

Perminder Kaur Puri vs Mohinder Pal Singh & Anr on 30 May, 2024

Author: Subramonium Prasad

Bench: Subramonium Prasad

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 4879/2024
PERMINDER KAUR PURI

MOHINDER PAL SINGH & ANR.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

% 30.05.2024 W.P.(C) 4879/2024, CM APPL. 19924/2024 and CM APPL. 34135/2024

1. Petitioner has approached this Court challenging the Order dated 12.03.2024, passed by the Respondent No.2/Appellate Authority Divisional Commissioner in Appeal bearing No.923/2024, dismissing the appeal by the Petitioner herein against the Order dated 29.01.2024 passed by the District Magistrate in an application filed by the Respondent No.1 herein, who is Father-in-law of the Petitioner herein, seeking eviction of the Petitioner.

2. The facts of the case reveals that Respondent No.1 herein filed a complaint under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as „the Senior Citizens Act) seeking eviction of the Petitioner herein from House No. B-1/168, First This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/06/2024 at 20:33:31 Floor Janakpuri, New Delhi-110058 (hereinafter referred to as „the Subject Property) on the ground that the Petitioner is harassing the complainant/Respondent No.1. It is stated that House No. B-1/168, Janakpuri, New Delhi-110058 is a built up property having four floors. It is stated that the ground and the third floor of the said property have been rented out by the Respondent No.1 and the second floor is in the occupation of the younger son of the Respondent No.1who resides there with his wife and the first floor of the said property is occupied by the Respondent No.1, his wife,

elder son of Respondent No.1 and his wife, i.e. the Petitioner herein. It is stated in the complaint filed by the Respondent No.1 that the Petitioner and her family members have been threatening the Respondent No.1 that he would be ousted from the subject property and they are also pressurizing the Respondent No.1 to transfer the subject property to the Petitioner herein. In the reply it has been stated by the Petitioner herein that the allegations levelled in the complaint by the Respondent No.1 are totally false and incorrect. It is stated in the reply that the complaint has been filed only to harass the Petitioner. It is further stated that there is a dispute between the Petitioner and her husband, i.e. the elder son of the Respondent No.1, and he has shifted to a rented accommodation and the Respondent No.1 has filed the application to evict the Petitioner from her matrimonial house. In the complaint filed by the Respondent No.1, under Rule 22(3) (iii) of the Delhi Welfare and Maintenance of Parents and Senior Citizens Rule, 2009 (hereinafter referred to as „the Rules), a report from the concerned SDM was called for. In the said Report it is stated that the Respondent No.1 is the owner of the subject property and there is no dispute regarding the title of the property. The learned District Magistrate, vide Order dated This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/06/2024 at 20:33:31 29.01.2024, allowed the application filed by the Respondent No.1 under the Senior Citizens Act and the Rules thereunder and directed for eviction of the Petitioner herein from the subject property. The Order of the District Magistrate was challenged by the Petitioner herein by filing an appeal. The Appellate Authority has dismissed the said appeal vide Order impugned herein. Thereafter the Petitioner has filed the present Writ Petition.

3. This Court on 04.04.2024 noted that since the dispute is between the family members, a serious attempt to resolve the disputes should be made and thereby referred the matter to Delhi Mediation and Conciliation Centre. Mediation has failed and the Writ Petition has been heard on merits.

4. Material on record indicates that there is acrimony between the Petitioner and her husband. Criminal complaints and cross complaints have been filed between the parties. Proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "DV Act") were initiated. Vide Order dated 29.02.2024, the learned Metropolitan Magistrate, Mahila Court, in an application filed by the Petitioner herein under the DV Act, has passed the following Order:

"11. In the present case, the respondent no.2 and 3 and complainant are residing together, however, they have alleged physical harassment at the hands of the complainant. Now, whether complainant has actually caused any physical violence upon the respondent no. 2 and 3, is a matter of trial. However, it cannot be denied that there is extreme acrimony between the respondent no.2 and 3 and the complainant. In such a situation, respondent no. 2 and 3 cannot be forced to reside with the complainant and their rights cannot be considered secondary to the complainant's. Respondent no. 2 and 3 cannot be allowed to languish because of the matrimonial discord between the complainant and This is a digitally signed order.

