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

+ **W.P.(C) 10574/2024 & CM APPLs. 43502-43503/2024**

AJAY KUMAR

.....Petitioner

Through: Mr. Aayush Agarwala, Ms. Mallika Luthra, Mr. Prallash Jha, Mr. Kunj Mehra and Mr. Nilesh Kumar, Advocates.

versus

SANTOSH RANI

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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01.08.2024

1. The present writ petition assails the order dated 05th March, 2024 passed by District Magistrate-cum-Appellate Tribunal, Tribunal for Maintenance and Welfare of Parents and Senior Citizens, in eviction case bearing ID No. 32549¹, in terms of an application filed by a senior citizen – the Respondent herein, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007² and the Delhi Maintenance and Welfare of Parents and Senior Citizen (Amendment) Rules, 2016³.
2. By way of the impugned order, the Petitioner has been directed to be evicted from the subject property being – C-30, Jain Park, D.K. Mohan

¹ “Impugned order”

² “Act”

³ “Rules”



Garden, New Delhi-110059 within 30 days of the order.

3. Under the aforementioned Rules, the Petitioner has a statutory remedy of preferring an appeal before the Divisional Commissioner against the impugned order of eviction. However, the Petitioner submits that on account of the current vacancy in the position of Divisional Commissioner, the statutory remedy of appeal against the impugned order cannot be effectively availed by them.

4. In light of the above, apprehending their eviction in terms of the impugned order passed by the District Magistrate and since they have no alternative forum to challenge the same, the Petitioner has filed the instant writ petition under Article 226 of the Constitution of India, 1950, along with an application under Section 151 of the Civil Procedure Code, 1908, seeking stay on the operation of the Impugned Order.

5. The Court has considered the submissions of the parties. In the opinion of the Court, since the Petitioner already has a statutory right of appeal under the aforementioned Rules, the Petitioner ought to first exhaust that remedy before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution. However, in light of the circumstances noted above, the Court is particularly mindful of the consequences that may arise from enforcing the eviction order while the appeal to be filed by the Petitioner remains unheard. The potential for irreparable harm to the Petitioner, should they be evicted unjustly, underscores the need for a cautious approach. Given that the Petitioner has not had an effective opportunity to contest the eviction considering the vacancy in the post of the adjudicating authority, the Court finds it appropriate to temporarily intervene to maintain the *status quo* and prevent potential injustice.



6. In view of the above, the present petition is disposed of with the following directions:

- (i) The Petitioner shall, within a period of one week from today, file an appeal with the Divisional Commissioner under Rule 22 (4) of the of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules (Amendment) Rules, 2016 along with an application for *ad-interim* relief.
- (ii) If such an appeal is preferred within the above timeline, the eviction order dated 05th March, 2024 shall be kept in abeyance and not given effect to, till the date the Divisional Commissioner assumes charge and considers the application of the Petitioner for *ad interim* relief in the appeal. The Divisional Commissioner shall first decide the said interim application, after hearing the parties, and thereafter proceed to adjudicate the appeal on its merits.
- (iii) The Divisional Commissioner is directed to expeditiously decide the appeal which would be preferred by the Petitioner as aforesaid.

7. The petition is disposed of in the above terms, along with pending applications. It is clarified that the Court has not examined the merits of the case and no opinion has been expressed thereon.

8. All rights and contentions of the parties are left open and the Divisional Commissioner shall adjudicate the appeal on its own merits, in accordance with law.

SANJEEV NARULA, J

AUGUST 1, 2024

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