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2026:DHC:10342

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

% ***Date of Decision: November 20th, 2026***

\# **CNR No. DLHC010210842026**

\+ **W.P.(C) 6452/2026 & CM APPL. 31842/2026**

SUBHASH CHANDER MALHOTRA .....Petitioner

Through: Mr. Madhav Khurana, Sr. Adv. with Ms. Riya Arora, Mr. Ayush Kumar, Ms. Ananya Saxena, Ms. Garima Rai Singhania, Mr. Shashank Dewan, Mr. Uttam Kumar & Mr. Hardik Arora, Advs. with Petitioner in person

versus

RAMAN MALHOTRA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, Senior Advocate with Mr. Mayank Bansal, Advocate for R1.
Ms. Nitika Bhutani, Panel Counsel for R-3/GNCTD.
Ms. Puja S. Kalra, CGSC for R-4/UOI.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. By way of the present petition, the petitioner seeks the following reliefs:

> *"A. Pass an appropriate Order, Writ or direction to set aside the Order dated 28.04.2026 passed by the Ld. Appellate Authority of Divisional Commissioner in Appeal being PA/Appeal No. 1262/2025/386-389 titled, "Subhash Chander Malhotra vs. Raman Malhotra & Anr." filed by the Petitioner U/s 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007R/w Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009.*
> *B. Pass an appropriate Order, Writ or direction evicting Respondent No. 1*

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and 2 from the self-acquired Property being 24-B, Masjid Moth, MIG Flats, Phase-1, New Delhi- 110048 of the Petitioner."

2. Succinctly stated, the petitioner is an 85-year-old senior citizen and is the absolute owner of property bearing No. 24-B, Masjid Moth, MIG Flats, Phase-I, New Delhi-110048 **('subject property')**, which, as per the petitioner, is his self-acquired property, acquired by him from Delhi Development Authority in the year 1980 and subsequently converted into freehold in the year 2000. Respondent No. 1 is the eldest son of the petitioner, and Respondent No. 2 is the wife of Respondent No. 1.

3. It is the case of the petitioner that after Respondent Nos. 1 and 2's marriage in the year 2003, they continued to reside with the petitioner in the subject property. It is stated that upon the marriage of the petitioner's second son, Mr Sumit Malhotra, in the year 2005, and thereafter of his youngest son, Mr Sachin Malhotra, in the year 2008, Respondent Nos. 1 and 2 were requested to make alternate arrangements for their accommodation. However, they refused to leave the subject property. It is alleged that over the years, the behaviour of Respondent Nos. 1 and 2 towards the petitioner deteriorated and they also stopped supporting him financially. The petitioner's wife passed away on 18.11.2020, whereafter, as per the petitioner, the harassment at the hands of Respondent Nos. 1 and 2 intensified.

4. It is alleged that on 03.09.2022, Respondent Nos. 1 and 2 tried to threatened the petitioner and assaulted his youngest son, in respect of which a police complaint was filed by the petitioner on 07.09.2022. Thereafter, the petitioner filed a petition, being Senior Citizen Case No.

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126/2022, under Sections 4 and 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 **('the Act')** read with Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 **('2009 Rules')** before the learned District Magistrate (South) **('District Magistrate')** seeking eviction of Respondent Nos. 1 and 2 from the subject property and also sought maintenance.

5. In their reply dated 15.02.2023 filed before the learned District Magistrate, Respondent No. 2 admitted to having filed a complaint before the CAW Cell, *inter alia*, against the petitioner, which was later withdrawn, and Respondent Nos. 1 and 2 offered to pay maintenance of Rs 15,000/- to the petitioner.

6. On 25.02.2023, the learned Sub-Divisional Magistrate (Hauz Khas) **('SDM')** submitted an enquiry report, recording that the subject property is in the name of the petitioner, and further noting as under:

> *"The complaint of harassment of Senior Citizen can't be ascertained whether it is genuine or not. However, it seems dispute between the brothers. This inquiry report is being submitted before the Competent Authority for taking necessary action"*

7. Subsequently, the learned District Magistrate, *vide* order dated 25.08.2023, disposed of the petition, relying on the enquiry report of the learned SDM, observing that the allegations of ill-treatment and harassment had not been proved and that the petitioner was misusing the provisions of the Act to resolve a business dispute between his sons. Even though an offer to pay maintenance was made by Respondent Nos. 1 and 2, no direction *qua* maintenance was passed.

