

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 30, 2019

+ W.P.(C) 347/2018, CM Nos. 1417/2018, 36104/2018 & 40805/2018

AARSHYA GULATI (THROUGH: NEXT FRIEND MRS. DIVYA GULATI) AND ORS.

..... Petitioners

Through: Mr. T.K. Ganju, Sr. Adv. with
Mr. Divyanshu Goyal, Ms. Swati Jain
and Ms. Shikha Sinha, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Sanjoy Ghose, ASC for GNCTD
with Ms. Urvi Mohan, Adv.
Mr. V.K. Bali, Sr. Adv. with
Mr. Aditya Soni, Adv. for R4 & R6.
Mr. Mudit Gupta, Adv. for R5

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 1417/2018 (by applicant Mrs. Divya Gulati under Order 32 Rule 1 of CPC to act as next friend of the petitioners to prefer the accompanying writ petition)

For the reasons stated in the application, the same is allowed and disposed of.

CM Nos. 40805/2018 and 36104/2018 (under Section 151 CPC for placing additional documents on record)

For the reasons stated in the application, the same are allowed. Additional documents are taken on record. Applications are disposed of.

W.P.(C) 347/2018

1. This petition has been filed by two minor petitioners through their mother as their next friend with the following prayers:

“In view of the facts and circumstances as stated above it is respectfully prayed that this Hon’ble Court may graciously be pleased to:

a) Issue a Writ of Certiorary or any other appropriate Writ and thereby quash the Rule 22(3) and 22(4) of The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2016 for being ultra-vires the Parent Act and the Constitution of India, 1950;

b) Issue a Writ of Certiorary or any other appropriate Writ and thereby set aside the Order dated 28.11.2017, passed by the Ld. Division Commissioner in Appeal bearing No. PA/Div. Comm./Appeal No. 08/2017/Sec-16 to the extent it curtails the right of the Petitioners to raise preliminary issues/legal defences;

c) Issue a Writ of Certiorary or any other appropriate Writ and thereby quash the impugned show cause notice dated 14.12.2017, issued by the Ld. DM in furtherance to the Impugned Order;

d) Pass any order(s) as this Hon'ble Court deems fit and proper in the interest of justice."

2. The facts in brief are as follows:
 - i. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted on 29th December, 2007 with aim of providing more effective mechanism for providing maintenance and welfare of parents and senior citizens and for matters connected therewith and incidental thereto.
 - ii. Vide a notification dated 30th June, 2009, respondent no.1 in exercise of powers under Section 32 of the Act notified Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 and a separate Comprehensive Action Plan was also framed under Section 32(2)(f) of the Act. The said Plan, through Rule 22 (1) and (2), cast a duty on concerned police officials to prepare a list of senior citizens in their area, regularly visit senior citizens and to promptly attend to their complaints. Therefore, by virtue of the said Action Plan an effective channel for communication between senior citizens and police officials was provided. It is however to be noted that under the said Action Plan there was no specific provision for any remedy of eviction.

- (iii) It is stated that the petitioners claiming to be coparceners in Kuldip Singh and Sons, HUF have already instituted CS(OS) 2223/2013, a Suit for Partition of all family properties and businesses including their present residential house. Respondent no.4 is grandfather of the petitioners and father of respondent no.5.
- (iv) In response to the said Suit for Partition, respondent no.4 is stated to have filed a writ petition seeking remedies under the aforesaid Action Plan as also eviction of the present petitioners from their current residential house. The said writ petition was however withdrawn. Despite efforts, disputes between the parties could not be resolved amicably.
- (v) On 19th December, 2016 respondent no.1 is stated to have amended the Comprehensive Action Plan, thereby incorporating a summary procedure for eviction of a senior citizen's son / daughter / legal heir from his self-acquired property on account of his non-maintenance and ill-treatment. The Rules were further amended on 28th July, 2017 to expand the scope of the term "Property" under the said Rules. Resultantly, the remedy of eviction was extended to "*property of any kind whether*

moveable or immoveable, ancestral or self-acquired, tangible and intangible and include rights or interests in such property” as opposed to only self-acquired property.

- (vi) Pursuant to the said amendment respondent no.4 instituted a complaint before the learned District Magistrate seeking eviction of respondent no.5. Vide order dated 26th September, 2017, the said complaint was however dismissed, holding that the said complaint seemed to be for a division of several coparcenary / joint properties and a similar matter was already pending before this court wherein, orders were passed for the maintenance of status quo with respect to possession and title in respect of the said properties. The said order was challenged by respondent no.4 before the Divisional Commissioner, who vide order dated 28th November, 2017 allowed the appeal and remanded the matter back to the District Magistrate for a decision on merits.
- (vii) It is to be noted that while remanding the matter back to the District Magistrate, the Divisional Commissioner directed that “.....*counsels on both sides not to bring in any technical points pertaining to the Act to unnecessary delay the proceedings*”.

The petitioners herein and respondent no.5 were therefore restrained from raising preliminary issues regarding substantial questions of law going to the root of the matter before the District Magistrate.

(viii) In pursuance to the said remand order, the District Magistrate has issued a show cause notice dated 14th December, 2017 for appearance of the petitioners on 12th January, 2018 for further proceedings under the impugned Rules.

3. It is the petitioner's case that the said remand order arbitrarily restricts the petitioners' (and respondent no.5's) rights to raise legal issues in the proceedings before the District Magistrate, including those of jurisdiction and the very applicability of the provisions of the Act. It is stated that the Divisional Commissioner has not even passed a reasoned order while issuing directions restraining the essential rights of the petitioners to raise the aforesaid issues. The said directions are also stated to have been passed without any arguments being addressed or pleadings being furnished on the same. It is stated that the Divisional Commissioner while passing the order dated 28th November, 2017 has failed to deal with the issues going to the root of the matter and has simply termed them as being technical and passed a blanket order restraining the petitioners from raising such issues / defences before the District Magistrate. Such procedure is in clear violation of principles of natural justice which is a *sine qua non* that an administrative authority must keep in mind while passing any order.

4. The petitioners have also challenged the impugned Rules on the ground that the said Rules have transgressed the Act and gone beyond its ambit by making provisions and conferring powers which are not contemplated under the Act itself. The said Rules are therefore stated to be discriminatory, vague and arbitrary apart from being violative of Articles 14 and 21 of the Constitution of India.

5. It is stated that the impugned Rules bring into existence a substantive right and a new remedy of eviction, which does not find any mention under any provision of the parent Act. Moreover, only Sections 21, 22 and 23 of the Act deal with protection of life and property of senior citizens to the extent that in certain specific circumstances transfers of properties made by senior citizens may be declared to be void by the Tribunals established under the Act. Reference is specifically drawn to Section 23 (1) and (2).

6. According to the petitioners, provisions of the Act do not create any negative obligation of eviction of any bonafide occupant from any premises when such occupant has been in settled possession of the said premises for a long duration of time. Further from the provisions of the Act, no legislative intent delegating, expressly or impliedly the power to enact any summary procedure for eviction of parties concerned, is discernable. The said Rules are further challenged on the ground that they suffer from the vice of delegation of essential legislative functions which consists of determination or choosing of legislative policy and of formally enacting that policy into a binding Rule of conduct as opposed to acceptable delegation of only ancillary

functions in order to fill up the details / gaps in the policy framed by the statute.

