



2024 : DHC : 3675



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

Date of decision: 06<sup>th</sup> MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 1700/2024 & CM APPL. 7002/2024**

SUDESH CHHIKARA

..... Petitioner

Through: Mr. Jaipal Singh, Advocate.

versus

DISTRICT MAGISTRATE WEST DELHI AND ANR.

..... Respondents

Through: Mr. Prashant Manchanda, ASC with  
Ms. Nancy Shah, Ms. Arani  
Mukherjee and Ms. Haridas Medha  
Dilip, Advocates for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner has approached this Court challenging the Order dated 13.12.2023 passed by the Appellate Court of Divisional Commissioner in Appeal No.480/2021 whereby the Appellate Authority has allowed the appeal filed by the Petitioner and remanded back the matter to the District Magistrate for re-consideration of the case after obtaining fresh and independent report from SDM and after affording proper opportunity of hearing to both the parties.

2. Even though the Petitioner has been successful in getting the Order dated 28.03.2022 passed by the District Magistrate set aside, the Petitioner has approached this Court on the ground that the proceedings were itself not



maintainable before the authorities established under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as "Senior Citizens Act"*)

3. The facts, in brief, leading to the filing of the instant writ petition are that the Petitioner herein is the daughter-in-law of Respondent No.2. It is the case of the Petitioner that the Property bearing No.128, Ganesh Nagar, Tilak Nagar, New Delhi (*hereinafter referred to as "Subject Property"*) was constructed with the funds of the late husband of the Petitioner. It is stated that husband of the Petitioner passed away on 19.10.2010. It is stated that pursuant to the death of the husband of the Petitioner, the Respondent No.2 being father-in-law and the mother-in-law and their daughters have always tried to dispossess the Petitioner and her son from the subject property. Material on record discloses that FIRs have been filed by both the parties against each other. Material on record also discloses that Respondent No.2 has filed a Civil Suit being CS No.136/2016 for eviction of the Petitioner from the subject property. It is stated in the list of dates that the Petitioner and her son have also filed a Civil Suit being CS No.455/2017 for declaration of title and injunction in respect of the subject property. The Respondent No.2 approached the authorities under the Senior Citizens Act read with Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, as amended from time to time, for eviction of the Petitioner on the ground that the Petitioner is harassing the Senior Citizens.

4. Material on record discloses that multiple reports were called for from the SDM of which two of the reports dated 17.08.2021 and 24.02.2022 have



been annexed with the present writ petition. In the report dated 17.08.2021, the SDM has only stated that the subject property being its old address i.e., WZ-1/12, Ganesh Nagar is in the name of Respondent No.2. In the second report dated 24.02.2022, it is stated that the SDM had called both the parties and on the allegations and counter allegations against each other various police complaints have been filed by the parties against each other. The report also states that Respondent No.2 is going through mental tension due to the ongoing dispute with the Petitioner.

5. An Eviction Order was passed against the Petitioner on 28.03.2022 by the District Magistrate holding that the subject property belongs to Respondent No.2 and that the Petitioner herein has ill-treated the Respondent No.2 and thereby, the Respondent No.2 is entitled to the eviction of the Petitioner from the subject property. The said Eviction Order dated 28.03.2022 was challenged by the Petitioner before the Divisional Commissioner which is the Appellate Authority. The Appellate Authority by the Impugned Order dated 13.12.2023 held that the SDM report should be based on independent inquiry with respect to the facts of the case and it cannot be based only on the submission of the Parties. Stating that the SDM has not done a thorough inquiry in making the report and that the District Magistrate could not have allowed the eviction of the Petitioner on the basis of SDM report without taking proper evidence, the Appellate Authority remanded the matter back to the District Magistrate for a fresh consideration.

6. It is this Order dated 13.12.2023 which is under challenge in the instant writ petition.



7. It is the contention of the learned Counsel appearing for the Petitioner that the present matter ought not to have been entertained by the authorities under the Senior Citizens Act for the reason that there is a dispute between the parties regarding the title of the subject property. He states that until the title of the subject property is decided, the issue as to whether the Petitioner can be evicted or not under the Senior Citizens Act read with Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, as amended from time to time, could not have been entertained at all by the authorities.

8. The submission made by the learned Counsel for the Petitioner is unfounded. The purpose of Senior Citizens Act is to provide effective provisions for the maintenance and welfare of parents and Senior Citizens guaranteed and recognised under the Constitution of India. The purpose of the Act is to ensure that the Senior Citizens live peacefully in their eve of life without being harassed by the children who have the moral and the legal obligations to maintain their parents. Undoubtedly, the authorities under the Senior Citizens Act are not the Civil Courts to decide the question of title of a property. In the present case, the subject property stands in the name of Respondent No.2. There is a suit which has been filed by Respondent No.2 against the Petitioner claiming eviction of the Petitioner and the Petitioner has also filed a suit against Respondent No.2 for declaration of title of the subject property. However, the details of the suits are not mentioned in the writ petition. The question of title of the subject property would, therefore, be decided by the Court of competent jurisdiction.

9. Section 6 of the Senior Citizens Act lays down the jurisdiction and



procedure for deciding the dispute. Section 6 of the Senior Citizens Act reads as under:

**“6. Jurisdiction and procedure.—**(1) *The proceedings under section 5 may be taken against any children or relative in any district—*

*(a) where he resides or last resided; or*

*(b) where children or relative resides.*

*(2) On receipt of the application under section 5, the Tribunal shall issues a process for procuring the presence of children or relative against whom the application is filed.*

*(3) For securing the attendance of children or relative the Tribunal shall have the power of a Judicial Magistrate of first class as provided under the Code of Criminal Procedure, 1973 (2 of 1974).*

*(4) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases:*

*Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case ex parte.*

*(5) Where the children or relative is residing out of India, the summons shall be served by the Tribunal through such authority, as the Central Government*



*may by notification in the official Gazette, specify in this behalf.*

*(6) The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.*

*Explanation.—For the purposes of this sub-section “Conciliation Officer” means any person or representative of an organisation referred to in Explanation to sub-section (1) of section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of section 18 or any other person nominated by the Tribunal for this purpose.”*

10. A perusal of Section 6 shows that for deciding a dispute, it is a duty of the authorities to take evidence to ascertain as to whether the Senior Citizen has been subjected to harassment or not. It is apparent from the face of record that the SDM has not followed the procedure prescribed under Section 6 of the Senior Citizens Act. As rightly observed by the Appellate Authority that the report of SDM is a shabby one. The SDM has to make an independent inquiry from friends, neighbours etc. to ascertain the correct position of the matter which is a very relevant material for the authorities under the Senior Citizens Act to come to a conclusion as to whether the welfare of the Respondent No.2/Senior Citizen is under jeopardy or not or as to whether the Senior Citizens Act is being abused by the Respondent No2/Senior Citizen for evicting the Petitioner/daughter-in-law from the



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subject property. The authorities would also have to take into account the various decisions of the Apex Court to come to a conclusion that mere a matrimonial dispute is not being converted into a proceeding for eviction under the Senior Citizens Act. It cannot be said that the authorities under the Senior Citizens Act did not have the jurisdiction to entertain the present dispute and they had to await the decision of the Civil Courts.

11. In view of the above, this Court is of the opinion that the Impugned Order dated 13.12.2023 does not call for any interference by this Court under Article 226 of the Constitution of India.

12. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**MAY 06, 2024**

*S. Zakir*