Judgment reserved on: 16.05.2024
Judgment pronounced on: 07.08.2024

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2582 of 2021 (M/S)

Neena Khanna W/o Late Col. Shradhanand Khanna
R/o 5 East Canal Road, Dehradun
Uttarakhand .....Petitioner

Vs.

1. State of Uttarakhand through Secretary (Home), Civil Secretariat Dehradun
2. Vanita Khanna Bali D/o Late Vishwa Nand Khanna
   R/o 5 EC Road, Karanpur, Chakrata Road, Dehradun
   Uttarakhand .....Respondent

Present:-
Mr. Siddhartha Sah and Priyanka Agarwal, learned counsel for the Petitioner.
Mr. Yogesh Chandra Tiwari, Standing Counsel for the State/ Respondent no. 1.
Mr. Ramji Srivastava and Mr. Rajat Mittal, Counsel for the Respondent no. 2.

Hon'ble Vivek Bharti Sharma, J.

Present writ petition under Article 227 of the Constitution of India is filed for quashing of judgment and order dated 24.04.2019 passed by the Appellate Tribunal, Dehradun under the *"Maintenance and Welfare of Parents and Senior Citizen Act, 2007"*, whereby the appeal filed by the Respondent no.2 was allowed and the order dated 05.01.2019 passed by the Prescribed Authority/S.D.M., Dehradun under Section 22 of the Act was set aside.

2. Admit the petition.

3. Heard final arguments of learned counsel for the parties and perused the material available on record.

4. Facts of the case, as stated in the writ petition are that the petitioner moved an application before the District Magistrate, Dehradun under Section 21 and 22 of The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (*hereinafter referred to as "the Act"*) seeking protection of her life and property and eviction of trespassers i.e. respondent no.2 from the property of the petitioner *bearing no. 5, East Canal Road Dehradun, Uttarakhand-248001 (hereinafter referred to as "the property")*stating that Late Smt. Ram Pyari Khanna was the owner of the property House No.5 E.C. Road; that, during her lifetime, Smt. Ram Pyari Khanna had registered a Will giving 25% share of the property, each, to her son Lt. Col. Shradha Nand Khanna *(petitioner's husband)* and Vishwa Nand Khanna *(second respondent's father)* and remaining 50% share to another son Rajendra Nand Khanna; that, after the death of Late Smt. Ram Pyari Khanna, the petitioner, her husband and their children started residing in *"the property"* and has been residing there since 1985; that, father of respondent no.2 was never in possession of the said property; that, after the death of the father of respondent no.2, the mother of respondent no.2 alienated her

undivided 25% share of the property to one Shri Pradeep Kumar Anand and J.S. Rauthan vide sale deed dated 30.10.2001 and that now respondent no.2 has no lawful claim to the premises; that, on 17.04.2017 respondent no.2 broke the front wall of the said premises and encouraged two persons namely Kovid Ahuja and Mr. Sanjay Aggarwal to illegally trespass in *"the property"* and they broke open the locks of the rooms occupied by the petitioner; that, in this regard the petitioner lodged an FIR under Section 452/427 of IPC.

5. It was also alleged in the said application that the respondent no.2 is threatening the petitioner with dire consequences and has also manhandled the petitioner on several occasions; that, the petitioner is an old lady aged 73 years and is a helpless senior citizen who is unable to defend herself and is under constant physical and mental harassment at the hands of respondent no.2 and her associates; that, at the behest of respondent no.2, three persons Mrs. Jyoti Sood, Mrs. Meena Thapa and Mrs. Vibhas Thapa keep on entering *"the property"* of the petitioner/applicant forcibly and threaten the petitioner to withdraw the above mentioned FIR.

6. Said application was registered as "*Case No. 3 of 2018 Smt. Neena Khanna vs. Smt Vanita Bali*" and vide order dated 05.01.2019 *(Annexure-1)*, the S.D.M. (*Sadar*) allowed the application of the petitioner and directed the Officer-in–charge of the Police Station, Dalanwala to get the property vacated and to handover the possession of the property to the petitioner with further direction to the respondent no.2 to neither enter the property of the petitioner in future nor commit any cruelties upon the petitioner.