7. It is stated that the impugned Rules erroneously confer powers of eviction through a summary procedure wherein any party in settled possession and having possessory rights will be evicted without following substantive procedure of law. Disputes with respect to title and possession of immovable properties involve disputed questions of fact and law and the same warrants adjudication after a proper trial by a civil court. The said Rules are further challenged on the ground that judicial functions have been delegated to administrative / quasi-judicial authorities. There is further no scope for trial to be conducted even if disputed and triable issues are raised by the parties.

8. Specific reference is made to Rule 22 wherein the District Magistrate / Deputy Commissioner only after verifying the title deeds shall be at liberty to evict any person on the alleged non-maintenance / ill-treatment of the concerned senior citizen without having first dealt with substantive legal rights supporting settled possession of the parties so evicted. In the absence of specific definitions of the grounds on which eviction may be ordered, i.e., (i) ill-treatment and (ii) non-maintenance of the concerned parent / senior citizen, the entire procedure envisaged is stated to be absolutely arbitrary and at the mercy of unfettered discretion of the administrative / quasi-judicial body. It is also their case that the said Rules are in direct derogation of public policy and law of the land specifically under Hindu Law.

9. As regards the challenge to the amendment in definition of

“property”, it is their case that the parent Act did not intend to trample upon rights guaranteed under different Acts including right of residents and maintenance of coparceners or members of joint Hindu family in the family residential house. The amendment however has given a prejudicial right of eviction against such person deriving legal right of residence under other laws prevalent in India thereby rendering such rights ineffective that too without having followed proper procedure. It is finally stated that to the best of the petitioner’s knowledge the impugned Rules have not been laid before legislature for approval in terms of Section 32 of the Act.

10. Respondent no.1 Government of NCT of Delhi through the Social Welfare Department has filed its counter-affidavit wherein it is stated that the impugned Rules have been prepared, published and notified in exercise of powers conferred by Section 32 of the Act. Respondent no.1 has further framed comprehensive Rules and Action Plans from time to time for the well being and protection of senior citizens and parents alike and consequently the impugned Rules detail the duties and powers of the Deputy Commissioner / District Magistrate with regard to protection of life and property of the senior citizens / parents. It was only following consultation with the Law Ministry that the Rules were amended in 2016 to provide a procedure for eviction from the property of the senior citizen / parent and then in 2017 to expand the scope of the term “property”. The said amendment is stated to be on similar pattern as adopted by the Union Territory of Chandigarh following directions of the Punjab and Haryana High

Court in the case of *Justice Shanti Sarup Dewan, Chief Justice (Retd.) and Anr. v. Union Territory, Chandigarh and Ors, LPA 1007/2013 (order dated 26.09.2013)*.

11. The aforementioned amendments are stated to have been brought about following receipt of various grievances at various forums demanding Rules under Section 22 (2) of the Act. Further the definition of “property” is stated to have been taken from the Act wherein Section 2 (f) states that ““*property*” means property of any kind, whether moveable or immoveable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.” Further Section 3 states that “*the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.*” It is also stated that District Magistrate has been empowered with the task of protection of property only within the parameters set by Section 22 (1) of the Act.

12. The effect of the impugned Rules of 2009 as amended in 2011, 2016 and 2017 is that appropriate powers have been conferred on the District Magistrate / Deputy Commissioner for eviction and protection of property of both senior citizens and parents for their welfare. In conclusion it is stated that the impugned Rules challenged by the petitioner have been correctly framed after following all due and prescribed procedures of law in order to ensure senior citizens and parents their rightful maintenance and upkeep through properties

earned by them and that this has been done in furtherance of the intention of the legislature.

13. Respondent nos. 4 and 6 have filed their counter-affidavit jointly, wherein it is their stand that the present petition has been filed with the sole motive of misleading this court especially in light of the fact that the vires of the Rules in question was not questioned in 2016 at the first instance nor were they challenged when they received show cause notices upon the initial complaints being made by respondent no.4. According to them, the present challenge is highly belated and clearly an afterthought.

14. It is stated that a complaint was first moved by the respondent No.4 in terms of the Rules of 2016 on February 01, 2017. In terms of Rules 22(3)(1)(ii) and (iii) a report of verification of title of the property was submitted in favour of the complainant by the Sub Divisional Magistrate and consequently a show cause notice was issued to parents of the petitioners to show cause as to why they should not be evicted. It is stated that even the petitioners along with their parents being respondent No.5 herein were a party to the said complaint, however, the said Rules were never challenged and instead they continued opposing the said complaint on merits without even showing an intention to challenge the said Rules before any Forum. Final arguments were heard August 14, 2017 and the judgment was finally delivered on September 26, 2017 wherein the District Magistrate had declined to pass an order of eviction based on a technicality, without adjudicating the complaint on merits.

15. An appeal was filed against the said order before the Divisional Commissioner. Vide order dated November 28, 2017, which is stated to have been a conceded order, the matter was remanded back to the District Magistrate to pass appropriate orders within two months without considering any technical points pertaining to the Act. It is stated that it was only on the eve of the hearing before the learned District Magistrate that the present petition was filed by the petitioners challenging the conceded order passed by the Divisional Commissioner.

16. It is pointed out that the respondents had been physically assaulted and turned out of their own house by their son and had there been any possibility of settlement they would themselves have taken necessary steps in furtherance of same. It is stated that such assaults and attacks on respondent no.4 have instilled a sense of fear to the extent that he cannot even stand in the same room as his son leave apart settling differences.

17. It is stated that respondent No.6 bought H.No.C-117, East of Kailash from her own income on lease hold basis from May 06, 1978 and the conveyance deed for the same was executed on October 14, 1996 and thereafter the house was gifted to respondent No.4 and the mutation regarding the same has also been carried out. It is stated that the respondent No.5 has a lavish 900 sq. ft. hone at Dwarka jointly owned with his wife which he is purposely not occupying with the sole motive of grabbing H.No.C-117.

18. It is stated that in order to escape the merciless attacks and

torture by their son (respondent No.5), respondent Nos.4 and 6 had to leave to their own house from time to time. As a result of being turned out from their own house respondent nos. 4 and 6 have been living in Gurudwaras and at the mercy of their relatives while hiding from respondent no.5 herein.

19. As regards that impugned order passed by the Divisional Commissioner, it is stated that directions have been passed only to adjudicate upon respondent no.4's complaint within the mandate of the Act and therefore there cannot be any infirmity with the same. According to them, the only reason that the said order has been challenged now is to delay the proceedings so remanded back to the District Magistrate. Moreover, the said order having not been challenged by respondent no.5 (respondent before the Divisional Commissioner) has now attained finality.

20. It is stated that pursuant to the subject remanding order passed by the Divisional Commissioner, the District Magistrate has also passed a final order on the complaint on March 23, 2018 wherein the subject complaint has been dismissed. According to the respondent No.4 the said final order is in complete disobedience of the impugned remanding order. An appeal against the same has already been preferred before the Divisional Commissioner.

