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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CWP-497-2022

Date of Decision :18.01.2025

Tarsem Lal Arora

...Petitioner

Versus

The Additional District Magistrate and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Navyuggeet Brar, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

Mr. Akshay Bhan, Senior Advocate with
Mr. Harsh Gupta, Advocate for respondent No.2.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to the order passed by the Additional District Magistrate, Panchkula dated 22.10.2021 (Annerxure P/13) under the provisions of The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as '2007 Act') by which, the application filed by the petitioner-senior citizen so as to seek eviction of the private respondent-son from the property concerned, has been rejected on the ground that there is no proof of torture or maltreatment met out to the senior citizen and hence, respondent-son cannot be directed to vacate the property in question.

2. Learned Senior counsel appearing for the petitioner submits that concededly the property in question belongs to the petitioner-senior

citizen as he is the sole owner of the property in question. Learned Senior counsel appearing for the petitioner further submits that the possession of the ground floor and 1st floor of the property in question is with the petitioner-senior citizen, where he is presently residing whereas, the possession of the second floor is with respondent-son who was stated to be living in the same house along with his family.

3. Learned Senior counsel for the petitioner further submits that keeping in view the various incidents, the petitioner-senior citizen filed petition for eviction of the son from the premises in question by invoking provisions of 2007 Act on the ground that he has been maltreated and tortured and there is a threat to his life at the hands of respondent-son and his family and as he is approximately 84 years of age, he is not in a position to defend himself and hence, in order to live peacefully, a prayer was made for the eviction of respondent-son from the premises in question.

4. Learned Senior counsel appearing for the respondent-son submits that after having due arguments before the competent authority, an order dated 22.10.2021 has been passed by the authority concerned that there is no proof of torture or maltreatment of the petitioner-senior citizen and the application filed by the petitioner under 2007 Act has been rejected hence, there is no question of directing the son to vacate the premises in question and the present petition is liable to be dismissed.

5. Learned Senior counsel appearing for the petitioner-senior citizen submits that as of now there have been complaints filed against the petitioner-senior citizen by the respondent-son as well as his family and a question has also been raised upon his character in the said complaint,

which amounts to harassment as well as mal-treatment of a senior citizen, which fact has been ignored by the authorities concerned while rejecting the claim of the petitioner and hence, the order passed by the Tribunal under 2007 Act is perverse and is liable to be set aside.

6. Learned Senior counsel appearing for the petitioner-senior citizen further submits that after passing of the impugned order dated 22.10.2021 the respondent-son along with his family has already moved out from the property in question to shift to their own house i.e. H. No.5457, Manimajra, Chandigarh and now the 2nd floor is locked only to restrict the access to the senior citizen hence, keeping in view the subsequent development also as the respondent-son is not occupying the premises in question, the possession of the same needs to be handed over to the petitioner-senior citizen.

7. Learned Senior counsel appearing for the respondent-son submits that though, there have been complaints from either side but the said complaints cannot be construed to mean that senior citizen has been maltreated at the hands of respondent-son. Learned Senior counsel appearing for the respondent-son further submits that the only complaint by the daughters of the respondent-son was that whenever they were alone, the senior citizen used to come on the 2nd floor to harass them or use to watch them through the windows hence, the said complaints cannot be treated in any manner to be raising a finger towards the character of a senior citizen and does not amount to assassination of character of the petitioner-grandfather.

8. Learned Senior counsel appearing for the respondent-son very

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fairly upon instructions from respondent-son, who is also present in Court submits that respondent-son has already purchased other property details of which have been recorded hereinbefore and son along with his family has already moved to the said property but submits that once they are in possession of the property in question as of now, their right to retain the same exists even if, the same is locked as of now and is not being used.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The question which arises for adjudication before this Court is whether the senior citizen, who owns a particular property has right to live peacefully in the said property or not in case he has any grievance or any apprehension of threat to his life or reputation.

