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

+ **W.P.(C) 4465/2024**

SH. CHOTE LAL

.....Petitioner

Through: Mr. Anil Kumar Sharma, Ms. Akanksha, Mr. Nirmal Dixit, Mr. Rajesh Rao and Mr. Narender Kumar, Advocates.

versus

SH. MANOJ KUMAR AND ANR

.....Respondents

Through: Mr. Manoj Kumar and Mr. Suresh Kumar, Advocates for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.08.2024

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1. The Petitioner is a senior citizen having three daughters and two sons. After the marriage of children, he has been residing with his sons at Petitioner's property bearing No. 25/120, Trilok Puri, Delhi-110091.¹ He seeks eviction of his younger son, Respondent No. 1 and daughter in law, Respondent No. 2, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007,² citing harassment and ill-treatment. The subject property comprises of four floors. The family of Petitioner's elder son, Mr. Shivkaran, occupies the second and third floor, while the Respondents inhabit the ground and first floors along with their children.

¹ "subject property"

² "Senior Citizens Act."



2. The Petitioner filed an application for eviction of the Respondents before the District Magistrate (East), alleging that he had been mistreated and subjected to verbal and physical harassment by Respondents. In the complaint, Petitioner highlighted that Respondents were coercing him to dispossess his daughter, Ms. Gunjan, who resides in Petitioner's ancestral property located in Pratapgarh, Uttar Pradesh, and also to transfer the subject property in their name. He also narrated an incident where their quarrel manifested into physical assault on Petitioner by the Respondents. Through order dated 18th April, 2023, the District Magistrate allowed the Petitioner's request, directing the Respondents to vacate the subject property. District Magistrate determined that Petitioner held the ownership rights to subject property on the basis of an allotment slip dated 18th January, 1977 issued by Delhi Development Authority under the Jhuggi Jhopri Removal Scheme. Considering the complaints lodged with the police³ and issuance of notice disowning the Respondents in a daily publication by Petitioner,⁴ the allegations of ill-treatment also found favour with the District Magistrate.

3. The afore-noted order was reversed on 03rd July, 2023 by the Divisional Commissioner in an appeal filed by Respondents. The relevant portions of Divisional Commissioner's order are as follows:

"4. Respondent on the other hand argued that he is a senior citizen and having 3 daughters and 2 sons. He got all his children married and settled. He retired from the in the year 2006. It is submitted by the respondent that the property in question is purchased and built by him and his elder son Sh. Shiv kumar. Respondent alleged that he is being ill-treated by the appellants. Appellants threatened him of dire consequences if the property in question is not transferred in their name. It is further alleged by the respondent that his daughter along with her minor children started residing in the ancestral house in village Bibipura, PO Jethwara,

³ On 09th May, 2022, 29th May, 2022 and 03rd July, 2022.

⁴ Dated 13th January, 2022.



Pratapgarh, Uttar Pradesh as her in-laws have thrown her and her minor children out of the house. But the appellants fight and pressurize the respondent not to allow the daughter to reside in an ancestral house. When the respondent refused to do so they physically assaulted the respondent. The appellants used to abuse respondent on daily basis and threatened him to implicate in false criminal cases.

5. The arguments and case records, including DM's case records have been carefully considered. Rule 22 (3)(1) of Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, as amended from time to time, provides that "A Senior citizen /Parents may make an application before the Dy. Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and include right or interests in such property on account of his non-maintenance and ill-treatment."

6. From the perusal of the record and submissions of the parties, this appellate authority finds it to be case of property dispute. **The respondent failed to show how he is being illtreated when he is residing separately in village. The ill-treatment cannot be presumed simply on the statement of a person and there must be some substance in support of his/ her submissions. It seems to be a property dispute between siblings. But it is also to keep in mind that this is a welfare legislature, enacted for the comfortable living of the Parents and Senior Citizens when it is an admitted fact that the property in question is in the name of respondent. In view of the plea of the respondent to stay in the property in question, however the appellants are directed to shift to the First floor of the property in question as it is their own case that they are only in possession of ground floor which means that first floor is vacant. The appellants are directed to handover the peaceful possession of the ground floor of the property in question to the respondent, keeping in view the age of the respondent.** In terms of above observation, impugned order is hereby set-aside. The respondent is further directed to maintain status quo with respect to the title of property in question and shall not create third party interest. Copy of this order be provided to both the parties. Record of the Proceedings before DM (South-West) be also sent back to DM with the copy of this order."

