



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

Reserved on: 04th July, 2024

Pronounced on: 27th August, 2024

+ W.P.(C) 4190/2023

SMT. SANTOSH TYAGI

.....Petitioner

Through: Mr. N. C. Chauhan, Mr. Jagdish Prasad, Ms. Shweta Mathur, Mr. Rupesh Singh, Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND ORS.Respondents

Through: Mr. Raghuvendra Upadhyay, Panel Counsel for GNCTD with Ms. Purnima Jain and Mr. Vaibhav Tripathi, Advocates for R-1 and R-2. Mr. Karan Tyagi, Advocate for R-3, 4 & 5. Mr. Dinesh Tyagi, Respondent No.3 in person.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J.:

1. Mrs. Santosh Tyagi, a senior citizen, has filed the present petition assailing the order dated 17th August, 2022,¹ passed by the Respondent No. 1/ Divisional Commissioner dismissing her appeal against the order dated 13th February, 2021, passed by the Respondent No. 2/ District Magistrate,

¹ "the impugned order"



South West, Kapashera under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.² The said order rejected Petitioner's application for eviction of Respondents No. 3 to 6. This case brings us at an intersection of the senior citizen's rights, as stipulated under the Act, with the entitlements of her daughter-in-law under the provisions of the Protection of Women Against Domestic Violence Act, 2005,³ emphasizing the delicate balance between safeguarding the welfare of the elderly and protecting matrimonial home rights.

PETITIONER'S CASE:

2. Counsel for the Petitioner has presented the following facts and contentions:

2.1. The Petitioner, aged about 80 years, is the sole and registered owner of the property bearing No. RZ/A-34, Mahavir Enclave, Palam, New Delhi, 110045.⁴ This property was acquired through a Sale Deed dated 05th April, 1974.

2.2. Residing within this property are Respondents No. 3, Mr. Dinesh Tyagi, and Respondent No. 4, Mrs. Babita Tyagi—her son and daughter-in-law, married since 16th January, 1996. Their children, Respondent No. 5, Ms. Kumari Iti, and Respondent No. 6, Mr. Tarkeshwar Tyagi, also reside with them. The area in contention is the ground floor of the residence, which includes three rooms, a kitchen, a bathroom, and a common toilet.

2.3. From the outset, Respondents No. 3 to 6 have maintained a non-cooperative and hostile demeanour, frequently threatening the Petitioner,

² "Senior Citizens Act"

³ "Domestic Violence Act"

⁴ "the subject property"



which has rendered cohabitation in the same property untenable. Consequently, the Petitioner was compelled to disown Respondents No. 3 to 6 *via* a public notice. Additionally, Respondents No. 3 and 4 have attempted to coerce her into partitioning the property under the guise of acquiring ownership. However, as the property is self-acquired by the Petitioner, Respondents No. 3 to 6 possess no legal claim, right, or interest in it.

2.4. Aggrieved by the conduct of Respondents No. 3 to 6, on 14th October, 2019, Petitioner filed an application for eviction of the said Respondents under the Senior Citizens Act before the District Magistrate. It was during these proceedings that it came to light Respondent No. 3 had initiated divorce proceedings against Respondent No. 4 in the Dwarka District Court.

2.5. Subsequent to the Petitioner's eviction application, Respondent No. 4, on 02nd February, 2021, filed a complaint against the Petitioner under Section 12 of the Domestic Violence Act before the Metropolitan Magistrate (Mahila Court), South-West District, Dwarka. The Petitioner submitted her reply and countered the allegations and sought discharge, arguing that the complaint was filed as a counterblast to her eviction application. On 30th May, 2022, the Mahila Court dismissed the Petitioner's discharge application. However, upon challenge, the Court of Additional Sessions Judge, South-West, Dwarka, on 28th November, 2022, discharged the Petitioner and her husband citing the absence of specific allegations against them.

2.6. Petitioner can recount several incidences of harassment and ill-treatment faced by her at the hands of the Respondents No. 3 to 6. On 23rd August, 2020, Respondents No. 4 and 5, informed her that Respondent No. 5



was infected with COVID-19 and demanded a separate room for isolation, which was not available. When Petitioner suggested that Respondents No. 4 and 5 stay in government isolation centres, Respondent No. 5 attempted to expose the Petitioner to the virus. Petitioner's husband also sought police help, however, no action was taken.

