 of the Act,2007 before the Maintenance Tribunal making a prayer for eviction in addition to the prayer that the petitioner might seek to make in accordance with the instructions dated 29.11.2023.

(ii) In case, any such application is moved, the respondent No. 3 or any other person against whom the prayers have been made would be at liberty to raise all pleas as available to her in accordance with law to oppose the said application.

(iii) The petitioner has undertaken before this Court that he would submit a Demand Draft for an amount of Rs.25,000/- in the name of respondent No. 3 with the registry of this Court within a period of one month from today after informing the counsel of respondent No. 3 and the same would be released by the registry to respondent No. 3 or to an authorized representative of respondent No. 3.

(iv) The registry is directed to handover the old Demand Draft to the learned counsel for the petitioner for an amount of Rs.25,000/- which has been deposited in pursuance of the order dated 08.08.2022.

9. It is made clear that this Court has not opined on the merits of the case and it would be open to all the parties to raise all please before the Maintenance Tribunal and the Maintenance Tribunal would independently decide the same in accordance with law as expeditiously as possible.

29.01.2024

Mehak

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No