8. The petitioner thereafter filed multiple police complaints against Respondent Nos. 1 and 2, alleging continued harassment.

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9. Aggrieved by the order dated 25.08.2023, the petitioner preferred an appeal, being Appeal No. 908/2024, under Rule 22(3)(4) of the 2009 Rules before the learned Appellate Authority, Divisional Commissioner **('Divisional Commissioner')**.

10. It is pertinent to note that though hearing notices were issued for 17.01.2024, 20.03.2024 and 26.03.2025, no hearing took place in the appeal, and in the meantime, the petitioner filed further police complaints. The petitioner, therefore, approached this Court by way of W.P.(C) 4035/2025, wherein, *vide* order dated 03.04.2025, this Court directed the learned Divisional Commissioner to make an endeavour to dispose of the appeal within a period of two months.

11. By order dated 12.06.2025, the learned Divisional Commissioner set aside the order dated 25.08.2023 and remanded the matter back to the learned District Magistrate, on the ground that the learned SDM had been unable to ascertain whether the complaint of harassment was genuine. Aggrieved thereby, the petitioner filed W.P.(C) 12946/2025 before this Court seeking setting aside of the order dated 12.06.2025.

12. During the pendency of the said writ petition, this Court, *vide* order dated 26.08.2025, directed the SHO concerned to render every possible assistance to the petitioner to obviate any threat that may be faced by the petitioner from Respondent Nos. 1 and 2, and also sought the status of adjudication of the remanded proceedings, registered as Senior Citizen Case No. 46 of 2025, before the learned District Magistrate.

13. Pursuant to the remand, the learned SDM conducted a fresh enquiry in Senior Citizen Case No. 46 of 2025, and submitted a report

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dated 17.09.2025, wherein it was noted that *the allegation of harassment was not established, as no clear evidence of harassment had been observed*, and that the matter appeared to be *a family dispute over property*. It is further the case of the petitioner that though hearing notices were issued for 18.09.2025, 25.09.2025, 09.10.2025 and 16.10.2025, the matter was heard only on 23.10.2025. During this period, the petitioner again filed multiple police complaints against Respondent Nos. 1 and 2.

14. By order dated 28.10.2025, the learned District Magistrate dismissed Senior Citizen Case No. 46 of 2025 on the ground that the petitioner's complaint lacks genuineness, no substantial proof had been provided to support the allegations of harassment, and the matter appeared to be a family and property dispute.

15. Subsequently, this Court, *vide* order dated 29.10.2025 passed in W.P.(C) 12946/2025, directed the SHO concerned to scrupulously comply with the directions issued *vide* order dated 26.08.2025. On 02.12.2025, the petitioner preferred an appeal, being Appeal No. 1262/2025, under Section 16 of the Act read with Rule 22(3)(4) of the 2009 Rules before the learned Divisional Commissioner, assailing the order dated 28.10.2025. Thereafter, *vide* order dated 22.01.2026 passed in W.P.(C) 12946/2025, this Court directed the learned Divisional Commissioner to make an endeavour to dispose of the said appeal, preferably within a period of eight weeks.

16. By the impugned order dated 28.04.2026, the learned Divisional Commissioner dismissed Appeal No. 1262/2025 and upheld the order dated 28.10.2025 passed by the learned District Magistrate. It was, *inter*

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alia, observed that the provisions of the Act cannot be invoked to settle private family or property disputes in the absence of clear and credible evidence of neglect or harassment; that the enquiry reports of the learned SDM did not substantiate the allegations of ill-treatment; that no complaint had been filed by the petitioner prior to 07.09.2022; and that the petitioner had failed to establish a case of harassment, neglect or circumstances warranting eviction under the Act.

17. Aggrieved by the same, the petitioner has preferred the present petition.

18. The learned counsel for the petitioner submits that the petitioner, an 85-year-old senior citizen, is being continuously harassed by Respondent Nos. 1 and 2, and despite having approached the concerned authorities on numerous occasions, no relief has been granted to him. He submits that Respondent Nos. 1 and 2 are influential persons and have been misusing their influence to obtain orders in their favour.