21. It is their case that the petitioners and their parents were living in the subject property only with permission of respondent nos. 4 and 6 as licensees and the same having been withdrawn, they would be rendered illegal occupants in the property. The procedure specified in

the subject Rules for eviction from the property of the senior citizens / parents is not at all vague and arbitrary but is in fact quite detailed and clearly lays down specific conditions and circumstances under which eviction may be effected.

22. Respondent Nos.4 and 6 have therefore made a case in favour of upholding the vires of the impugned rules. The submissions in that regard have been made by Mr. Bali learned Senior Counsel appearing for the respondent Nos.4 and 6, and the same shall be referred to in the later part of this judgment.

23. Mr. T.K. Ganju, learned Sr. Counsel appearing for the petitioners would submit that the present petition has been preferred by minor petitioners challenging the vires of the subject Rules wherein respondent no.1 has provided for a “procedure of eviction from property / residential building of senior citizens / parents” as Rule 22 (3) purported to be made under Sections 22 and 32 of the Act of 2007. He would submit that the Act does not authorize the State Government to formulate Rules specifically for a summary procedure for eviction and therefore the Rules in question have been made beyond the power and authority granted under the Act. Reliance is placed on *General Officer, Commanding-in-Chief v. Dr. Subhash Chandra Yadav and Anr. 1998 2 SCC 351*. According to him, the impugned amended Rules purport to create substantial rights, obligation and disabilities, in the form of summary procedure for eviction simpliciter on the specified therein. According to him such a provision for creation of substantive rights, disabilities and obligations constitutes essential

legislative function which could not have been delegated. Moreover, general rule making powers cannot be construed to have been delegated to provide for an expansive policy / procedure. Reliance is placed on *Global Energy Limited and Anr. V. Central Electricity Regulatory Commission*, (2009) 15 SCC 570, *Kunj Behari Lal Butail and Others. V. State of HP and Others*, (2003) 3 SCC 40 and *Supreme Court Employees Welfare Association V. Union of India*, (1989) 4 SCC 187.

24. It is his submission that the impugned Rules have conferred wide and unfettered powers on the Deputy Commissioner / District Magistrate, who is not a judicial authority but merely an administrative one to decide complicated and disputed questions of facts and law without any trial. Moreover Rule 22(4) [it should be 22(3)(1)(i)] purports to include ancestral and joint family property within the Deputy Commissioner's / District Magistrate's jurisdiction for the purpose of effecting eviction as opposed to demarcating and partitioning shares of respective parties in such family properties.

25. He would further submit that Section 23 of the Act only provides the remedy of eviction as a consequential relief, after certain specific kinds of transfers of properties of the concerned senior citizen / parent have been annulled. There is no provision, according to Mr. Ganju, that provides for a substantive relief in the nature of eviction from the residential property of the senior citizen / parent. The said relief is therefore, that of 'repossession' only. He therefore submits that it was never the intention of the legislature to provide any such

substantive remedy, but merely to protect the senior citizens / parents in cases where they may have been taken advantage of, to grab their property.

26. Mr. Ganju would point out that in the present case, the petitioners and their parents are in occupation of the subject property ever since they were born and the said alleged “transfer of property” was effected much before the Act came into existence. Even so respondent no.4 has neither claimed any maintenance nor claimed any relief under Section 23 of the Act.

27. He would rely on *C.K. Vasu v. Circle Inspector of Police 2012 SCC Online Ker 10658*; *Sanjay Walia v. Sneha Walia 204 2013 DLT 618*; *Kanailal Pramanik v. State of Calcutta 2013 SCC Cal. 11797*; *B. Ramasamy v. District Collector and Ors.*; to state that the Act does not provide for the remedy of eviction. He would further rely on *Major Harmohinder Singh v. State of Punjab LPA 1588/2014* to state that the impugned Rules erroneously confer an administrative authority with powers to summarily evict a party in settled position and have possessory rights. Reliance is also placed on *Jairam Sakharam Gaikwad v. State of Maharashtra 2016 SCC Online Bom. 506*; *Kamlesh Kumari Shravankumar Shukla v. Parvatiben Ramprasad Shukla*; *M.P. Tej Babu v. The State of Telangana 2016 SCC Online Hyd. 79*; *Janardan Maniyamma v. MTA & DC 2017 Law Suit (Ker) 664*.

28. He would conclude by submitting that the Statement of Objects and Reasons of the Act clearly shows that the intention of the

Legislature was to provide for speedy and inexpensive legal remedy with respect to granting maintenance to the senior citizens / parents and not with respect to settlement of property disputes among family members, more so, in a summary manner. According to him, the impugned provisions shall have overreaching effect on other statutory rights including the right to maintenance of members / coparceners as guaranteed under Hindu Law.

29. Mr. Sanjoy Ghose, learned ASC appearing for respondent nos. 1 to 3 would apart from reiterating the stand adopted in the counter-affidavit submit that the impugned order dated 28th November, 2017 suffers from no infirmity simply because the same has been passed by the Divisional Commissioner pursuant to the amended Rules. As regards the Rules, he would submit that the same have been adopted on a pattern similar to the ones as adopted by the Union Territory of Chandigarh following receipt of several grievances at various forums from concerned persons. He would rely on Section 22(1) of the Act to submit that powers have been conferred on the District Magistrate / Deputy Commissioner. Moreover, Section 22 (2) widens the scope of the Act and the role of the concerned authorities to prepare a Comprehensive Action Plan to achieve the stated objectives of the Act.

30. He would rely on *Eera through Manjula Krippendorf v. State of NCT of Delhi and Ors. AIR 2017 SC 3457* and *Paramjeet Kumar Saroya v. Union of India and Anr. AIR 2014 P&H 121* to submit that a provision must be construed in such a manner so as to give effect to

the intention of the legislature in such a manner that the same does not lead to any absurdity or ambiguity in operation of the said provision. He would also seek the impugned provisions to be interpreted in a liberal manner on account of the fact that the subject Act and Rules framed there under are beneficial in nature. Reliance is placed on *Baldev Sahai Bangia v. R.C. Bhasin* 1982 2 SCC 210; *Board of Muslim Wakfs, Rajasthan v. Radha Kishan and Ors.* 1979 2 SCC 468; *Bombay Anand Bhawan Restaurant v. Deputy Director* 2009 9 SCC 61; *Edukanti Kistamma v. S. Venkatareddy* (2010) 1 SCC 756; *Hindustan Lever Ltd. v. Ashok Vishnu Kate and Ors.* 1995 6 SCC 326; *Indian Performing Rights Society Ltd. v. Sanjay Dalia* 2015 10 SCC 161; *SM Nilajkar and Ors. v. Telecom District Manager, Karnantaka* 2003 4 SCC 27; *Spring Meadows Hospital and Anr. v. Harjol Ahluwalia and Anr.* 1998 4 SCC 39.

