



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 19th December, 2024
Pronounced on: 07th January, 2025

+ W.P.(C) 5068/2022 & CM APPLs. 15054/2022, 43616/2024
SMT. TABASSUM & ORS.Petitioners

Through: Mr. Kotla Harshvardhan, Ms. G.
Gupta, Advocates.
versus

AMNA BEGUM & ORS.Respondents

Through: Ms. Aditi Gupta and Mr. Utkarsh,
Advocate. Ms. Vaishali Gupta, Panel
Counsel (Civil), GNCTD for R-3 & 6.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The present writ petition impugns order dated 2nd March, 2022 whereby the Divisional Commissioner in exercise of its powers under Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, (Amendment) Rules, 2016,¹ upheld the eviction of the Petitioners No. 1 to 4. The impugned order stems from order dated 13th August, 2020, issued by the District Magistrate (North-East), permitting Respondent No. 1 to reclaim possession of her property bearing No. C-25/28, Gali No. 3, Rishi Kardam Marg, Chauhan Bangar, Seelampur, Delhi-

¹ “the Delhi Senior Citizens Rules”



110053,² through eviction of the Petitioners.

THE PARTIES

2. The present petition is filed by Ms. Tabassum (Petitioner No. 1) who is married to Mr. Aslam Parvez (Petitioner No. 4). Together, they have two children, who are Petitioners No. 2 and 3 in these proceedings.

3. Ms. Amna Begum (Respondent No. 1), an elderly senior citizen, is the mother of Mr. Aslam Parvez, Mr. Mohammad Shahid (Respondent No. 4) and Ms. Shabana (Respondent No. 2). Mr. Shahid is married to Ms. Naima (Respondent No. 5) while Ms. Shabana remains unmarried.

4. The family resides in the subject property as follows: Ms. Tabassum, Mr. Aslam Parvez and their children occupy the second floor; Mr. Mohammad Shahid and Ms. Naima reside on the ground floor and Ms. Amna Begum lives on the first floor with Ms. Shabana. As a senior citizen, Ms. Amna Begum asserts her right to exclusive possession of the entire property, citing specific legal protections under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.³

PETITIONERS' CASE

5. Counsel for Petitioners summarizes the case of the Petitioners as follows:

5.1. Petitioner No. 1 married Petitioner No. 4 in 2014. Soon after the marriage, Respondent No. 2 allegedly made demands for dowry, which Petitioner No. 1 was unable to fulfil. This became a constant source of discord in the family. Due to insufficient dowry, Respondent No. 2

² “the subject property”



instigated Respondent No. 1 to ask the Petitioner No. 4 to divorce the Petitioner No. 1 and expel her from the matrimonial house.

5.2. Being provoked by Respondent No. 2, Respondent No. 1 published a newspaper advertisement on 11th January, 2015 disowning both her sons, their wives and their children from her inheritance. This was followed by a complaint dated 19th January, 2015 made by Respondent No. 1 against the Petitioners with the Police Station, Seelampur.

5.3. Petitioner No. 1 states that she has been subject to constant physical and mental harassment by Respondents No. 1 and 2 since 2014. In particular, she cites the instance which took place on 26th April, 2016 where she was subject to physical assault at the hands of Respondents No. 1 and 2. As a result, she initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 on 20th September, 2019.⁴ In respect of the said complaint, on 26th October, 2021, the Mahila Court (Karkardooma Courts) passed a protection order in favour of Petitioner No. 1 under Section 18 of the DV Act.

5.4. The Petitioners contend that in retaliation to the DV Act proceedings, Respondent No. 1 disconnected the electricity of the floor where the Petitioners reside, despite regular payments made by them. In this regard, Petitioners filed a suit bearing C.S. No. 569/2021⁵ with the Karkardooma Courts seeking permanent injunction and Petitioners' application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908, which was dismissed through order dated 26th August, 2022. Ultimately, on 1st

³ "the Senior Citizens Act"

⁴ "the DV Act"

⁵ titled *Tabassum v. Shabana*



March, 2024, the suit was dismissed as withdrawn with liberty to file afresh.