7. Being aggrieved by Order dated 05.01.2019, respondent no.2 preferred an appeal before the Appellate Tribunal. Learned Appellate Tribunal, vide its Order dated 24.04.2019 *(Annexure-2)*, allowed the appeal and set aside the order dated 05.01.2019. Hence, the present petition.

8. Learned counsel for the petitioner would submit that respondent no.2 has no claim, right, title or interest in the property in question since mother of respondent no.2 had already sold her 25% share in the property to Mr. Pradeep Kumar Anand and Mr. J.S. Rauthan vide sale deed dated 30.10.2001 thereby disentitling the respondent no.2 from entering the said property.

9. Counsel for the petitioner would further submit that the mother of respondent no.2 after alienating her share to third party via a sale deed cannot bequeath the same upon respondent no.2 by way of a Will, which will itself be null and void, as prior to bequeathing the said property to the respondent no. 2, her mother had already transferred her right, title and interest in the said property to a third party.

10. Learned counsel for the petitioner would further submit that the Appellate Tribunal failed to take notice of the fact that the property in question had devolved upon the petitioner after the demise of her husband and it was only her husband who had the physical possession of the property; that, all the bills and expenses pertaining to the development and maintenance of the said property were being paid by the husband of petitioner only.

11. Counsel for the petitioner would further submit that the various documents placed on record would reveal that respondent no.2 was never a resident of *5, East Canal Road, Dehradun, Uttarakhand* but she is the owner and has always been permanent resident of property situated at Village Naya Gaon, 16 Bigha, P.O. Anarwala, Garhi Cantt, District Dehradun, which is

evident from the passport of respondent no.2 *(Annexure-14),* therefore, had the respondent no.2 been residing at *"the property"* then her address in the passport would also have reflected the same i.e. of *5, East Canal Road Dehradun, Uttarakhand-248001;* that, when the respondent no.2 forcibly entered *"the property"* to harass the petitioner then as a last resort, the petitioner approached the learned Maintenance Tribunal for protection of her life and property under Section 22 of "the Act".

12. Counsel for the petitioner would further submit that respondent no.2 has even made a separate entrance to the illegally occupied portion of the property belonging to the petitioner and has also got installed a separate electricity and water connection and due to such illegal trespass and occupying of the portion of the property belonging to the petitioner, respondent no.2 is a threat to life, liberty and property of the petitioner.

13. Per contra, counsel for the respondent no.2 would oppose the submissions made by the counsel for the petitioner and would submit that the respondent no.2 has a lawful share in the property and has been residing in the said property since 2006; that a suit for cancellation of the sale deed dated 30.10.2001 was filed

by the respondent no. 2 as the alleged sale deed said to have been executed by her mother, was executed under a conspiracy, which is still pending consideration; that no partition of the said property has ever taken place and the property is in joint possession till date; that the Adhar card and the water and electricity bill proves the factum of living jointly in the said property; that allegations of harassment leveled by the petitioner are false and frivolous; that the petitioner and her son harassed the respondent no.2 for which proceedings under Protection of Women from Domestic Violence Act, 2005 were also initiated.

14. Counsel for respondent no.2 would further submit that the petitioner along with her son had locked the room of respondent no. 2 and in order to break this lock of her own room, she took the help of her friends; that the petitioner made issue of this incident for which the respondent no. 2 made a written complaint to the S.H.O. Dalanwala, Dehradun.

