

Court No. - 5

Case :- MISC. SINGLE No. - 16212 of 2021

Petitioner :- Smt. Khushboo Shukla

Respondent :- District Magistrate, Lucknow & Ors.

Counsel for Petitioner :- Shailendra Singh Rajawat, Devesh Deo Bhatt, Mohd. Shahanshah Newaz Kh

Counsel for Respondent :- C.S.C., Sunil Dixit, Umesh Chandra Dixit

Hon'ble Vivek Chaudhary, J.

1. Present is an unfortunate litigation between the petitioner widow and her only son with her in-laws (private respondents).

2. The writ petition is filed challenging the order dated 14.07.2021 passed by the Sub Divisional Magistrate, Sadar, Lucknow in Case No.75 of 2019, filed under the U.P. Maintenance and Welfare of Parents and Senior Citizens Rules, 2014 (hereinafter referred to as 'Senior Citizens Rules, 2014') whereby direction for eviction of petitioner from the House No.3/347, Vishal Khand, Gomti Nagar, Lucknow (house at Gomti Nagar, Lucknow) within 15 days of receiving of the order has been issued.

3. Facts of the case are that petitioner Smt. Khushboo Shukla and Sri Gaurav Shukla got married on 04.02.2013. Initially, they were living with the parents of Sri Gaurav Shukla in House No.54/4, Veer Nagar, Udaiganj, Lucknow (house at Udaiganj, Lucknow). However, soon thereafter certain family disputes arose and, therefore, petitioner and her husband started living separately on the ground floor of the house at Gomti Nagar, Lucknow. On 21.07.2015, a son Shikhar Salil Shukla was born out of the wedlock. Husband of petitioner Sri Gaurav Shukla expired on 15.07.2019 leaving behind his minor son, wife and his parents. Petitioner alleges that after the death of her husband, private respondents started harassing her, including for dowry. In the said background, she lodged several

F.I.Rs. She also filed a Complaint Case No.1136 of 2019; 'Khushboo Shukla & another Vs. Kavita Shukla & others' on 06.11.2019 before the Court of Special Chief Judicial Magistrate (A.P.), Lucknow, under Section 12 and 13 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act, 2005). By the said complaint case, she sought maintenance for herself and her son and also prayed for restraining the private respondents from dispossessing the petitioner and her son from the house at Gomti Nagar, Lucknow, wherein she was residing since before the death of her husband. Meanwhile, private respondents also filed a Case No.75 of 2019 on 25.10.2019 under Rule 21 and 22 of the Senior Citizens Rules, 2014. By the said case, the private respondents asked for possession of house at Gomti Nagar, Lucknow by evicting the petitioner from the same. By order dated 17.02.2020, Special Additional Chief Judicial Magistrate (A.P.), Lucknow in Complaint Case No.1136 of 2019 filed by petitioner granted maintenance of Rs.3000/- per month to petitioner and Rs. 2000/- per month to her son and further restricted the private respondents from evicting the petitioner from the house at Gomti Nagar, Lucknow. The private respondents have not challenged the said order. Soon thereafter, the Sub-Divisional Magistrate, Sadar, Lucknow in Case No. 75 of 2019 filed by private respondents passed the impugned order dated 14.07.2021 directing eviction of the petitioner from the house at Gomti Nagar, Lucknow within 15 days of receiving the award. Thus, the present writ petition is filed challenging the order dated 14.07.2021.

4. Learned counsel for petitioner submits that though initially petitioner was granted an interim protection by this Court but the same could not be extended and her belongings were thrown on the road and she was forcefully evicted from the house at Gomti Nagar, Lucknow on 08.09.2021.

5. This court passed an order on 17.09.2021 and tried for an amicable solution between the parties as both counsels for the parties agreed for mediation.

However, the parties could not come up with a settlement suitable for both the parties.

6. I have heard Sri S.S. Rajawat, learned counsel for the petitioner and Sri Sunil Dixit, learned counsel for opposite parties no. 3 and 4 and learned Standing Counsel has appeared on behalf of opposite parties no. 1 and 2.

7. Learned counsel for private respondents, raised a preliminary objection as to the maintainability of the writ petition under Article 226 of the Constitution of India on the ground that the order impugned in this writ petition is appealable under Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

8. Learned counsel for petitioner opposed the submission of learned counsel for private respondents and submits that there is no remedy of appeal available to the petitioner against the impugned order under the Senior Citizens, Act, 2007.

