

**Court No. - 19**

**Case :-** WRIT - C No. - 26686 of 2021

**Petitioner :-** Jeetu @ Amit Kumar Rawat And Anr.

**Respondent :-** Sub Divisional Magistrate Sadar Lucknow And Anr.

**Counsel for Petitioner :-** Sadhu Saran Shukla, Madhu Srivastava

**Counsel for Respondent :-** C.S.C., Rajendra Prasad

**Hon'ble Pankaj Bhatia, J.**

Learned Counsel for the petitioner opposes illness application filed by the learned Counsel for the respondent. Although the same is on personal ground, however, in view of the said objection, the matter is being heard.

Let a copy of this order be sent to the Bar Association for information.

Heard learned Counsel for the petitioner.

In view of the opposition to the illness application of the Counsel for the respondent, the matter is proceeded to ex-party.

The present petition has been filed challenging the order dated 01.02.2021 whereby an order has been passed under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (in short the Senior Citizen Act" ) .

Facts in brief are that the petitioners are the son and daughter-in-law of the respondent no.2 and are staying in her residence situate at House No.537D/228A, Srinagar Colony, Lucknow. It is stated that on account of the petitioner no.2 suffering from disease and two operations, she did not bear a child. The respondent no.2 was mentally harassing the petitioner and in this regard, initially an FIR was lodged as Case Crime No.0003 of 2019, under Section 147, 323 IPC. It also appears from the record that the petitioner no.2 had given an application to the police of Police Station Madiyaw alleging that her in-laws were harassing and disconnected the electricity and water connection. It is also argued that in the light of the said, the terms of the petitioners and the respondent no.2 are not cordial.

It is stated that the respondent no.2 filed an application under Section 4/5 of the Senior Citizen Act alleging that the respondent no.2 was being harassed by the petitioners. Several allegations of taking liquor were also levelled against the

petitioner no.1. After referring various instances regarding the act of the petitioner no.2, the respondent no.2 felt insecure and moved the application for eviction of the petitioners from the house.

In response to the said application, a reply was filed by the petitioner denying the allegations levelled. On the basis of the averments made, a statement was also given by the respondent no.2 to the effect that she was ready and willing to offer for a residence to the petitioners over the another plot situate at Itaunja, District Lucknow.

In view of the pleadings exchanged between the parties and the statement made by the respondent no.2 that she was willing and ready to construct an accommodation for the petitioners over the vacant plot for staying, an order came to be passed on 01.02.2021 directing the petitioners to vacate the house of the respondent no.2 on the ground that within two years, the respondent no.2 shall raise construction over the vacant plot and gave the same to the petitioners. The order is under challenge before this Court.

The Counsel for the petitioner argues that Additional District Magistrate who passed the order has no jurisdiction to pass an order of eviction under Section 4/5 of the Senior Citizen Act that too in the summary proceedings. He places reliance on the judgment of this Court in the case of **Smt. Khushboo Shukla vs District Magistrate, Lucknow** decided on 02.11.2021.

As the respondent no.2 is not present, I have perused the counter affidavit wherein it has been stated that the petitioners are used to harass the respondent no.2 and the respondent no.2 was taken the steps to avoid her harassment as well as the family members.

In the light of the submissions made, this court is to decide whether the order passed impugned in the writ petition are justified or not.

The act in question was framed with a view to provide for maintenance and welfare of the parents and the senior citizen which is directly recognized and guaranteed under the Constitution of India and all matters incidental thereto.

Section 4 of the Senior Citizen Act provides for maintenance of the senior citizen including the parents to make an application for grant of maintenance against the children.

Section 5 empowers that an application for maintenance be

filed by the senior citizen or the parents or the person authorized by him. It also empowers that the tribunal to take suo moto cognizance.

Section 21 of the said Act provides for the measures to be taken by the State Government to ensure the well being of the senior citizen.

In pursuance to the power conferred, the Rules have also been framed.

Rule 21 of the said Rules provides the duty and powers of the District Magistrate and it is mandatory for the District Magistrate to ensure that the life and property of the senior citizen are protected and they are able to live with security and dignity. Thus, the act recognizes the vulnerable position of the senior citizen in the present society and intends to provide mechanism to avoid their suffering and to ensure that the life and property of the senior citizen are secured and they are able to live in security and dignity.

The petitioner has placed reliance in the case of ***Khushboo Shukul (Supra)*** wherein this Court placing reliance on the judgment of the Supreme Court in the case of *S. Vanitha vs Deputy Commissioner, Bengaluru Urban District and others; 2020 SCC OnLine SC 1023* and decided a issue where a steps is being taken for eviction by the in-laws from the property where the petitioner was staying separately and the said property belonged to the in-laws of the petitioner. In that context this Court had held that the summary proceedings cannot be resorted for eviction.

There can be no quarrel for the proposition laid down by this Court, however the issue in the present case is slightly different, inasmuch as, the petitioners are staying along with the respondent no.2 and the steps have been taken under Section 4/5 to protect and secure the life and the property of the senior citizen.

In terms of the power conferred on the District Magistrate and the pleadings on record clearly demonstrate that the respondent no.2 had justifiable apprehension to the threat or security in case the petitioners are continued to stay in the property in question along with the respondent no.2. The *bona fide* of the respondent no.2 are further clear, inasmuch as, she has offered to provide for an alternative accommodation to the petitioners despite therebeing no legal requirement to do so. The order impugned also directs the eviction subject to the respondent no.2 providing for alternative accommodation as offered by her

with the construction raised thereupon within a period of two years.

In view of the aforesaid, I do not find any reason to interfere in the order impugned.

The writ petition lacks merit and is accordingly **dismissed**.

**Order Date :- 14.3.2022**

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