15. He would further submit that Section 2(b) of the *Maintenance and Welfare of Parents and Senior Citizen Act, 2007* defines “maintenance” which includes provision for food, clothing, residence and medical attention and the Maintenance Tribunal constituted

under Section 7 of the Act is confined only to grant financial benefits to the senior citizens who are unable to maintain themselves and is not empowered to pass an order of eviction for vacation of any property; that, the scope of the expression "include" in Section 2(b) of the Act cannot be so enlarged as to incorporate "eviction" when the Uttarakhand Maintenance and Welfare of Parents and Senior Citizen Rules, 2011 is also silent about the same; that even if it is assumed, for the sake of argument, that the Act envisions power of eviction, such power of passing an order of eviction *(if any),* can be exercised only by the District Magistrate or its subordinate officers and in no case by the Tribunal.

16. To bolster his submissions, learned counsel for respondent no.2 would place reliance on a judgment rendered by Hon'ble Rajasthan High Court in the case of ***"Vinod Sharma v. Shanti Devi and others,2022 SCC OnLine Raj 2968",*** wherein the said High Court has observed as under:

> *"52. ... that the power of passing an order of eviction (if any), can be exercised by the District Magistrate or its subordinate and in no case by the Tribunal. An S.D.O may be administratively subordinate to the District Magistrate, but while discharging the duties as a persona designata- the Presiding Officer of*

the Tribunal, he does not act as a subordinate of the District Magistrate in any manner".

17. He would also submit that Section 2(a) of the Act defines "children" which includes son, daughter, grandson and granddaughter and Rule 2 (c) of Uttarakhand Maintenance and Welfare of Parents and Senior Citizen Rules 2011, defines "blood-relation" which means father-daughter, mother-son and brother-sister *(not cousins)* and the respondent no.2 does not fall into any of the categories, therefore the application filed by the petitioner under the Act was not maintainable against the respondent no.2 and was liable to be quashed at the very outset.

18. Counsel for respondent no.2 would also submit that an application moved under Section 22 of the "Act" is not maintainable in the absence of a claim for maintenance. Hence, the application seeking eviction of respondent no.2 in absence of any claim for maintenance against the respondent no. 2 is perverse and should not have been entertained.

19. To this, the learned counsel for the petitioner would submit that the application under Section 22 of the "Act" filed by the petitioner falls under "Chapter V" of the Act which deals with "*Protection of Life and Property*

of Senior Citizen" and not under Chapter II which deals with *"Maintenance of Parents and Senior Citizens"*. The keyword in Chapter V is "*Senior Citizen"* and there is no mention of the word "*Parent*" and hence existence of any relationship to seek protection of life and property is not required. Thus, the contention of respondent no.2 that since no relationship with the petitioner, as defined under the Act, exists, so the application is not maintainable against her, is totally misplaced.

20. In support of his case, learned counsel for the petitioner would place reliance on the case of "*Balbir Kaur vs. Presiding Officer-cum-S.D.M 2015 SCC OnLine P&H 2603"* wherein the Hon'ble Punjab and Haryana High Court has observed that an application under Section 22 of the Act would be maintainable against any person irrespective of the fact whether the respondent in the application falls within the category of persons as defined in any of the definitions as provided for in Section 2 of the Act or otherwise. He would refer to paragraph 21 of the judgment, which is quoted as under:-

> *"21. In view of the above, an application under Section 22 of the Act would be maintainable against any person irrespective of the fact whether the respondent in the application falls within the category of persons as defined in any of the definitions as provided for in Section 2 of the Act or otherwise. The only rider is that the applicant*

> *should be a senior citizen as defined in Section 2(h) i.e. a citizen of India, who has attained the age of 60 years or above and further as defined in Section 2(f), he/she has a property of any kind whether movable or immovable or self-acquired, tangible or intangible and includes rights and interest in such property. Accordingly, it cannot be said that the application preferred by respondent nos.2 and 3 against the petitioner, who is daughter-in-law, would not be maintainable under Section 22 of the Act."*

21. On the point whether a claim for eviction before the Maintenance Tribunal is maintainable under the Act in absence of a claim for maintenance, learned counsel for the petitioner would place reliance on the judgment rendered by Hon'ble Delhi High Court in the case of ***"Sunny Paul & Anr vs. State of NCT of Delhi &Ors 2017 SCC OnLine Del 7451"*** wherein the Hon'ble Delhi High court has observed that a claim of maintenance is not a condition precedent for passing an eviction order under the Act.

