

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(204)

CWP-34543-2019 (O&M)

Date of decision: - 23.01.2024

Jagdish Jaglan

....Petitioner

Versus

District Magistrate Jind and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vijay Kumar Jindal, Senior Advocate, with
Mr. Akshay Jindal, Advocate, and
Mr. Pankaj Gautam, Advocate
for the petitioner.

Mr. Amandeep Joshi, AAG, Haryana.

Mr. Pardeep Sehrawat, Advocate
for respondent No.2.

Dr. Pankaj Nanhera, Advocate, and
Mr. Lajpat Rai Sharma, Advocate
for respondents No.3 to 4.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari or any other appropriate writ or direction for setting aside the order dated 13.11.2019 (Annexure P-6) vide which the application moved by the petitioner/senior citizen under the Maintenance and Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred as 'Act of 2007') for protection of life and property has been dismissed.

2. Learned senior counsel for the petitioner has submitted that in the present case, a cryptic and non-speaking order dated 13.11.2019 (Annexure P-6) has been passed without going into the merits of the case and without considering the contentions of the parties. It is further submitted that the said order being cryptic and non-speaking deserves to be set aside on the said ground alone.

3. Learned State counsel has pointed out that in the present case, a prayer for eviction has been made in the proceedings before the District Magistrate, but on account of the judgment passed by a Co-ordinate Bench of this Court in ***CWP-4744-2018*** titled as “***Simrat Randhawa Vs. State of Punjab and others***”, the District Magistrate is not authorized to pass an eviction order, but however, the Maintenance Tribunal can pass the eviction order in view of the provisions of Section 23 of the Act of 2007 and for the said purpose, learned State counsel has relied upon the instructions dated 29.11.2023, issued by the Director General, Social Justice, Empowerment, Welfare of SCs & BCs and Antyodaya (SEWA) Department, Haryana, Chandigarh. The said instructions dated 29.11.2023 are reproduced herein under: -

“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/re-constituting, 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”*

A perusal of the above reproduced 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 a 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 instructions, 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.

4. Learned counsel appearing for respondents No.3 and 4 have submitted that in case the matter is to be reheard, then, all the pleas raised by respondents No.3 and 4 be also considered before finally adjudicating the matter.

5. The position that emerges from the above-said facts and circumstances is that the pleadings in the present case are complete and as per the latest instructions, the District Magistrate-cum-Deputy Commissioner is not authorized to pass eviction orders and the same can only be done by the Maintenance Tribunal. The order dated 13.11.2019 (Annexure P-6) is a cryptic and non-speaking order and on the said count alone, cannot withstand judicial scrutiny and the same deserves to be set aside and the matter deserves to be reheard.

5. In the light of above-said facts and circumstances, with the consent of the parties concerned, the present writ petition is disposed of with the following directions: -

- (i) Order dated 13.11.2019 (Annexure P-6) passed by the District Magistrate, Jind is set aside on the ground that the same is cryptic and non-speaking.
- (ii) In view of the instructions dated 29.11.2023 issued by the Director General, Social Justice, Empowerment, Welfare of SCs & BCs and Antyodaya (SEWA) Department, Haryana, Chandigarh, which has been reproduced herein above, the present matter is remanded to the Maintenance Tribunal, Jind to decide the application filed by the senior citizen i.e.

petitioner afresh. It has been brought to the notice of the Court that the pleadings in the said case are complete and the Maintenance Tribunal, Jind would proceed in the matter from the stage after the pleadings in accordance with law.

- (iii) The parties would appear before the Maintenance Tribunal, Jind on 13.02.2024.
- (iv) In case the record of the Maintenance Tribunal is not complete, the parties are directed to complete the said record and give the copies of the application filed as well as the replies filed by the parties concerned.
- (v) The Maintenance Tribunal, Jind would independently consider the pleas raised by the parties and would decide the application filed by the petitioner/senior citizen under the Act of 2007, as expeditiously as possible, without being influenced by the earlier order dated 13.11.2019 (Annexure P-6) passed by the District Magistrate and after taking into consideration all the pleas raised by the parties concerned.
- (vi) It is made clear that this Court has not opined on the merits of the case and the Maintenance Tribunal would decide the matter independently, in accordance with law.

6. Pending application, if any, stands disposed of accordingly

January 23, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No