[Emphasis Supplied]

4. The Divisional Commissioner has concluded that Petitioner has failed to demonstrate that he was subjected to ill-treatment by Respondents. He found the instant case to be a property dispute between siblings and accordingly, refused to evict the Respondents, but directed them to handover



the possession of the first floor to Petitioner given the Petitioner's advanced age and the fact that the first floor was vacant. Further, Petitioner has been directed to maintain *status quo* as to the title of subject property, and not create any third-party interest thereon. The present petition impugns the afore-noted order of the Divisional Commissioner.

5. Respondents refute the Petitioner's allegations and argue that the present petition is a ploy devised by Petitioner and his elder son to dispossess Respondents from the floors occupied by them under a mutual arrangement. They argue that Petitioner wishes to force the Respondents out of the subject property so that it can be transferred in name of the elder son, Mr. Shivkaran. Further, reliance is placed upon the judgment of ***S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Ors.***,⁵ to argue that Respondent No. 2's rights protected by the Protection of Women from Domestic Violence Act, 2005 must be harmonized with the Petitioner's rights under the Senior Citizens Act. Further, Respondents inform that a civil suit was filed by Respondent No. 1 against Petitioner seeking a permanent injunction from unlawful eviction, which was withdrawn subsequent to the impugned order.

6. The Court has heard the counsel for parties. The Divisional Commissioner has opined that ill-treatment cannot be presumed in absence of corroborative material, particularly since the Petitioner was residing separately in his village. However, in forming such an opinion, the Divisional Commissioner has failed to consider the facts presented. Significantly, Petitioner had submitted complaints against the alleged physical abuse to the police, as noted in the order of District Magistrate.



While the Court is not engaging in an examination of veracity of these claims, the reporting of incidents to police evinces familial discord between the parties, which may have led to altercations. Therefore, the Divisional Commissioner erred in concluding that the Petitioner's apprehensions of violence or abuse were entirely unfounded. The specific allegations of abuse, which had been noticed by the District Magistrate, have been disregarded by the Divisional Commissioner in a perfunctory manner.

7. The Senior Citizens Act is a beneficial legislation intended to safeguard interests of the elderly, who are deprived of financial or other support from their family, in an effort to ensure their welfare and maintenance. Rule 22 of the Delhi Maintenance and Welfare of Parents and Citizen Rules, 2022⁶ enable a senior citizen or parent to request for eviction of their children or legal heirs due to their non-maintenance and ill-treatment. In evaluating such requests, the interest of the senior citizen hold paramount significance. There is no dispute that the subject property was allotted in Petitioner's name, and Respondents have been occupying the same with his permission. He has the freedom to decide which of his children will continue residing with him. In case the Petitioner believes that Respondents have faltered in discharging their obligation towards his maintenance and well-being and have maltreated him, he is justified in seeking an order for their eviction from his property in terms of the Senior Citizens Act read with Delhi Senior Citizens Rules.

8. The Divisional Commissioner's observation that the present appears to be a "*property dispute between siblings*" is misplaced as there is no

⁵ 2020 SCC OnLine 1023.

⁶ "Delhi Senior Citizens Rules."



material on record to this effect. Irrespective, any perceived conflicts between the siblings cannot be a basis for a senior citizen to be deprived of his right to the subject property. The Respondents were inhabiting the subject property with Petitioner's consent, which has since been withdrawn. Therefore, they cannot secure an order compelling the senior citizen (Petitioner) to live with his children/ legal heirs, who have inflicted abuse or injury on them. Such a direction would defeat the object of the Senior Citizens Act, which *inter alia* aims at protecting a senior citizen's life and property from their legal heirs.

9. The Respondents' reliance upon the judgment is *S. Vanitha (Supra)* is misconceived inasmuch as there is no accusation of domestic violence or mistreatment by the daughter in law (Respondent No. 2) under the Protection of Women from Domestic Violence Act against Petitioner.

10. Lastly, the Divisional Commissioner has attempted to bring reconciliation by directing Respondents to move to the first floor, and handover the vacant possession of the ground floor to Petitioner. This again, in the opinion of the Court, contravenes the intent of the Senior Citizens Act. Petitioner no longer desires to live with the Respondents and therefore, this arrangement, would not address his complaints and provide a fruitful long-term resolution.

11. In view of the above, the present petition is allowed with following directions:

11.1. The order of Divisional Commissioner dated 03rd July, 2023 is set aside.

11.2. The order of District Magistrate (East) dated 18th April, 2023 is restored.



11.3. Respondents are directed to vacate property bearing No. 25/120, Trilok Puri, Delhi-110091, within two months from today. In the event they fail to vacate, Petitioner shall be entitled to seek implementation of this order under the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009.

12. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

AUGUST 2, 2024

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