



2024:DHC:1368



\$~70

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

Date of decision: 19th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 11401/2021**

MAHESHWARI DEVI

..... Petitioner

Through: Ms. Aakansha Kaul, Mr. Aman Sahani, Ms. Versha Singh and Mr. Satya Sabharwal, Ms. Rhea Borkotoky, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Udit Malik, ASC for GNCTD with Mr. Vishal Chanda, Advocate.
Mr. Kanishk Ahuja, Advocate for R-2 and 3.
Respondent No.4 in person

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner, who is a senior citizen, has approached this Court challenging Order dated 28.06.2021 passed by the Appellate Authority/Divisional Commissioner rejecting an appeal filed by the Petitioner herein under Rule 22(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, which had been filed against an Order dated 04.04.2019 passed by the District Magistrate rejecting an application filed under the Maintenance and Welfare of Parents and Senior Citizens Act (*in short* 'Senior Citizens Act').



2. Shorn of details, the facts leading to this writ petition are that the property being B-78, Hari Nagar-II, Jaitpur, Delhi, was purchased in the name of the Petitioner herein by way of a Power of Attorney and other documents on 04.08.2003.
3. It is stated that the family of the Petitioner consists of her husband/Mohan Singh, who was enrolled in Army on 12.03.1963 and thereafter discharged from the service on 31.03.1980. It is stated that the Petitioner has three children, i.e., one daughter and two sons. It is stated that Respondent No.2 herein is the son of the Petitioner who is married to Respondent No.3 herein.
4. It is stated that Respondents No.2 and 3 are staying in the first floor of the property in question and the Petitioner's husband is occupying the second floor. It is stated that though the Petitioner lives in the ground floor of the property in question but she is unable to reside in the said property because of the ill treatment met out to her by Respondent No.2 and 3 and the Petitioner is currently residing with her daughter at H.No.260, I-Block, Kalkaji, New Delhi. Material on record discloses that the Petitioner and her husband are not in good terms and that there are litigations going on between them.
5. Material on record also discloses that a suit was filed by the husband of the Petitioner herein along with Respondent No.2 being CS No. 1330/2017 on the file of Additional District Judge-01, South East District, Saket Courts, New Delhi for declaration of title and for permanent injunction. The said suit was dismissed for non-prosecution and an application for restoration of the suit has been filed which is pending.
6. Material on record also reveals that a maintenance petition was filed



2024:DHC:1368



by the Petitioner herein against her husband under Section 125 CrPC and vide Order dated 28.01.2023 passed by the learned Judge, Family Courts, Saket, Delhi, the husband of the Petitioner has been directed to pay a sum of Rs.10,000/- per month to the Petitioner herein.

7. Material on record indicates that all is not well in the family. Material on record also indicates that it is the allegation of the Petitioner that Respondent No.2 and 3 broke open the locks of the first floor of the house and forcibly entered the first floor and thrown away the belongings of the Petitioner and her daughter. The Petitioner, therefore, filed a complaint under the Maintenance and Welfare of Parents and Senior Citizens Act with an application under Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, for eviction of Respondent No.2 and Respondent No.3 from the premises in question.

8. It is stated that pursuant to the filing of the complaint, the Petitioner was assaulted by Respondents No.2 and 3 and their children resulting in injuries. It is stated that Police was called and the Petitioner was taken to AIIMS Trauma Centre and the MLC of the Petitioner was conducted and the MLC report indicates the injuries to the Petitioner herein, i.e., tenderness and swelling in the occipital region, back and scarth marks on both forearms. It is stated that a complaint was lodged with SHO Jaitpur and FIR bearing NCR No. 35/2017 dated 03.12.2017 was registered under Section 323 and 506 of the IPC.

9. The District Magistrate *vide* Order dated 04.04.2019 held that the ownership of the property in question is not clear and since the Petitioner is claiming ownership of the property on the basis of Power of Attorney and other documents, whereby her title cannot be established. The District



Magistrate was of the opinion that the various litigations going on between the parties and the Police complaints indicating the abject animosity prevailing in the household which is causing mental harassment to the Petitioner as well as the Respondents herein. The District Magistrate also held that the mental stress or physical harassment to the Respondents herein cannot be ruled out and, therefore, the District Magistrate refused to exercise its jurisdiction under Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, and did not pass an order of eviction against the Respondents herein.