5.5. On 16th April, 2019, Respondent No. 1 filed a complaint accusing the Petitioners of physical and mental abuse and accordingly, sought their eviction from the subject property. This request was allowed by the District Magistrate through the impugned order dated 13th August, 2020. Aggrieved by the said order, Petitioners preferred an appeal to the Divisional Commissioner which was dismissed after hearing the parties through impugned order dated 2nd March, 2022.

5.6. The Petitioners argued that the impugned order of the Divisional Commissioner is arbitrary and is contrary to the principles of natural justice. They contended that the order disregards the Supreme Court's ruling in *S. Vanitha v. Deputy Commissioner, Bengaluru*⁶ which emphasizes the need to balance the provisions of the DV Act with the Senior Citizens Act. Petitioner No. 1 has a right of residence under Section 17 of the DV Act which has completely been ignored by the authorities.

5.7. Petitioner No. 4 also asserted his right over the subject property by stating that he had borne all expenses in the construction of the property and thus, being a legal heir, has rights therein.

5.8. The Petitioners also highlighted their precarious financial situation, asserting that they lack a stable income and are unable to afford alternative housing. They allege that Respondent No. 1, in contrast, owns a three-story house and a shop in the market, from which she earns a monthly rental income.

⁶ (2021) 15 SCC 730



RESPONDENTS' CONTENTIONS

6. Counsel for Respondent No. 1 while asserting Respondent No. 1's title over the subject property, urged as follows:

6.1. The proceedings initiated by Petitioner No. 1 under the DV Act are merely a counterblast to the proceedings for eviction initiated by Respondent No. 1 on 16th April, 2019. These actions, Respondent No. 1 contended, demonstrate an attempt to undermine her legitimate rights as a senior citizen to peaceful possession of her property.

6.2. The Petitioners have never contributed towards the maintenance or upkeep of the subject property. Their claim of rights over the property is baseless and appears to stem from a desire to continue occupying the premises without any lawful entitlement.

6.3. The impugned order of the Divisional Commissioner categorically notes that the Petitioners failed to effectively counter the allegations of ill-treatment made by Respondent No. 1. Indeed, the Petitioners have consistently failed in their duties towards her welfare, subjecting her to various forms of harassment. This includes cutting off her access to essential areas such as the terrace, even for basic maintenance activities like water tank repairs and obstructing light and air to the floor she occupies. These actions have led to formal complaints to the SHO, Police Station Jafrabad.

6.4. Respondent No. 1 categorically denies any undue influence exerted by Respondent No. 2 in the eviction proceedings. She further contended that her daughter, Ms. Shabana, had no role in the eviction process and should not have been impleaded as a party in the present petition.

6.5. In light of the hostile and oppressive environment she is being subjected to, Respondent No. 1 asserted her fundamental right to live in



peace and dignity, particularly in the twilight years of her life. Her primary objective is to restore her security and tranquillity in her own home, free from harassment and undue disturbance.

COURT ORDERS

7. On 28th March, 2022, as an interim measure, the Court stayed the impugned orders. The Petitioners undertook not to ill-treat or interfere with Respondent No. 1's stay in the subject property, thus ensuring her peace and security in the subject property.

8. By order dated 12th December 2022, interim relief was extended to Respondent No. 2, safeguarding her right to reside on the first floor of the property alongside her mother, Respondent No. 1. In addition, the Court directed the concerned SHO to submit a status report detailing the actual position regarding the disputes between the Petitioners and Respondents, as well as the specific complaints raised.

9. On 6th March, 2023, it was recorded that Petitioners occupied the subject property which is admittedly owned by Respondent No. 1. In view thereof, the Petitioners were directed to pay a sum of INR 3,000/- per month as occupational charges with effect from March, 2023. Additionally, they were directed to clear all the electricity dues, if any, subject to which the electricity may be restored by the Electricity Department to the second floor. The Petitioners were permitted to file an application if the electricity connection was not restored.

