

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-8308-2019

Date of Decision : April 21, 2026

SUSHIL KUMAR AND OTHERS

-PETITIONERS

V/S

**DISTRICT MAGISTRATE-CUM-DEPUTY
SIRSA AND ANOTHER**

COMMISSIONER,

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Paramjit Singh Jammu, Advocate, with
Mr. Akashdeep Singh, Advocate
for the petitioners.

Mr. Bhupender Singh, Addl. A.G., Haryana.

Mr. Rajinder Goel, Advocate, with
Mr. Manoj Sharma, Advocate, and
Mr. Novjyot Singh, Advocate
for the respondent No.2.

KULDEEP TIWARI, J. (ORAL)

1. The present writ petition assails the order dated 01.01.2019, whereby, upon an application preferred by the respondent No.2 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “the Act of 2007”), the respondent No.1- District Magistrate, Sirsa, has directed the partition of the property in question between the petitioners and respondent No.2.

2. At the outset, learned counsel for the petitioners draws the attention of this Court to the notification dated 17.11.2016 issued by the Social Justice and Empowerment Department, Government of Haryana, prescribing the composition of the Maintenance Tribunal and Appellate Tribunal, to submit that the impugned order suffers from illegality having

been passed *coram non judice*. It is submitted that under the notification (*supra*), both the Maintenance Tribunal and the Appellate Tribunal are required to comprise three members, with the Sub-Divisional Magistrate and the Deputy Commissioner acting as their respective Chairmen. In the present case, however, the impugned order has been passed solely by the District Magistrate, thereby lacking the mandated coram. In support of this contention, reliance is placed on the ***judgment dated 26.10.2016*** rendered by a Coordinate Bench of this Court in ***CWP No.18784 of 2015***, the relevant paragraph whereof is extracted hereunder:

“I have heard learned counsel for the parties and perused the record with able assistance and am of the considered opinion that the impugned order passed by the Appellate Authority is patently without jurisdiction because as per the Scheme of the Act, the Tribunal and the Appellate Tribunal are constituted by the State Government by way of notification and the appeal has to be decided by the duly constituted Tribunal. In the present case, notification dated 10.12.2012 has been relied upon to which there is no contrary notification produced before this Court. In this notification, the Tribunal has been specifically constituted for Kurukshetra in which there are three Members. District Magistrate may be the Chairman of the Tribunal but once there is a Tribunal of three Members, the District Magistrate has no jurisdiction to take decision alone and the decision has to be taken unanimously or by way of majority. Therefore, on this ground alone, the impugned order deserves to be set aside and thus the present writ petition is hereby allowed and impugned order is set aside and the matter is remanded back to the Tribunal constituted as per notification dated 10.12.2012 to decide the matter afresh after affording due opportunity of hearing to both the parties and by passing a reasoned order.”

3. Learned State counsel, as well as learned counsel for the respondent No.2, do not dispute that the impugned order is vitiated, having been passed *coram non judice*.

4. Having considered the submissions of learned counsel for the parties and perused the record, this Court finds that the impugned order does not pass the test of legality, as it has been passed by an authority lacking jurisdiction and lawful coram, and is, therefore, a nullity in the eyes of law and cannot be sustained. Accordingly, the **impugned order is hereby set aside**, having been passed in the absence of the coram mandated by the notification (*supra*), and the **matter is remanded for fresh adjudication**.

5. At this stage, learned counsel for the petitioners submits that the impugned order has been passed by the respondent No.1 in pursuance of the “Action Plan for the Protection of Life and Property of Senior Citizens,” notified under Section 22(2) of the Act of 2007 read with Rule 24 of the Haryana Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as “the Rules of 2009”), vide notification dated 26.05.2015. Subsequent to the passing of the impugned order, a Co-ordinate Bench of this Court, vide **order dated 23.01.2020**, passed in **CWP-4744-2018**, titled “**Simrat Randhawa v. State of Punjab and Others**”, has struck down Clauses 1 to 3 of the said Action Plan, namely: (1) Procedure for eviction from property/residence building belonging to/occupied by senior citizens/parents; (2) Eviction order from property/residential building of senior citizens/parents; and (3) Enforcement of orders. Although the State of Haryana has preferred an LPA against the order dated 23.01.2020, no stay has been granted by the LPA Bench. Consequently, now the application filed by the respondent No.2 warrants adjudication by the Maintenance Tribunal, duly notified under the apposite Act and the Rules.

6. Learned State counsel fairly submits that following the

judgment dated 23.01.2020 and in the absence of any stay granted in the pending LPA, the Director General, Social Justice, Empowerment, Welfare of SC & BC and Antyodaya (SEWA) Department, Haryana, issued a communication dated 19.01.2023 directing all District Magistrates in Haryana not to act in accordance with Clauses 1 to 3 of the Action Plan (*supra*). It is, therefore, submitted that the application filed by the respondent No.2 is now required to be adjudicated by the three member Maintenance Tribunal presided over by the Sub-Divisional Magistrate.

7. Consequently, the **matter is remanded to the three member Maintenance Tribunal concerned for fresh adjudication**. The respondent No.1 is directed to, on receipt of a certified copy of this order, forthwith transmit the original application to the Maintenance Tribunal. The parties are directed to cause appearance before the Maintenance Tribunal on 04.05.2026 at 11:00 a.m., whereafter the latter shall endeavour to decide the matter expeditiously, in strict compliance with the Act of 2007 and the applicable Rules, and only after affording due opportunity of hearing and permitting the parties to adduce evidence, if any. The Maintenance Tribunal shall decide the application afresh on its own merits, uninfluenced by any observations contained in the impugned order.

8. **Disposed of accordingly.**

April 21, 2026
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No