2.7. Thereafter, on 13th February, 2021, the District Magistrate dismissed the petition by briefly stating that there is no ill-treatment to justify the eviction. Subsequently, the Petitioner's appeal before the Divisional Commissioner was also dismissed on 17th August, 2022.

2.8. In the above circumstances, the Petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking eviction of Respondents No. 3 to 6.

RESPONDENTS' CASE

3. *Per contra*, counsel for Respondents No. 4 to 6 urged the following contentions to defend the impugned order:

3.1. The Petitioner has fabricated facts and filed the petition solely to harass Respondents No. 4 to 6 with the aim to have the said Respondents evicted from the subject property.

3.2. The site plan of the subject property as submitted by the Petitioner is incorrect as the subject property consists of six rooms, where the Petitioner and her son, Respondent No. 3, currently reside. Respondents No. 4 to 6 are forced to live in a single room despite there being six rooms in the subject property, as Respondent No. 3 has refused to offer any assistance or accommodation within the property to them.

3.3. Respondent No. 4 is striving to preserve her marriage for the sake of



her children, denies ever mistreating the Petitioner.

3.4. The Petitioner in collusion with her son, Respondent No. 3, has initiated frivolous proceedings under the Senior Citizens Act after 24 years of marriage solely because Respondent No. 3 wishes to re-marry. This is evident as Respondent No. 3 has filed a divorce petition which is pending before the Dwarka Court.

3.5. Respondent No. 4 has filed a petition under Section 12 of the Domestic Violence Act to safeguard her residential rights and to prevent her from being ousted. Through order dated 05th March, 2021, the Mahila Court directed the Petitioner not to evict Respondents No. 4 to 6 from the shared household or commit any domestic violence till further orders.

3.6. Although Respondent No. 3 earns a substantial income from his online business and other sources and leads a lavish lifestyle, he has neglected to support Respondent No. 4 or their children. Respondent No. 4 is lacking an independent income to meet her financial needs or litigation expenses. Nonetheless, she has managed to arrange the marriage of Respondent No. 5 on 09th December, 2022, with the assistance of her family members, without any contribution from Respondent No. 3.

3.7. The instant petition is a gross abuse of process of law. Reliance is placed on the decisions in *Satish Chander Ahuja v. Sneha Ahuja*⁵ and *S. Vanitha v. The Deputy Commissioner, Bengaluru, Urban District and others*,⁶ where the Supreme Court addressed similar situation and legal grounds as those raised by the Petitioner in the present case. Petitioner has

⁵ (2021) 1 SCC 414.

⁶ (2021) 15 SCC 730.



no right to evict their daughter-in-law as the Senior Citizens Act does not have any overriding effect over the Domestic Violence Act.

THE IMPUGNED ORDER:

4. The Divisional Commissioner has upheld the order of the District Magistrate and declined the request for eviction holding that no ill-treatment or harassment can be deduced from the facts of the case. For ease of reference, the relevant portion of the impugned order reads as under:

“13. *On considering the facts and circumstances of the present case and the documents placed on record, this appellate authority is of the view that there is no ill-treatment or harassment at the hands of the respondent no. 2 i.e the daughter-in-law and her children i.e the respondent no. 3 & 4 as appellant failed to show how she has been ill- treated and harassed by the respondent no. 2 and her children. The complaint/ eviction application has been filed to take undue advantage of the Senior Citizen Act as it is an admitted fact that there is a matrimonial dispute between the respondent no. 1 & respondent no. 2. Thus, in order to throw daughter-in-law out of the suit property filed the eviction application in collusion with her son i.e respondent no. 1.*

14. *It is also pertinent to note that the Domestic Violence Complaint of respondent no. 2 is also pending before the Hon'ble Dwarka Court. The Hon'ble Apex Court in S. Vanitha case protected the residential rights of the daughter-in-law where there is a marital discord and there is a presumption that the provisions of Senior Citizen Act may be misused to oust the daughter-in-law from her shared household. Hon'ble Supreme Court of India held that:*

“21.....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 the 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." However, the over-riding 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 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 S.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 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 3 PWDV Act 2005 and Senior Citizens Act 2007. Section of the Senior Citizens Act, 2007 cannot be deployed to over-ride 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" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act



2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups, who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization....”

“24 For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act 2007.”