10. In pursuance of the aforesaid directions, the Petitioners filed CM APPL. 24858/2023 seeking directions for installing electricity connection to the second floor of the subject property. The Petitioners also sought the bank



account details of Respondent No.1 to comply with the order dated 6th March, 2021. It was noted that the Respondent No. 1 did not wish to share her bank account details and payment was directed to be made by way of cash or cheque. Further, directions were issued to BSES to install a new electricity meter for the second floor without requiring a no-objection certificate from Respondents No. 1 and 2. The status report filed by the SHO confirmed that Petitioner No. 1 resides on the second floor of the property.

11. On 11th September, 2024, this Court made a *prima facie* observation that it is the primary duty of the husband to provide shelter to his wife. The Court further noted that the Domestic Violence Act cannot be used as a tool to compel a mother-in-law, especially one with claims under the Senior Citizens Act, to provide housing for her son and daughter-in-law.

12. On 13th November, 2024, the Court provided the parties an opportunity to explore an amicable resolution. However, as informed on the last date of hearing, no settlement was reached. Consequently, the parties were directed to present their arguments on the merits of the case.

ANALYSIS AND FINDINGS

13. Firstly, the Court shall deal with Petitioners' application [CM APPL. 43616/2024], for amendment of the writ petition by incorporating grounds to challenge the constitutional validity of Rules 22(3) and 22(4) of the Delhi Senior Citizens Rules on which the arguments were argued alongside the main writ petition.

14. The Petitioners primarily contended that the afore-noted provisions infringe upon a woman's right to reside in a shared household as guaranteed under Section 17 of the DV Act. While acknowledging that the Division Bench of this Court in *Aarshya Gulati & Ors v. Government of NCT of*



*Delhi*⁷ has upheld the vires of Rules 22(3) and (4) of the Delhi Senior Citizens Rules, the Petitioners highlight that the Supreme Court, in SLP (C) 18687/2019 against the said judgment, left the question of law open. They further argued that the Division Bench in *Aarshya Gulati* failed to address the need to balance the rights of senior citizens under the Senior Citizens Act with those of women under the DV Act. This omission, they assert, gains particular significance in light of the subsequent Supreme Court decision in *S. Vanitha*, which emphasizes the necessity of reconciling these competing rights.

15. The Court finds the Petitioners' arguments unpersuasive and considers the application misconceived. While indeed the Supreme Court in *Aarshya Gulati* left the question of law open, this fact alone does not render the present challenge tenable. The mere absence of a definitive ruling from the Supreme Court on the vires of Rules 22(3) and 22(4) does not negate the binding nature of the Division Bench's decision, which upheld the validity of these provisions. Until the Supreme Court decides otherwise, this Court remains bound by the Division Bench's ruling, which continues to hold the field.⁸ Moreover, the Petitioners have failed to advance any new or substantive legal argument that would justify reconsideration of the Division Bench's findings. Their contention that *Aarshya Gulati* did not address the balancing of competing rights under the DV Act and the Senior Citizens Act lacks force, as this very issue was comprehensively analysed by the Supreme Court in *S. Vanitha*. The principles laid down in *S. Vanitha* do not conflict with the ruling in *Aarshya Gulati*; on the contrary, *S. Vanitha*

⁷ 2019:DHC:2957-DB

⁸ See also: *Brijlal Kumar v. Union of India*, 2020 SCC OnLine Del 1477



reaffirms the need to reconcile rights under the DV Act and the Senior Citizens Act, a principle that does not undermine the constitutional validity of Rules 22(3) and 22(4). Hence, the Petitioners' attempt to extrapolate a broader implication from *S. Vanitha* is misplaced.