9. The Senior Citizens Act, 2007 is divided in the separate chapters. Chapter-II runs from Section 2 to 18. Chapter-II of the Senior Citizens, Act, 2007 provides for "Maintenance of Parents and Senior Citizens". Under Section 4 it provides that senior citizens including parents who are unable to maintain themselves from their own earning or property shall be entitled to make application under Section 5 before the Tribunal. Section 6 provides for jurisdiction and procedure of the Tribunal. Section 7 provides for constitution of Maintenance Tribunal. Section 8 provides for summary procedure of inquiry to be conducted by the Tribunal. Section 9 provides for order for maintenance in the given cases. Section 10 provides for alteration of order of maintenance and further directions. Section 15 and 16 provide for constitution of Appellate Tribunal and appeals. Section 17 and 18 prescribe with regard to legal representation and maintenance officer. Thus, Chapter-II is a complete code in itself with regard to claim of maintenance by senior citizens and its disposal by the Tribunal, appeal against

such an order before the Appellate Tribunal and execution of the same. Therefore, Section 16 relates to appeal against the order passed by the Maintenance Tribunal and no further. Chapter-V of the Senior Citizens, Act, 2007 provides for "Protection of Life and Property of Senior Citizen". Section 22 of the same reads as:-

"Section 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.

(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens."

Under the said Section, the State Government may confer power and impose duties upon the District Magistrate as may be necessary for implementing the provisions of the Senior Citizens, Act, 2007. In exercise of the said power under Rule 21 of the Senior Citizens, Rules, 2014, the duties and powers of District Magistrate is prescribed as follows:-

"21. Duties and Power 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,

(ii) oversee and monitor the work of Maintenance Tribunals Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, and execution Tribunals' orders;

(iii) oversee and monitor the working of old age homes in the district so as to ensure that they conform to the standards laid down in these rules and any other guidelines and orders of the Government;

(iv) ensure regular and wide publicity of the provisions of the Act, Central and State Governments, programmes for

the welfare of senior citizens;

(v) encourage and co-ordinate with panchayats, municipalities, Nehru Yuva Kendras, educational institutions and especially their National Service Scheme Units, Organisations, specialists, experts activists, etc. working in the district so that their resources efforts are effectively pooled for the welfare district; senior citizens of the district;

(vi) ensure provision of timely assistance and relief to senior citizens in the event of natural calamities and other emergencies;

vii) ensure periodic sensitisation of officers of various Departments and Local Bodies concerned with welfare of senior citizens, towards the needs of such citizens, and the duty of the officers towards the latter,

(viii) review the progress of investigation and trial of cases relating to senior citizens in the district, except in cities having a Divisional Inspector General of Police.

(ix) ensure that adequate number of prescribed application forms for maintenance are available in officers of common contact for citizens like Panchayats, Block Development Offices, Tahsildar Offices, District Social Welfare Offices, Collectorate, Police Station etc.;

(x) promote establishment of dedicated helplines for senior citizens at district headquarters, to begin with; and

(xi) perform such other functions as the Government, may by order, assign to the District Magistrate in this behalf, from time to time.

(3) With a view to performing the duties mentioned in sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with the Act; these rules, and general guidelines of the Government, as may be necessary, to any concerned Government or statutory agency or body working in the district, and especially to the following:

(a) Officers of the State Government in the Police, Health and Publicity Departments, and the Department dealing with welfare of senior citizens;

(b) Maintenance Tribunals and Conciliation Officers;

(c) Panchayats and Municipalities; and

(d) Educational Institution."

Under Rule 21(2)(i), the District Magistrate is to ensure that life and property of senior citizens are protected and they are able to live with security and dignity. In exercise of the said powers, the proceedings are held by the Sub Divisional Magistrate, Sadar, Lucknow and impugned order of eviction is passed. There is

no appeal provided against an order passed under Rule 22 of the Senior Citizens, Rules, 2014 and the rules are silent in this regard. The power of appeal provided under Section 16 of the Senior Citizens Act, 2007 with regard to Appellate Tribunal constituted under Section 15 is only relating to any order passed under Chapter-II which relates to maintenance of senior citizens and parents. Neither the Maintenance Tribunal constituted under Section 7 has any power to direct eviction nor such power is vested in the Appellate Tribunal. They both can only pass order with regard to maintenance of senior citizens and parents. The power of eviction is exercised under Rule 21 which is framed for giving effect to powers under Section 22 of the Senior Citizens Act, 2007 which falls under Chapter-V of the Act. There is no provision of appeal against any of these orders either under Chapter-V of the Senior Citizens Act, 2007 or under the Senior Citizens Rules, 2014. Therefore, submission of counsel for private respondents that appeal would lie before the Appellate Tribunal constituted under Section 15 read with Section 16 of the Senior Citizens Act, 2007 before the Appellate Tribunal constituted for the purposes of maintenance is incorrect and is rejected.

