

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

(206)

**2024:PHHC:028420
CWP-37762-2018
Date of Decision: 28.02.2024**

Yogesh Sehgal & another

--Petitioners

Versus

Ld. Additional Deputy Commissioner-cum-
Additional District Magistrate, Ludhiana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL.

Present:- Mr. S.K. Singla, Advocate for the petitioners.

Ms. Neha Sonawane, DAG, Punjab.

Mr. Rajesh Gupta, Advocate for
respondents no.2 and 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 21.09.2018 (Annexure P-3), passed by respondent no.1 vide which the application filed by respondents no.2 and 3 for eviction of the petitioners, has been allowed.

2. Brief facts of the present case are that respondents no.2 and 3, who are admittedly senior citizens and the father and mother of the petitioners, had filed an application for eviction from the portions situated on the first floor, ground floor of the property no.B-19-634, Malerkotla House, Civil Lines, Ludhiana, measuring 260 sq., yards comprised in Khasra No.2483//1008, 1009, 1010, 1011, 1012, 2486//1008, 1009, 1010, 1011, 1012 of village Mahal Bagat, Tehsil & District Ludhiana. In the said application, it was averred that respondent no.2 was born on 16.11.1941 and respondent no.3 was born on 24.08.1951 and respondent no.2 was the

owner of the property in question. It was further submitted that the present petitioners were residing in portions of the house in question as licensees and had no right in the same. Specific averments have been made in the application to the effect that the petitioners used to beat up respondents no.2 and 3 and a number of police complaints were made by respondents no.2 and 3 but the petitioners did not improve their act and conduct and that on 2.1.2017, at about 2:00/2:30 PM, petitioners criminally trespassed into the room of respondents no.2 and 3 and raised a *Lalkara* that both respondents no.2 and 3 would be killed due to their continuous habitation in the property in dispute and that in case the respondents no.2 and 3 did not agree to sell the property in question and to distribute the sale proceeds to the petitioners, then, respondents no.2 and 3 would be done to death and since respondents no.2 and 3 refused to accept the said demand, the petitioners started beating them mercilessly. It was also specifically averred that the petitioners used to call their mother by abusive names and that respondents no.2 and 3 being old persons were suffering from various diseases. On the said averments eviction was sought. A reply dated 15.12.2017 (Annexure P-2) was filed by the petitioners in which it was stated by the petitioners that due to a family dispute the relationship between the petitioners and respondents no.2 and 3 was strained and respondents no.2 and 3 were interfering in the possession of the petitioners over the property in question and that in the first week of November, 2017 petitioners requested respondents no.2 and 3 not to encroach upon their possession. It was also averred that certain anti social elements came to the property in question and on account of hue and cry, respondents no.2 and 3 could not successfully dispossess the petitioners. In para 10 of the reply on merits, a reference was made to the complaint

filed in the Woman Cell, Ludhiana by the petitioners. The authority under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter to be referred to as “the Act”) vide order dated 21.09.2018 (Annexure P-3), after duly verifying the ownership of respondent no.2 and after taking into consideration the Jamabandi for the year 2009-2010 and after observing that petitioners misbehaved with respondents no.2 and 3, allowed the said application and directed the petitioners to vacate the portion of the house which had been possessed by the petitioners. It is the said order which is the subject matter of challenge in the present writ petition.

3. Learned counsel for the petitioners has submitted that petitioner no.1 Yogesh Sehgal has died and his wife and children have left the premises in question. It is submitted that the present writ petition survives only qua petitioner no.2. Challenging the impugned order, learned counsel for the petitioners has submitted that there is no evidence recorded by the authority to come to a conclusion that there was a dispute between the parties and without there being any evidence on the said aspect, the impugned order could not have been passed. It is argued that petitioner no.2 is ready and willing to take care of respondents no.2 and 3 and has submitted that, to show their bonafide, petitioners had even brought a demand draft of Rs.1 lakh each in the name of respondents no.2 and 3 in pursuance to the order dated 11.01.2019 passed by a Coordinate Bench of this Court vide which eviction of the petitioners was stayed. It is submitted that it was respondent no.2 who had refused to accept the said amount and had prayed that he wanted the premises to be vacated. It is further submitted that petitioner no.2 is still ready and willing to take care of

respondents no.2 and 3. It is next argued that the first floor of the house has already been vacated as petitioner no.1 has died and his wife and children have already left the premises in question and petitioner no.2 is occupying some portion of the ground floor and thus he should not be evicted from the premises in question.

4. Learned counsel appearing for respondents no.2 and 3 has opposed the present writ petition and submitted that petitioners and their family members had made the life of respondents no.2 and 3 a living hell and it was impossible to live with them and any further cohabitation with the petitioners could have caused physical harm to respondents no.2 and 3 and it is for the said reason that respondent no.2 had refused to accept the demand draft of Rs.1 lakh and prayed that petitioners (now petitioner no.2) be evicted from the premises in question. It is submitted that the said stand of the respondent no.2 shows that the application filed by respondents no.2 and 3 was genuine and bonafide and was only to live peacefully in their old age.