Thus, the counsel for the petitioner would argue that the application filed by the petitioner against respondent no. 2 was maintainable even if the petitioner did not seek any relief of maintenance against the respondent no. 2.

22. Learned counsel for the petitioner would further rebut the submissions made by learned counsel for the respondent no. 2 by arguing that in the judgment of *Sunny Paul (supra) the Hon'ble Delhi High Court* has

further held that in absence of a comprehensive action plan for protecting the life and property of senior citizens under Section 22 of the Act, the Maintenance Tribunal has the jurisdiction to pass an order of eviction. Hence, the counsel for the petitioner would submit that the Tribunal is very well empowered to pass an eviction order under the Act and it rightly exercised its jurisdiction in passing the order of eviction against respondent no. 2.

23. Before venturing into the merits of the present case, it would be apt and pertinent to first analyze the scope of the *Maintenance and Welfare of Parents and Senior Citizen Act, 2007* and the reasons for which it was enacted.

24. The Statement of Objects and Reasons of the Act reflects that it was enacted to provide for institutionalization of a suitable mechanism for protection of life and property of older persons as well as to provide need-based maintenance to the parents and senior citizens. The “Act” aims to give more attention to the care and protection of older persons while envisaging simple, inexpensive and speedy procedure for the protection of their life and property. The Act further casts a duty upon the State to ensure

that the life and property of senior citizens are protected and they are able to live their lives with security and dignity.

25. In the case at hand, the petitioner who is a senior citizen, filed an application under Section 22 of the Act before the District Magistrate, Dehradun seeking eviction of respondent no.2 (*petitioner's niece*) from the property in question on the ground that respondent no. 2 is a threat to her life and property; that by order dated 05.01.2019, the Maintenance Tribunal had allowed the application of the petitioner and ordered for eviction of respondent no.2. However, in appeal, the Appellate Tribunal observed that the case does not come under the ambit of the Act rather is a property dispute which requires determination of respective rights of the parties by a competent court, for which different suits are already pending and allowed the appeal of respondent no. 2 and set aside the order dated 05.01.2019 passed by the Maintenance Tribunal.

26. Though various contentions have been raised by the parties, touching various aspects, this Court deems it appropriate to confine the adjudication of the present petition, solely to the issues related to the provisions of the Act.

27. The primary issue that arises for consideration before this Court is whether *the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 only provides for the remedy of maintenance to the abused parents and senior citizens or does it also provide for 'eviction' in case the life and property of senior citizens is jeopardized?*

28. Coming to the facts of the present case. It is quite evident from the record and from the documents filed by both the parties herein that the parties are in disagreement for last few years. The petitioner is an old aged lady suffering from various ailments and is even undergoing for dialysis. Certain photographs of the petitioner have also been brought on record to show that the petitioner is in urgent need of medical attention. It is also worthwhile to mention that the relationship between the petitioner and the respondent no.2 is admittedly quite strained. As per the petitioner's version, respondent no. 2, in a desire to grab a part of the property, is causing undue mental tension, agony and harassment to the petitioner; that, traumatized by her own niece the petitioner seeks her removal from the property; that, this harassment of the petitioner at the hands of respondent no. 2, if allowed to be continued, will not only disturb her mental peace and health but

will also deteriorate her physical and health condition. The counsel for the petitioner further argues that if the Act is not utilized to protect the senior citizens from such abuse, then the very purpose, for which it was enacted, would be frustrated. It is to prevent such incidences of abuse, that the petitioner is seeking protection under the Act.

