



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

CWP-19699-2024(O&M)

Date of decision: 20.08.2024

Rajneesh Chaudhary and others

...Petitioners

Versus

The District Magistrate-cum-Appellate Authority,
Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Mansur Ali, Advocate for the petitioners.

Mr. Parminder Singh Kanwar, Addl. Standing Counsel
UT, Chandigarh for respondent Nos. 1 & 2.

Mr. Anuj Roura, Advocate for respondents No. 3 & 4.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Articles 226/227 of Constitution for quashing of the impugned order dated 18.09.2023 (P-3) passed by learned Additional Deputy Commissioner-cum-Maintenance Tribunal under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act') whereby eviction of petitioners from the demised premises was ordered and impugned order dated 02.08.2024 (P-9) passed by learned District Magistrate-cum-Appellate Tribunal whereby appeal against aforesaid order, was dismissed.



(2) Brief facts of the case as recorded by learned Maintenance Tribunal in the impugned judgment dated 18.09.2023 are as under:-

“In the present case, applicant filed application under the Maintenance & Welfare of Parents and Senior Citizens Act, 2007 read with the Chandigarh Maintenance of Parents & Senior Citizens Rules, 2009 for protection of life and eviction of respondents from H.No. 2355, First Floor, Sector 38-C, Chandigarh. In the application, applicants submitted that they are senior citizens and they filed the present petition seeking eviction of Rajneesh Chaudhary and his family members, respondent No. 1 to 4 from the first floor of House No. 2355, Sector 38-C, Chandigarh as the respondents have made the life of applicants hell and respondents are harassing them physically and mentally. In the application, applicants submitted that respondents want to grab the property owned by applicant no. 1 and they are pressurizing the applicant to execute documents qua transfer of ownership of House No. 2355, Sector 38-C, Chandigarh. Applicants further submitted that applicant no.1 is the absolute owner of House No. 2355, Sector 38-C, Chandigarh (file no. LP-1239) which was allowed by Estate Office Chandigarh. Applicants further submitted that they have two sons namely Rajneesh Chaudhary (elder son-respondent No.1) and Sandeep Chaudhary (younger son). Unfortunately, Sandeep Chaudhary passed away. Dr. Renu Chaudhary wife of late Sandeep Chaudhary and Jatin Chaudhary son of late Sandeep Chaudhary, daughter in law and grandson respectively are living along with the applicants on the ground floor of the house in question. Applicants further submitted that respondents have a bad eye on the properties of applicants. In spite of this all, the applicant no. 1 by executing a Will dated 29.03.2022 duly registered with Sub Registrar Chandigarh had bequeathed 50% share i.e. the ground floor to Dr. Renu Chaudhary, his daughter in law and 50% share to respondents No.1. When, respondent No. 1 came to know about this Will and since then he claims himself to be owner of the property. Applicants further submitted that considering the ill behaviour and attitude of



the respondents, applicant No. 1 has preferred a Civil Suit No. 853 of 2023 and in the said case order dated 04.05.2023 was passed whereby respondents were restrained from raising any sort of construction in House No. 2355, Sector 38-C, Chandigarh. In view of these submissions, applicants prayed to allow the present application and requested this tribunal to issue directions to respondents to vacate the house in question i.e. H.No. 2355, Sector 38-C, Chandigarh.”

(3) The aforesaid application filed by respondent Nos. 3 & 4, namely, Sh. Hardev Chander Chaudhary and Mrs. Kanta Chaudhary (senior citizens) was allowed and operative part of the aforesaid order reads as under:-

“On hearing the arguments made by both the parties and documents placed on record file, it is evident that there are not cordial relations between the parties. There is an apprehension that respondents can grab the property of applicant. The respondent is taking sufficient salary with which he can live separately along with his family. Further, after hearing the arguments, it reveals that the life and property of applicants is in danger in the hands of respondents. Applicants are Senior Citizens and as per provision of Section 21 and 22 of the Act, they are entitled to file the present application before this authority. Further, it is duty of the State to ensure protection of life and property of Senior Citizens. Hence, in order to protect life and property of applicant, present application is hereby allowed. Respondents are hereby directed to vacate the house of the applicant i.e. House No. 2355, Sector 38-C, Chandigarh within 30 days from the dispatch of this order. After the expiry of said period, concerned area S.H.O. is directed to visit the house in question and get the house vacated from respondents and send the compliance report to this tribunal. S.H.O. concerned is further directed to depute a Sub Inspector of Police along with a lady constable to visit the applicant fortnightly in order to ensure



protection of life and liberty of the applicant. This case file be consigned to the record room of this office.”