19. He further submits that the petitioner, being the absolute owner of the subject property, is entitled to live therein peacefully, and if he feels threatened or his peace is being disturbed, he is entitled to seek eviction of Respondent Nos. 1 and 2 from his own property, to live in peace at the age of 85 years.

20. He submits that it is settled law that a senior citizen is entitled to seek eviction of his children from his self-acquired property, and that he is not required to establish ill-treatment as a pre-condition for the same. In support of his submissions, he places reliance on ***Piare Khan v. Government of NCT of Delhi & Ors.:*** **2025 SCC OnLine Del 8568**, ***Pritam Singh v. Government of NCT of Delhi & Ors.:*** **2025 SCC**

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OnLine Del 4406, ***Chandiram Anandram Hemnani & Anr. v. Senior Citizens Appellate Tribunal/District Collector & Ors.:*** **2025 SCC OnLine Bom 2457** and ***Sandeep Gulati v. Divisional Commissioner:*** **2020 SCC OnLine Del 2517**.

21. *Per contra*, the learned counsel for Respondent Nos. 1 and 2 submits that the allegations levelled by the petitioner are at the behest of the younger brother of Respondent No. 1. He submits that the dispute is, in fact, a business dispute between the brothers, and the younger brother is using the petitioner to his advantage.

22. He submits that the learned authorities below have returned concurrent findings of fact, and that Respondent Nos. 1 and 2 have been taking care of the petitioner and have also offered to pay maintenance to him. He places reliance on ***S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors.:*** **(2021) 15 SCC 730** and ***Shri Chand Gautam & Anr. v. Govt. of NCT of Delhi & Ors.:*** **W.P.(C) 3557/2025**.

23. I have heard the learned counsel for the parties and perused the record.

24. The petitioner, an 85-year-old senior citizen, has been pursuing his remedies under the Act since the year 2022, seeking eviction of his son and daughter-in-law from his self-acquired house. The question that arises for consideration is whether the learned authorities below were justified in declining the relief of eviction to the petitioner on the ground that the allegations of harassment were not established by clear and credible evidence.

25. Before adverting to the merits, it is necessary to note the limited scope of interference under Articles 226 and 227 of the Constitution of

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India with an order passed by the learned Appellate Authority. This Court's interference is only warranted where the findings are perverse, based on no evidence, suffer from patent illegality or disclose a jurisdictional error. This Court, while exercising writ jurisdiction, cannot re-appreciate the evidence led before the learned Appellate Authority as though rehearing the matter on facts. However, interference is warranted when the authorities fails to exercise jurisdiction on erroneous interpretation of the provisions.

26. Undisputedly, the petitioner is the absolute owner of the subject property. The same has been recorded in both the enquiry reports of the learned SDM dated 25.02.2023 and 17.09.2025. Respondent Nos. 1 and 2 have not claimed any title to the subject property, and they are residing therein only by virtue of being the son and the daughter-in-law of the petitioner. The petitioner has categorically expressed that he does not wish to reside with Respondent Nos. 1 and 2.

27. It is relevant to note that the Hon'ble Supreme Court in ***Ravi Kant Gupta v. State of Uttar Pradesh & Ors.***, Civil Appeal arising out of **SLP (C) Diary No. 22768 of 2024, decided on 04.08.2026**, while tracing the object of the Act and the scheme of Sections 7, 8 and 27 of the Act, held that the Maintenance Tribunal, in exercise of its incidental powers, may order eviction of children from the property of a senior citizen where such a course is necessary and expedient for the maintenance and protection of the senior citizen. The relevant portion reads as under:

> *"9. The measure of a civilized society is often reflected in the dignity, respect and security it affords to its elderly. Across cultures, religions, and civilizations, senior citizens have been regarded not merely as dependents requiring care, but as repositories of wisdom, experience, and collective*

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memory whose guidance enriches families and society alike. Article 21 of the Constitution as interpreted by this Court and Article 41 of the Constitution envisage a social order that protects the vulnerable and enables every individual to live with dignity throughout the course of life. ***This commitment finds statutory expression in the Act, enacted to ensure that advancing age does not become synonymous with neglect, insecurity, or indignity****. In light of the aforesaid constitutional mandate, the Parliament has enacted the Act. The provisions of the* ***Act incorporate the values deeply rooted in our country's civilizational ethos which revere the mother and the father as divine. The Act is intended to provide a speedy remedy for the senior citizen.***

10. Under Section 7 of the Act, the tribunals have been constituted which have power under Section 8 of the Act to conduct an inquiry following a summary procedure with powers of a Civil Court. Section 27 of the Act explicitly bars the jurisdiction of the Civil Courts. It is a well-settled legal proposition that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (Income Tax Officer Cannanore v. M.K. Mohammed Kunhi, 1968 SCC OnLine SC 71). On this analogy, we have no hesitation in holding that the tribunal under the Act has power to order eviction in order to ensure the maintenance or protection of a senior citizen.