10. The said order has been challenged by the Petitioner before the Appellate Authority/Divisional Commissioner. The Appellate Authority also concurred with the order passed by the District Magistrate and rejected the appeal filed by the Petitioner herein.

11. Aggrieved by the order passed by the Appellate Authority, the Petitioner approached this Court by filing the instant writ petition.

12. Notice was issued to the writ petition. Vide Order dated 09.08.2023, the matter was sent to Delhi High Court Mediation & Conciliation Centre. However, mediation between the parties has failed and a Mediation Report dated 23.11.2023 has been filed.

13. It is pertinent to mention that this Court *vide* Order dated 21.04.2023 in the present writ petition had directed Respondents No.2 and 3 to pay a sum of Rs. 10,000/- per month to the Petitioner herein for use and occupation of the property, which was not complied with by the Respondents, for which contempt petition being CONT.CAS(C) 1495/2023 has been filed which is being dealt with by this Court *vide* a separate order.

14. In the meantime, a separate application being CM APPL. 40759/2023



2024:DHC:1368



was filed by the Respondents No.2 and 3 for vacation of the Order dated 21.04.2023, whereby this Court had directed Respondents No.2 and 3 to pay a sum of Rs. 10,000/- per month to the Petitioner herein, on the ground that the said order has been passed without effecting service on the Respondents.

15. Learned Counsel for the Petitioner contends that the property is situated in an unauthorized colony where sale deeds are not registered and properties are sold and purchased by way of Power of Attorney and other supporting documents which is a recognized mode of transfer. She states that the suit for declaration of title filed by the Petitioner's husband has been dismissed for non-prosecution and has not been restored till date. There is therefore no challenge to the title of the property as of now. She further states that in any event the authorities under the Senior Citizens Act cannot adjudicate on the title of the property more so when undisputedly the documents of the property are in the name of the senior citizen. She states that after holding that there is enough acrimony in the family, the authorities under the Senior Citizens Act ought to have passed an order of eviction keeping in mind the object and purpose of the Senior Citizens Act which is to protect the interests of the senior citizens. She states that even the Petitioner had to file a petition under Section 125 CrPC against her husband seeking maintenance and the said application has been allowed and maintenance of Rs.10,000/- is being paid by the husband of the Petitioner.

16. It is stated that the Petitioner has not asked for eviction of her husband but only of her son and daughter-in-law, i.e., Respondents No.2 and 3 herein, who have assaulted the Petitioner post the Petitioner filing the present writ petition for eviction of the Respondents under the Senior Citizens Act. She further states that the order impugned herein is not in



accordance with the spirit of the legislation and the Petitioner who is a senior citizen is unable to enter into her own house because of her son and daughter-in-law and her grand-children who are residing in the upper floors of the house.

17. *Per contra*, learned Counsel for the Respondents contends that a Power of Attorney sale cannot be construed as a sale of the property. He further states that the entire money to purchase the property has been spent by the father of Respondent No.2, i.e., husband of the Petitioner herein, and, therefore, the Petitioner alone cannot seek eviction of Respondents No.2 and 3. He states that a suit has been filed by the husband of the Petitioner which was dismissed for non-prosecution but an application for restoration of the suit to its original number is pending. He further states that notice in the present writ petition was issued on 06.10.2021 but it was served on the Respondents on 18.04.2023 and the Order dated 21.04.2023 directing the Respondents to pay a sum of Rs.10,000/- per month to the Petitioner has been passed without the knowledge of the Petitioner. He further states that the Court proceeded on the basis of the office noting which showed that Respondents No.2 and 3 have been served through e-mail which was subsequently corrected on 18.04.2023.

18. It is stated by learned Counsel for the Respondents that the Petitioner is being manipulated by her daughter and her son-in-law and this is evident by the fact that a Power of Attorney has already been issued by the Petitioner in favour of her daughter and the idea is to get Respondents No.2 and 3 evicted from the premises in question so that the property can be sold and to restrain the daughter from selling the property in question, a suit has been filed by Respondent No. 2 and his father.



19. It is stated that Respondent No.2 is unemployed having no source of income and is not in a position to pay a sum of Rs.10,000/- per month to the Petitioner herein. He further states that the findings of the two authorities below that the Senior Citizens Act cannot be misused to settle personal scores between the families does not require any interference by this Court while exercising its jurisdiction under Article 226 of the Constitution of India.

