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

+ W.P.(C) 9757/2022, CM APPL. 28925/2022 (Stay)

MR. NEERAJ BHASIN Petitioner

Through: Mr. Anil Airi, Sr. Adv. with Mr. Saurabh, Mr. Mudit, Mr. Antony Juliar and Mr. Farhat, Advs.

versus

DIVISIONAL COMMISSIONER, DELHI & ORS..... Respondents

Through: Ms. Sanjana Nangia, Ms. Shreya Gupta and Mr. Sameer Vashisht, ASC (C), GNCTD for R-1 and 4.
Mr. Ashim Vachher, Mr. P. Piyush, Mr. Vaibhav Dabas and Mr. Kunal Laksa, Advs. for R-2.
Mr. Viraj R. Datar, Sr. Adv. with Ms. Meenal Duggal, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

08.07.2022

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1. This writ petition has been preferred assailing the validity of an order passed by the Divisional Commissioner acting as the Appellate Authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [**“the Act”**] rejecting an application for stay made in a pending appeal instituted by the petitioner.

2. The Appellate Authority has while passing the impugned order taken note of the submission that as per a will executed in favor of the senior citizen, the suit property stands in her name. The order further refers to a

family settlement in respect of which the Appellate Authority has observed that the respondent has refused to accept that settlement and that issues pertaining to the same are pending trial before the competent Civil Court. It has further taken note of the fact that the petitioner appellant has his own property and as such no irreparable harm will be caused to him if he is asked to shift from the property in question.

3. Assailing the order impugned, Mr. Airi, learned Senior Counsel appearing in support of the petition, submitted that once the appeal had been entertained, it was imperative for the Divisional Commissioner to provide interim protection to the petitioner and place the order of eviction in abeyance since a refusal to do so would render the filing of the appeal itself otiose. It was contended that the petitioner had proceeded further in terms of the family settlement which had been duly signed by the second respondent and thus handed over the possession of a property standing in his name in Sukhdev Vihar to his estranged wife. It was contended that the right of residence as claimed by the petitioner not only flowed from that settlement, but it was also clearly protected in terms of that arrangement. It was pointed out that the aforesaid exchange of properties as a consequence of which the estranged wife moved out from the property in dispute and took up residence at Sukhdev Vihar was consequential to the family settlement which had been entered into and which in turn formed the basis for a settlement arrived at before the Mediation Centre between the petitioner and the third respondent. Mr. Airi submitted that the family settlement had never been disputed by the respondent Nos. 2 and consequently, the Divisional Commissioner clearly erred in refusing to accord interim protection. Learned Senior Counsel also submitted that the second respondent had

sought to set up a case based on a will which was yet to be probated and, in any case, the said disposition forms subject matter of separate civil proceedings. In view of the above, it was contended that the impugned order is liable to be set aside.

4. Controverting the aforesaid submissions, Mr. Vachher, learned counsel representing the second respondent submitted that the 2007 Act is principally concerned with protecting the interests of the senior citizen. It was submitted that rights that may be claimed by competing parties in respect of property cannot be the determinative factor for the purposes of considering complaints under the 2007 Act. Mr. Vachher contended that the senior citizen in the present case had to firstly face the outcome of a bitter marital dispute between the petitioner and respondent No.3. It was pointed out that the petitioner here had left the property itself and was residing in Goa where he owns residential property and is also gainfully employed. Mr. Vachher submitted that the complaints which had been lodged and which stand placed at pages 263 and 265 of the additional documents filed would evidence the serious allegations of ill-treatment which were leveled by the senior citizens against the petitioner here. Mr. Vachher also drew the attention of the Court to the public declaration made by the second respondent and her husband while he was alive disowning the petitioner. That declaration appears at page 268 of the additional documents filed. According to learned counsel, the aforesaid facts when weighed together would clearly evidence that the relationship between the senior citizens and the petitioner had been acrimonious and that there had been a complete breakdown of the familial bond. In view of the aforesaid, it was contended that the right of the senior citizen to peacefully occupy the premises in her

twilight years cannot be defeated based on the assertions made by the petitioner claiming rights in the property in question.

5. Mr. Vachher submitted that the family settlement on which much stress has been laid is outrightly denied and that the second respondent refutes having ever executed or appended her signature to any such settlement. Mr. Vachher in fact went to the extent of praying that the Court require the petitioner to produce the aforesaid settlement in original so as to ascertain its veracity.

6. More importantly, Mr. Vachher referred to the orders passed in Civil Suit No. 1474/2009 in which the third respondent was arrayed as a defendant. Mr. Vachher submitted that in terms of the order of 28 August 2009, the third respondent had been enjoined from parting with possession of the second floor or from creating any third-party interest in respect of the said property. It was pointed out that pursuant to the insistence of the third respondent in those proceedings, the petitioner was also impleaded as a party defendant in that suit. It was submitted that he, for reasons unknown, chose not to file any written statement or contest the aforesaid suit. The suit was ultimately decreed and the order of 28 August 2009 made absolute. In view of the aforesaid, Mr. Vachher contended that the mutual exchange which was entered into between the petitioner and the third respondent would clearly be in violation of that injunction. It was additionally submitted that the settlement which was drawn pursuant to the intervention of the Mediation Centre was ex parte the second respondent and that she was never placed on notice of the aforesaid settlement.