11. It is noteworthy that a three-Judge Bench of this Court (S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors., (2021) 15 SCC 730), while dealing with claims arising out of the provisions of the Act and the Protection of Women from Domestic Violence Act, 2005 held that the tribunal under the Act ***may have the authority to order an eviction if it is necessary and expedient to ensure the maintenance and protection of a senior citizen or a parent. It was further held that eviction would be an incident of enforcement of right to maintenance and protection****. Taking into account the aforesaid observations, a two-Judge Bench of this Court (Samtola Devi v. State of U.P & Ors., 2025 SCC OnLine SC 669), held that tribunal under the Act may order eviction if it is necessary and expedient to ensure the protection of senior citizens. Another two-Judge Bench of this Court (Kamalakant Mishra v. Additional Collector & Ors., 2025 SCC OnLine 2077) reiterated the same view."*

28. The learned senior counsel for the petitioner has rightly placed reliance on the decision of a coordinate Bench of this Court in ***Pritam Singh v. Govt. of NCT of Delhi***, **W.P.(C) 13840/2022**, decided on 13.05.2025. The relevant portion of the judgment reads as under:

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> *"27. Thus,* ***a senior citizen is merely to show that his property needs protection*** *and need not necessarily have to show that he/she needs maintenance or has been ill-treated by the son or other legal heir.*
> *xxx*
> *32. The* ***Senior Citizen Rules cannot be construed in a narrow and constricted manner in which the Appellate Authority has sought to do, which completely defeats the purpose of the beneficial provisions. The Rules do not expressly require that the senior citizen should be residing at the property at the time when the application under Rule 22 of the Senior Citizen Rules is filed****. There is no basis for reading such a requirement into the said Rule.*
> *33. Also, the very fact that the petitioner is unable to live in his own house, which is his only residential abode, and has been forced to take shelter at his married daughter's house,* ***is itself demonstrative of the ill treatment suffered by him. The said ill treatment affords a continuous cause of action to the senior citizen.*** *It cannot be said, by any stretch of imagination, that just because the senior citizen was not residing at the subject property when the application under Rule 22(3)(1) of the Senior Citizen Rules was filed, the same ipso facto becomes non- maintainable. As such, the reasoning given by the Appellate Authority is unsustainable.*
> *xxx*
> *37. The same has no bearing on the entitlement of the petitioner to seek eviction in the proceedings under the Senior Citizen Act and the Senior Citizen Rules, which are in the conspectus of the peculiar framework and objects thereof i.e. to provide more effective provisions for maintenance and welfare of parents and senior citizens."*

29. Thus, in view of the dictum in ***Pritam Singh (supra)***, a senior citizen seeking eviction of his children from his property is not necessarily required to show that he has been ill-treated by them. It is sufficient if he shows that his property needs protection, so that he can live therein peacefully and with dignity.

30. Similarly, this Court in ***Vinay Varma v. Kanika Pasricha***: **2019 SCC OnLine Del 11530**, observed as under:

> *"5. In case the* ***son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property*** *so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living."*

31. In the present case, the learned District Magistrate, by order dated

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28.10.2025, rejected the petitioner's complaint by relying on the enquiry report dated 17.09.2025 of the learned SDM, holding that the complaint lacked genuineness, that no substantial proof had been provided to support the allegations of harassment, and that the matter appeared to be a family and property dispute.

32. The learned Divisional Commissioner, by the impugned order, has affirmed the said finding by observing that the provisions of the Act cannot be invoked in the absence of clear and credible evidence of neglect or harassment.

33. This Court is unable to concur with the said approach. Both the learned authorities below have proceeded on the premise that the petitioner was required to establish harassment by way of clear and cogent evidence before an order of eviction could be passed. As noted above, no such requirement is contemplated under the Act or the 2009 Rules. By insisting on the same, the learned authorities below have imposed a condition which the statute does not contemplate, and have thereby committed an error of law.