20. On 13.02.2024, this Court directed the learned Counsel for the Petitioner to implead the daughter of the Petitioner in the array of parties. Though amended memo of parties has not been filed and formal service has not been effected through the Court, Respondent No.4, who is the daughter of the Petitioner, is present in Court today.

21. Heard learned Counsel for the parties and perused the material on record.

22. The Senior Citizens Act, 2007 was enacted with the objective to provide a mechanism to secure maintenance and ensure welfare of senior citizens left bereft of support, financial or otherwise. The Act being a social legislation, ought to be construed liberally and its provisions should be implemented in light of the aims and objectives with which the Act was enacted, which for all intents and purposes in the immediate case herein is to ensure that a senior citizen without any semblance of support is not further deprived of the property and so that there is no threat to their life.

23. The Government of Delhi has legislated Delhi Maintenance and Welfare of Parents and Senior Citizens Amendment Rules, 2016, in exercise of powers conferred by Section 32 read with Section 2(i) to the Senior Citizens Act, 2007. Rule 22 of the Delhi Maintenance and Welfare of



Parents and Senior Citizens Rule lays down an action plan for protection of life and property of senior citizens. Under Rule 22(3)(1) a senior citizen may make an application for eviction of their son/daughter/legal heirs from their self-acquired or ancestral properties, before the District Magistrate. The same reads as under:

“22. Action plan for the protection of life and property of senior citizens. –

xxx

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

(i) A senior citizen/parents may make an application before the Deputy 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 rights or interests in such 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/District Magistrate during summary proceedings for the protection of



senior citizen/parents shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/District Magistrate 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 property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/District Magistrate 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 issue thereof.”

24. It is a well settled rule that while interpreting the provisions of a statute, the Courts must bear the objectives and purposes for which the statute was enacted. In the present case, as already discussed above, it emerges that the Senior Citizens Act, 2007 and the Rules enacted thereunder as amended from time to time were enacted for the protection of interests of senior citizens. Rule 22(3)(1) of the Delhi Senior Citizens Rules provides for a comprehensive procedure for eviction from the property of a senior citizen



residing in Delhi. Sub-rule (iv) of Rule 22(3)(1) provides that the authority on taking cognizance of a complaint for eviction may initiate summary proceedings and conduct enquiries to satisfy themselves to conclusively order for eviction of a son, daughter, or legal heir from the property of a senior citizen, self-acquired or ancestral, on the grounds of non-maintenance and ill treatment.

25. This Court is not going into the fact as to whether daughter and son-in-law of the Petitioner are manipulating the Petitioner. Undisputedly, the property has been purchased in the name of the Petitioner through General Power of Attorney and other supporting documents. It is not the case of the Respondents that the property is not situated in an unauthorized colony and the sale deeds are not being executed in that area.

26. No doubt a suit has been filed for declaration and permanent injunction by the husband of the Petitioner stating that the property has been purchased by using his funds and, therefore, the provisions of the Benami Property Act will not be applicable in the facts of the present case because of the exceptions of the Benami Property Act but as of now suit is not pending.

27. Both the authorities below have categorically held that there is acrimony in the family. The short question, therefore is, if there is acrimony in the family, then should the order have been passed in favour of the senior citizen keeping in mind the object of the Act. There is nothing on record to show nor is it the case of the Respondents that the senior citizen has any independent source of income. It is also not the case that she is residing in her own house. The Petitioner is unable even to reside in her house because of the fear of Respondents No.2 and 3 and even if she is residing, obviously



it is not a peaceful existence for her.

28. Learned Counsel for the Petitioner, therefore, is correct in stating that when there is acrimony in the family and there are police complaints against the children of the senior citizens, then the purpose of the Act being beneficiary in nature, welfare of the senior citizens ought to have been taken into account by the authorities below while dealing with petitions filed under the Senior Citizens Act.

29. The Senior Citizens Act as stated earlier has come out for the benefits of senior citizens to ensure that they live peacefully in the eve of their life. Respondent No.2, who was present in Court, in the contempt petition filed for non-compliance of Order dated 21.04.2023 in the instant writ petition, has refused to comply with the said order.

30. It is moral and legal obligation of every son to maintain his mother. In fact Section 4(2) of the Senior Citizens Act casts an obligation on the children to maintain a senior citizen so that senior citizen may lead a normal life. Though the Petitioner has not claimed a right to be maintained, the fact that the Court had passed an order on 21.04.2023, even if it is presumed that it was in the absence of service to the Respondents, it is still the obligation of the Respondents to comply with the directions passed by the Court.