31. He would further submit that remedy of eviction is squarely provided for under the Scheme of the Act. Reference is made to *Ms. Sahidun Nisa v. Lt. Governor and Ors.* 2017 SCC Online Cal. 16231; *Sunny Paul v. State of NCT of Delhi LPA 205/2017*; *Darshna v. GNCTD and Ors.* 2018 SCC Online Del. 11641; *Shadab Khairi and Anr. V. State and Ors.* 2018 SCC Online Del 7626. Relying on *Surinder Kaur v. State of Punjab and Ors.* 2017 SCC Online P&H 1219; *Jagtar Singh v. State of Punjab* 2018 SCC Online P&H 598; *Gurpreet Singh v. State of Punjab CWP 24058/2015*; *Dattatreya Shivaji Mane v. Leelabai Shivaji Mane*, 2018 SCC Online Bom. 2246 and *Manjit Singh v. District Magistrate*

Cum Deputy Commissioner (2016) 3 RCR (C) 832, he would submit that the District Magistrate does in fact has the power to order eviction in terms of the Act and the procedure laid down in the Rules.

32. He would further submit that whether the delegation by Legislature to the executive has exceeded the permissible limits would depend on the facts and circumstances of a specific case and it cannot be said that there is a general Rule governing the issue. The answer would depend upon the nature of power delegated and the purpose intended to be achieved. In this regard, he would rely *Sitaram Vishambhar Dayal v. State of UP, AIR 1972 SCC 1168* and *Krishan Prakash Sharma v. Union of India 2001 5 SCC 212*. Referring to *Mahe Beach Trading Company v. Union Territory of Pondecherry, 1996 3 SCC 741*, he would submit that there would be no abdication / surrender of legislative functions or excessive delegation so long as the legislature has expressed its will on a particular subject matter; indicated its policy and left its effectuation to subordinate legislation, provided the Legislature has retained control in its hands and with reference to it so as to act as a check or a standard to prevent or undo the mischief, if any, by subordinate legislation. He would also rely on *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Seth 1984 4 SCC 27* for the same.

33. In conclusion Mr. Ghose would refer to a judgment of the High Court of Kerala in *P.V. Mani v. Union of India AIR 1986 Ker. 86* to submit that courts must not normally cast negative burden on the Rule

making authority to controvert an assumption to the effect that a subordinate legislative instrument is invalid for absence of confidence or bonafides or fairness or reasonableness on part of the authority.

34. Mr. V.K. Bali, learned Senior Counsel appearing for the respondent Nos.4 and 6 while drawing reference to the statement of objects and reasons of the Act of 2007 would submit that the Act was enacted since there was no other efficacious remedy available under civil law at that time. From a reading of the definition of “property” in Section 2(f) of the Act, it becomes clear that the same has been enacted only to secure the interest of elders. Referring to section 3, Mr Bali would submit that provisions of the Act would have the effect, notwithstanding anything inconsistent therewith contained in any enactment other than this Act. It is also his submission that being a central enactment, the Act must have uniform application throughout the territory of India. In this regard he would submit that various High Courts across the country have time and again held that the scheme of the Act does provide for eviction of children from the property of the parents / senior citizens.

35. It is his submission that Sections 22 and 32 must be read together, and in doing so, it becomes clear that the State Government is mandated to frame specific rules and prescribe a comprehensive action plan for providing protection to the life and property of senior citizens. Relevant provisions of Sections 22, and 32 read as under:

“22. Authorities who may be specified for implementing the provisions of this Act.-

1. *The State Government may, confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.*

2. *The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”*

“32. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

1. *Without prejudice to the generality of the foregoing power, such rules may provide for—*

- a. *XXX;*
- b. *XXX;*
- c. *XXX;*
- d. *XXX;*
- e. *the powers and duties of the authorities for implementing the provisions of this Act, under sub-section (1) of section 22;*
- f. *a comprehensive action plan for providing protection of life and property of senior citizens under sub-section (2) of section 22;*
- g. *XXX”*

36. Moreover, in light of Section 27 of the Act, jurisdiction of Civil Courts is completely barred. Mr Bali would refer to the Rules framed by the Union Territory of Chandigarh, and then by the State of Punjab, pursuant to certain orders passed by the Punjab and Haryana High Court wherein procedure for eviction from property / residential

building of senior citizens / parents has been laid down. It is pointed out that that despite challenges before the Punjab and Haryana High Court the same have been upheld time and again.

37. It is submitted that the present Rules have been framed casting a duty on the District Magistrate to ensure that life and property of senior citizens and parents are protected and that they are able to live with the sense of security and dignity. Reliance is placed on the case of *Justice Shanti Sarup Dewan (supra) and Gurpreet Singh v. State of Punjab and Ors. CWP. 24508 of 2015 decided on 1st December, 2015, Punjab and Haryana High Court.*

38. It is submitted that the Act of 2007 is a beneficial legislation with the object of providing institutionalized mechanism for protection of life and property of older persons. Chapter V of the Act deals with the protection of life and property of the senior citizen and Section 22 categorically states that State Government may confer and impose duties on a District Magistrate as may be necessary to ensure that the provisions of the Act of 2007 are carried out properly. The mandate to make Rules in furtherance of Section 22 (1) is present in Section 32 (2)(e). According to him, Section 23 of the Act deals only with a particular scenario, relating to transfer of property done after commencement of the Act. Rest of the contingencies are covered by the provisions of the sections 22 and 32, supplementing section 23.

39. It is further submitted that the Govt. of NCT of Delhi had duly notified rules as regards institutionalization of provision of maintenance to senior citizens / elder parents under the Act, however,

no such steps were taken for institutionalization of a suitable mechanism for the protection of life and property of the concerned senior citizen / parents.

40. As regards the petitioners' stand that the proceedings under the Act would be barred on account of the subject property being part of coparcenary /joint family property it is his submission that the existence of any HUF / coparcenary is inconsequential for the purpose of the Act of 2007. It is submitted that the notification dated July 28, 2017, amended the definition of "property" in the relevant Rules to include all property, whether ancestral, or self-acquired. He would therefore submit that the same was done with the sole objective of providing speedy and efficacious remedy to senior citizens.

41. Mr. Bali further submitted that the words "Action Plan" as mentioned in the Act should be read to mean a working, efficient and enforceable Action Plan for the protection of life and property of the senior citizen / older person and merely notifying vague and toothless Rules would not be in compliance of the same. The definition of "property" has been widened with the sole intention of providing speedy and efficacious remedy under the Act. Earlier the definition in the subject Rules had been restricted to include only self-acquired property which was clearly inconsistent with Section 2 (f) of the Act. Rules have therefore been framed in consonance with the stated objectives of the Act and the intention of the legislature in enacting the same. Reference is drawn to *Sunny Paul and Anr. V. State of NCT of Delhi 253 (2018) DLT 410*.

42. As regards that impugned order passed by the Divisional Commissioner, it is submitted that directions have been passed only to adjudicate upon respondent no.4's complaint within the mandate of the Act and therefore there cannot be any infirmity with the same. According to him, the only reason that the said order has been challenged now is to delay the proceedings. Moreover, the said order having not been challenged by respondent no.5 (respondent before the learned Divisional Commissioner) has now attained finality. It is further pointed out that the matter as remanded back to the learned Deputy Commissioner has now been adjudicated and final orders have been passed on March 23, 2018, against which an appeal has already been preferred by respondent no.4 with the Divisional Commissioner. According to Mr. Bali, the challenge to the order of the Divisional Commissioner is now infructuous.

