

Meena Kumari vs Bhagwant Prasad Sharma And Anr on 27 February, 2023

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2445/2023&CM APPLs. 9348/2023, 9349/2023

MEENA KUMARI

..... Petitioner

Through: Mr. A. K. Dubey and Mr. Pawan

Kumar, Advocates. (M: 7838122354)

versus

BHAGWANT PRASAD SHARMA AND ANR. Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 27.02.2023

1. This hearing has been done through hybrid mode. CM APPL.9348/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of. W.P.(C) 2445/2023 & CM APPL.9349/2023

3. The present petition has been filed by the Petitioner- Smt. Meena Kumari, seeking the quashing of the following two orders

(i) Order dated 4th November, 2022, passed in Ref. No. PA/DIV.COMM./APPEAL No. 281/2021/598-601, by the Appellate Court of Divisional Commissioner, Department of Revenue, Government of NCT of Delhi (GNCTD) in the case titled 'Meena Kumari v. Bhagwant Prasad Sharma & Ors.'

(ii) Order dated 31st March, 2021, passed in Ref. No. F.PA/DC/NE/48/2019/6067-6071 by the the Appellate Court of Divisional Commissioner, Department of Revenue, GNCTD in the case titled 'Bhagwant Prasad v. Manoj Sharma & Anr.'

4. Ld. counsel for the Petitioner submits that the impugned orders would be liable to be stayed on the strength of the judgment of the Supreme Court in S. Vanitha v. Deputy Commissioner, 2020 SCC OnLine SC 1023 and Sanjay Walia v. Sneha Waliya, 2013(204) DLT 618. The Petitioner further contends that her husband is part owner of the property after the demise of his mother, Smt. Kitaba Devi.

5. Shri Bhagwant Prasad Sharma, who is father of Mr. Manoj Sharma, had filed the eviction petition under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the District Magistrate, North East District, GNCTD ('DM'). The DM vide order dated 13th November, 2020 directed the eviction of the Petitioner as also her husband. The relevant extracts of the said order dated 13th November, 2020 issued by the DM is extracted as under:

"Now, even if the undersigned authority consider the plea of opposite party, Meena that eviction order should not be passed for concern of opposite party(s) and minor kid and if this plea is allowed to be considered then subsequently in every such case the elder parents will have to face burden of their son(s) and daughter in law, and legal heir for non-maintenance and ill- treatment and no order for eviction would be passed. This is not the Scheme of the present act and it is meant for Maintenance and welfare of parents and senior citizens. The Senior citizens do have a right to enjoy peaceful possession of property which is protected under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (as amended up to date) act and rules under Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016.

In view of the above, I am of the view that since this is a case of ill- treatment and misbehavior with the applicant by the opposite parties, it would be appropriate to pass an eviction order against the opposite party(s) Meena. As per records, the minor kids are living with support of parents i.e. opposite parties and present order of eviction which is passed against parents is also applicable to minor kid, in the light of settled legal position as discussed in Writ Petition. (C) 347/2013, AARSHYA GULATI (THROUGH: NEXT FRIEND MAS, DIVYA GULATI) AND ORS. versus GOVERNMENT OF NCT OF DELHE AND Ors decided by Hon'ble High court of Delhi vide order dated 30.05.2019.

I, therefore, in exercise of the powers conferred upon me under The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 & The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, hereby direct the opposite parties namely Smt. Meena to vacate the part of property is question i.e. H.No-D-7/74, Dayaipur, Karawal Nagar, Delhi-110094 within 30 days from the date of this order and handover the vacant and peaceful possession to the applicant.

[As discussed above, the present order does not contain any finding w.r.t elder son of applicant i.e. Manoj qua application seeking eviction on ground of Non-maintenance and Ill-treatment. However, applicant reserves his right to proceed against his elder son if he came to India and make any effort to interfere in peaceful enjoyment of property of applicant in near future.

Further, it is mentioned that the undersigned authority decided the application on the basis of documents filed by parties and consider the appropriate that application

succeed to prove his case and entitle to such relief prescribed under Senior citizen act/rules. The present order does not resist or prevent parties from seeking relief before any court or any other authority.

The Deputy Commissioner of Police, District North-East shall take coercive measures to enforce the eviction order through SHO concerned to handover the possession of property-in-question to the applicant within 07 days, if the opposite parties failed to evict the premises on her own within the time specified as above. A compliance report of the same will be filed thereafter. The file be consigned to record room."

6. The finding of the DM, who sought for the report from the Tehsildar, is that the Respondent has been subjected to ill-treatment by the Petitioner. It was also recorded by the DM in the order dated 13th November, 2020 that the revenue officials in their report had confirmed that there was ill treatment on behalf of the opposite party. Further, in the said order, the SDM- Karawal Nagar recorded that the husband of the Petitioner is working in Muscat, Oman since 2008 and has been earning well there. Accordingly, the DM directed the SHO concerned to get the property evicted within seven days.

7. This order of the DM was challenged before the Divisional Commissioner, who has also, vide order dated 4th November, 2022, upheld the orders of the DM. The operative portion of the said order is extracted as under:

9. Keeping on view the facts and circumstances of the case, as there is no matrimonial dispute among the appellant and respondent no. 2, thus appellant has not been protected by the Judgment of S. Vanitha and has no right to reside in the suit property against the wishes of the respondent no. 1. Also it is an admitted fact that the respondent no.1 filed Civil Suit for injunction and another under Indian succession Act which are pending before the Hon'ble Civil Courts which shows that the eviction application is not in collusion with respondent no. 2, otherwise also from the case of appellant herself it is clearly evident that there is no matrimonial dispute among the appellant and her husband respondent no. 2.

The Hon'ble Delhi High Court in Darshna Vs. The Govt. of NCT of Delhi & Ors. held that "In the present case, excluding daughter-in-law from the scope of Rule 22(3)(2)(1) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended would debilitate the provisions of the Rules and render it incapable to serve the object of Section 22 of the Act. It is difficult to accept that although a senior citizen is entitled to evict his/her son who is maltreating him, he/she has no option but to suffer the ill-treatment at the hands of his/her daughter-in-law. Accordingly, there is no infirmity in the impugned order dated 13.11.2020 and the appeal is hereby dismissed being devoid of merits.

The Appeal stands disposed off accordingly. Copy of this order be provided to both parties. Record of the Proceedings before DM (North-East) be also sent back to DM with copy of this order.

8. Issue notice. The challenge to the order dated 4th November, 2022 passed by the Id. Divisional Commissioner has been listed today for the first time. Considering the fact that the Respondent No.2 i.e., the husband of the Petitioner is earning well and located in Muscat, Oman as also the concurrent findings of ill-treatment, this Court is not inclined to grant interim relief. If required, some alternate premises could be arranged for the Petitioner through her husband for the purpose of residence of herself and her two children. For the said purpose, the Petitioner has been directed to serve the copy of the petition to the Respondent Nos.1 and 2 through email as well.

9. Under these circumstances, if there are any coercive steps taken by the police for evicting the petition, the Petitioner is free to approach this Court by way of an application.

10. List on 17th March, 2023 at the top of the Board.

PRATHIBA M. SINGH, J FEBRUARY 27, 2023 dk/am