



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24<sup>th</sup> MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 3927/2024 & CM APPL. 16198/2024**

MANJU TOKAS & ANR.

..... Petitioners

Through: Mr. Rajul Jain, Advocate.

versus

GNCT OF DELHI THROUGH DIVISIONAL COMMISSIONER &  
ORS. .... Respondents

Through: Mr. Avishkar Singhvi, ASC with Mr.  
Naved Ahmed and Mr. Vivek Kumar  
Singh, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner has approached this Court challenging the Order dated 15.01.2024, passed by the Respondent No.1 in Appeal No.844/2023, directing the District Magistrate New Delhi, to decide the application filed by the Respondent No.3 herein on merits and has dismissed the appeal filed by the Petitioner herein against the interim Order dated 23.06.2023, passed by the District Magistrate, New Delhi under the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2016 (*hereinafter referred to as 'the Senior Citizens Rule'*). The appeal of the Petitioner herein has been rejected on the ground that the forum under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter referred to as 'the Senior Citizens Act'*) do not have the jurisdiction to entertain an application under Rule 22 of the Senior Citizens Rules read with Senior Citizens Act if there



are disputes regarding title of the property from which eviction is being sought.

2. Shorn of unnecessary details, the facts, leading to the filing of the present Writ Petition are as under:

- a) It is the case of the Petitioner that the property bearing No. 33-E, Village Munirka, Delhi (*hereinafter referred to as the property in question*) was inherited by one Ajay Tokas, who is the husband of the Petitioner No.1 and father of the Petitioner No.2 and son of the Respondent No.3 herein. It is stated that Ajay Tokas became the sole owner after relinquishment deeds were executed by Respondent No.3 and other siblings.
- b) Material on record indicates that Ajay Tokas passed away on 18.12.2021.
- c) The Petitioner herein claims that the property in question has been bequeathed in her favour by her husband whereas Respondent No.3 claims title over the property in question on the ground of a sale deed which was executed by Mr. Ajay Tokas in her favour.
- d) Material on record also discloses Respondent No.3 approached the authorities under the Senior Citizens Act read with Senior Citizens Rules seeking eviction of the Petitioners No.1 & 2 from the property in question on the ground that the Petitioners are not maintaining the property in question and are threatening to transfer the property and are also harassing the Respondent No.3. The matter is pending before the authorities.
- e) Petitioners herein filed CS No.5050/2022 against the



Respondent No.3 and other relatives of Ajay Tokas seeking permanent and mandatory injunction against the Respondent No.3 from creating third party rights over the property in question.

- f) In the application filed by the Respondent No.3 herein seeking eviction of the Petitioners from the property in question, a primary objection was raised by the Petitioners herein stating that till the title of the property is not decided, the application under the Senior Citizens Act cannot be entertained.
- g) The District Magistrate, New Delhi, vide Order dated 22.06.2023 held that though the title of the property in question is disputed and both parties have their claims and counter claims over the property, it appears that there is ill treatment of Respondent No.3 at the hands of the Petitioner and the property in question appears to be ancestral property and, therefore, Respondent No.3, i.e. the applicant before the Authorities, is entitled to protection under the Senior Citizens Act.
- h) It is stated that the said Order was challenged by the Petitioner by filing an appeal before the Appellate Tribunal. In the said appeal also the Petitioner had contended that since the Respondent No.3 does not have the title over the property she is not entitled to maintain the application under the Senior Citizens Act. The Appellate Authority vide the impugned Order directed the District Magistrate, New Delhi to decide the matter by ensuring a proper independent field inquiry and after hearing both the sides. The Appellate Authority has also held that the



District Magistrate could not have held that on the one hand there is ill treatment of Respondent No.3 at the hands of the Petitioners but at the same time not decide the matter finally. The findings of the District Magistrate regarding ill treatment of Respondent No.3 at the hands of the Petitioners herein has been stayed till the District Magistrate decides the case and disposes of the same on merits.

i) It is this Order which has been challenged by the Petitioners in the present Writ Petition.

3. The short question which, therefore, arises for consideration is as to whether in cases where title is disputed, an application under Senior Citizens Rules read with Senior Citizens Act would be maintainable or should the authorities under the Senior Citizens Act must first wait for the title of the property to get cleared before entertaining the application under the Act.

4. At this juncture, it is necessary to reproduce the statement of objects and reasons of the Senior Citizens Act and the same reads as under:

*“Statement of Objects and Reasons.—Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need*



*to have simple, inexpensive and speedy provisions to claim maintenance for parents.*

*2. The Bill proposes to cast an obligation on the persons who inherit the property of children or their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up oldage homes for providing maintenance to the indigent older persons.*

*The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.*

*3. The Bill, therefore, proposes to provide for—*

*(a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;*

*(b) providing better medical facilities to senior citizens;*

*(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;*

*(d) setting up of oldage homes in every district.*

*4. The Bill seeks to achieve the above objectives.”*

5. The purpose of the Senior Citizens Act is, therefore, to provide for an appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens. The Act also aims to provide for better medical facilities to senior citizens and a suitable mechanism for protection of life and property of older persons.