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12. Therefore, in view of the settled law and after careful consideration of the facts and circumstances of the present matter, respondent no. I is directed to arrange an alternate accommodation for the complainant and her minor son of the same level as that of the shared household within 2 weeks from today. Respondent no.1 is also directed to deposit at least 6 months advance rent of the alternate accommodation so arranged and place copy of the rent agreement as well as proof of payment of advance rent. After the alternate accommodation is arranged, complainant is directed to vacate her portion of the shared household within a week and reside therein with her minor son.

13. Till the time the alternate accommodation is respondents are restrained from dispossessing the complainant and her minor son, from the shared household."

5. It is stated that the said Order has been challenged by the Petitioner herein by filing an appeal.

6. This Court is of the opinion that the present Writ Petition should be disposed of with a direction to the Respondent to comply with the Order of the Mahila Court as it is this Order which would decide the rights of the parties.

7. The Apex Court in *S. Vanitha v. Commr.*, (2021) 15 SCC 730, while holding that that it is necessary to harmonise the relation between the Senior This is a digitally signed order.

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"35. In the present case, Section 36 of the PWDV Act, 2005, albeit not in the nature of a non obstante clause, has to be construed harmoniously with the non obstante clause in Section 3 of the Senior Citizens Act, 2007 that operates in a separate field.

36. In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act, 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, "is widely prevalent but has remained largely invisible in the public domain".

The Statement of Objects and Reasons indicates that while Section 498-A of the Penal Code, 1860 created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would "provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society". The ambit of the Bill has been explained thus:

"4. The Bill, inter alia, seeks to provide for the following--

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the This is a digitally signed order.

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(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc."

37. The above extract indicates that a significant object This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/06/2024 at 20:33:31 of the legislation is to provide for and recognise the rights of women to secure housing and to recognise 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 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.

38. 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 overriding 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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/06/2024 at 20:33:32 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 Section 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 ["26. Relief in other suits and legal proceedings.--(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."] 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 the Senior Citizens Act, 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to override 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"

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(emphasis supplied)

8. In the facts of the present case also both proceedings, i.e. proceedings under the Senior Citizens Act and the DV Act, are running parallely. The learned Mahila Court vide Order dated 29.02.2024, after taking cognisance of the Senior Citizens Act has directed that the Petitioner herein must be provided with an alternate accommodation.

9. In Order to ensure that the Order of the Mahila Court is complied with, this court directed the learned Counsel for the Respondent No.1 to suggest alternate accommodation which can be given to the Petitioner herein.

10. CM APPL. 34135/2024 has been filed by the Petitioner stating that the following two properties are available with the Respondents which can be given to the Petitioner for alternate accommodation:

a. Property bearing No. WZ-131, 2nd & 3rd Floor, Virender Nagar, New Delhi-110058; and b. Property bearing No. WZ-445, Gali No. 23, Shiv Nagar, Delhi-

110058.

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11. It is stated by the learned Counsel for Respondent No.1 that Property bearing No. WZ-445, Gali No. 23, Shiv Nagar, Delhi, is not available as it does not belong to the Respondent No.1. However, it is stated by the learned Counsel for the Respondent No.1 that Respondent No.1 own a part of Property bearing No. WZ-131, Virender Nagar, Delhi and the Petitioner can be accommodated in the said property within eight weeks.

12. Statement of the learned Counsel for the Respondent is taken on record.

13. Without going into the merits of the case, this Court is of the opinion that no interference is called for in the impugned Order and the same would be subject to the Order passed by the Appellate Court in the appeal filed by the Petitioner against the Order dated 29.02.2024. The Appellate Court is, therefore, directed to take a decision without being influenced by the fact that the present Writ Petition has been disposed of by this Court.

14. Respondent No.1 is directed to provide accommodation to the Petitioner in Property bearing No. WZ-131, Virender Nagar, Delhi.

15. The Writ Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J MAY 30, 2024 Rahul This is a digitally signed order.

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