31. Though the Senior Citizens Act is for the protection of the senior citizens, however, the same also cannot be used for settling property disputes. There is a serious dispute regarding the title of the property. A suit had been filed by Respondent No.2 and the husband of the Petitioner. No doubt, the suit has been dismissed for non-prosecution but an application to restore the suit is pending. In view of the fact that the Petitioner has already given a Power of Attorney in favour of her daughter, i.e., Respondent No.4



herein, the possibility of Respondent No.4 and the Petitioner disposing off the property and rendering the suit infructuous cannot be ruled out. Though this Court is inclined to set aside the order and direct Respondents No.2 and 3 to vacate the premises, at the same time, this Court while exercising its jurisdiction under Article 226 of the Constitution of India directs the Petitioner and Respondent No.4 not to dispose off the property till the restoration of the suit.

32. The refusal of the Respondent even to pay a sum of Rs.10,000/- per month to the Petitioner for use and occupation of the property and the preparedness of the Respondent No.2, who is present in Court, to face contempt and even necessary go to jail, speaks volumes of the conduct of Respondent No.2 and in the facts and circumstances of this case and keeping in view the object of the Senior Citizens Act and Rule 22 of the Senior Citizen Rules which is for the welfare of the senior citizen and protection of the life and property of the senior citizen, this Court is of the opinion that the present case is fit for this Court to exercise its jurisdiction under Article 226 of the Constitution of India.

33. The writ petition is allowed. Resultantly, the Order dated 28.06.2021 passed by the Appellate Authority is set aside and the application of the Petitioner under Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, stands allowed.

CM APPL. 40759/2023

1. This is an application on behalf of Respondents No.2 and 3 for vacation of Order dated 24.01.2023 passed by this Court in W.P.(C) 11401/2021.

2. Material on record indicates that notice was issued to Respondents



2024:DHC:1368



No.2 and 3 on 06.10.2021 and the office notings dated 15.12.2021 indicates that Respondent No.2 and 3 were served though email.

3. Material on record indicates that vide Order dated 20.04.2022, fresh steps were directed to be taken by the Petitioner for effecting service on the Respondents. The process was filed on 08.09.2022 and notice was issued to Respondents No.2 and 3 through ordinary mode, speed post and courier services. The office noting dated 16.12.2022, records as under:-

"Noting mentioned as above regarding service of notice to R-2 and R-3 through ordinary mode via e-mail may be read as awaited instead of served as same is typographical error

Speed Post and Courier:- returned as no one came to collect."

Therefore, the office notings indicate notice had not been served till 19.12.2022.

4. The order directing Respondents No.2 and 3 to pay a sum of Rs.10,000/- per month to the Petitioner for use and occupation of the property in question was passed by this Court on 21.04.2023. Material on record reveals that *vakalatnama* on behalf of Respondents No.2 and 3 was filed on 10.05.2023, i.e., after the Order dated 21.04.2023 was passed by this Court. The office notings also indicates that there was an error in the first office noting dated 16.12.2021 that Respondents No.2 and 3 have been served through email. However, subsequent the office noting dated 16.12.2022 indicate that there was typographical error in the said office nothing and service to the Respondents through email is awaited.

5. In view of the above, it is clear that the Order dated 21.04.2023 has been passed without service on Respondents No.2 and 3.



2024:DHC:1368



6. Order dated 21.04.2023 proceeds on the ground that despite service on Respondents No.2 and 3, they have not appeared in Court, which is contrary to the record.
7. In view of the above, since service was not effected on Respondents No.2 and 3, the Order dated 21.04.2023 passed by this Court stands withdrawn.
8. Now, the service is complete. In view of the fact that the service is complete and Respondent No.2, who is the son of the Petitioner is under an obligation to maintain his mother, who is without any source of income, this Court is inclined to direct Respondent No.2 to pay a sum of Rs.10,000/- to the Petitioner every month towards maintenance. The Respondent No.2 shall start paying the monthly sum of Rs.10,000/- towards maintenance to the Petitioner from 01.03.2024.
9. The application is disposed of.

SUBRAMONIUM PRASAD, J

FEBRUARY 19, 2024

hsk