16. That apart, it is crucial to highlight that in the present case, no allegations of domestic violence or mistreatment have been levelled by Ms. Tabassum against her husband, Mr. Aslam Parvez or her mother-in-law, Ms. Amna Begum. This factual context distinguishes the present matter from the case of *S. Vanitha*, where competing rights under the DV Act and the Senior Citizens Act required careful consideration to strike a balance. In *S. Vanitha*, the claims arose from allegations of domestic violence within the shared household, necessitating judicial intervention to reconcile these conflicting rights. Here, however, Ms. Tabassum's grievances are directed solely against her sister-in-law, Ms. Shabana, without implicating her husband or her mother-in-law, in any alleged acts of domestic violence. The right of residence under the DV Act is enforceable primarily against the spouse, as it arises from the concept of a shared household. In the absence of allegations against Petitioner No. 4, the protective provisions of the DV Act cannot be invoked to secure residence rights *vis-à-vis* other family members, such as Respondent No. 1 or Ms. Shabana. Therefore, Ms. Tabassum's claim lacks the substantive basis required for adjudicating competing interests, as contemplated in *S. Vanitha*.

17. Thus, it is apparent that the application represents an attempt to re-open settled issues without presenting any novel or compelling arguments. Such procedural tactics undermine the efficiency and the expeditious relief envisioned under the Senior Citizens Act. The Petitioners are only



attempting to frustrate the expeditious relief envisaged under the Senior Citizens Act, particularly when a senior citizen is deprived of peaceful possession of her property during her advanced years. Consequently, the application challenging the constitutional validity of Rules 22(3) and 22(4) lacks merit and is dismissed as an attempt to prolong litigation.

18. The Court shall now proceed to examine the facts and contentions raised impugning the orders passed by the District Magistrate and the Divisional Commissioner.

19. A senior citizen's right to seek eviction of their children stems from Rule 22(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016. This provision, read with the Senior Citizens Act, requires the senior citizens to demonstrate a valid right, title or interest in the property from which eviction is sought. In the present case, the subject property was purchased by Late Mr. Abdul Sattar, the deceased husband of Ms. Amna Begum. The Sale Deed and General Power of Attorney in her name provide substantial proof of her ownership, sufficient to assert her rights under the Senior Citizens Act.

20. Petitioner No. 4, Mr. Aslam Parvez, asserted a right over the subject property, claiming contributions to its construction and maintenance. However, this assertion lacks evidentiary support and remains unsubstantiated. Despite his claim, no suit for declaration of ownership has been filed by Petitioner No. 4, nor has he presented any credible documentation to counter Ms. Amna Begum's ownership. The District Magistrate, after thoroughly examining the evidence, rejected his assertions and affirmed Respondent No. 1's ownership. The absence of any legal challenge to these findings reinforces the conclusion that Petitioner No. 4's



claim is devoid of merit.

21. It is also significant to note that the domestic violence proceedings initiated by Ms. Tabassum resulted in a protection order against Ms. Shabana. However, in the said proceedings, Ms. Amna Begum was not a party. Furthermore, in a civil suit [C.S. No. 569/2021] filed by Ms. Tabassum challenging the disconnection of electricity, no *prima facie* case was established and the suit was ultimately dismissed as withdrawn. These facts indicate that the disputes are primarily conflicts among family members, particularly between Ms. Tabassum and Ms. Shabana, rather than substantive claims affecting the ownership over the subject property.

22. The necessity of safeguarding a senior citizen's right to live with dignity and security in their own property needs no emphasis. The allegations of ill-treatment, financial exploitation and mental harassment made by Respondent No. 1 were proved before the District Magistrate. The complaints and evidence presented on record demonstrate a sustained pattern of hostility, creating a deeply distressing and insecure environment for the senior citizen. The evident breakdown of familial relationships makes it imperative for Respondent No. 1 to seek eviction as a necessary step to restore her peace and dignity in her own home. Undoubtedly, the DV Act offers protections to women, however, these must be weighed against the rights of senior citizens under the Senior Citizens Act. In this case, the absence of any allegations of domestic violence against Respondent No. 1, along with her established ownership of the property, shifts the balance decisively in favour of enforcing her rights. There is no material on record to justify interference by this Court. Permitting the Petitioners to remain in occupation of the property against the wishes of its lawful owner would



create an untenable situation, defeating the very purpose of the Senior Citizens Act.

23. In light of the above, the petition is dismissed and the Respondents shall be at liberty to enforce the order passed by the District Magistrate, in accordance with law.

24. Disposed of along with pending applications.

SANJEEV NARULA, J

JANUARY 07, 2025

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