29. The *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* is a legislation with social and moral purpose that aims to establish measures to safeguard the well-being and welfare of elderly individuals including making provisions for maintenance and protection of their life and property. The object of the Parliament behind enacting this Act is to provide simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The Act is a special legislation and its provisions have to be construed liberally to further its primary objective to ensure social justice to the abused parents and senior citizens.

30. One of the major aims of the Act is to provide a suitable mechanism for the protection of life and property of older persons. At this stage, it is apt to

mention Section 2(f) of the Act which defines the term 'property' as below:

> *"S. 2(f) "property" means property of any kind, whether moveable or immoveable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property."*

The afore-quoted definition of "property" shows that its scope is quite wide and comprehensive, sufficient to secure the interest of the elders.

31. In the present case, the petitioner is in possession over the property in question through her husband, who in turn had accrued the right over the property by way of a Will executed by the petitioner's mother-in-law in favour of her husband. The learned counsel for respondent no.2 argues that the petitioner does not have the sole ownership over the property and the property is held jointly by respondent no. 2 as well, thus, the petitioner not being the owner lacks any right to seek eviction. At this stage, it is apt to observe that the term "property" as defined under Section 2 (f) of the Act, includes any 'right or interest in such property' and is not limited to ownership of the property. Thus, this argument made by learned counsel for respondent no. 2 is without any merit and deserves to be discarded. The

petitioner has every right to enjoy her property peacefully without any obstruction or hindrance and has every right to protect it from external forces. It can, thus, safely be inferred that the respondent no.2, who is the petitioner's niece, has no authority to interfere with the peaceful possession of petitioner over the subject property.

32. Now, in order to form an opinion that whether the Act envisages the power of 'eviction', it is important to first analyze its various provisions. The Act aims to provide for the institutionalization of a suitable mechanism for the protection of life and property of senior citizens (Chapter V) as well as to set up an appropriate mechanism for providing need-based maintenance to parents and senior citizens (Chapter II). Section 22 (1) of the Act contemplates that the State Government may confer powers and impose duties on the District Magistrate for implementing the provisions of this Act and further empowers the District Magistrate to delegate powers conferred upon him, to his subordinate, while Section 22 (2) mandates that the State Government shall provide a comprehensive action plan for protecting the life and property of senior citizens. Section 32 of the Act empowers the State to frame rules to carry out the purposes of the Act.

Consequently, the State of Uttarakhand has framed The Uttarakhand Maintenance and Welfare of Parents and Senior Citizens Rules, 2011 (*hereinafter referred to as the "Rules")*.

33. Section 4 of the Act entitles a 'parent' or a 'senior citizen' to make a suitable application seeking maintenance before the Maintenance Tribunal constituted under Section 7 of the Act. In the present case, the application seeking eviction was moved by the petitioner under Section 22 of the Act. Section 22 does not explicitly entitle a 'senior citizen' to make an application before a Tribunal seeking protection of his/her life or property but the provision entitles the State Government to confer such powers and impose such duties on the District Magistrate as is necessary to ensure effective implementation of various provisions of this Act and to prescribe a comprehensive legislated scheme to protect the life and property of senior citizens. Consequent upon this, Rule 19 of the *Uttarakhand Maintenance and Welfare of Parents and Senior Citizens Rules, 2011* imposes a duty on the District Magistrate to ensure that the life and property of senior citizens is protected. The said rules also do not specifically empower the District Magistrate to pass an order of

eviction in order to protect the life and property of a senior citizen, however, the counsel for the petitioner has drawn attention of this court towards Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 whereby by way of an amendment in 2016, Rule 22(3) has been added to the Delhi Rules. Rule 22 (3) (1) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 delineates a provision that allows a senior citizen to submit an application for 'eviction' before the District Magistrate. Similar such power of eviction has been conferred on the District Magistrates in various other states and will have a persuasive value while deciding the issues at hand.

