

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-23683-2022

Date of decision : 19.01.2024

Najam Singh alias Najar Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vikas Kumar Gupta, Advocate for the petitioner.

Mr.Kunal Muthreja, AAG, Punjab.

Mr.Dinesh Kumar Singla, Advocate for
Mr.Manish Kumar Singla, 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, order or direction quashing decision dated 09.08.2022 (Annexure P-3) of the Additional Deputy Commissioner, Sangrur, vide which the application filed by the petitioner under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to "Act 2007") seeking possession of property has been dismissed.

2. Learned State counsel as well as learned counsel for respondent no.3 have submitted that the District Magistrate/Additional District Magistrate does not have the power under Section 22 of the Act 2007 to pass the order of eviction but the Maintenance Tribunal has the power to pass the eviction order in view of the provisions of Section 23 of the Act 2007. It is further submitted that in the present case, the petitioner has filed the application before the District collector under Section 22 of the Act 2007 which as per the law laid down by a coordinate Bench of this Court in

CWP-4744-2018 titled as “*Simrat Randhawa vs. State of Punjab and others*” and also as per the instructions dated 18.12.2023 issued by the Additional Director, Department of Social Security and Women & Child Development, Punjab, is not maintainable and only an application before the Maintenance Tribunal under Section 23 of the Act 2007 for eviction is maintainable. The relevant portion of the instructions dated 18.12.2023 is reproduced herein under:-

*“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” bu the Division Bench of the Hon’ble High Court did not stay the same. Depsite, this, the eviction orders were being passed by the District Magistrates as per mandates of the aforecited 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”*

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 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 Punjab, 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 2007 and the above-said judgment, after taking into consideration the relevant factors, in accordance with law.

3. Learned counsel for the petitioner has submitted that in view of the said instructions and in view of the fact that the earlier application was filed under Section 22 of the Act 2007 before the District Collector, the petitioner be permitted to withdraw the present petition and liberty be granted to file a petition under Section 23 of the Act 2007 before the Maintenance Tribunal and the Maintenance Tribunal be directed to decide the same on merits and in accordance with law and uninfluenced by the order dated 09.08.2022 passed in the present case.

4. Learned State counsel and learned counsel for respondent no.3 have submitted that they have no objection to the said course of action but have submitted that the respondents be also granted liberty to raise all pleas available to them, in accordance with law.

5. In view of the above, the present petition is dismissed as

withdrawn with liberty to the petitioner to file a petition under Section 23 of the Act 2007 before the Maintenance Tribunal in pursuance of the instructions dated 18.12.2023 and in case the petitioner files the said petition, the same would be decided by the Maintenance Tribunal uninfluenced by the order dated 09.08.2022 (Annexure P-3) independently and after hearing all the parties concerned.

6. It is made clear that this Court has not opined on the merits of the case and it would be open to both the parties to raise all pleas, in accordance with law.

(VIKAS BAHL)
JUDGE

January 19, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No