



CWP-34411-2024 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106) CWP-34411-2024 (O&M)
Date of Decision : January 07, 2025

Kamaljit Rajput and another .. Petitioners

Versus

District Magistrate-Cum-Appellate Tribunal, UT, Chandigarh
and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Reshabh Bajaj, Advocate and
Mr. Vardaan Seth, Advocate, for the petitioners.

Mr. Parminder Singh, Addl. Standing Counsel and
Ms. Aashna Gill, Advocate, for respondent No.1-UT
Chandigarh.

Mr. Amar Vivek, Advocate, for respondent No.3.

Ms. Arundhati, Advocate, for respondent No.4.

HARSIMRAN SINGH SETHI J. (ORAL)

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As prayed for, the application is allowed.

Transfer deed dated 20.04.2021 as Annexure P-9 is taken on
record.

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1. In the present writ petition, the challenge is to the order dated
20.02.2023 (Annexure P-4) passed by the authorities concerned under the
Maintenance and Welfare of Parents and Senior Citizens Act, 2007



(hereinafter referred as “2007 Act”).

2. Learned counsel for the petitioners argues that vide order dated 20.02.2023 (Annexure P-4), the Additional Deputy Commissioner- cum- Maintenance Tribunal, U.T. Chandigarh has allowed the claim of respondent No.3 Krishna Devi so as to evict the petitioners and their family from the premises concerned, which order has been upheld wrongly by the Appellate Authority vide order dated 25.10.2024 (Annexure P-6) and that too without noticing the actual facts which were very material for the adjudication of the claim of respondent No.3 as raised before the authorities concerned.

3. Learned counsel for the petitioners submits that the petition was filed by respondent No.3 i.e. the mother of petitioner No.1 and the mother-in-law of petitioner No.2 claiming to be owner of the premises i.e. House No.224, Sector 18-A, Chandigarh by levelling certain allegations against the petitioners for not maintaining her despite being bound under the 2007 Act.

4. Learned counsel for the petitioners further submits that respondent No.3 did not disclose the fact that during the pendency of the proceedings, the house in question from where the eviction of the petitioners was sought on the ground that respondent No.3 is the owner, was transferred by her in the name of respondent No.4 Krishna Kumar Rajput i.e. brother of petitioner No.1.

5. By the time, the Tribunal was to decide the claim raised by respondent No.3 under 2007 Act, the entitlement of respondent No.3 to the claimed relief, which was to be decided first, was ignored by the Tribunal



and straightaway by treating respondent No.3 as the owner of the premises concerned and an order was passed by the Tribunal on 20.02.2023 (Annexure P-4) directing the eviction of the petitioners from the premises concerned.

6. Learned counsel for the petitioners further submits that though the petitioners filed an appeal before the Appellate Authority but the same was also rejected on 25.10.2024 (Annexure P-6) without even looking into the objections raised by the petitioners before the Appellate Authority qua the order passed by the Tribunal.

7. Learned counsel for the petitioners argues that on the date when the Tribunal passed an order on 20.02.2023 (Annexure P-4), respondent No.3 was not the owner of the property concerned, as on 20.04.2021, the said property had already been transferred by respondent No.3 in favour of her other son i.e. respondent No.4 hence, the claim of respondent No.3 that she is the owner of the property and was liable to be maintained by the petitioners and as they were not maintaining her, they were liable to be evicted, loses significance as the essential parameter of being owner of the property to claim the relief did not exist with respondent No.3 on the date when the impugned order was passed by the Tribunal on 20.02.2023 (Annexure P-4).

8. Learned counsel for the petitioners further submits that by ignoring the said factual aspect, the appeal has also been dismissed by the Appellate Court hence, the said order is also liable to be set aside.

9. On advance notice, the respondents have appeared.

10. Learned counsel appearing on behalf of respondent No.3 contends that on the date when the proceedings were initiated by her under



2007 Act, she was the owner hence, she has full right to claim the relief as had been claimed before the Tribunal so as to get eviction of the petitioners from the premises concerned as she was the exclusive owner of the property in question at the relevant time of filing the application under 2007 Act.

11. Learned counsel for respondent No.3 very fairly submits that though the property was transferred in the name of respondent No.4 during the pendency of the litigation initiated by respondent No.3 but the position is to be seen on the date when the litigation is instituted and the subsequent facts which have come are to be ignored and have rightly been ignored by the Tribunal as well as by the Appellate Authority hence, the order being impugned by the petitioners by this petition i.e. Annexures P-4 and P-6 are liable to be upheld.

12. Learned counsel for respondent No.3 submits that respondent No.3 is to be treated owner despite the transfer deed dated 20.04.2021 as she was getting old and in order to save the property from going to the petitioners and to preserve the property in question qua which relief was sought under 2007 Act, the same was transferred in favour of respondent No.4, who was taking good care of her during the period she remained ill.

13. Learned counsel appearing on behalf of respondent No.4 submits that as of now, in view of the transfer deed dated 20.04.2021, he is the owner of the property in question as the same has already been transferred in his name by the Chandigarh Administration.