6. The Government of Delhi has legislated Delhi Maintenance and



Welfare of Parents and Senior Citizens Amendment Rules, 2016, in exercise of powers conferred by Section 32 read with Section 2(i) to the Senior Citizens Act, 2007. Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rule lays down an action plan for protection of life and property of senior citizens. Under Rule 22(3)(1) a senior citizen may make an application for eviction of their son/daughter/legal heirs from their self-acquired or ancestral properties, before the District Magistrate. The same reads as under:

*“22. Action plan for the protection of life and property of senior citizens. –*

*xxx*

*(3)(1) Procedure for eviction from property/residential building of Senior Citizen/Parents, -*

*(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.*

*(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.*

*(iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.*

*(iv) The Deputy Commissioner/District Magistrate*



*during summary proceedings for the protection of senior citizen/parents shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/District Magistrate shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.*

*(v) The notice shall-*

*(a) specify the grounds on which the order of eviction is proposed to be made; and*

*(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.”*

7. The said Rules prescribes that even if there is a modicum of right on the senior citizen over a property then the senior citizen is entitled to file an application and would also be entitled for maintenance.

8. It is the duty of the Petitioner to maintain her mother-in-law. No doubt, it is the claim of the Petitioner that disputes have arisen after the death of her husband.



9. At this juncture, this Court is not going into the merits as to whether there is ill-treatment of Respondent No.3 at the hands of the Petitioner or not as the matter is pending before the District Magistrate.

10. It is well settled that while interpreting the provisions of a statute, the objectives and the purpose for which the statute has been enacted must be kept in mind and the purpose of the Senior Citizens Act and Rules is welfare of the senior citizens and to ensure that the senior citizens are not harassed in the eve of their life and are in a position to live properly.

11. Undisputedly, the question of title is under dispute but it does not mean that till it is not decided finally that Respondent No.3 has more right and interest over the property in question she cannot approach the forum under the Senior Citizens Act for her rights under the Act and such an interpretation would defeat the very purpose and objective of the Senior Citizens Act.

12. A reading of the Act makes it clear that the forum under the Act do not have the jurisdiction to decide the title of the property and the purpose of the Act is maintenance of the Senior Citizen and to ensure their welfare. The question of title, therefore, cannot be decided by forums under the Senior Citizens Act.

13. Section 6 of the Senior Citizens Act lays down the jurisdiction and procedure for deciding the dispute. Section 6 of the Senior Citizens Act reads as under:

***“6. Jurisdiction and procedure.—(1) The proceedings under section 5 may be taken against any children or relative in any district—***

*(a) where he resides or last resided; or*





*(b) where children or relative resides.*

*(2) On receipt of the application under section 5, the Tribunal shall issues a process for procuring the presence of children or relative against whom the application is filed.*

*(3) For securing the attendance of children or relative the Tribunal shall have the power of a Judicial Magistrate of first class as provided under the Code of Criminal Procedure, 1973 (2 of 1974).*

*(4) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed for summons cases:*

*Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case ex parte.*

*(5) Where the children or relative is residing out of India, the summons shall be served by the Tribunal through such authority, as the Central Government may by notification in the official Gazette, specify in this behalf.*

*(6) The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.*

*Explanation.—For the purposes of this sub-*



*section “Conciliation Officer” means any person or representative of an organisation referred to in Explanation to sub-section (1) of section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of section 18 or any other person nominated by the Tribunal for this purpose.”*

14. A perusal of the Order of the District Magistrate shows that procedure under Section 6 of the Senior Citizens Act has not been followed. The Appellate Authority has protected the interest of the Petitioner inasmuch as it has directed the Magistrate to proceed afresh in the matter. This Court is in conformity with the decision taken by the Appellate Authority. The District Magistrate shall follow the procedure, collect evidence and apply its mind and if necessary call for a fresh report from the SDM and then he has to weigh both sides as to whether there is a case for ill-treatment or not and proceed further in accordance with law

15. Keeping in view the objective of the Senior Citizens Act, this Court does not find any fault with the decision rendered by the Appellate Authority.

16. Accordingly, the Writ Petition is dismissed, along with pending application(s), if any.

17. Needless to states that nothing has been mentioned in the Orders of the forums below or the Courts below on the title of the property in question and the same will be decided by the Court of competent jurisdiction in Suits which have been filed by both the sides.

**SUBRAMONIUM PRASAD, J**

**MAY 24, 2024/Rahul**