15. *No doubt, the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Delhi amended Rules, is a welfare legislation and enacted for the benefits and protection of senior citizens/Parents, so that they can spend their twilight years peacefully but it also imposes a duty on the District Magistrate to see that the provisions of the Senior citizen Act and amended Rules shall not be misused as a tool to evict daughter-in-law from her shared household in collusion with son. Ill-treatment cannot be presumed simply on the statement of complainant. No ground appeal is hereby dismissed as there is no infirmity in the impugned order dated 13.02.2021.*

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

ANALYSIS AND FINDINGS:

5. The case highlights a recurring social issue where matrimonial discord not only disrupts the lives of the couple involved but significantly affects senior citizens. In this instance, the elderly Petitioners, at a vulnerable stage of their lives, faced undue distress due to persistent familial conflicts. This situation reflects the need to address the welfare of senior



citizens amidst family disputes.

6. The Petitioner is, undisputedly, the owner of the subject property which she has acquired through her own means. She asserts that neither Respondent No. 3 nor his wife, Respondent No. 4, provided any care for them, and the ongoing marital discord between the two is a constant source of discomfort and stress for the Petitioner and her husband, which she likens to a slow death. The described household conditions manifest not just as verbal disputes but extend into the physical environment of the home, contributing to an unhealthy and stress-filled living situation for the senior citizens. The allegations of intentional exposure to COVID-19 represent a severe breach of duty of care expected from family members towards the elderly, who are more vulnerable to such health risks. Furthermore, the presence of pets whose maintenance is not properly managed, leading to unsanitary conditions, compounds the disrespect and neglect faced by the elderly couple. These details paint a distressing picture of the Petitioner's daily life, encumbered with neglect, health hazards, and psychological distress. Such circumstances compellingly argue for the necessity of ensuring that the living environment of senior citizens is safe, dignified, and free from any form of abuse or neglect, aligning with the core objectives of the Senior Citizens Act.

7. In reconciling the conflicting legal protections under the Domestic Violence Act and the Senior Citizens Act, this Court is guided by precedents that stress a harmonious interpretation of both statutes to ensure justice is tailored to the specific familial and social contexts of the parties involved. The Domestic Violence Act primarily safeguards the rights of women within



domestic spheres, ensuring protection against abuse and the right to reside in the matrimonial or shared household. However, this right must be considered in conjunction with the protections afforded to senior citizens under the Senior Citizens Act, which emphasizes the dignity, welfare, and peaceful living conditions for the elderly, allowing for the eviction of occupants causing distress. Thus, the Court would have to balance Respondent No. 4's right to residence under Section 17 of the Domestic Violence Act and the right of eviction of the senior citizens provided under Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2016. The Supreme Court in *S. Vanitha v. The Deputy Commissioner, Bengaluru, Urban District and others*,⁷ has elucidated on this issue and observed that the rights of the interested parties are to be balanced by harmonious construction of the two legislations. The Supreme Court highlighted that in cases of competing claims between the parties, the reliefs must be moulded accordingly to the circumstances. In *Satish Chander Ahuja v. Sneha Ahuja*⁸, the Apex Court expounded that the right to residence of a daughter-in-law is not an indefeasible right, further observing that the Courts deciding such cases must endeavour to balance the rights of the parties.

8. In the present case, subsequent to Petitioner's eviction application, Respondent No. 4 filed a complaint under Section 12 of the Domestic Violence Act against the Petitioner. Thereafter, Petitioner filed an application for rejection of the complaint and sought discharge. The said

⁷ (2021) 15 SCC 730.

⁸ (2021) 1 SCC 414.



application was dismissed by the Mahila Court on 30th May, 2022. However, in appeal, the Court of Additional Sessions Judge set aside the said order and discharged the Petitioner. The operative portion of the said order, reads as follows:

“12. Appellant is a 77 year old lady and admittedly though she is residing in the same house but is living separately. No specific date, time or occasion has been mentioned by the respondent as to how or in which manner the appellant committed any act of domestic violence on her. Merely because appellant is the owner of the premises where respondent is staying or merely because of her status of mother-in-law of respondent, appellant cannot be subjected to facing the trial in the present case instituted by the respondent U/s 12 of DV Act.

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13. No specific allegations are appearing against the appellant for inflicting any domestic violence against the respondent, hence, relying upon above stated authoritative pronouncement of Hon'ble Apex Court, proceedings are required to be dropped against appellant in the present case by taking the aid of provision of Section 28 of DV Act. Accordingly, appellant is discharged from the present case. Impugned order dated 30.05.2022 passed by Ld. MM (Mahila Court-05), South-West District, Dwarka Courts in case “Babita Tyagi Vs. Santosh Tyagi & Anr”, MC No. 142/2021 qua appellant Santosh Tyagi stands set aside. Appeal stands allowed.”