(4) Feeling aggrieved, petitioners preferred appeal under Section 16 of the Act, but the same was dismissed by learned Appellate Authority vide the impugned order dated 02.08.2024 (P-9). Hence, the present petition.

(5) Reply dated 19.08.2024 on behalf of respondent Nos. 3 & 4 has been filed, which is taken on record. Copy supplied to the other sides. Registry to tag the same at appropriate place.

(6) Contends that respondent Nos. 3 & 4 had executed irrevocable Will dated 29.03.2022 (P-1) whereby 50% share (ground floor) was to go to Ms. Renu Chaudhary wife of Lt. Sh. Sandeep Chaudhary (younger brother of petitioner No.1 and son of respondent Nos. 3 & 4) whereas the remaining 50% share i.e. first and second floors were to go to petitioner No. 1.

(6.1) Further contended that petitioners were already living in the said property and as such, Will dated 29.03.2022 could not have been unilaterally revoked. Again contended that Dr. Renu Chaudhary-wife of younger brother of petitioner No.1 and Jatin-son of younger brother of petitioner No.1, influenced respondent Nos. 3 & 4 and got various properties transferred in their names. Also contended that the orders impugned are liable to be set aside as no specific harassment has been attributed to the petitioners.

(6.2) Again contended that as per Rule 13(1) of the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as 'the Rules'), an opportunity of leading evidence is mandatory; but in the present case, no such course was followed by learned Tribunal and thus, great

prejudice has been caused to the petitioner.



(6.3) Lastly contended that respondent No. 3 had transferred the premises in question in favour of respondent No. 4 vide transfer deed dated 04.08.2023 (P-5) i.e. after filing of the petition before respondent No. 2. Therefore, learned Authorities below ought not to have passed the orders impugned in view of the changed circumstances.

(6.4) In support of his averments, learned counsel for the petitioners has relied upon the following judgment/orders:-

i. *'P.K. Mohan Ram Versus B.N. Ananthachary and others'* 2010(4) SCC 161.

ii. *'Smt. S. Vanitha Versus The Deputy Commissioner Bengaluru Urban District & Ors'* 2021 (15) SCC 730.

iii. *'Rajeshkumar Bansraj Gandhi Versus State of Gujarat and others'* 2017 (1) RCR (Criminal) 192.

iv. *'Labh Kaur @ Labho Vs. State of Punjab and others'* 2024(2) R.C.R(Civil) 769.

v. *'Randhir Singh Vs. District magistrate Faizabad and others'* 2019(4)ALL. LJ 356.

vi. *'Ashwani Kumar and another vs. Additional District Magistrate Patiala and others'* 2019(1) PLR 40.

(7) On the other hand, learned counsel for respondent Nos. 3 & 4 submitted that in 1994, petitioner Nos. 1 & 2 shifted to the first floor of the house in question and since then, they are living there with an independent kitchen. Further submitted that petitioners never discharged their responsibility to take care of respondents No.3 & 4; thus, their behaviour always remained arrogant and aggressive towards them and all efforts were made to grab more and more money as well as properties from their parents.

(7.1) Again submitted that after death of Sh. Sandeep Chaudhary (younger brother of petitioner No. 1), Smt. Renu Chaudhary, a Doctor by



profession alongwith her son has been serving respondent Nos. 3 & 4 with all dedication, love and affection.

(7.2) Also submitted that despite irresponsible and negligent behaviour of petitioners, respondent Nos. 3 & 4 have transferred various movable and immovable properties in their favour, but despite that, they have repeatedly quarreled with them.

(7.3) Again submitted that petitioners in response to the petition filed by respondent Nos. 3 & 4 before learned Appellate Tribunal did not take any plea that Will dated 29.03.2022 was irrevocable.

(8) Heard learned counsel for the parties and perused the paperbook.