7. Mr. Vachher, learned counsel has also referred to various decisions rendered by this Court as well as the Punjab and Haryana High Court to

submit that considering the interest and security of the senior citizen, the petitioner should not be permitted to occupy the premises and that the application was rightly rejected.

8. Mr. Datar, learned Senior Counsel appearing for the third respondent, on the other hand, has addressed submissions limited to the extent that while the said respondent has taken up residence at Sukhdev Vihar pursuant to the settlement arrived at, certain monetary benefits which were reserved in terms thereof remain to be paid and the conditions of the settlement have not been complied with fully by the petitioner.

9. From the recordal of submissions as noted above, it is manifest that the parties have raised various questions touching upon their respective civil rights claimed in relation to the property in question. However, those questions, in the considered opinion of this Court, at this stage if not irrelevant must be viewed as subservient and secondary to the principal consideration of proceedings under the Act, namely, the security and maintenance of a senior citizen. It would be apposite to extract the Statement of Object and Reasons of the Act which reads thus: -

“Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also

proposes to make provisions for setting-up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

- (a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;
- (b) providing better medical facilities to senior citizens;
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;
- (d) setting-up of old age homes in every district.

4. The Bill seeks to achieve the above objectives.”

10. The Court also bears in mind the following pertinent observations as were entered in **Arshiya Gulati (Through: Next Friend Mrs. Divya Gulati) & Ors. v. Govt. of NCT of Delhi & Ors.**, [261 (2019) DLT 373]:-

“60. Now the question is whether the State Government could have formulated a summary procedure for eviction. We must bear in mind the objective for which the Parliament has enacted the Act, that is because of withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support which clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection of the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, a need was felt to have simple, inexpensive and speedy mechanism for parents / senior citizens to claim maintenance. The Act also provide for protection of the life and property of the senior citizens / parents. The “protection of property” must be understood to mean where a senior citizen retains the property in his name and possession for his welfare and well being.

61. So, the objective of the Act being, 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. Further, a senior citizen cannot knock the door of civil Court to fight a legal battle to obtain the possession of the property as the jurisdiction of the Civil Court is barred under Section 27 of the Act. In this regard, we may refer to the judgment of the Punjab and Haryana High Court in the case of Justice Shanti Sarup Dewan, Chief Justice (Retd.) and Anr. (supra) wherein in para 37 it is held as under:

“37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an over-riding effect qua any other enactment in view of Section 3 of the said Act. In fact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus LPA No. 1007 of 2013 (O&M) required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No.1. In fact, that is the very objective of respondent No. 7.”

11. As is evident from the above, the principal objective of the Act is to make effective provisions for the maintenance and welfare of parents and senior citizens. These are senior citizens who are left to fend for themselves all alone in the dusk of their lives, have been exposed to years of emotional neglect and receive no financial or emotional support from their children and heirs. Therefore, Courts and authorities administering the provisions of the Act are obliged to confer paramount consideration on these issues. Regard must also be had to the fact that the word “property” under the Act is

defined to mean property of any kind whether moveable or immoveable, ancestral or self-acquired and includes rights or interests in such property. It would therefore clearly follow that a senior citizen may claim a right of exclusive residence even though he or she may be only able to establish a “right” or “interest” in such property even if such right or interest be lower than an exclusive ownership right. Ultimately, the authorities under the Act are obliged to take into consideration the mental and physical well-being and security of the senior citizens and pass appropriate orders of protection bearing in mind the predominant purpose of the Act.

12. In the facts of the present case, it appears that the petitioner had moved out from the disputed property way back in 2006-2007 on account of breakdown of marital relations. He is thereafter stated to have entered the subject property only pursuant to the settlement which was arrived at before the Mediation Centre. The Court bears in mind the serious allegations of abuse which were made by the senior citizen(s) against him and which were referred to by Mr. Vaccher as well as the public declaration of the two senior citizens having disowned their only son. There cannot possibly be more compelling evidence of bitterness, rancour and a complete loss of faith of the parents in their child. The Court is constrained to observe that while learned senior counsel for the petitioner addressed elaborate submissions relating to the rights in property which were claimed, no submissions were made with respect to whether the petitioner had ever provided any emotional or financial support to his aged mother. The facts would in fact reflect that the parents were made to go through tremendous emotional trauma on account of the marital discord between the petitioner and the third respondent. The petitioner is thereafter stated to have taken up residence in

Goa and came to enter the property only pursuant to the terms of the settlement arrived at before the Mediation Center. The Court was not apprised of any support, financial or emotional, which may have been extended by the petitioner to the senior citizen in the intervening years. If that be the position, the desire of the senior citizen to spend her days in quietude free from emotional and mental stress must be respected and protected. Viewed in that backdrop, the Court finds no justification to interfere with the order impugned.

13. Whether the family settlement had come to be validly made and would bind parties are issues which must be left to be canvassed and agitated by respective parties in appropriate civil proceedings. Presently and in view of the outright denial of execution of that instrument by the second respondent, the Court finds no justification to grant any relief to the petitioner based on that settlement.

14. Accordingly, and for all the aforesaid reasons, the writ petition along with pending application fails and shall stand dismissed.

YASHWANT VARMA, J.

JULY 8, 2022

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