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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1281/2024**

SH. K. R. RAJORA

..... Petitioner

Through: Mr. Dhananjay Grover and Mr.
Karthek P., Advocates.

versus

GOVERNMENT OF NCT DELHI & ANR.

..... Respondents

Through: Ms. Hetu Arora Sethi, ASC with Ms.
Kavita Nailwal, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **30.01.2024**

CM APPL. 5325/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 1281/2024 & CM APPL. 5324/2024

1. The Petitioner seeks to challenge the Order dated 14.09.2023 passed by the Appellate Authority, Divisional Commissioner under the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 (hereinafter referred to as "Senior Citizens Act").
2. A dispute arose between the Petitioner and the Respondent No.2, who is the daughter-in-law of the Petitioner. The Petitioner, thereafter, filed a petition before the District Magistrate under the Senior Citizens Act complaining that the Petitioner is being harassed by Respondent No.2 and that the Respondent No.2 should be evicted from the house under Rule 22 of



the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The Ld. District Magistrate allowed the said petition *vide* Order dated 04.03.2020. On an appeal preferred by Respondent No.2 against the said Order dated 04.03.2020, the Appellate Authority, Divisional Commissioner *vide* Order dated 26.08.2021 set aside the Order dated 04.03.2020 passed by the Ld. District Magistrate. The Petitioner, thereafter, challenged the said Order dated 26.08.2021 by filing a writ petition being W.P.(C) 12750/2021 before this Court. This Court *vide* Order dated 31.10.2022 set aside the Order dated 26.08.2021 passed by the Appellate Authority, Divisional Commissioner and remanded the matter back for a fresh consideration. On remand, the Divisional Commissioner further remanded the matter back to the District Magistrate *vide* the Impugned Order dated 14.09.2023 by observing as under:

“13. From the facts of the case, this appellate authority too finds it hard to believe that the appellant is harassing the respondent when he is residing with his two sons and their families. It is also relevant to mention that the DV case of the appellant is also pending. The woman in the house too have equal right to reside in the house and Hon'ble Apex Court has clarified in S. Vanitha Judgment that section 3 of the Senior Citizen Act has no over-riding effect over the Domestic Violence Act, 2005 and right of the lady. It is also clarified by the Hon'ble Apex Court that under the Senior Citizen Act, 2007, it is the duty of the authorities to balance the claims of both the Senior Citizen and daughter-in-law by applying the principle of harmonious construction as both are vulnerable section of the society. Here in this case, the respondent failed to show ill-treatment to him so as to invoke the provisions of the Senior Citizen Act, 2007 to evict appellant in a summary proceedings. The Appellant is



a widow. She too needs protection. On perusal of the record, the SDM report is sketchy and was not done by the authority concerned i.e. the SDM. Also on perusal of the report, it is evident that only submissions of the respondent were noted and no opportunity was given to the appellant. Also there are no proper details of witnesses whose statements that appellant misbehave with the respondent simply noted. For example, there are no details as to whether they are neighbors and if not how they are aware of the affairs of the family. Prima Facie, they do not seem to be neighbors as evident from their addresses mentioned. So in a nutshell, the case requires a proper SDM field enquiry. It is directed that the SDM shall himself do the enquiry so as to meet the requirement of law. Accordingly the matter is remanded back for considering afresh after obtaining due report from the SDM concerned. The District Magistrate shall decide the case within three months. Copy of this order be provided to both parties. Record of the Proceedings before DM (North-West) be also sent back to DM with copy of this order.”

3. Learned Counsel appearing for the Petitioner states that this is a case of *Res Ipsa Loquitur* where Respondent No.2, being the daughter-in-law of the Petitioner, is harassing the Petitioner, and on the basis of material on record, remand was not necessary.

4. The Court while exercising its jurisdiction under Article 226 of the Constitution of India only looks at the decision making process and not the decision itself. The reason given in paragraph No.13 of the Impugned Order dated 14.09.2023 is that the rights of the daughter-in-law who is entitled to protection under the Domestic Violence Act and the rights of the father-in-law who is entitled to protection under the Senior Citizens Act have to be properly balanced. Further, no evidence under Section 6 of the Senior



Citizens Act has been taken by the Ld. District Magistrate before the passing the Order.

5. In view of the above, this Court does not find any reason to interfere with the Impugned Order dated 14.09.2023 passed by the Appellate Authority, Divisional Commissioner.

6. However, in view of the fact that the complaint was filed in the year 2018 and six years have already passed, this Court directs the Ld. District Magistrate to decide the matter, after recording of evidence, positively within a period of three months from today.

7. With these observations, the writ petition is disposed of, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.

8. Liberty is granted to the Petitioner to approach this Court again in case the Ld. District Magistrate does not decide the matter within the time stipulated.

SUBRAMONIUM PRASAD, J

JANUARY 30, 2024

S. Zakir