9. In light of the said order, it is evident that the allegations made against the Petitioner under the Domestic Violence Act could not be substantiated. Therefore, the reasoning of the Divisional Magistrate in the impugned order which places considerable reliance on the domestic violence complaints against the Petitioner, is no longer tenable. While the residential rights of Respondent No. 4 must be taken into account, however, given the dismissal of the domestic violence complaint, the Court cannot assume that the instant petition was filed solely to evict Respondent No. 4 from her shared



household. The Appellate Court's decision effectively nullifies the basis for assuming that the Petitioner's actions were driven by a motive to unlawfully dispossess Respondent No. 4, instead redirecting focus towards ensuring that the Petitioner's legitimate grievances and rights as a senior citizen.

10. Additionally, it is to be noted that the Petitioner filed the eviction application against Respondents No. 3 to 6 on 14th October, 2019 and subsequently, Respondent No. 3 filed the petition seeking divorce from Respondent No. 4. One year later, Respondent No. 4 filed the complaint under Domestic Violence Act. Therefore, the allegation made by Respondent No. 4 that Petitioner is acting in collusion with Respondent No. 3, is also not borne out. Hence, Petitioner must not be deprived from utilizing her entire property and be forced to live with Respondent No. 4, when there are instances to show that there is a rift between the son and the daughter-in-law. There is no justification to allow Respondents No. 3 to 6 to continue occupying the subject property, which is admittedly owned by the Petitioner.

11. In light of the foregoing, having regard to the established legal principles and the Supreme Court decisions in *S. Vanitha* and *Satish Chander Ahuja*, the principle of "balancing of interests" becomes crucial, ensuring that no legal provision is used as a tool for injustice against another vulnerable member of the household. Notably, there is an obligation upon the husband to provide for residence and maintenance to his wife. In the instant case, no order has been shown whereby the Mahila Court had fixed any maintenance amount to be paid to Respondent No. 4 by the Petitioner or Respondent No. 3. The Petitioner's allegations of ill-treatment are mainly



targeted towards Respondents No. 4 to 6 and not her son, although eviction has been sought against him as well. This is because of the fact that the continuous disputes between Respondents No. 3 and 4 are a constant source of distress for the Petitioner and her husband. On the other hand, Respondent No. 4 asserted that the subject property constitutes a “shared household” and, therefore, she has a right to reside in the subject property as provided under Section 17 of the Domestic Violence Act. In such a situation, while the Petitioner is entitled to seek eviction from the subject property, Petitioner and Respondent No. 3 must also provide an alternate reasonable accommodation to Respondent No. 4.⁹ Considering the competing claims and composite disputes under the two legislations, it is appropriate to mould reliefs in recognition of the claims of Respondent No. 4. Accordingly, it would be appropriate to permit the Petitioner to exercise her rightful ownership over the subject property, while ensuring that Respondent No. 4 is provided with an alternate accommodation or a monthly payment towards alternate accommodation.

12. To facilitate a resolution that respects the rights of the Petitioner and the residential rights of Respondent No. 4 under the Domestic Violence Act, the following directions are issued:

(a) Respondent No. 3, Mr. Dinesh Tyagi, is directed to provide financial assistance to his wife, Respondent No. 4, by paying a sum of INR 25,000/- per month which shall be credited to her bank account on or before the 10th of every month, in order to enable her to secure alternative accommodation for herself. The details of such bank account shall be provided by

⁹ See also: *Vinay Verma v. Kanika Pasricha & Anr.*, 2019:DHC:6519.



Respondent No. 4 to Respondent No. 3 within a period of one week from today. In absence of such details, payment be made through Demand Draft/ Pay Order. Should Respondent No. 3 fail to make the monthly payments or expresses an inability to fulfil this financial obligation, the responsibility to ensure payment shall fall upon the Petitioner.

(b) Once the financial support commences, Respondents No. 3 to 6 shall vacate the subject property and hand over vacant possession to the Petitioner within two months.

(c) The above directions shall be taken into consideration and be also subject to any decision that may be given by the Metropolitan Magistrate (Mahila Court), South-West District, Dwarka in respect of maintenance and residence etc., *qua* Respondent No. 3.

13. With the above directions, the present petition, along with pending application(s), if any, is disposed of.

SANJEEV NARULA, J

AUGUST 27, 2024

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