10. Coming to the merits of the case, learned counsel for petitioner submits that the impugned order is illegal and directly in teeth of the apex court judgement reported in *2020 SCC OnLine SC 1023 (S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Other)* which is opposed by the private respondents.

11. In the present case, the impugned order is passed by the Sub-Divisional Magistrate, Sadar, Lucknow ignoring the law settled by the apex Court in case of *S. Vanitha (supra)*. Paragraph-38 and 39 of the said judgment reads:-

"38. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act

2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

39. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common

intent of the Senior Citizens Act 2007 and the PWDV Act 2005 of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization."

12. From the aforesaid judgment of the Supreme Court, it stands settled that both the Acts i.e. Senior Citizens, Act, 2007 and PWDV Act, 2005 are to be read simultaneously and a wife cannot be ousted from her matrimonial home on the basis of the summary proceedings under the Senior Citizens Act, 2007. In the present case, the Sub-Divisional Magistrate, Sadar, Lucknow has passed the order in violation of the law settled by the Supreme Court by directing eviction of the petitioner under the provisions of Senior Citizens Act, 2007.

13. Learned counsel for private respondents further submits that even otherwise, there is no illegality in the impugned order the same should not be set aside. He submits that the impugned order is passed for protection of life and property of senior citizens i.e. private respondents. Learned counsel for private respondents submits that the Court should not go into the technicality and should see that property of the private respondents i.e. senior citizens need protection as petitioner is causing damage to the same. He submits that though initially petitioner was living on the ground floor of the house at Gomti Nagar, Lucknow but now has also planted tenants on the floors above the ground floor and is also interfering in the possession of the private respondents. He further submits that private respondents have no objection in case petitioner with her son come and live with them in the house at Udaiganj, Lucknow.

14. Learned counsel for petitioner strongly denied the statements of learned counsel for private respondents. He submits that petitioner was living only on the ground floor of the house at Gomti Nagar, Lucknow and has no concern of any kind with any of the floors above the ground floor. It is false to suggest that petitioner has put any tenant on such floors or petitioner is causing any

hindrance in movement of any person from the floors above. It is also stated that floors above the ground floor have separate entry and exist and has no concern with the ground floor where petitioner was living.

15. This Court does not find any force in the submissions of the private respondents. Conflicting submissions without any supportive cogent evidence are being made with regard to the tenants on the floors above. On one hand it is stated that tenants are planted by the petitioner and on the other hand it is claimed that petitioner is disturbing their movements. A categorical statement is given by the petitioner that she is neither interfering in lives or movements of the persons living above the ground floor nor any of them is a tenant of the petitioner or planted by her. There is nothing specifically stated by the private respondents as to how the petitioner is damaging the property. There is no finding given in the impugned order that petitioner has occupied any of the floors other than the ground floor in an illegal manner or that she has obstructed the movements of any person of floors above the ground floor. There is no finding that petitioner has caused any damage to the property in any manner whatsoever. In absence of any such finding, the impugned order could not have been passed. Further, admittedly, the private respondents are having number of properties. They are living in their own house at Udaiganj, Lucknow. Petitioner with her son was living on the ground floor of the multi-story house at Gomti Nagar, Lucknow. Petitioner and her son have no concern with any of the floors above the ground floor of the said house from which they have been evicted in furtherance of the impugned order. I do not find any circumstance under which it can be stated that they were causing any damage or interfering in any manner with the lives of the private respondents. On the contrary, by their ousting they have been left roofless and to put great inconvenience.

16. In the given facts and circumstances of the case, the impugned order dated 14.07.2021 cannot stand and is aside. Respondents are directed to hand over the

possession of the ground floor of the House No.3/347, Vishal Khand, Gomti Nagar, Lucknow to the petitioner and her son forthwith. Petitioner shall not in any manner interfere with the ingress and egress of the occupants of the floors above the ground floor. Private respondents also shall not disturb or interfere in any manner with the living of the petitioner and her son in the said property.

17. With the aforesaid, present writ petition stands ***allowed.***

Order Date :- 2.11.2021

Arti/-

(Vivek Chaudhary,J.)