43. In conclusion, Mr Bali would submit that the mandate of the Act is to provide hassle free and speedy justice to parents and senior citizens. The intention of the legislature for enacting the Act of 2007 must be discerned from the statement of objects and reasons, read in conjunction with the relevant provisions of the Act. The procedure for eviction, as laid down in the Rules, 2016, is clearly quite detailed, and can under no circumstances be said to be vague or illusive.

44. In rejoinder Mr. Ganju would submit that several High Courts across the country have already taken the view that the Act does not contemplate eviction of children. Reference is made to the following judgments:-

- (i) ***(2012) SCC Online Ker 10658 C.K.Vasu v. Circle Inspector of Police;***
- (ii) ***2013(204) DLT 618 Sanjay Walia v. Sneha Waliya & Anr.;***
- (iii) ***LPA No. 946/2016 Smt. Sneha Walia v. Sanjay Waliya decided on 10th December, 2013;***
- (iv) ***W.P.(C) 35490/2013 Kanailal Pramanick v. State of West Bengal & Ors. decided on March 07, 2014;***
- (v) ***CWP No. 24392/2013 Major Harmohinder Singh v. State of Punjab & Ors.;***
- (vi) ***B. Ramasamy v. The District Collector, Namakkal District & Ors.;***
- (vii) ***LPA No. 1588/2014 Major Harmohinder Singh v. State of Punjab & Ors. decided on October 14, 2014;***
- (viii) ***2016 SCC Online Bom 506 Jairam Sakhram Gaikwad & Another v. State of Maharashtra & Others;***
- (ix) ***SCA No. 10700/2015 Kamleshkumari Shravankumar Shukla v. Parvatiben Ramprasad Shukla decided on April 13, 2016;***
- (x) ***2016 SCC Online Hyd 79 M.P. Tej Babu v. State of Telangana;***
- (xi) ***2017 Law Suit (Ker) 664 Janardhanan; Maniyamma v. MTAA & DC;***
- (xii) ***2000 Law Suit (Ker) 664 Kunj Bihar Lal Butail & Ors. v. State of H.P. & Ors.;***
- (xiii) ***(2009) 15 SCC 570 Global Energy Limited and Anr. v. Central Electricity Regulatory Commission;***

(xiv) (1988) 2 SCC 351 General Office Commanding in Chief and Anr. vs. Dr. Subhash Chandra Yadav and Anr.;

(xv) (1989) 4 SCC 187 Supreme Court Employees Welfare Association v. Union of India and Anr.

45. He would further refer the judgments relied upon by the respondents to submit that the same are all distinguishable on facts and law.

1. **Shanti Swarup Dewan v. UT Chandigarh; [LPA 1007 of 2013 (P&H HC)]**

- No challenge to vires of rules
- No rule of eviction at that point of time
- Special relief based on specific facts and circumstances, wherein no Civil Suit had been filed and attempts at mediation were also made, but son had refused to settle.
- Does not deal with the specific provisions of the Act, objective and purpose of the Act to determine whether any rule making power has been delegated under the Act to setup a separate Tribunal for eviction.
- Admitted case of exclusive ownership of Suit Property. Thus, not one of those classes of cases where genuine dispute has been raised.

2. **Gurpreet Singh v. State of Punjab; [CWP No. 24508 of 2015 dated 01.12.2015-P&H High Court]**

- Different facts
- Order passed in Writ Petition challenging an Order of eviction

passed by District Magistrate

- Not a case of challenge to vires of Rules per se
- Rules completely differ on grounds of unauthorized occupation only as against the ground of ill-treatment and no-maintenance as in impugned Rules
- No ruling with respect to cases wherein a genuine dispute with respect to the subject property is pending adjudicating before the Trial / Civil Court.
- Did not go into the question that whether any specific provision in the Act expressly / specifically delegating the power to make rules with respect to constitution / establishment of a Judicial / Quasi Judicial to adjudicate upon a lis between the party.

3. **Sunil and ors. v. State and Ors. [W.P.(C) 2208 of 2017 decided on 07.09.2017 by Delhi High Court]**

- Not challenged the vires; assumed the Rules to be correct.
- It was a case where Title / Ownership of property not disputed; hence not relevant.

4. **Nasir v. Govt. of NCT of Delhi [2015 SCC Online Del 13060]**

- Eviction Order passed by Maintenance Tribunal was not under any Rule.
- Question of vires of Rules not gone into as Rule did not exist at that point in time.

5. **Shadab Khairi and Ors. v. The State and Ors [MANU/DE/0917/2018]**

- Not gone into the question of vires of the Rules, hence, not relevant. The relevant extract is reproduced herein:-

It must be observed that in instant proceedings, neither the vires of the Act nor the Rules framed thereunder have been assailed on behalf of the appellants. What is assailed is the competence of the Maintenance Tribunal to render an order of eviction under the Act.

Further, it is canvassed that the Act does not contemplate eviction per se. Alternatively, it has been urged that respondent No.3 being possessed of sufficient means and assets was disentitled from maintaining an application seeking maintenance within the meaning of the provisions of the Act.

46. He would distinguish the peculiar facts of the present case from those of the cases relied upon by the respondents in the following manner:

- a. petitioners herein are minor children under Section 2 of the Act and hence beyond the scope of this Act.
- b. petitioners are co-parcenars / members of joint family having more than 13 properties.
- c. respondent No.4 has not alleged any grievance against the petitioners herein in his complaint before the District Magistrate and moreover, it is not the case that they (respondent Nos.4 and 6) have been excluded from enjoyment of the subject residential property.
- d. the petitioners and their parents have been making constant efforts to reconcile with respondent Nos.4 and 6 in an effort to live together.
- e. the subject property is part of an HUF and therefore, the petitioners and their parents cannot as such be excluded

therefrom. Moreover, respondent No.4's complaint before the Ld. DM has been dismissed on two separate occasions.

47. Mr. Ganju would refer to various provisions of the Act and submit that a bare perusal of the said provisions would indicate that the intention of the legislature was specifically to introduce the concept of grant of maintenance for parents and senior citizens and the establishment of "Maintenance Tribunals" to enforce said provisions. According to him, it was never the intention of the legislature to provide for any remedy in the nature of eviction of children of the concerned parents or senior citizens. It is his submission that the State Legislature has exceeded its delegated legislative authority under the Act in setting up adjudicatory forums and vesting them with the impugned powers.

48. He would reiterate that Section 22 of the Act merely gives power to the District Magistrate to ensure protection of life and property of the senior citizens and to take administrative measures in furtherance of said objectives. It does not in any manner warrant creation of rules, quasi-judicial forums or adjudicate such rights which are not provided for by the parent Act. Such general / vague delegation cannot be said to be within the ambit of essential legislative functions. He would point out that even for setting up a Maintenance Tribunal, specific provisions are provided under the Act whereas there is nothing similar provided for setting up of separate Tribunals for eviction. He would refer to definition of the word "*protection*" from

various dictionaries to submit that by no stretch of imagination can the said word be interpreted to mean eviction of children, relatives and others. He would submit that even under principles of Administrative Law, delegated legislation may be framed by the delegatee only within the strict confines of powers granted by the Statute. Reliance is placed on *Kunj Bihar Lal Butail & Ors. (supra)*, *Global Energy Ltd. (supra)*, *General Office Commanding in Chief and Anr. (supra)*.