(9) Before proceeding further, it would be appropriate to recapitulate the Objects and Reasons of the Act which reads as under:-

“ Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are not forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents. ”



(10) For dealing with the controversy in hand, relevant provisions of the Act are recapitulated as under:-

“ 4. Maintenance of Parents and Senior Citizens

1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of-

i. parent or grand-parent, against one or more of his children not being a minor

ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2

2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

9. Order for maintenance

1. If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.



2. *The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.*

23. 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.”*

(11) Section 4 (1) of the Act stipulates that senior citizen, including parent, who is unable to maintain himself from his own earning or out of the property earned by him, he/she is entitled to seek maintenance. Further more, maintenance is a monetary relief and such maintenance may be flowing from the earnings out of the property. Whereas, Section 23 (1) provides that in case, transferee of the property fails to provide basic amenities and basic physical need to the transferor, the said transfer of property shall be deemed to have



been made by fraud or coercion or under undue influence and if the transferor so desires, same may be declared void by the Tribunal.

(12) As regards facts of present case, respondent Nos.3 & 4 filed a petition under Sections 4 & 5 of the Act seeking eviction of petitioners from first floor of House No.2355, Sector 38-C, Chandigarh, *inter alia*, on the following grounds as recorded in copy of petition (P-2):-

“6. That the petitioners are paying all the bills relating to basic amenities being used by them. Some of the documents to this effect are annexed as Annexure P-3.

7. That on other hand Rajneesh Chaudhary respondent no. 1 along with his family defendant no. 2 to 4 are living on the first floor of the house in question. The attitude of Rajneesh Chaudhary since beginning has remained rough and has never bothered to take care of his elder parents. Rather he and his family have remained very rude towards the petitioners. Respondent no. 1 and 2 always have an eye on the properties of petitioners.

8. That inspite of this all, the petitioner no. 1 by executing a Will dated 29.03.2022. duly registered with Sub Registrar Chandigarh had bequeathed 50% share Le. the ground floor to Dr. Renu Chaudhary, his daughter in law and 50% share to respondent no. 1. Respondent no. 1 came to know about this Will and since then he claims himself to be owner of the property. There is no dispute to fact that fruit of the Will is available only on the demise of the executant of the Will and not earlier to that.

9. That as stated in preceding paras since long though respondent no. 1 who is elder son has the duty to maintain and respect and not to fight with the petitioners, his aged parents yet he in complete disregard to the age, health and welfare of his parents who are 94 and 82 years of age, forced the petitioners to give all papers of House No. 2355, Sector 38 C, Chandigarh. On refusal, he perforce has taken away some relevant papers relating to this house in the



third week of April 2023 and neither he is showing those papers nor is returning the same inspite repeated requests made by the petitioners. Apart from this he perforce has also taken signatures of petitioner no.1 on some blank papers. Attitude of respondent no.1 and 2 have deliberately failed to recognize the contribution and the efforts made by the petitioners including monetarily towards establishing them in their lives. The right of exclusive possession of a self owned property by a registered document of title can well be enforced under the provision of the Act by issuing appropriate directions to order eviction of respondent from the demised premises.

10. That in utter disregard to the Byelaws, Rules and Statutes and terms and condition of the lease deed so executed between the Chandigarh Administration on one side and Sh. Hardev Chander Chaudhary petitioner no. 2 on other side, the respondents have starting raising construction on the rear side of the first floor and on the roof of the first floor. This exercise is commenced in the last week of April 2023. On making protest by the petitioners, the respondents misbehaved with them and cautioned do whatever they want to do. They are not even bothering and respecting the age of the parents. Some of the pictures evidencing the factum of these acts of respondents are being annexed as Annexure P-4.

11. That the petitioners who being in the evening of their life that itself is an ailment, do not want to raise any sort of construction or have consented to respondents to raise any construction on the house owned by petitioner no. 1 in any manner. House is built up as per sanctioned site plan and the petitioners do not want to do any lawful act and do not allow any construction to be raised at the house unless until they desire. Even otherwise no construction can be raised against the mandate of law, statute and byelaws. However, the defendants, inspite the protest of petitioners are not mending their ways and trying all efforts to continue with the construction.



12. That on 29.04.2023, when the respondents continue with their unlawful activities concerning construction, petitioners raised protest. On this respondents fought with them. A police team called for and respondent no.1 stopped construction at that time. Police official advised respondents not to carry out any unlawful construction. Moment the police official went away, they again started construction. Then the contractor and the labourer were cautioned that police action will be taken against them, they went away. No provision of law permits the respondents to raise any construction in unlawful manner. However, respondents by arranging other labourers are making all efforts to continue with the construction on the first floor and on its roof.

13. That it is humbly submitted that the respondents at the most are living on the first floor of the house in question with the status of licensee and have no right of any ownership. Indeed, the licensee has no right to raise any sort of construction unless and until the petitioners permit based on sanctioned site plan to that effect.

