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

Date of Decision: 30th August, 2024

+ **W.P.(C) 9877/2021**

GEETA WAHAL

.....Petitioner

Through: **Mr. F.K. Jha and Mr. Gaurav Jha,**
Advocates.

versus

GOVT. OF NCT OF DELHI & ANR.

.....Respondents

Through: **Ms. Harshita Nathrani, Advocate for**
Mr. Sameer Vashisht, ASC (Civil),
GNCTD.

Vaibhav Sinha, Advocate for R-2.

Mr. Tarun Verma, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, a senior citizen, assails order dated 13th August, 2021 passed by the Divisional Commissioner dismissing Petitioner's appeal against order dated 17th August, 2020,¹ passed by District Magistrate, North-West, Kanjhawala/ Respondent No. 1 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007,² read with Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The afore-said orders reject Petitioner's application seeking eviction of Ms. Niharika Nigam, her

¹ collectively, "the impugned orders"

² "Senior Citizens Act"



daughter-in-law.

PETITIONER'S CASE

2. Counsel for the Petitioner has summarized the following facts and contentions:

2.1. The Petitioner, a 71-year-old senior citizen with physical disabilities, is the registered owner of the property bearing Flat No. 152, SFS Flats, Ashok Vihar, Phase-IV, Delhi-110052,³ through (a) DDA Conveyance Deed dated 25th June, 2001 registered under No. 12159 with the Sub-Registrar-VII, New Delhi and (b) Sale Deed dated 04th December, 2006, bearing No. 17820.

2.2. The Petitioner's younger son, Mr. Rajat Wahal (Respondent No. 3), married Ms. Niharika Nigam (Respondent No. 2) on 29th January, 2015. From the outset, the marriage has been fraught with disputes. Soon after their marriage, Respondent No. 2 demanded separate accommodation, a request that was declined by Respondent No. 3, considering the Petitioner's advanced age and need for support. Despite Petitioner's efforts to maintain peace and harmony in the household, including advising Respondent No. 2 to co-exist peacefully, Respondent No. 2 allegedly responded with hostility and threatened the Petitioner with physical harm. On 22nd February, 2015, Respondent No. 2 reiterated her demand for a separate residence.

2.3. The Petitioner recounts multiple instances where Respondent No. 2 has displayed violent behaviour towards her, including verbally abusing the Petitioner, her elder son, and his wife. After the Petitioner refused Respondent No. 2's demand for separate accommodation for the second

³ "the subject property"



time, Respondent No. 2 allegedly threw a chair at her. Further, on 15th June, 2015, Respondent No. 2 allegedly slapped the Petitioner without provocation. Again, on 16th October, 2015, Respondent No. 2 threatened the Petitioner's elder son, stating that he would be falsely implicated in a molestation case if he did not pressure Respondent No. 3 to move to Gurgaon. In pursuance of her threats, Respondent No. 2 allegedly attempted to file a false complaint; however, the police found no merit in her allegations and took no action.

2.4. In light of these events, Respondents No. 2 and 3 began living separately from 03rd August, 2017, to 11th April, 2018. Initially, they resided at S-2/897, Sector-5, Vaishali, Vasundhara, Ghaziabad for one month and subsequently moved to 4/104, Flat No. C-1, Vaishali, Ghaziabad. During this period, Respondent No. 2 allegedly prevented the Petitioner from using and occupying the subject property by locking it.

2.5. On 24th August, 2017, the Petitioner filed a civil suit (CS No. 2027/2017) for a mandatory injunction against Respondents No. 2 and 3, seeking possession of the subject property. However, this suit was dismissed by order dated 25th January, 2021. The Petitioner has appealed this order before the Appellate Court, where the matter is currently pending consideration.

2.6. Subsequently, on 11th April, 2018, Respondent No. 3 filed a petition for divorce against Respondent No. 2, which is pending before the District Court in Rohini. In response, Respondent No. 2 lodged an FIR dated 08th June, 2018, under Sections 498A, 406, and 34 of the Indian Penal Code, 1860, at Police Station Ashok Vihar, Delhi, against Respondent No. 3, the



Petitioner, the Petitioner's elder son, his wife, and the Petitioner's grandson.

2.7. Due to the tense and hostile environment in her home, the Petitioner decided to move in with her elder son at his property, Flat No. 280, SFS Flats, Ashok Vihar, Phase-IV, Delhi-110052, where she currently resides. However, even at this residence, she has faced difficulties, as her elder son's wife has insisted that the Petitioner live separately.

