

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

(218)

CWP-24964-2023

Date of decision: - 04.03.2024

Om Parkash

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Aashna Gill, Advocate,
for the petitioner.

Ms. Neha Sonawane, DAG, Punjab.

Ms. Sumanjit Kaur, (Legal aid counsel)
for respondents No.5 and 6.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the letter dated 16.08.2023 (Annexure P-3) issued by respondent No.2 whereby he has refused to execute the eviction orders dated 06.06.2017 (Annexure P-1) and dated 08.06.2022 (Annexure P-2) passed in favour of the petitioner.

2. On 06.11.2023, this Court was pleased to pass the following order: -

“Learned counsel for the petitioner has submitted that in spite of the fact that the eviction order in favour of the petitioner has attained finality, the Deputy Commissioner, Patiala has dismissed the application for execution. It is further submitted that once the order

has attained finality, the Executing Court cannot go beyond the order passed. It is stated that the petition for eviction at any rate is maintainable in view of the law laid down by the 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" and the said judgment has been followed by this Court in CWP-15170-2023 titled as "Ravi Kumar Vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others, decided on 20.07.2023". It is further stated that the petitioner is 82 years old and the impugned order dated 16.08.2023 on the face of it is illegal and has caused serious prejudice to the petitioner.

Notice of motion for 29.11.2023.

On the asking of the Court, Mr. Ferry Sofat, Additional Advocate General, Punjab, appears & accepts notice on behalf of respondents No.1 to 4 and seeks time to get instructions in the matter.

Liberty is granted to the petitioner to serve respondents No.5 and 6 through process dasti as well.

To be taken up at 12.00 noon.

November 06, 2023

**(VIKAS BAHL)
JUDGE"**

3. Learned counsel for the petitioner has reiterated the arguments noticed in the abovesaid order.
4. Learned counsel appearing for private respondents No.5 and 6 has submitted that the first application for eviction was allowed vide order dated 06.06.2017 (Annexure P-1), whereas, the second application for vacation of the house, on which the order dated 08.06.2022 (Annexure P-2) was passed, was filed after a period of five years from the date of the order dated 06.06.2017 and thus, the present writ petition deserves to be dismissed on the ground of delay in filing the second application, which culminated into the order dated 08.06.2022.
5. This Court has heard learned counsel for the parties and has

perused the paper-book.

6. It is not in dispute that the petitioner, who is a senior citizen and is the father of respondent No.5 and father-in-law of respondent No.6, had on 23.03.2017 filed an application with respect to vacation of the house in question, which application was allowed vide order dated 06.06.2017 (Annexure P-1). The relevant portion of the said order is reproduced herein below: -

“In the present case, the applicant Shri Om Prakash is the owner of the said property. The applicant not only has the legal right to get possession of his house but the applicant is also in need of his house at this time as the applicant has no source of income nor is the applicant in a position to work for his own support. Therefore, the respondent is directed to vacate the applicant's house situated in Village Buha, Tehsil Rajpura by 05.07.2017. A copy of the order should be sent to Tehsildar, Rajpura for compliance and necessary action. The order was pronounced. File be consigned to the record room after completion as per the law.

*Dated: 06.06.2017
Place: Patiala*

*sd/-
District Magistrate,
Patiala.”*

It is also not in dispute that the said order was not challenged by anyone and the same attained finality.

7. Since the house was not vacated by respondent Nos.5 and 6, the petitioner had filed another application on 26.04.2022, which was decided vide order dated 08.06.2022 (Annexure P-2) on the following terms: -

“Therefore, the Tehsildar, Rajpura is again instructed to take possession of the said house from the respondent under the rules in compliance with the order dated 06.06.2017 issued by my predecessor and give possession to the petitioner. If a stay order issued by a High Court is presented, the possession regarding should be stayed in case

of stay. The order was pronounced. File be consigned to the record room after completion.

Dated: 08.06.2022

*sd/-
Additional District
Magistrate, Patiala.*

7. It is not in dispute that the said order has also attained finality and the same has not been challenged by respondent Nos.5 and 6 or any other person till date.

8. The respondent authorities instead of executing the said order and getting the possession of the premises in question vacated from respondent Nos.5 and 6 and handing over the same to the petitioner, vide letter dated 16.08.2023 (Annexure P-3) informed the petitioner that the said proceedings cannot be continued in view of the judgment passed by a Co-ordinate Bench of this Court in “*Simrat Randhawa Vs. State of Punjab and others*, passed in CWP-4744 of 2018, decided on 23.01.2020. The said letter is absolutely illegal and against law and deserves to be set aside, inasmuch as, it is a matter of settled law that the Court/authorities while executing an order cannot go beyond the order passed by the authorities under the Act of 2007, more so when the same has attained finality. Moreover, the authorities had not taken into consideration the law laid down by the Hon'ble Supreme Court in *Smt. S Vanitha (supra)*, wherein, it had been 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.”

9. This Court in CWP-15170-2023 titled as “**Ravi Kumar Vs. Deputy Commissioner-cum-Appellate Tribunal, Jhajjar and others**, decided on 20.07.2023, after taking into consideration 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***

xxx xxx xxx xxx xxx xxx

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).

xxx xxx xxx xxx xxx xxx xxx”

10. Even appeal bearing LPA-1387-2023 filed against the said judgment has also been dismissed.

11. Thus, the present writ petition deserves to be allowed and the impugned letter dated 16.08.2023 (Annexure P-3) deserves to be set aside. The argument raised by learned counsel for respondent Nos.5 and 6 to the effect that there was a delay of five years in filing the second application, culminating into the passing of the order dated 08.06.2022, does not in any way calls for dismissal of the present writ petition and the said argument deserves to be rejected for the reasons mentioned hereinafter. In the order dated 08.06.2022 (Annexure P-2) there was a specific direction given that the possession be handed over to the petitioner who was a senior citizen. The said order had not been challenged and had attained finality and thus had to be executed. The necessary application for execution and the present writ petition have been filed within a period of one year and six months from the date of passing of the said order and cannot even remotely be stated to be barred

by limitation. Moreover, no law has been cited nor any provision of law has been referred to by the learned counsel for respondents No.5 and 6 to show that the application filed for execution within a period of one year and three months from the date of passing the order dated 08.06.2022 was barred by limitation. Moreover, respondent Nos.5 and 6 against whom an order of eviction stands cannot be permitted to stay in possession of the premises in question and the ends of justice would require that they be evicted from the premises.

12. Keeping in view the above-said facts and circumstances, the present writ petition is allowed and the impugned letter dated 16.08.2023 (Annexure P-3) is set aside and respondent No.2 is directed to implement the order dated 08.06.2022 (Annexure P-2) and get the premises in question vacated from respondent Nos.5 and 6 and further get the possession handed over to the petitioner, as expeditiously as possible and in any case within a period of one month from the date of receipt of certified copy of the present order.

13. It would be open to respondent No.2 to seek police help for the purpose of taking possession.

March 04, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes