

Court No. - 39

Case :- WRIT - C No. - 19524 of 2023

Petitioner :- Dr Virendra Singh

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Tripathi B.G. Bhai, Pramod Kumar Singh

Counsel for Respondent :- C.S.C., Sanjeev Kumar Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Shri Tripathi B.G. Bhai, learned counsel for the petitioner, Shri Mukul Tripathi, learned Standing Counsel and Shri Sanjeev Kumar Singh, learned counsel for respondent nos. 6 to 9.

2. Present petition has been filed for the following relief:

"(I) Issue a writ, order or direction in the nature of mandamus, commanding the respondent No.2 to 5 to restore the possession of the petitioner over the house No.29/2 situated in Village-Koni, Police Station- Khalilabad, District - Siddharth Nagar after evicting the respondent No.6 to 9 as well as from the agricultural land bearing plot Nos.129 situated in Village-Koni, Police Station- Khalilabad, District - Siddharth Nagar in exercise of power conferred by Rule 21(2)(i) and Rule 22(1) of the U.P. Maintenance and Welfare of Parents and Senior Citizens Rules, 2014, within stipulated period to be specified by this Hon'ble Court.

"(II) Issue a writ, order or direction in the nature of mandamus, commanding the respondent No.1 to 5 to take immediate action in order to protect the life as well as property of the petitioner from contesting respondent No.6 to 9, within stipulated period to be specified by this Hon'ble Court."

3. On 7.7.2023, we had passed the following order:

"1. Grievance is, the petitioner, a senior citizen is being harassed by his one son and others. He then claims, he has been ousted from his house property and also he has been deprived of his agricultural land. At present, the petitioner is about 78 years of age. He further claims grievance of his application moved before the statutory authority having been kept pending for no good reason. In fact, he complains, no action has been taken by the statutory authority.

2. The facts alleged are grave.

3. Learned Standing Counsel prays for and is granted ten days' time to obtain

written instruction as to the correct facts and status of the proceedings on the complaint made by the petitioner. The instructions may also reveal why proceedings have remained pending for so long.

4. Put up as fresh on 21.07.2023.

5. Let copy of this petition and a copy of this order be also communicated to the Secretary, District Legal Services Authority, Sant Kabir Nagar by the Registrar (Compliance). The District Legal Services Authority, Sant Kabir Nagar may also attempt to ascertain the facts and help out the petitioner in seeking logical end of the proceedings instituted by him in accordance with law.

6. It is expected, the District Magistrate, Sant Kabir Nagar shall render all support in that regard."

4. Later, we had granted further time to the learned Standing Counsel as the proceedings were pending. Today, upon the matter being taken up, learned Standing Counsel has placed on record the written instructions received by him from Shri Shailendra Kumar Dubey, Sub-Divisional Magistrate, Khalilabad, Sant Kabir Nagar. A copy of the same has been marked as 'X' and retained on record. The instruction reveals that the Sub-Divisional Magistrate, Khalilabad, Sant Kabir Nagar despite categorical order passed by this Court has proceeded to reject the application made by the petitioner dated 2.3.2023 as not maintainable.

5. Upon hearing learned counsel for the parties, it transpires, the application dated 2.3.2023 was filed by the petitioner before the District Magistrate, Sant Kabir Nagar. A copy of that application annexed as Annexure no.1 to the writ petition clearly indicates that the District Magistrate, Sant Kabir Nagar delegated the Sub-Divisional Magistrate, Khalilabad, Sant Kabir Nagar to deal with that application. That delegation appears to be clearly referable to Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (hereinafter referred to as the Act). Thus, once the District Magistrate had delegated his function to the Sub-Divisional Magistrate, it did not survive for any consideration or

dispute if the Sub-Divisional Magistrate had jurisdiction to deal with the application dated 2.3.2023, filed by the petitioner.

6. Instead of passing any order on the merits of the application made by the petitioner, that too despite specific orders passed by this Court, the Sub-Divisional Magistrate has failed to exercise his jurisdiction and in fact he has refused to exercise his jurisdiction by observing that the application itself is not maintainable. The Sub-Divisional Magistrate has acted unmindful of the delegation made by the District Magistrate on the application made by the petitioner.

7. Section 22(1) of the Act reads as below:

22. Authorities who may be specified for implementing the provisions of this Act.- (1) *The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed."*

8. Thus, in the first place, State Government may confer on the District Magistrate of any individual district, such powers and impose such duties as it may deem necessary. Rule 21 (1) & (2)(i) of the Uttar Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2014 (hereinafter referred to as the Rules) reads as below:

21. Duties and Powers of the District Magistrate.- (1) *The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.*

(2) *It shall be the duty of the District Magistrate to :*

(i) *ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity.*

9. Thus, under Section 22(1) of the Act read with Rule 22(2)(i) of the Rules, it is the duty of the District Magistrate to ensure,

amongst others, the property of senior citizens are protected. Then, by virtue of Section 22(1) of the Act, the District Magistrate has been empowered to delegate his function to any officer subordinate to him.

10. In the present case, upon the petitioner's application dated 2.3.2023, the District Magistrate made a note, amongst others, requiring the Sub-Divisional Magistrate, Khalilabad - "*Susangat Karyavahi Karayein*". Having directed the Sub-Divisional Magistrate, Khalilabad to conduct lawful proceedings on the application made by the petitioner, to secure his property, clearly, the District Magistrate, Sant Kabir Nagar delegated his power that otherwise arose under Rule 21(2)(i) of the Rules.

11. Therefore, once that complete delegation had been made by the proper authority, in accordance with law, it never became open to the Sub-Divisional Magistrate, Khalilabad to observe that the application moved by the petitioner, was not maintainable.

12. In any case, if the Sub-Divisional Magistrate had entertained any permissible doubt as to existence of delegation of such power, he being an officer subordinate to the District Magistrate (which authority was competent to make such delegation), the Sub-Divisional Magistrate ought to have obtained appropriate clarification from the District Magistrate, Sant Kabir Nagar.

13. He may not have proceeded to reject the application as not maintainable. If the Sub-Divisional Magistrate, Khalilabad was somehow convinced that the application was maintainable before the District Magistrate, Sant Kabir Nagar alone, still, he may have only referred the matter back to the District Magistrate, Sant Kabir Nagar with his appropriate note containing his opinion as to jurisdiction being vested in the District Magistrate only and/or

valid delegation being lacking.

14. It may not be forgotten that the Act is a piece of welfare legislation. It seeks to offer speedy, summary remedy to senior citizens to protect their life and property, to the minimum. The proceedings being summary in nature, it was not proper on part of the Sub-Divisional Magistrate, Khalilabad to have rejected the application as not maintainable.

15. The power being vested in the District Magistrate, by an act of the principal legislature and that power being permitted to be delegated to the Sub-Divisional Magistrate, wherever there may arise any doubt as to maintainability of any application filed by any senior citizen under the Act, either before the delegate or the delegatee i.e. the District Magistrate or the Sub-Divisional Magistrate, such an application may never be dismissed as non-maintainable, for reason of delegation made or its lack.

16. In case an application is filed before the District Magistrate and the District Magistrate is of the opinion that the power/function to deal with such application has already been delegated by him to the Sub-Divisional Magistrate, he may only make a proper note in that regard and transfer an application to the proper officer delegated with that power. He may also issue appropriate communication to the applicant informing him of the delegation thus made. Such steps would be necessary to ensure that the senior citizen is not unduly troubled in that regard and it would also ensure that such senior citizen is not made to run from pillar to post to know the status of his application. In that regard, wherever available, the office of the District Magistrate and/or the Sub-Divisional Magistrate (before whom an application may be filed) may keep a record of the details of phone number

(landline/mobile number), social media, platform on which such senior citizen may wish to interact with respect to proceedings being instituted by him and his email address for efficient communication of information of notice, etc.

17. By way of corollary, if any application is filed before the Sub-Divisional Magistrate who entertains any doubt if such application is maintainable before him, he may, where required, verify the correct facts with respect to delegation of power from the office of the District Magistrate and proceed accordingly. If he forms a view that the application is not maintainable, by that authority, for reason of lack of delegation, he may only make a proper note and remit the matter to the District Magistrate with appropriate communication made, to the senior citizen/applicant amongst others, on the landline/mobile number and/or social media platform/email.

18. At this stage, learned Standing Counsel states, one opportunity may be granted to the authorities to rectify their mistake. Accordingly, on the prayer of learned Standing Counsel, Sub-Divisional Magistrate, Khalilabad, Sant Kabir Nagar may be allowed to recall his order dated 28.8.2023 and pass a fresh order on the merits of the matter dealing with the claim made by the petitioner and the objections being made by the private respondent nos. 6 to 9, who are none other than the son and grandsons of the petitioner. Parties may appear before the Sub-Divisional Magistrate, Khalilabad, Sant Kabir Nagar, on 28 September 2023 along with a copy of this order for hearing. Accordingly, appropriate and reasoned order may be passed on or before 12 October 2023.

19. With the aforesaid observation, present petition stands

disposed of.

20. Let a copy of this order be communicated to the Chief Secretary, Government of Uttar Pradesh, for proper communication and effective compliance. This direction has become necessary as this Court is facing a regular influx of similar cases where the proceedings under the Act and the Rules framed there under are found to have been delayed many times owing to doubt as to jurisdiction/delegation of powers.

Order Date :- 6.9.2023

Prakhar

(Rajendra Kumar-IV, J.)

(S.D.Singh, J.)