2.8. Given the acrimonious behaviour of Respondent No. 2 towards the Petitioner and her family, the Petitioner filed an eviction petition dated 15th May, 2018, under Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, against Respondent No. 2. Since Respondent No. 3 has been living separately since 2017, the Petitioner did not seek his eviction. However, due to delays and perceived inadequacies in the functioning of the District Magistrate, the Petitioner was compelled to approach this Court through writ petitions bearing Nos. W.P.(C) 8554/2019, W.P. (C) 12196/2019, and W.P. (C) 1204/2020. On each occasion, the District Magistrate was directed to decide the Petitioner's application expeditiously. Finally, through the impugned order dated 17th August, 2020, the District Magistrate dismissed the Petitioner's eviction application, citing the marital discord between Respondents No. 2 and 3 as the basis for the decision. The Petitioner's subsequent appeal before the Divisional Commissioner was also dismissed on 13th August, 2021.

2.9. In these circumstances, the Petitioner invokes the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking the eviction of Respondent No. 2.

RESPONDENT'S CASE



3. *Per contra*, Counsel for Respondent No. 2, defends the impugned orders and makes the following submissions:

3.1. The Appellate Authority has correctly found no merit in the Petitioner's allegations of ill-treatment and physical assault, as the Petitioner has failed to substantiate these claims with any credible evidence. The allegations are fabricated and are intended solely to secure an unlawful eviction of Respondent No. 2 from the subject property.

3.2. The Petitioner is allegedly acting in collusion with her son, Respondent No. 3, as evidenced by the transfer of half of the subject property by Respondent No. 3 through a Sale Deed dated 04th December, 2006. The Respondent further contends that Mr. Rajat Wahal, who is currently in his third marriage, along with the Petitioner, has a pattern of evicting daughters-in-law from the matrimonial home after a year of marriage and confiscating their jewellery. Several legal disputes, including a divorce case filed by Mr. Rajat Wahal, are currently pending before the Rohini District Court.

3.3. Respondent No. 2 initiated proceedings under Section 125 of the Code of Criminal Procedure, 1973, and through an order dated 27th March, 2019, the Family Court in Rohini awarded her INR 8,000/- per month as maintenance. Additionally, in 2017, Respondent No. 2 filed a complaint under the Protection of Women from Domestic Violence Act, 2005,⁴ against the Petitioner, her sons, elder daughter-in-law, and grandson before the Chief Metropolitan Magistrate, Mahila Court, North-West, Rohini. In this complaint, Respondent No. 2 invoked her right to reside in the subject

⁴ "the Domestic Violence Act"



property and prayed for payment of rent of INR 25,000/- per month in case she shifted out of the said property. On 08th August, 2019, the Mahila Court, considering the order passed by the Family Court, directed Respondent No. 3 to continue the payment of INR 8,000/- to Respondent No. 2 which was awarded by the Family Court as interim maintenance.

3.4. Respondent No. 2 argues that the subject property qualifies as a “shared household” under Section 17 of the Domestic Violence Act, thereby granting Respondent No. 2 the right to reside in the subject property. Consequently, the Petitioner lacks the legal authority to evict Respondent No. 2 and has, in fact, misused the provisions of the Senior Citizens Act to further her objectives.

THE IMPUGNED ORDERS

4. The Divisional Commissioner has upheld the order of the District Magistrate declining the request for eviction on account of the matrimonial dispute between Respondents No. 2 and 3 and holding the Petitioner and Respondent No. 3 to be in collusion. For ease of reference, the relevant portion of the impugned orders reads as under:

Impugned order passed by the District Magistrate

“The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules 2009 as amended in 2016 were framed in aid of provisions of section 22 (2) of the Act and, thus, must be construed in the widest sense to ensure protection of life and property of senior citizen. Therefore, question of excluding daughter in law from the scope of rule 22(3)(l)(i) of the said rules does not arise and accepted the submission of appellant.

However, the court observed that it cannot be denied that the matter with regard to domestic violence is continuing since 2016 as revealed from copies of complaints to SHO and copies of MLCs filed by the respondent. And a matrimonial dispute and maintenance case is also going on in Rohini court.



The Senior Citizen Act is enacted to ensure the proper protection of maintenance of senior citizens. However at the same time, it cannot be allowed to be used as a tool in settling property dispute or matrimonial dispute or domestic violence dispute or any other dispute in the garb of protecting senior citizen interests.

Considering the overall facts and circumstances of the case, material placed on record and oral and written submission made by the applicant and respondents; it clearly appears to be a matrimonial dispute between respondent Ms. Niharika Nigam and Mr. Rajat Wahal son of the applicant / complainant. The case as such is not maintainable under the Maintenance and Welfare of Parents and Senior Citizens Act and hence dismissed. The case stands disposed of accordingly. The complainant / applicant is at liberty to approach the-appropriate court of law for settling the dispute.”

Impugned order passed by the Appellate Authority

- “21. *This appellate authority is also of the opinion that the decision of Hon’ble Apex Court passed in Smt. S Vanitha Vs Deputy Commissioner, Bengaluru is also applicable to the present case as in that case also husband transferred his share in favour of parents due to matrimonial discord with wife and thereafter in-laws filed eviction application before District Magistrate to evict daughter-in-law the aforesaid case Hon’ble Supreme Court of India directed not to evacuate daughter-in-law where the relations were estranged and litigations are pending. Hon’ble Apex Court observed that “Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act, 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws or that her estranged spouse is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005”.*
22. *Herein this case also there is matrimonial discord between the appellant son and daughter-in-law i.e., the respondent and various litigations including the divorce proceedings are pending before the Hon’ble Rohini Courts.*
23. *No doubt the Act and rules were framed in order to protect and*



care the senior citizens/parents from the ill-treatment and harassments but at the same time it is also the duty of the District Magistrate to see that the act should not be used as a tool to settle personal scores or to uses the provisions of the act for ousting daughter-in-law in collusion with their son where there is matrimonial discord between daughter-in-law and son.

24. *Therefore, in the light of the above facts and circumstances this appellate authority is of the view that the appellant is in collusion with her son to oust the respondent from her matrimonial house/ shared household. This appellate authority does not find any infirmity in the impugned order dated 17.08.2020 and thus hereby upheld the same by dismissing the appeal of the appellant being devoid of merits.*

The Appeal stands disposed off accordingly. Copy of this order be provided to both parties. Record of the Proceedings before DM (North-West) be also sent to DM with copy of this order.”

ANALYSIS AND FINDINGS

5. This case once again brings to the forefront the legal conflict between the rights of senior citizens to secure and protect their property under the Senior Citizens Act and the right of residence claimed by a daughter-in-law Domestic Violence Act.

6. It is undisputed that Petitioner is the owner of the subject property, as established by the Conveyance Deed dated 25th June, 2001 and the Sale Deed dated 04th December, 2006. The latter deed, executed by her son, Mr. Rajat Wahal, pertains to a half share of the property, effectively making the Petitioner the absolute owner. As the lawful owner, the Petitioner undeniably holds the right to reside in the subject property. Furthermore, the Petitioner is entitled to invoke the provisions of the Senior Citizens Act to seek protection against any perceived threats to her safety or property. The objective of the Senior Citizens Act is to provide a safeguard for senior



citizens to live with dignity and security, free from abuse, harassment, or coercion, including the misuse of their property by others.

7. However, this right is not unfettered and must be balanced against Respondent No. 2's rights under the Domestic Violence Act. Respondent No. 2, as the daughter-in-law, claims a right of residence in the subject property on the ground that it constitutes a "shared household" as per Section 17 of the Domestic Violence Act. The protection provided under the Domestic Violence Act is designed to ensure that women are not rendered homeless or deprived of their matrimonial home due to marital discord or other conflicts. The Supreme Court in *S. Vanitha v. Deputy Commissioner, Bengaluru*,⁵ has clarified that the rights under the Domestic Violence Act cannot be circumvented by invoking the summary procedures under the Senior Citizens Act to oust a woman from her matrimonial home.

