

Delhi High Court

Ashish Randev & Anr. vs The State (Govt. Of Nct Of Delhi) ... on 21 July, 2023

Neutral Citation Number is 2023:DHC:5102

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 2

IN THE MATTER OF:

+ W.P.(C) 7554/2022 & CM APPL. 23192/2022

ASHISH RANDEV & ANR

Through: Mr. Arun Francis and Ms
Francis, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) AND ORS.

..... Resp

Through: Mr. Sameer Vashisht, ASC for R-1
R-4/GNCTD.

Mr. Rajiv Khosla and Mr. Sunil
Singh, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioners challenging the Order dated 05.05.2022 passed by the Divisional Commissioner, GNCTD (Appellate Authority) in Appeal No.435/2022 affirming the Order of eviction dated 21.12.2021 passed by the District Magistrate, District South-West in Case No.1/40/2021 in the case of "Jagdish Prasad Randev vs. Ashish Randev and Anr." under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as „Senior Citizens Act, 2007') read with the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended from time to time.

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2. The Respondent No.5 herein filed an application under the Senior Citizen Act, 2007 before the District Magistrate, District South-West seeking eviction of the Petitioners herein from the property bearing C-2/53, Janakpuri, New Delhi - 110058.

3. Shorn of unnecessary details, the facts in brief leading to the filing of the instant writ petition are as under:

a) Petitioner No.1 is the son and Petitioner No.2 is the daughter-in-law of Respondent No.5. Respondent No.5, at present is more than 90 years of age and was

88 years old when the complaint was filed. Respondent No.5 is staying with his wife, who was 84 years old at the time when the complaint was filed, on the ground floor of the premises in question i.e., C-2 Block GF of House No. 53, Janakpuri, New Delhi - 110058 (hereinafter referred to as "property in question"). The said property was purchased by Respondent No.5 in his own name.

b) It is stated in the petition that the property in question consists of two floors, namely, ground floor and first floor. It is stated that a portion of the ground floor consisting of two rooms was being used by the Petitioners herein and the daughter of Respondent No.5. It is stated that on the ground floor, a school was being run by the daughter and wife of Respondent No.5. It is stated that the Petitioners herein, who are the son and the daughter-in-law of the Respondent No.5, used to fight constantly with the couple i.e., Respondent No.5 and his wife, demanding ownership of the ground floor of the property in question.

c) Material on record indicates that Respondent No.5 filed a police complaint dated 22.02.2021 against his son and the daughter-in-law in Signature Not Verified By:RAHUL SINGH Signing Date:24.07.2023 15:09:18 Neutral Citation Number is 2023:DHC:5102 Police Station, Janakpuri alleging that he is being harassed by them. The complaint dated 22.02.2021 is on record.

d) The Respondent No.5, thereafter, filed a petition before the Sub- Divisional Magistrate (Dwarka) seeking appropriate action against his son and the daughter-in-law. The petition states that the Respondent No.5 is very old and weak and his wife is also bed ridden. It is stated in the petition that the school was closed due to the COVID-19 pandemic and the Respondent No.5 and his wife due to their old age wanted to reside on the ground floor which was not to the liking of the son and the daughter-in-law of the Respondent No.5.

e) The Tribunal for Maintenance and Welfare of Parents and Senior Citizens, District-South West vide Order dated 21.12.2021 directed that the Petitioners herein should be evicted from the property in question. The Petitioners, thereafter, challenged the said Order dated 21.12.2021 passed by the Tribunal before the Appellate Authority of Divisional Commissioner, GNCTD. The Appellate Authority vide Order dated 05.05.2022 affirmed the Order dated 21.12.2021 passed by the Tribunal.

f) It is this Order dated 05.05.2022 passed by the Appellate Authority which is under challenge in the instant writ petition.

4. Notice was issued in the petition on 17.05.2023. Counter affidavit has been filed on behalf of Respondent No.5.

5. The undisputed facts of the case are that the Respondent No.5 is more than 90 years of age. The property in question is a self acquired property of Respondent No.5. Material on record indicates that Respondent No.5 filed a complaint against the Petitioners herein stating that he apprehends threat to Signature Not Verified By:RAHUL SINGH Signing Date:24.07.2023 15:09:18 Neutral Citation Number is 2023:DHC:5102 his life and property and also made complaints regarding

harassment which the Respondent No.5 and his wife were facing at the hands of the Petitioners herein. Material on record also indicates that Respondent No.5, who is more than 90 years old, is also partially blind and deaf and had appeared before the Tribunal and the Appellate Authority and submitted that he does not wish to reside with his son and the daughter-in-law. The Order impugned in the instant writ petition indicates that Respondent No.5 had clearly indicated that he would like to live with his daughter who is taking care of the old couple. The impugned Order also indicates that Petitioner No.2 herein is a teacher in a school and is in the possession of keys of her parental house which is a double storey building built up on 420 Square Yards land which is close to the house of Respondent No.5. Material on record also indicates that the son of the Petitioners is working as a Chartered Accountant in KPMG, London and the daughter of the Petitioners is married and is staying in Nigeria.

6. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was brought into force to provide a more effective provision for maintenance and welfare of parents and senior citizens, a right which is guaranteed and recognized under the Constitution of India. The Statement of Objects and Reasons of the Act indicates that there is a provision under the Code of Criminal Procedure under which parents can claim maintenance from the children but the procedure is time consuming and expensive and, therefore, it is stated that simple, speedy and inexpensive mechanism be provided whereunder maintenance can be claimed by the suffering parents from the children.

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7. The State of NCT of Delhi has brought out the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016. Rule 22 (2) & (3) of the Rules, 2016 gives powers to the District Magistrate to pass an Order of eviction in case it is found that the senior citizens are being ill- treated and are not being maintained by their children.

8. A Division bench of this Court in a Judgment dated 30.05.2019 passed in W.P.(C) 347/2018 in the case of "Aarshya Gulati and Ors vs. Government of NCT of Delhi and Ors" has stated that the objective of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is to provide inexpensive and speedy procedure for the protection of life and property of the senior citizens from the children / legal heirs, who are expected to maintain parents / senior citizens by providing the basic amenities and physical needs but refuse or fail to maintain / provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a ground for parents / senior citizens to seek eviction of children / legal heir from the property, which is the only way for them to seek protection of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their children / legal heirs. It was further observed that a senior citizen cannot be expected to knock the door of Civil Courts to file a legal battle to obtain possession of the property.

9. A Division bench of this Court in a Judgment dated 22.02.2018 passed in LPA 783/2017 in the case of "Shadab Khairi & Anr vs. The State & Ors" has observed as under:

"20.At the outset, we had elaborated on how beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare State. The object for which the Act as well as the subject Rules, extracted hereinabove, were brought into force, namely, for the welfare of parents and senior citizens and for protection of their life and property, leave no manner of doubt that the Maintenance Tribunal constituted under the Act has the power and jurisdiction to render the order of eviction."

10. The High Court of Madras in L. Lokesh vs. Chariman cum Managing Directors, Tamil Nadu Generation and Distribution Corporation Ltd and Ors, 2019 SCC OnLine 2713 has observed as under:

"7. (6) (vii) ...it is the bounden duty of children to take care of them and their children should not be allowed to leave their parents in lurch, thereby letting them scot-free and the old aged people at the fag end of their life are rushing to Courts to get money from their children."

11. The Appellate Authority, after taking into account the fact that the Respondent No.5 is more than 90 years of age and his wife is 86 years of age and also considering the various police complaints, entertained the petition and has arrived at a conclusion that the Respondent No.5 is entitled to the benefit under the Senior Citizens Act, 2007 and the District Magistrate was well within its rights under the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 to pass an Order of Eviction protecting the old parents from harassment at the hands of the son and the daughter-in-law who according to the Applicant/Respondent No.5 are only interested in forcing him to vacate the ground floor of the property in question.

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12. It is contended by the Petitioner that the Order dated 21.12.2021, passed by the District Magistrate, District South-West in Case No.1/40/2021 is an unreasoned Order. The said Order dated 05.05.2022, passed by the Appellate Authority shows that Respondent No.5 had appeared before the Tribunal. After taking into account the fact that the Respondent No.5 is more than 90 years of age and the complaints which have been filed by him with the Police Authorities, the Appellate Authority came to the conclusion that Respondent No.5 was facing harassment at the hands of his son and the daughter-in-law. It is not in dispute that Respondent No.5 is the owner of the property in question. There is no doubt on the title of the property in question.

13. The Report of the Grievance Cell in the present case reveals that an enquiry into the matter was conducted which revealed that the matter primarily pertains to a property dispute between the father and son. The said report is irrelevant for the present case because there cannot be a dispute in respect of the property in question, which stands in the name of Respondent No.5 himself. Therefore, the reason given by the Grievance Cell that it is a property dispute is unsustainable under

law.

14. In view of the above, no fault can be found with the Tribunal and the Appellate Authority in entertaining the petition and passing the Order of eviction under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read with the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, as amended from time to time.

15. In view of the above, this Court does not find any reason to interfere with the Order dated 05.05.2022 passed by the Divisional Commissioner, GNCTD (Appellate Authority).

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16. The writ petition is dismissed, along with pending application(s), if any.

17. However, it is always open for the Petitioners to file a suit before the appropriate Civil Court in case the Petitioners are able to establish any kind of right/title/interest over the property in question.

SUBRAMONIUM PRASAD, J JULY 21, 2023 S. Zakir/Urvi Signature Not Verified By:RAHUL SINGH Signing Date:24.07.2023 15:09:18