

Virender Singh vs Pr Secretary Cum Divisional ... on 6 October, 2022

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 14149/2022

VIRENDER SINGH

Through: Appearance not given

versus

PR SECRETARY CUM DIVISIONAL COMMISSIONER & ORS.

..... Respondents

Through: Mr. Divyam Nandrajog,
Mr. Jasmeet Jolly, Mr. Sh
for GNCTD.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 06.10.2022

1. This writ petition is directed against an order dated 23 August 2022 passed by the Divisional Commissioner rejecting an application for stay in an appeal which had been preferred against the original order passed by the District Magistrate on 23 November 2021. That order made under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [the 2007 Act] was based on serious allegations of harassment and ill-treatment which were found to be duly established and proved by the Sub-Divisional Magistrate in his report. On the basis thereof, the District Magistrate had proceeded to frame directions for the eviction of the petitioner and the other respondents there.

2. The petitioner, it becomes relevant to note, happens to be the son-in-law of the senior citizen. Bearing in mind the material which has been taken into consideration by the District Magistrate, the Court finds no ground to interfere with the order passed by the Divisional Commissioner for reasons which follow.

3. While in the case of ordinary civil litigation, the issue of grant of stay is governed by the principles of prima facie case, balance of convenience and irreparable loss with courts bearing in mind the need to preserve the rights of parties inter se during the pendency of proceedings, the primordial consideration in proceedings under the 2007 Act is the necessity to protect and secure the life and property of the complainant senior citizen/s. While dealing with an application for stay that may be made in a pending appeal under the 2007 Act, the appellate authority would have to necessarily take

into consideration the nature of evidence that was placed before the Tribunal and constrained it to frame orders for eviction. If it finds that the order of eviction is predicated upon cogent and reliable material that evidences harassment and ill-treatment, the ends of justice may warrant the order of eviction being permitted to run its course and the offending parties being required to remove themselves from the premises till such time as the appeal is decided.

4. The Court notes that at that stage the authorities administering the provisions of the 2007 Act are to primarily weigh in consideration the imperatives of securing the physical and mental well-being of the senior citizens and their security bearing in mind the predominant objective and purpose of the 2007 Act. In such situations and unlike civil litigation, a prayer for the status quo being maintained is not liable to be granted as a matter of course. This since the continuance of the offending parties in the premises may itself cause irreparable damage and perpetuate the mental and physical torture which the senior citizens may have suffered in the past and had compelled them to initiate proceedings under the 2007 Act.

5. The appellate authority would also be obliged to bear in mind that the order of eviction would have come to be made after due contest with an opportunity of hearing having been duly provided to parties by the Tribunal. The Court observes that at the interim stage and where the appellate authority comes to the prima facie conclusion that the order of the Tribunal is not shown to suffer from a patent or manifest error or where the ultimate direction of eviction is not ex facie untenable, the ends of justice may merit parties being required to separate and await the final outcome of the appeal.

6. Ultimately it would be the facts of each case which would merit examination and evaluation in order to guide the exercise of the power to stay as conferred upon the appellate authority. All that the Court seeks to emphasize is that the power to grant interim stay is not to be exercised mechanically or as a matter of rote. The mere fact that the appeal has been entertained would also not and necessarily warrant the order of the Tribunal being placed in abeyance. It would be the individual facts of each case on a consideration of which the appellate authority would have to consider whether interim protection is liable to be accorded to parties against whom allegations may have been levelled by the senior citizen/s. The power to grant interim relief would ultimately have to be left to the sound and judicious discretion of the appellate authority.

7. In the facts of the present case, the Court notes that the conclusions with respect to harassment and ill treatment which came to be recorded by the SDM and formed the basis for the order of the Tribunal were neither questioned nor assailed. In view of the aforesaid, the Court finds no justification to interfere with the order impugned.

8. The writ petition shall consequently stand dismissed.

YASHWANT VARMA, J.

OCTOBER 6, 2022/neha