34. It is also pertinent to note that the learned authorities below have not adverted to the multiple police complaints filed by the petitioner since the year 2022, or to the fact that this Court, *vide* orders dated 26.08.2025 and 29.10.2025 passed in W.P.(C) 12946/2025, found it necessary to direct the police to render every possible assistance to the petitioner to obviate any threat from Respondent Nos. 1 and 2. Merely because there may also exist a business dispute between the sons of the petitioner, the same, by itself, cannot be a ground to hold that the grievance of the petitioner is not genuine, or to deny him the protection

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afforded under the Act.

35. Further, the learned District Magistrate and Appellate Authority have mechanically relied upon the enquiry reports of the learned SDM, which, in the considered opinion of this Court, suffer from infirmity on both occasions. The first enquiry report dated 25.02.2023 did not return any finding on the allegation of harassment, and merely recorded that it could not be ascertained whether the complaint of the petitioner was genuine or not. A report which is, on its own showing, inconclusive could not have formed the basis of a finding that the allegations of harassment stood disproved.

36. The second enquiry report dated 17.09.2025 suffers from the same infirmity. A perusal of the said report shows that the learned SDM recorded the submissions of both parties, including the grievance of the petitioner that Respondent No.1 had been recorded on video verbally abusing the petitioner in a meeting of the RWA, that multiple police complaints had been filed against Respondent Nos.1 and 2, and that their belongings had been kept in a room adjoining the room of the petitioner. The report also records that a house visit was carried out by the learned SDM on 16.09.2025 and that both the parties submitted pen-drives along with their written statements. However, the report neither records what was observed during the house visit, nor contains any discussion of the material placed on record, and proceeds to conclude, in a single line, that the allegation of harassment is not established, as no clear evidence of harassment has been observed. A conclusion bereft of reasons cannot be termed a finding.

37. Notably, the said report does not even refer to the order dated

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26.08.2025 passed by this Court, whereby the police were directed to render every possible assistance to the petitioner to obviate any threat from Respondent Nos.1 and 2.

38. Insofar as the reliance placed by the learned counsel for Respondent Nos. 1 and 2 on ***S. Vanitha (supra)*** is concerned, the said decision, as noted in ***Ravi Kant Gupta (supra)***, itself recognises that the Tribunal under the Act may order eviction where it is necessary and expedient to ensure the maintenance and protection of a senior citizen. The concern of the Hon'ble Supreme Court in ***S. Vanitha (supra)*** was that the summary procedure under the Act ought not to be used to defeat the claim of a woman to a shared household under the Protection of Women from Domestic Violence Act, 2005. In the present case, it is not the case of Respondent No.2 that any proceedings under the said Act have been initiated by her. Similarly, the reliance placed on ***Shri Chand Gautam (supra)*** is misplaced. In the said case, the son and daughter-in-law had instituted a civil suit claiming rights in the property, which is not the case here. The decision, therefore, is distinguishable on facts.

39. This Court is also conscious of the fact that instances of harassment of senior citizens by their children often take place within the four walls of the house and may be difficult to establish by way of independent evidence. The proceedings under the Act are summary in nature, and the authorities under the Act are not expected to insist upon a standard of proof as is required in a civil or criminal trial.

40. Further, a senior citizen cannot be compelled to share his own house with his children against his wishes, more so when the

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relationship between the parties has deteriorated to such an extent that the petitioner has been constrained to litigate against Respondent Nos. 1 and 2 since the year 2022 and to seek police assistance under the orders of this Court. At the age of 85 years, the petitioner is entitled to live in his own house peacefully and with dignity.

41. In view of the above, the impugned order dated 28.04.2026 passed by the learned Divisional Commissioner as well as the order dated 28.10.2025 passed by the learned District Magistrate are set aside.

42. Respondent Nos. 1 and 2 are directed to vacate the subject property within a period of four weeks from today.

43. The SHO concerned is directed to render all necessary assistance to the petitioner for ensuring compliance with the present order, if so required.

44. The present petition is allowed in the aforesaid terms. The pending application also stands disposed of.

AMIT MAHAJAN, J

NOVEMBER 20, 2026
"SS"