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

15. In order to decide a claim, the eligibility of the claimant under the 2007 Act under which the claim has been raised, is to be determined.



The said eligibility has to remain with the applicant till the order is passed on the claim raised, by the appropriate Tribunal. Though, in the present case, on the date when the proceedings were initiated by respondent No.3 under 2007 Act to evict the petitioners by claiming herself to be owner of the property and to be an exclusive person to decide who will remain on the said property, the respondent No.3 was well within her jurisdiction to initiate the said proceedings. But after the transfer of the property by her on 20.04.2021 pendente lite, she lost her right to claim the ownership of the property concerned so as to evict the petitioners on the ground that she no longer had exclusive right to be the owner of the property so as to oust the petitioners under 2007 Act.

16. The ingredients of the provisions of 2007 Act that a senior citizen who is the owner of the property can evict the persons from the said property who are troubling her in her peaceful existence and not letting her life with dignity as envisaged under Article 21 of the Constitution of India, are not fulfilled in the facts and circumstances of the present case on the date order of eviction is passed under 2007 Act.

17. It is a conceded position between the parties that on the date when the Tribunal decided the claim raised by respondent No.3 on 20.02.2023, the respondent No.3 was not the owner of the said property so as to claim eviction on her request from the premises in question. The Tribunal as well as the lower Appellate Court have totally ignored provisions of law as well as the factual aspect which existed in the present case while directing the eviction of the petitioners from the house in question under 2007 Act.



18. The argument of learned counsel for respondent No.3 that even after the transfer of the property in favour of respondent No.4, she remains the owner of the property in question, cannot be accepted. According to the documents which exist as of now, including the transfer deed dated 20.04.2021 as well as the subsequent registration of the same to be in the record of the Chandigarh Administration, respondent No.4 is the owner of the property. Once the property was transferred by respondent No.3 prior to the passing of the order of the Tribunal qua the claim raised before the Tribunal under 2007 Act in respect of the eviction of the petitioners, the Tribunal was under an obligation to decide the eligibility of respondent No.3 to claim eviction of petitioner keeping in view the facts which existed on the date when the eviction is being ordered by the Tribunal along with the other provisions of law under 2007 Act.

19. Keeping in view the facts mentioned hereinbefore, the order passed by the Tribunal as well as by the Appellate Authority are inconsistent with the facts of the present case which were on record and have been ignored by the authorities concerned so as to pass the impugned order. Petitioners have been ordered to be evicted from the property which was not owned by respondent No.3 but was owned by respondent No.4.

20. Learned counsel appearing on behalf of respondent No.3 has relied upon the judgments of the Hon'ble Supreme Court of India in ***Rameshwar and others vs. Jot Ram and another*** 1976 SCC 1194 to contend that the position is to be seen on the date when the proceedings are instituted and not on the date when the order is to be passed.



21. In order to press the same argument, the reliance has also been placed upon the judgment of the Hon'ble Supreme Court of India in ***Pasupeleti Venkateswarlu vs. Motor and General Traders, 1975 SCC 1 770.***

22. After going through the judgments being relied upon by the learned counsel for respondent No.3, the same are not applicable in the facts and circumstances of the present case especially qua a claim raised under 2007 Act.

23. In order to pass or to give relief to a senior citizen, certain parameters are to be looked into. The said parameters are to exist on the date when the relief is to be given to the senior citizen and not when the application under 2007 Act was instituted. Once, the eligibility is to be seen on the day when the order is to be passed on the claim raised under 2007 Act, the subsequent facts which take away the eligibility of an applicant to claim a relief under 2007 Act, cannot be ignored. The interpretation being given to the judgments cited by learned counsel for respondent No.3, is not applicable in the facts and circumstances of the present case.

24. The last argument which has been raised by learned counsel for respondent No.4 that the petitioners have already stated that they are not living in the property hence, they should not be allowed to keep the property the possession of which was given up by them voluntarily and it cannot be restored to them even after setting aside the impugned orders passed under 2007 Act.

25. Learned counsel for the petitioners submits that though the petitioners were not living in the premises, keeping in view their professional assignments outside Chandigarh but same was in their

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possession and their daughter was living in the said property and she has been evicted on the basis of the order passed under 2007 Act which have been impugned. This fact has gone un rebutted.

26. Once, the family members of the petitioners were in possession of the property concerned which has been got vacated on the basis of impugned order passed under 2007 Act, it cannot be said that the petitioners have left the said property voluntarily so as not claim restoration of the same to them.

27. Keeping in view the above, the impugned orders dated 20.02.2023 (Annexure P-4) and 25.10.2024 (Annexure P-6) are set aside. The property which was in possession of the petitioners and was got vacated under the impugned orders passed under 2007 Act be restored to them within a period of four weeks from the receipt of copy of this order and in case same is not restored to the petitioners within the time frame granted, Police authorities will help them to execute the said order forthwith.

28. However, the restoration of the property will be subject to any litigation which is initiated by respondent No.4 against the petitioners in his own right as the owner of the property.

28. The present writ petition is allowed in above terms.

29. Civil miscellaneous application pending if any, also stands disposed of.

January 07, 2025*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No