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

+ **W.P.(C) 4695/2024 & CM APPL. 19243/2024**

SUDESH CHHIKARA

..... Petitioner

Through: Mr. Jaipal Singh, Advocate.

versus

DIVISIONAL COMMISSIONER, DELHI AND ORS.

..... Respondents

Through: Mr. Rishikesh Kumar, ASC for GNCTD with Ms. Sheenu Priya, Mr. Atik Gill, Mr. Sudhir Kumar Shukla and Mr. Sudhir, Advocates for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

02.04.2024

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1. The Petitioner has approached this Court challenging the Order dated 13.12.2023 passed by the Appellate Court of Divisional Commissioner rejecting the appeal filed by the Petitioner herein assailing the Order dated 14.09.2021 passed by the District Magistrate wherein the District Magistrate had directed the Petitioner herein to vacate the property bearing No.C-33, Mansa Ram Park, New Delhi-110059 (*hereinafter referred to as "property in question"*)

2. The facts of the case, in brief, are that the Respondent No.3, who is father-in-law of the Petitioner herein, filed a petition under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred*



to as “Senior Citizens Act”) for eviction of the Petitioner from the property in question. It is stated that after the demise of the son of Respondent No.3, the Petitioner started misbehaving and humiliating Respondent No.3. It is also stated that police complaints were also filed by the Respondent No.3 against the Petitioner complaining of her misbehaviour. In reply, the Petitioner took a stand that the property in question was purchased by the Petitioner and her husband who is the son of Respondent No.3 and the Petitioner was running a school from the property in question. It is stated that the whole purpose of the Petition was to evict the Petitioner from the property in question.

3. Material on record indicates that a writ petition being W.P.(C) 11326/2019 was filed before this Court by the Petitioner challenging the jurisdiction of the District Magistrate in entertaining the complaint on the ground that the property in question is not a residential property. This Court by Order dated 23.10.2019 disposed of the writ petition directing the District Magistrate, before whom the complaint was filed, to decide the question of maintainability as well.

4. Pursuant to the Order dated 23.10.2019 passed by this Court, the District Magistrate came to the conclusion that the Respondent No.3 is the sole and absolute owner of the property in question and that the Petitioner herein failed to prove the ownership of the property in question. It was also observed by the District Magistrate that there is no documentary proof of purchase of property in question by the Petitioner herein or the husband of the Petitioner. It was observed that the Respondent No.3 was being harassed by the Petitioner. The District Magistrate, therefore, *vide* Order dated 14.09.2021 allowed the application filed by the Respondent No.3 and



directed the Petitioner not to interfere with the peaceful possession of the Respondent No.3 in the property in question.

5. Aggrieved by the aforesaid Order dated 14.09.2021 passed by the District Magistrate, the Petitioner filed an appeal before the Appellate Authority under the Senior Citizens Act. Before the Appellate Authority, it was contended that the District Magistrate ought not to have gone into the question of title of the property in question because a suit has already been filed for declaration of the title of the property in question. It was also contended before the Appellate Authority that the forums constituted under the Senior Citizens Act do not have jurisdiction to entertain the complaint for the reason that the property in question was being used to run a school and the same was not a residential property. However, the Appellate Authority held that the District Magistrate ought not to have gone into the question of title of the property in question and the title should be decided in the suit which is pending between the parties before the Civil Court. The Appellate Authority *vide* Impugned Order dated 13.12.2023 dismissed the appeal by observing as under:

“6. As per the SDM report there is property dispute between the parties. The play school is running since 2009. The property in question is admittedly not residential house of either of the parties and is used for running only a play school. It is also an admitted fact that the appellant had already handed over the possession of the property in question after vacating the same. This appellate authority does not find any reason to interfere in the impugned order. Further under the Senior Citizen Act, 2007 neither the District magistrate nor this appellate authority has any jurisdiction to decide the title dispute between the parties and civil court only have the jurisdiction. The



Senior Citizen Act, 2007 is a welfare legislature and it is very essential that the Senior Citizen has source of income Senior Citizen has right to use the property in question in the manner he wants. Appeal is dismissed accordingly. Copy of this order be provided to both the parties. Record of the Proceedings before DM (South-West) be also sent back to DM (South-West) with the copy of this order.”

6. Learned Counsel appearing for the Petitioner raises a contention that the petition was not maintainable before the authorities under the Senior Citizens Act. He also states that the Respondent No.3 is not residing in the property in question. He states that since a school was being run from the property in question, there was no jurisdiction in the authorities under the Senior Citizens Act to entertain the petition.

7. At this juncture, it is apposite to reproduce Rule 22 (3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016 which is relevant to the present case:

“22 (3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents, -

(i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate(DM) of his district for eviction of his son, and daughter or legal heir from his self acquired property on account of his non-maintenance and ill-treatment.

(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of



such application.

(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.

(iv) The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of or claim interest in the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issued thereof.

(2) Eviction Order from property/residential building



of Senior Citizens/Parent. –

(i) If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated.

(3) Enforcement of Orders, -

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;

(ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.

(iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.

(iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.



(4) Appeal

(i) The appeal against the order of Dy. Commissioner/DM shall be lie before Divisional Commissioner, Delhi.

(ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

8. A perusal of the above rule shows that a Senior Citizen can move an application Dy. Commissioner/District Magistrate for eviction of his son and daughter or legal heir from his property on account of his non-maintenance and ill-treatment. No distinction has been made between residential and non-residential property.

9. Two forums below have come to the conclusion that the Respondent No.3 was being ill-treated by the Petitioner herein. In view of the concurrent findings arrived at by the two forums below, this Court is not inclined to interfere with the concurrent facts rendered by both the authorities while exercising its jurisdiction under Article 226 of the Constitution of India. The Petitioner has not been able to demonstrate that the observations of the authorities below is completely perverse and is based on without any evidence. It is well settled that the Courts while exercising jurisdiction under Article 226 of the Constitution of India do not substitute its own conclusion to the one arrived at by the authorities below only because one more view is possible.

10. The Appellate Authority has adequately protected the Petitioner by stating that there is no finding regarding the title of the property in question.



This Court is in agreement with the finding of the Appellate Authority and makes it clear that the Trial Court will not be influenced by any observations made by the authorities under the Senior Citizens Act on the title of the property in question.

11. It is stated that the Suit bearing CS No.282/2019 is pending before the learned ADJ, Dwarka Courts, New Delhi. The Trial Court is directed to consider the suit on its own merits and on the basis of the evidence adduced by the parties.

12. With these observations, the writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 2, 2024

S. Zakir