49. Referring to the 28th report of Standing Committee on Social Justice and Empowerment for Maintenance and Welfare of Parents and Senior Citizen Bill, 2007, Mr. Ganju would submit that the rule making powers under Section 22 and 32(2)(f) of the Act are only for matters of administrative detail and procedure. He would submit that under the impugned Rules there is high degree of scope for abuse of the provisions laid down thereunder. Specifically he would point out that a rich senior citizen not requiring maintenance may make use of the impugned Rules to by-pass or circumvent procedure of adjudication of civil disputes and partition matters to gain quick and effective possession of subject properties on account of the fact that the impugned Rules presuppose the genuineness of a claim made by the said senior citizen. Consequently, the adjudicatory process involving trial and appreciation of substantive evidence would be rendered infructuous and would lead to anomalous situation wherein senior citizens / parents might get away with playing fraud upon relatives by merely making vague, unsubstantial allegation of ill-treatment. According to him, the present case highlights the classes of

cases where provisions of the Act are being grossly misused on the basis of vague, unsubstantiated allegations.

50. In conclusion Mr. Ganju would, while referring to the Statement of Objects and Purpose of the Act of 2007 submit that the Act does not contemplate resolution of family dispute or the protection of civil rights and property of senior citizens who are of adequate means and are not left shelter less or without food. The Act provides for protection only in cases where the senior citizens / parents have been neglected or abused to usurp their property. According to him, enlarging the scope of the Act would amount to judicial activism.

51. Before proceeding to examine the issues involved in the present matter it is necessary to note that the impugned order dated November 28, 2017 passed by the Divisional Commissioner, remanding the appeal of respondent no.4 herein back to the District Magistrate has, during the pendency of the present proceedings, being taken to its logical conclusion inasmuch as the District Magistrate / Deputy Commissioner has vide order dated March 23, 2018 dismissed the complaint made by respondent no.4 under the subject Act and Rules on the ground that the only two circumstances under which remedies could have been granted were not made out in the case before him. The petitioners' challenge, therefore, to the order dated November 28, 2017 would not be required to be dealt with and the only issue that remains for our consideration pertains to the challenge to the constitutionality of the impugned Rules.

52. Having heard the learned counsel for the parties, before we

proceed to deal with the rival submissions made by them, it is important for us to refer to our judgment in the case of *Sunny Paul and Anr. V. State of NCT of Delhi (supra)* which was an intra Court appeal arising from the judgment of the learned Single Judge wherein the learned Single Judge had considered the issue whether or not the Act of 2007 provides, to senior citizens / parents, a remedy of maintenance by children / relatives and / or does it also provide for eviction of adult children in case of parental abuses. The learned Single Judge had answered the question in affirmative. In the appeal we have upheld the judgment by holding, in para 17, as under:

“17. A reading of the Rules framed by the Government of NCT clearly reflect that a senior citizen can file an application seeking eviction of his son and daughter or legal heir from his self acquired or ancestral property on the ground of ill-treatment or non maintenance. The vires of these Rules has not been challenged by the appellant. The limited challenge is to the jurisdiction of the Maintenance Tribunal to order an eviction under the Act of 2007. So noting the limited challenge to the order passed by the Tribunal and keeping in view the fact that the enactment being a social legislation and the same requires to be given liberal interpretation to achieve the mandate of the Act of 2007 i.e for the welfare of the parents and senior citizens and for the protection

*of their life and property, there is no doubt that the Tribunal does have the jurisdiction to direct vacation by the children of any property in which the senior citizen has a right of residence / possession. In this regard, we may refer to the judgment of the Supreme Court in **Board of Muslim Wakfs, Rajasthan v. Radha Krishna and Ors (1979) 2 SCC 468** wherein it was held that the construction which tends to make any part of the Statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the Statute should be accepted.”*

53. So to answer the submissions made by the learned counsel for the parties as noted above, we proceed to answer the same on the premise that the Tribunal has the jurisdiction to direct the eviction of the children from the property.

54. The word “property” has been defined in Section 2(f) of the Act as follows:

“property” means property of any kind, whether moveable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.”

55. Suffice it would be to state that the petitioners have not challenged any provisions of the Act. On a reading of the provisions of the Act as they stand, more specifically Sections 2(f), 22 and

32(2)(f), and our judgment in *Sunny Paul and Anr. (supra)*, the position that emerges is that a District Magistrate, in order to protect the property of senior citizens, whether moveable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property, may direct eviction therefrom.

56. The Government of Delhi, in exercise of its powers under Section 32(2)(f) has framed **Delhi Maintenance and Welfare of Parents and Senior Citizens Rules 2009**. The said Rules have also undergone amendments on December 19, 2016 and on July 24, 2017. By the amendment of 2016 the Rule making Authority has added sub-Rules 3 and 4 to Rule 22, which reads as under:

“3(1) Procedure for eviction from property / residential building of Senior Citizens / Parents:-

- (i) A senior citizen may make an application before the Dy. Commissioner / District Magistrate (DM) of his district for eviction of his son and daughter or legal heir from his self-acquired 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 Magistrate 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 / DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner / DM 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 self-acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner / DM 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 or 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.

(2) Eviction Order from property / residential building of Senior Citizens / Parent. –

- (i) If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he / she may produce in support of the same and after giving him / her a reasonable opportunity of being heard, the Deputy Commissioner / DM is satisfied that the eviction order needs to be made, the Deputy Commissioner / DM may make an order or eviction, for reasons to be recorded therein, directing that the property / residential building shall be vacated:

(3). Enforcement of Orders,

- (i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner / DM or any other officer duly authorized by the Deputy Commissioner / DM in this behalf may evict that person from the premises in question and take possession;
- (ii) The Deputy Commissioner / DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.
- (iii) The Deputy Commissioner / DM will further hand over the property / premises in question to the concerned Senior Citizen.

(iv) The Deputy Commissioner / DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.

4. Appeal

- (i) The appeal against the order of Dy. Commissioner / DM shall lie before Divisional Commissioner, Delhi.
- (ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.”

57. By the amendment of 2017 the authority has substituted sub-Rule 3(1)(i) and 3(1)(iv) of Rule 22 in the following manner:

“(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 includes rights or interests in such property on account of his non-maintenance and ill-treatment.

(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 moveable, immovable, ancestral or self-acquired, tangible or intangible and includes 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.”

58. It may be stated here that the challenge in the writ petition is only to Rule 22 (3) and 22 (4) [it should be Rule 22(3)(1)(i) and Rule 22(3)(1)(iv)]. Having said that, the primary submissions of Mr. Ganju while laying the challenge to the Rules can be summed up as under:

- (i) The Act did not authorize the State Government to formulate rules specifically for a summary procedure for eviction and therefore the Rules in question have been made beyond the rule making power under the Act.
- (ii) The impugned Rules purport to create substantive rights, disabilities and obligations in the form of summary procedure of eviction on the grounds of ill treatment and non maintenance, which are neither mentioned nor delegated under the Act.
- (iii) The delegate cannot create substantive rights, disabilities and obligations which are not provided for under the

parent Act as they constitute essential legislative function, which can neither be delegated nor construed to be delegated in vague and expansive manner.