14. That it is important to state here that the petitioners who being in the late evening of their lives want to live peacefully and do not want any action from any authority on the property built up by them during their lifetime. However respondents are harassing the petitioners and are fighting with them.

15. That faced with this the petitioner no. 1 has executed appropriate documents cancelling the Will dated 29.03.2022. Children who do not respect their parents, are not entitled to have anything from their parents perforce or by causing harassment. Children can have from their parents with all love and affection with blessing but not perforce and with dominating behaviour that the respondents have expressed.

16. That considering the ill behaviour and attitude of the respondents, petitioner no. 1 has preferred a Civil Suit No. 853 of 2023 titled as Hardev Chander Chaudhary Vs. Rajneesh



Chaudhary and others in the judicial courts at Chandigarh. The Ld. Civil Judge after notice to respondents, vide order dated 04.05.2023 has restrained them from raising any sort of construction in House No. 2355, Sector 38 C, Chandigarh. Copy of the order dated 04.05.2023 is annexed as Annexure P-5.

17. That the petitioners humbly submits that the Hon'ble Court may protect them from the unlawful activities of the respondents. The respondents may be ordered to be evicted from first floor of House No. 2355, Sector 38 C, Chandigarh forthwith as presence and living of respondents on the first floor of the house is not safe for the peaceful life of the petitioners.

18. That once the petitioner no.1 is the absolute owner of House No. 2355, Sector 38 C, Chandigarh and does not want any sort of humiliation and insult in the hands of his children and does not want any penal action, the respondents in no eventuality can force or impose themselves upon the petitioners to disturb their live and the peaceful possession of the petitioners and other family member in any manner whatsoever.”

(13) From perusal of the above, it is nowhere discernible that petitioners neglected or refused to maintain respondent Nos. 3 & 4. It is also not the case of the respondent Nos.3 & 4 that after commencement of the Act, they, transferred the property in favour of petitioner No.1, subject to the condition that transferee shall provide them basic amenities and/or the transferee has refused or failed to provide such amenities/physical needs, justifying their eviction. To the contrary, it seems that petitioners being son, daughter-in-law and grandson of respondent Nos.3 & 4, have been residing in the demised property since long and petition under Sections 4 & 5 of the Act is not the proper remedy for their eviction. Moreover, even if for the sake of

arguments, the allegations of respondent Nos.3 & 4 are taken as gospel truth,

still the same would not constitute a ground to recover possession of the demised premises in such a manner.

(14) Apart that, there is force in the argument of learned counsel for petitioners that Maintenance Tribunal did not follow the procedure prescribed under the Act as well as the Rules framed thereunder. Noteworthy that Section 8 of the Act deals with summary procedure in case of enquiry and for reference, same is recapitulated as under:-

“8. Summary procedure in case of inquiry.-- (1) In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State of Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribnal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) ”

(14.1) A bare reading of above extract clearly reveals that learned Tribunal is to hold the enquiry by following the summary procedure as prescribed by the State Government. Still further, Rule 13(1) of the Rules mandates that learned Tribunal is statutorily obliged to afford an opportunity of leading evidence to both parties and relevant part of the above rule is extracted hereinbelow for reference:-

“13. Action by the Tribunal in other cases:

(1) ”

(i) to (iv) ”



The Tribunal shall give to both the parties an opportunity of leading evidence in support of their respective claims, and shall, after a summary inquiry as provided in sub-section (1) of section 8, pass such order as it deems fit.”

(14.2) A conjoint reading of above legal provisions make it crystal clear that granting opportunity to both parties for leading evidence is mandatory and which has been completely ignored by learned Tribunal in this case.

(15) Moreover, it is neither the case of respondent Nos.3 & 4; nor there is any evidence to the effect that petitioners are in unauthorized occupation of the property in dispute; rather, a civil suit is already pending between the parties before the Court of competent jurisdiction.

(16) In view of above, this Court is of the opinion that orders impugned are not legally sustainable; hence liable to be set aside.

(17) Consequently, present petition is allowed; impugned orders dated 02.08.2024 and 18.09.2023 passed by learned Authorities below are quashed & set aside; the matter is remanded to learned Tribunal for decision afresh as per law, after affording opportunity of leading evidence to both parties.

(18) Needless to add that above observations shall not be construed as an expression of opinion on merits of the case, in any manner.

Pending application(s), if any, shall also stand disposed off.

20.08.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No