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. Hon'ble Supreme Court in case titled as "Smt. S Vanitha Vs. The Deputy Commissioner Bengaluru Urban District & Ors., reported as 2021(15) SCC 730, had observed that a Tribunal constituted under the Senior Citizens Act, 2007 has the authority to pass an order of eviction, if it is necessary and expedient to ensure the maintenance and protection of the senior citizen or parent and that the eviction in other words would be an incidence of the enforcement of the right to maintenance and protection. Relevant part of para No.25 of the said judgment is reproduced herein

below: -

“xxx xxx xxx xxx xxx xxx

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.”*

7. This Court in **CWP-15170-2023** titled as **“Ravi Kumar Vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others, decided on 20.07.2023**, in view of the judgment of the Hon'ble Supreme Court in **Smt. S. Vatnitha's case (supra)** had upheld an order of eviction passed therein by the authorities under Act of 2007. The relevant portion of the said judgment is as under: -

“9. In the said judgment, the Hon'ble Supreme Court had taken into consideration the legislative scheme of the 2007 Act & reference was also made to Chapter V of the 2007 Act which provide for “protection of life and property of senior citizens”. The objects of the Act which included a need to give more attention to the care & protection of older persons was also taken into consideration. It was observed that the procedure to be followed by the Tribunal was of a summary nature. The contesting claim for both the parties to the effect as

to whether the authorities under the Act have the jurisdiction to entertain the proceedings for eviction was also noticed. Relevant part of Paragraph No.6; Paragraphs 15, 16, 17 in their entirety as well as relevant portion of Paragraphs 19 and 20 of the above judgment are reproduced as under: -

xxx xxx xxx xxx xxx xxx

6. The appellant specifically raised an objection to the jurisdiction of the authorities to entertain the proceedings seeking her eviction from the premises. She submitted that while the Senior Citizens Act 2007 provides for the maintenance of a senior citizen or a parent, there is no provision envisaging an order of eviction, and that the authorities had no jurisdiction to direct her removal from the premises.

C. Legislative scheme: Senior Citizens Act, 2007

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15. The rival submissions will now be analysed.

16. Our analysis of the rival submissions must begin with explaining and interpreting the salient feature of the Senior Citizens Act 2007 which have a bearing on the present controversy. “Maintenance is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment. In defining the expression “property”, the legislation uses broad terminology encompassing “property of any kind” and to include “rights or interests in such property”. Overriding effect is given to the provisions of the enactment by Section 3. Besides the definitions which are comprised in Chapter I, Chapter II is titled “Maintenance of Parents and Senior Citizens” while Chapter V is titled “Protection of Life and Property of Senior Citizen”.

17. The Statement of Objects and Reasons indicates the rationale for the enactment of the law:

“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 now 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.

xxx xxx xxx xxx xxx xxx

19. xxx xxx xxx Hence, in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance.

20. The procedure to be followed by a Maintenance Tribunal (constituted under Section 7 is of a summary nature as provided in Section 8(1) and with all the powers of a Civil Court, as provided in Section 8(2).”

8. LPA-1387-2023 filed against the said judgment has been dismissed.

9. Coming to the facts of the present case, the fact that respondents no.2 and 3 are senior citizens, is not disputed before this Court. In para 1 of the application (Annexure P-1) it was stated that respondent no.2 was born on 16.11.1941 and respondent no.3 was born on 24.8.1951 and the said averments in para 1 of the application were not disputed in the reply dated 15.12.2017 (Annexure P-2) filed on behalf of the petitioners. It is also not in dispute that respondents no.2 and 3 are the father and mother of the petitioners and petitioner no.1 has died during the pendency of the

present writ petition. Even the fact that respondent no.2 is the owner of the property in question is not disputed before this Court. Further, a perusal of the impugned order dated 21.09.2018 (Annexure P-3) would show that the verification in respect of the ownership was got conducted through S.D.M., Khanna and a report was prepared by the S.D.M., Khanna with regard to the property in question, as per which respondent no.2 was found to be the owner of the property in dispute. Reference in the report was made to the Jamabandi for the year 2009-2010 with respect to the property in question. The fact that there was a dispute between the parties is clearly proved from a bare reading of the application (Annexure P-1) and the reply (Annexure P-2). In the application (Annexure P-1) it was specifically averred that the petitioners herein were cruel and adamant towards respondents no.2 and 3 and used to beat them up for which a number of police complaints were made and a specific reference has been made to the incident dated 2.1.2017 in para 10 of the application (Annexure P-1), in which it was stated that the present petitioners had criminally trespassed into the room of respondents no.2 and 3 and threatened to kill respondents no.2 and 3 in case they did not sell the property and not distribute the sale proceeds, equally to the petitioners. A perusal of paras 11 and 12 of the application would also show that there were specific pleadings with respect to the petitioners abusing respondents no.2 and 3. In the reply (Annexure P-2), the factum that there was a dispute between the parties was admitted in para 4 of the preliminary objections and even the fact that the relationship between the parties were strained, was also admitted. A perusal of para 10 of the application and para 10 of the reply on merits would show that complaints were filed by the parties to the police and one such complaint

was pending before the Woman Cell, Ludhiana. From the said pleadings, it is apparent that there were disputes between the petitioners and respondents no.2 and 3. Thus, respondents no.2 and 3 had every right to file the application for eviction in order to enforce their right of protection in pursuance of the law laid down in the above referred judgements. The argument of learned counsel for petitioners to the effect that there was no evidence to show dispute between the parties, is thus, meritless. Even the argument to the effect that petitioner no.2 is ready and willing to take care of respondents no.2 and 3 does not cut much ice. There is nothing on record to show that petitioners have prior to filing of the application (Annexure P-1) by respondents no.2 and 3 transferred any money into their account or had been paying any monthly maintenance to them. Mere offering to pay the amount after passing of the impugned order would not justify setting aside the impugned order. Moreover, the stand of respondents no.2 and 3 to not accept the demand draft of Rs.1 lakh each offered by the petitioners would also show the bonafide on the part of the respondents no.2 and 3 in filing the application seeking eviction of their sons to protect their life and to live peacefully in the twilight of their life. The order dated 21.09.2018 (Annexure P-3) has been passed in accordance with law and does not call for any interference by this Court.

10. Keeping in view the above said facts and circumstances, there is no merit in the present writ petition and the same is accordingly, dismissed.

(VIKAS BAHL)
JUDGE

28.02.2024

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