- (iv) The general rule making powers cannot be construed to have been obligated to provide for expansive policy / procedure.
- (v) The Rules confer wide and unfettered powers on the District Magistrate / Deputy Commissioner who is not a judicial authority, but merely an administrative one, to decide complicated and disputed question of facts and law without any trial. No guidelines are provided to control or supervise exercise of such powers by the District Magistrate. Further, Rule 22(3) [should be 22(3)(1)(i)] purports to include ancestral and joint Hindu family properties and all other movable and immovable properties etc within the jurisdiction of District Magistrate as opposed to their respective share only in the said ancestral / joint Hindu family property.
- (vi) The Act does not provide for any relief of eviction simplicitor but as a consequential relief granted subsequent to transfer of properties of the concerned senior citizen / parent having been annulled. Therefore, the relief is of repossession and not of eviction. Therefore, it was never the intention of the legislature to create a procedure, let alone a summary procedure, for

eviction simplicitor and the said provision has been introduced for cases where the senior citizens have been taken advantage / exploited by people to grab their properties with ulterior motives.

59. We note Section 22 of the Act empowers the State Government to confer such powers and duties on a District Magistrate for compliance of the provisions of the Act and for which purpose the State Government shall prescribe a comprehensive Action Plan for providing protection to life and property of senior citizens. Section 32 is the rule making power of the State Government. The provisions of Section 22 or Section 32 have not been challenged on any ground. So, it is clear that the Act itself empowers the State Government to confer such powers and duties on District Magistrate for protection of life and property of the senior citizens.

60. Now the question is whether the State Government could have formulated a summary procedure for eviction. We must bear in mind the objective for which the Parliament has enacted the Act, that is because of 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 forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support which clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection of 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, a need was felt to have simple, inexpensive and speedy mechanism for parents / senior citizens to claim maintenance. The Act also provide for protection of the life and property of the senior citizens / parents. The “*protection of property*” must be understood to mean where a senior citizen retains the property in his name and possession for his welfare and well being.

61. So, the objective of the Act being, to provide inexpensive and speedy procedure for the protection of life and property of the senior citizens from the children / legal heirs, who are expected to maintain parents / senior citizens by providing the basic amenities and physical needs but refuse or fail to maintain / provide basic amenities which conduct shall amount to ill-treatment and non-maintenance and shall be a ground for parents / senior citizens to seek eviction of children / legal heir from the property, which is the only way for them to seek protection of their property so that, they continue to have shelter over their head, and sustain themselves independently without interference from their children / legal heirs. Further, a senior citizen cannot knock the door of civil Court to fight a legal battle to obtain the possession of the property as the jurisdiction of the Civil Court is barred under Section 27 of the Act. In this regard, we may refer to the judgment of the Punjab and Haryana High Court in the case of ***Justice Shanti Sarup Dewan, Chief Justice (Retd.) and Anr. (supra)*** wherein in para 37 it is held as under:

“37. *It cannot be said that in such a situation, where*

respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an over-riding effect qua any other enactment in view of Section 3 of the said Act. Infact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus LPA No. 1007 of 2013 (O&M) required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No.1. Infact, that is the very objective of respondent No. 7.”

62. The reliance placed by Mr. Ganju on the judgment of the Supreme Court in the case of ***General Officer Commanding-in-Chief (supra)*** in support of his contention that the Rule made beyond the rule making power cannot become valid on subsequent conferment of power, has no applicability in view of the provisions of the Act as noted above.

63. So, it must be held that the Act empowers the State Government

to formulate summary procedure for eviction of children / legal heir of senior citizens, in the eventuality of ill-treatment or non-maintenance of Sr. Citizen / Parents.

64. The plea of Mr. Ganju that the delegate cannot create substantive rights, disabilities and obligations, which are not provided for under the parent Act, as they constitute an essential legislative function, which neither be delegated nor construed to be delegated in vague and expansive manner is concerned, suffice it would be to state that there is no general Rule governing the said proposition. The answer would depend upon the nature of power delegated and the purpose intended to be achieved. It was held by the Supreme Court in ***Mahe Beach Trading Co. and others (supra)*** that if there is an abdication of legislative power or there is excessive delegation or if there is a total surrender or transfer by the legislature of its legislative functions to another body then that is not permissible. The Supreme Court held there is, however, no abdication, surrender of legislative functions or excessive delegation so long as the legislature has expressed its will on a particular subject matter, indicated its policy and left the effectuation of the policy to subordinate or subsidiary or ancillary legislation, provided the Legislature has retained the control in its hand with reference to it so that it can act as a check or a standard and prevent or undo the mischief by subordinate legislation when it chooses to or thinks fit.

65. Similarly, it was held by the Supreme Court in ***Kishan Prakash Sharma and others (supra)*** that legislatures in India have been held to

possess wide power of legislation subject, however, to certain limitations such as the legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. The Legislature cannot delegate uncanalised and uncontrolled power. The Legislature must set the limits of the power delegated by declaring the policy of the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the Legislature. The Supreme Court further held, the Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law-making to Parliament and the Legislatures of States, it impliedly prohibits them from throwing away that responsibility on the shoulders of some other authority. An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including its preamble, and the facts and circumstances in the

background of which the statute is enacted, the history of the legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a legislative policy and guidelines for its execution are brought out, the statutes, even if skeletal, will be upheld to be valid but this rule of liberal construction should not be carried by the Court to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on the executive. The Supreme Court has further noted that these very tests were also adopted in *Ajay Kumar Banerjee vs Union of India, (1984) 3 SCR 252* to examine whether there is excessive delegation in framing schemes and reading the preamble, the scheme and the other provisions of the enactment taking note of the general economic situation in the country, the authorities concerned had to frame appropriate schemes.

66. In the case in hand, it is seen that the Parliament has expressed itself through the Act, the objective of which has already been narrated above. It is seen from the objective of the Act and from Section 22 whereby the State Government has been empowered to prescribe “*a comprehensive action plan for providing protection of life and property of Senior Citizens*” This being so, the protection of life and property basically pertains to law and order, which is a State subject. Therefore, the obligation to prepare Action Plan has been put on the State Government. So, it follows that a policy has been determined by the Parliament for the protection of life and property of the Senior

Citizen by the District Magistrate on the basis of Action Plan / Rules framed by the State Government. The action plan to be prescribed is the one, which is speedy and to be implemented by the District Magistrate, that is by an authority other than Civil Court, as the jurisdiction of Civil Courts is barred. So, the confirmation of such a power, even on an administrative authority, is justified. While exercising the powers bestowed under the Act / action plan / rules, the District Magistrate / Deputy Commissioner ceases to be an administrative authority as understood in normal parlance (even though there is no bar). He performs quasi-judicial functions as different from administrative functions. Further, the rules framed by the Government of NCT of Delhi, indicate the parameters on which the District Magistrate / Deputy Commissioner shall act, which includes, on an application by Senior Citizen / Parent(s) for eviction of his / her son, daughter or legal heir from his / her property (as defined under Section 2(f) of the Act of 2007), the District Magistrate, after getting the title of the property verified through SDM, and on consideration of the provisions of the Act of 2007, and forming an opinion that the son, daughter or legal heir are ill treating him / her by occupying their property, after following the principles of natural justice, by giving hearing to all persons concerned, pass an order of eviction.