34. Also, the Hon'ble Supreme Court in its judgment of ***S. Vanitha Versus. Deputy Commissioner, Bengaluru Urban District and others (2021) 15 SCC 730*** has observed that:

> "*25 ..... 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 incident of the enforcement of the right to maintenance and protection****. However, this*

remedy can be granted only after adverting to the competing claims in the dispute."

35. Further fortifying above analysis, Clause (i) of Sub-rule (2) of Rule 19 of the Uttarakhand Rules, 2011 casts a duty upon the District Magistrate to ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity. The term 'security and dignity' has to be understood in the light of the various objectives of the Act which are to strengthen the concept of social justice by ensuring that the elderly people live a fear-free life. Hence, the term 'security and dignity' is to be construed in wider terms and cannot be subjected to any limitations that may have frustrate the objective of the "Act". The term 'security' can be understood in terms of security of his/her place of residence. Thus, a conjoint reading of the various provisions of the Act, the Uttarakhand Rules and the views taken by various courts, this Court is of the firm opinion that the Act which empowers a District Magistrate to protect the life and liberty of the senior citizens also envisages a consequent power of 'eviction' to allow them to effectively implement the provisions of the Act. Such power to order 'eviction' is implicit in it and holding it contrary would frustrate the very purpose for which the Act was

enacted. It is a settled principle of law that where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

36. In the present case, the petitioner, as mentioned in the preceding paragraphs of this petition, is an old aged lady in her late seventies, who is stated to have been suffering from serious ailments and is presently undergoing Dialysis; it has also been brought to the notice of the Court that she is currently on ventilator. It has been clearly established that respondent no. 2 is interfering in the peaceful possession of the petitioner's property thereby endangering her life. In these circumstances, the Court deems it just and proper that justice would be met if the petitioner is allowed to enjoy her property without any hindrance.

37. Consequently, the provisions of Section 22 of the Act of 2007 along with the Uttarakhand Rules, 2011 framed there-under, are to be read in consonance meaning thereby that even in the absence of a comprehensive action plan for protecting the life and property of senior citizens envisaged under Section 22 of the Act, 2007, on the date the impugned order was passed, the Maintenance Tribunal was well within its

jurisdiction to pass an order of eviction. The Appellate Tribunal i.e. the District Magistrate erred in law in construing the provisions of the Act while observing that the case does not come under the ambit of the Act rather is a property dispute that requires adjudication by the competent court. Thus, the impugned order passed by the Appellate Tribunal is required to be interfered with.

38. Insofar as the argument raised by the counsel for respondent no.2 that the matter relating to the rights of the parties over the property is sub-judice before the civil court is concerned, it has no bearing to the facts of the case in view of the provision of Section 3 of the Act which specifically provides that this Act shall have overriding effect notwithstanding anything inconsistent contained in any other Statute. Moreover, Section 27 of the Act of 2007 bars the jurisdiction of Civil Courts in respect of any matter to which any provision of the Act applies.

39. Now considering another argument raised by learned Counsel for respondent no.2 that the application moved by the petitioner under Section 22 of the Act is not maintainable against respondent no. 2 as she does not fall under any of the categories as mentioned under the Act. On this point, Hon'ble Punjab and Haryana

High Court in its judgment rendered in "*Balbir Kaur vs. Presiding Officer-cum-S.D.M 2015 SCC OnLine P&H 2603",* has observed:

> *"19. A perusal of the above would show that it is the duty of the District Magistrate to ensure that the life and property of the senior citizen of the District are protected and they are able to live with security and dignity. Further in case of danger to life or property of a senior citizen, a duty has been cast to protect the same on the Duty Magistrate or an officer subordinate to him, who has been duly authorized to do so. This is an independent right conferred upon the senior citizen(s) irrespective of the fact whether the person who has threatened or endangered the life and property of such senior citizen(s) is related to him/her/them or not. This is apparent from the plain language of Section 22 of the Act and the Rules referred to above.*
>
> *20. This conclusion of mine is further fortified on critical analysis of the Act from another angle. It is worth noting that there is no mention or even indication with regard to any relationship in the context of terms as defined in Section 2 i.e. 'parent', 'children', 'relative' nor does it relate to*

'maintenance' .Though 'relationship' has a nexus with maintenance, which is dealt in Chapter II but the same has no connection with protection ,which is dealt in Chapter V.....Chapter II is applicable to both parents as well as senior citizens whereas Chapter V applies to only senior citizen. Therefore it is clear that the relationship is of no consequence as far as the applicability of Chapter V of the Act is concerned....."