11. The findings recorded by the Tribunal while rejecting the claim of the petitioner-senior citizen for eviction is on the ground that no proof of torture or maltreatment is met out to the senior citizen at the hands of respondent-son, his wife and his daughters. Learned counsel appearing on behalf of the respective parties have not been able to rebut a fact that the complaints which have been filed by the parties concerned against each other were before the authorities concerned at the time of adjudicating the plea of the petitioner-senior citizen under the 2007 Act. It may be noticed that the torture or maltreatment has to be understood keeping in view the allegations which have been made by the either parties against each other. Against the petitioner, who is a senior citizen aged about 84 years, the daughters of the respondent-son have made a complaint with regard to peeping from the window as and when they were alone and the police was



called to help them out. Allegations at the hands of the grand-daughter against their grandfather are very serious, which reflects upon the character and reputation of the grandfather. Once the said allegations have been alleged against a senior citizen without there being any action in furtherance of the complaint so as to prove the said allegations, it cannot be said that senior citizen has not been maltreated. The allegations against the reputation are good enough to be treated as maltreatment and harassment of a senior citizen, who is only praying that he should be allowed to enjoy his own property without fear or any harassment or maltreatment. The authorities concerned exercising jurisdiction under 2007 Act have failed to consider the facts in the correct perspective so as to hold that there is no proof of torture or maltreatment to a senior citizen in the facts and circumstances of the present case.

12. Further, the daughters of the respondent-son called the police qua the said grievance, which fact has gone unrebutted during the arguments. Hence, an unsubstantiated allegation upon the character of a senior citizen has to be treated as harassment.

13. Even otherwise, as of now, the situation has further changed. The respondent-son has already vacated the premises in question and has shifted to his own house but the premises in question is still under his lock only to restrict the senior citizen from enjoying his own property. The question which now arises is whether, the petitioner-senior citizen should be allowed to use his own property which belongs to him, once his son has already vacated the said property along with his family.

14. The argument of the learned Senior counsel for the respondent-

son that even if, the son is not residing in the property in question but he has a right to retain the possession of the same under lock and key, cannot be accepted. The benefit which has been given to a senior citizen under 2007 Act to enjoy his property carries more weight as compared to the claim of the respondent-son to use the said property to the exclusion of the owner, who is a senior citizen.

15. Learned Senior counsel for the respondent-son has placed reliance upon the judgment of the Coordinate Bench of this Court in **CWP-17520-2017 titled as Gian Singh vs. Additional Deputy Commissioner and another decided on 21.08.2017** and submits that once the proceedings were pending before the Civil Court, another parallel proceedings cannot be initiated or allowed to be continue and hence, once the respondent-son has already filed a civil suit to retain the possession of the property in question, the petitioner-senior citizen cannot avail the remedy under the 2007 Act.

16. It may be noticed that in the said petition, the senior citizen was availing two remedies i.e. before the Civil Court as well as under the 2007 Act. In the present case, there is no other remedy, which has been availed by the senior citizen qua the property in question except that one under 2007 Act. Once, the petitioner-senior citizen has not availed any other remedy except under the 2007 Act, judgment in **Gian Singh (supra)** is not applicable in the present case as the senior citizen in the present case has only availed the remedy under the 2007 Act, which fact has gone unrebutted.

17. Keeping in view the above, order passed by the Additional District Magistrate, Panchkula dated 22.10.2021 (Annexure P/13) is set

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aside. The claim of the petitioner-senior citizen is allowed. As the son has already vacated the premises in question but the same is under his possession under the lock & key, the respondent-son is directed to handover the keys of the lock to the senior citizen within a period of two weeks from the date of receipt of copy of this order especially, when counsel as well as respondent-son are present in the Court and knows about the present order being passed today.

18. No other argument is raised.

19. The present petition is allowed in favour of petitioner-senior citizen however, same will be subject to any order to be passed by the Civil Court in case, any such remedy is availed by the respondent-son and the same is permissible under law.

20. Present petition is allowed in above terms.

January 18, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No