67. The eviction is from the property of the Senior Citizen / parent which is, movable or immovable, ancestral or self acquired, tangible or intangible property which the Senior Citizen owns or has a right or

interest.

68. It must be said that the delegation of power to the State Government to frame an action plan and to the District Magistrate to implement the same, is justified and is not vague. Further, we note that the Central Government through Sections 30 and 31 of the Act has retained with itself, the power to issue broad guidelines to the State Governments as to the carrying into execution of the provisions of the Act and also to make periodical review and monitor the progress of the implementation of the provisions of the Act by the State Governments, which surely suggests, the Central Government has the power to prevent misuse of the Act.

69. Insofar as the plea of Mr. Ganju that consequential relief of repossession, if required under Section 23 can be granted by the Tribunal only after declaring transfer of property as null and void where the transfer of property takes place after the commencement of the Act; by way of gift or otherwise subject to the condition that the transferee shall provide basic amenities and physical needs to the transferor and the transferee having assured of such obligation, has failed to do so, is concerned, we are not in agreement with this submission of Mr. Ganju for the simple reason that the situation / procedure / action as contemplated under Section 23 is different from the situation / procedure / action, contemplated under Section 22 of the Act, which prescribes a comprehensive action plan for the protection of life and property of Sr. Citizen as different from annulling a transfer. Further, if Section 23, contemplated the only eventuality,

there was no necessity for the Legislature to include Section 22 of the Act. In other words, the Legislature thought it fit to include, through Action Plan, other eventualities whereby the property of the Sr. Citizen can be protected. Further, in Section 23, it is the Tribunal which shall determine the issue, whereas under Section 22, the concerned authority is District Magistrate. Mr. Bali is right in contending that this case is not covered under the provisions of Section 23. So, this plea of Mr. Ganju is rejected.

70. During the arguments, Mr. Ganju has made the following submissions:-

- i. It was never the intention of the legislature to create a procedure, let alone a summary procedure, for eviction simplicitor and the said provisions has been introduced for cases where the senior citizens have been taken advantage / exploited by people to grab their properties with ulterior motives.
- ii. Without prejudice, admittedly, the petitioners and their parents are in occupation of the residential property in question, ever since they were born and the said alleged “transfer of property” was affected much before the enactment of the Act, 2017.
- iii. The respondent No.4 has admittedly not claimed any relief of maintenance and to the contrary has stated that they do not require maintenance. Both the said facts have been expressly pleaded by the respondent No.4 in the Writ

Petition (Civil) 627/2017 before this Court.

iv. The respondent No.4 is man of substantial means and is in possession of properties worth more than 100 crores and does not fall in the category of a needy person requiring maintenance. Therefore invocation of the Act in such cases would purely be an exploitation of a Social Welfare Legislation designed to provide relief to needy and distressed strata of Senior citizens.

v. It is the case of the petitioner, that there is no provision / mechanism which provides for eviction simplicitor of any person under the Act, more so in a summary manner where the person is in settled possession and claiming a right as a coparcener / member of a coparcenary, which question is subjudice before this Court in CS(OS) 2223/2013.

71. These submissions made by Mr. Ganju are case specific and in any case the issue having already been decided by the District Magistrate (after the matter was remanded back by the Divisional Commissioner), it is for the parties to seek their remedies in accordance with law. On point No. (iii) above, we may clarify that in *Sunny Paul (supra)*, we have stated that a claim for annulment can lie without there being a claim for maintenance by a senior citizen. We reiterate that we have only considered the issue with regard to the vires of the Rules challenged by the petitioners and nothing more. We may

also clarify here that the remedy under the Act is for the senior citizens / parents and summary exercise of jurisdiction shall be without prejudice to the rights of a third party in the subject property, which may be determined by a Civil Court in accordance with law.

72. Insofar as the judgments relied by Mr. Ganju on the following propositions, we do not see their applicability to the facts of this case.

Srl. No.	Case Title	Proposition
1	<i>C.K. Vasu v. Circle Inspector of Police 2012 SCC Online Ker 10658;</i>	<i>The Act does not provide for a specific remedy of eviction.</i>
2	<i>Sanjay Walia v. Sneha Walia 204 2013 DLT 618</i>	<i>Tribunal established under the act cannot go into disputed question of title and possession of immovable property</i>
3	<i>Kanaialal Pramanik v. State of Calcutta 2013 SCC Cal. 11797;</i>	<i>Remedy of eviction would be available before a competent civil court and not under writ jurisdiction</i>
4	<i>B. Ramasamy v. District Collector and Ors</i>	<i>The Act empowers the tribunal to only order maintenance</i>
5	<i>Major Harmohinder Singh v. State of Punjab LPA 1588/2014</i>	<i>District Magistrate cannot order eviction of a person who is in possession of a property for a long time and that to through a summary procedure.</i>
6	<i>Jairam Sakharam Gaikwad v. State of Maharashtra 2016 SCC Online Bom. 506;</i>	<i>Section 23 of the Act can only be resorted to in certain specific situations only</i>
7	<i>Kamlesh Kumari Shrivankumar Shukla v. Parvatiben</i>	<i>An authority under the Act cannot assume the role of the</i>

	Ramprasad Shukla;	<i>Civil Court, and therefore cannot enforced eviction or pass direction in relation that to</i>
8	M.P. Tej Babu v. The State of Telangana 2016 SCC Online Hyd. 79;	<i>The Tribunal cannot adjudicate issues, such as property disputes since they do not squarely fall within the contours of specific provision of the Act.</i>
9	Janardan Maniyamma v. MTA & DC 2017 Law Suit (Ker) 664	<i>The Tribunal cannot pass any orders contrary to those pass by a Civil Court</i>

73. Mr. Ganju had also relied on the following cases, however, there is no dispute as regards the proposition of law laid down therein:

1	Global Energy Limited and Anr. V. Central Electricity Regulatory Commission, (2009) 15 SCC 570,	<i>Subordinate legislation should always be read only within the confines and context of parent enactment.</i>
2	Kunj Behari Lal Butail and Others. V. State of HP and Others, (2003) 3 SCC 40	<i>Only ancillary and subordinate legislative function may be delegated.</i>
3	Supreme Court Employees Welfare Association V. Union of India, (1989) 4 SCC 187	<i>Subordinate legislation must not be ultra vires the rule making power contained in the parent legislation</i>
4	Association of concerned Citizens of New Delhi v. New Delhi Municipal Council and ors. 2017 SCC OnLine DEL 9836	<i>A subordinate legislation must always conform to the parent statute and rules made thereunder cannot be made to supplant the provisions of the parent act but only to supplement it.</i>

74. We do not see any merit in the petition. The same is dismissed.

No costs.

V. KAMESWAR RAO, J

CHIEF JUSTICE

MAY 30, 2019/aky

HIGH COURT OF DELHI



भारतमेव जयते