40. A careful analysis of the relevant provisions of the "Act" and due consideration of Balbir Kaur's case *(supra)* read in light with the factual matrix of this case would show that the said application was filed under Section 22 which falls under Chapter V of the Act. Chapter V reads *"Protection of Life and Property of Senior Citizen*" while Chapter II *reads "Maintenance of Parents and Senior Citizens"*. An application seeking maintenance under Chapter II of the Act can be filed by a 'senior citizen' or a 'parent' against their 'children' or 'relative' and hence existence of a relationship is a prerequisite for availing remedy under this Chapter. However, in the present case, the application seeking eviction was filed by the petitioner under Chapter V of the Act which means that an application under this chapter can be filed by any person who is a 'senior

citizen' for protection of his/her life or property. Therefore, 'relationship' has no connection whatsoever as far as the applicability of Chapter V of the Act is concerned. Thus, the contention of the counsel for the respondent no. 2 is not correct. In view of the above, this court is of the considered view that the application filed by the petitioner against the respondent no. 2 was clearly maintainable.

41. Now delving further, the counsel for the respondent no. 2 has argued that the application filed by the petitioner seeking 'eviction' of respondent no. 2 was not maintainable as the petitioner did not sought any relief of 'maintenance' against the respondent no. 2 and in absence of any claim for maintenance, the application moved under Section 22 of the Act is not maintainable. To this, counsel for the petitioner has argued that there is no provision in the Act which warrants that in order to seek eviction or to pray for protection of one's life and property, a claim for maintenance has to be first sought; that, holding such a view will lead to a flawed interpretation of the statue when the same was not the object of the Act.

42. In Sunny Paul's case *(supra)* it is held by Hon'ble Delhi High court that a claim of maintenance is

not a condition precedent for passing an eviction order under the Act.

43. This court concurs with the judgment of Hon'ble Delhi High Court passed in *Sunny Paul* (supra). As has been dealt with in foregoing paragraphs, the application seeking maintenance are to be filed under Chapter II of the Act whereas the application seeking protection of life and property of a senior citizen are filed under Chapter V of the Act. Thus, 'maintenance' and 'eviction' are two separate remedies which fall under two different chapters of the Act and to hold that availing one of the remedy is a must to avail the other, would not be in the line with the Scheme of the Statute. Thus, claiming 'maintenance' is not a prerequisite to seek 'eviction' under the Act and this argument of the counsel for the respondent no. 2 is without any substance. Therefore, this court is of the view that the application filed by the petitioner seeking 'eviction' of respondent no. 2 was clearly maintainable even in the absence of any claim for maintenance.

44. In view of the foregoing discussions, it can be inferred at this stage that in this matter, a direction of eviction of respondent no.2 from the property is a necessary consequential relief to which the petitioner, a

senior citizen, would be entitled to. Moreover, this Court while exercising its extraordinary supervisory jurisdiction under Article 227 of the Constitution of India is empowered to do justice between the parties without going into the hyper-technicalities of the case. The crux of the aforesaid discussion would be that the petition deserves to be allowed.

45. Accordingly, writ petition is allowed. Impugned order dated 24.04.2019 passed by the Appellate Tribunal, Dehradun in Appeal No.01/2018 is hereby set aside. Respondent no.2 is directed to vacate the property in question within a week failing which the District Magistrate, Dehradun shall ensure compliance within three days thereafter.

46. No order as to costs.

(Vivek Bharti Sharma, J.)
07.08.2024