8. Indeed, both the District Magistrate and the Appellate Authority relied on the decision rendered in *S. Vanitha* to dismiss the Petitioner's claim for eviction, concluding that the eviction proceedings were a collusive act with her son, driven by the ongoing matrimonial discord between Respondents No. 2 and 3. The reliance on the decision in *S. Vanitha* is misplaced to the extent that it overlooks the necessity of balancing the competing rights involved; the Supreme Court in *S. Vanitha* did not rule out the protection available to senior citizens but emphasized that each case must be assessed on its own facts to achieve a fair outcome. While the existence of this marital discord and the pending divorce proceedings is a matter of record, there is no justification for the summary dismissal of the Petitioner's

⁵ (2021) 15 SCC 730.



allegations of ill-treatment and physical assault and assume that her version is concocted. The District Magistrate and the Divisional Commissioner appear to have overlooked the gravity of these allegations in their findings. The Appellate Authority's reasoning that Respondent No. 3 transferred his share of the property to the Petitioner as a consequence of his matrimonial discord with Respondent No. 2, and that the eviction application was subsequently filed to facilitate Respondent No. 2's ouster, is flawed. It is essential to note that the Petitioner acquired her title to half of the subject property through her son in 2006, nearly a decade before the initiation of the eviction proceedings. This fact negates the conclusion that the transfer of property was orchestrated to defeat Respondent No. 2's rights. Furthermore, the Supreme Court in *S. Vanitha and Satish Chander Ahuja v. Sneha Ahuja*,⁶ has underscored that a daughter-in-law's right to reside in a shared household under the Domestic Violence Act must be balanced against the rights of a senior citizen under the Senior Citizens Act. In this case, the fact that Respondent No. 3 has moved out of the subject property and the Petitioner, in her advanced years, is compelled to live with her elder son, reflects a clear deprivation of her right to a peaceful existence in her own property. The mere existence of matrimonial discord between Respondents No. 2 and 3, along with various pending litigations, including divorce proceedings, cannot, by itself, form a sufficient basis to assume that the Petitioner's actions are collusive. On the contrary, the ongoing marital discord lends credence to the Petitioner's claims of harassment and mistreatment by Respondent No. 2, which should not have been dismissed

⁶ (2021) 1 SCC 414



summarily. The Petitioner's allegations of being subjected to harassment by Respondent No. 2 cannot be disregarded. The impugned orders do not address the specific context of the Petitioner's right to live peacefully in her own property, especially given her advanced age and health conditions. They also fail to recognize that the Petitioner's plea for eviction was based not just on the property rights but on her right to live free from harassment and in a secure environment. Therefore, the conclusions drawn by both the District Magistrate and the Appellate Authority lack a sound legal basis and fail to appropriately apply the principles established by the Supreme Court. The findings of the Appellate Authority are based on conjectures and assumptions rather than tangible evidence, are not tenable in law.

9. It is also pertinent to note that, in the proceedings under the Domestic Violence Act, the Mahila Court has directed that maintenance amount of INR 8,000/- per month as awarded by the Family Court be paid by Mr. Rajat Wahal to Respondent No. 2. While the counsel for Respondent No. 2 contends that these payments are irregular, counsel for the Petitioner denies the same.

10. Be that as it may, in light of the Supreme Court decisions in *S. Vanitha* and *Satish Chander Ahuja* it is imperative to facilitate a resolution that appropriately balances the senior citizen's right to property with the residential rights of Respondent No. 2. Since the payments ordered by the Mahila Court are only towards maintenance, Respondent No. 2 is also entitled to alternate accommodation. Accordingly, the present petition is disposed of with the following directions:

(a) Respondent No. 3, Mr. Rajat Wahal, is directed to provide further



financial assistance to his wife, Respondent No. 2, by paying a sum of INR 15,000/- per month, to enable her to have alternate accommodation in view of her right of residence. This amount shall be credited to her bank account on or before the 10th day of every month to enable her to secure alternative accommodation. Respondent No. 2 shall furnish the details of her bank account to Respondent No. 3 within one week from today. In absence of such details, payment be made through Demand Draft/ Pay Order. Should Respondent No. 3 fail to make the monthly payments or expresses an inability to fulfil this financial obligation, the responsibility to ensure payment shall fall upon the Petitioner.

(b) Once the financial support commences, Respondent No. 2 shall vacate the subject property and hand over vacant possession to the Petitioner within two months.

(c) The above directions shall be subject to any further directions and decision rendered in the adjudication of the complaint under Domestic Violence Act before the Metropolitan Magistrate (Mahila Court), North-West District, Rohini and the divorce proceedings before the District Court, Rohini in respect of Respondent No. 2's claims of maintenance and residence etc.

11. With the above directions, the present petition, along with pending application(s), if any, is disposed of.

SANJEEV NARULA, J

AUGUST 30, 2024
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