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

+ W.P.(C) 10463/2015 & CM APPL. 43227/2016

SUNNY PAUL & ANR. Petitioners
Through Mr. Viresh B. Saharya with
Mr. Akshit Agarwal, Advocates

versus

STATE NCT OF DELHI & ORS. Respondents
Through Ms. Manmeet Arora, Advocate as
Amicus Curiae.
Mr. Naushad Ahmed Khan, ASC
(Civil) for R-1/GNCTD.
Mr. Ashutosh Gupta, Advocate for
R-2 and 3.

% Reserved on: 18th January, 2017
Date of Decision: 15th March, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. The primary issue that arises for consideration is whether the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "Act 2007") provides the sole remedy of monetary maintenance by the children/relative and/or does it provide for eviction of adult children in cases of parental abuse?

2. It is pertinent to mention that the present writ petition has been filed by Mr. Sunny Paul and Mr. Victor Dass, two sons of respondents No. 2 and

3 challenging the order dated 01st October, 2015, passed by the Maintenance Tribunal (Central District) Delhi, under the Act 2007 whereby both the petitioners along with their respective family members were directed to vacate House No.19A, Raj Niwas Marg, Civil Lines, Delhi-110054 (hereinafter referred to as “the property”).

3. The admitted facts are that the Baptist Church Trust Association (hereinafter referred to as "BCTA") is the absolute owner of the property.

4. Initially the property was allotted by BCTA to Mr. Andrew Jacob, who was in their employment. In 1990, Ms. Suman Gaur who is the daughter of respondents No. 2 and 3, began residing in the property with permission from Mr. Andrew Jacob.

5. In 1995, Mr. Andrew Jacob died but Ms. Suman Gaur continued to live in the property with the permission of the BCTA.

6. In 2002, respondent No.3-father of the petitioners and Ms. Suman Gaur became an employee of the BCTA, and was allotted the property by BCTA.

7. Respondent No. 3 was employed with BCTA from 2002 till 2012, during which time respondents No. 2 and 3 were permitted by BCTA to reside in the property. Subsequently, BCTA filed a suit for taking over possession of the property, which is still pending. Even the petitioners have admitted in the present writ petition and in their response to the show cause notice before the Maintenance Tribunal that respondents No. 2 and 3 are tenants in the property.

8. Moreover, BCTA, which is the lessor paramount of the property, does not acknowledge any claim of the petitioners to the property, and has stated that the petitioners could claim only as children/legal representatives of

respondents No. 2 and 3. Consequently, the legal possession of respondents No. 2 and 3 is not disputed by either BCTA, which is the lessor paramount, or by the petitioners.

9. In the petition filed under the Act, 2007, it was alleged that both the petitioners had physically assaulted, mal-treated and harassed the elderly and sick parents. It was averred that petitioner No.1-Sunny Paul is an alcoholic, whose services had been terminated by the Delhi Police on the ground of mis-conduct and who had been convicted in a fraud case and against whom a number of police complaints are pending in different police stations. It was further averred that senior citizens had already disowned and disinherited both the petitioners by way of publication in newspapers.

10. The Maintenance Tribunal by a detailed order directed the petitioners to vacate the property within ten days. The SHO, Police Station Civil Lines was directed to ensure enforcement/compliance of the said direction and to ensure that life and property of the senior citizens was secured and no harassment was caused to them by the petitioners and their families. The relevant portion of the impugned order is reproduced hereinbelow:-

“From the record and documents filed by both the parties herein it is very much clear that parties are at loggerheads for last few years or to say since the time the respondents forcefully occupied the rooms of the petitioners by break opening the locks and started giving mental tensions, harassment and threats to the petitioners. The petitioner No.1 is suffering from life threatening disease of Cancer and had to undergo Mastectomy Right Side. Petitioner No.2 and eighty seven year old senior citizen is also suffering from hypertension, and renal diseases. During the course of proceedings due to heightened harassment maltreatment and physically assault at the hands of respondents and their family, petitioner No.2 suffered renal failure and is undergoing dialysis twice a week.”

The tribunal is of the opinion that all Indian Citizens are entitled to fundamental rights granted to them by the Indian Constitution and Senior Citizens are no exception. They are also entitled to fundamental rights to life and personal liberty. It is quite apparent that the relationship between the petitioners and the respondents is very strained. In their lust to grab the house, the respondents, their wives, and children are causing undue mental tension, agony and harassment to the petitioners. The respondents and their family members are not even refraining from causing physical assault on senior citizen parents/grand parents, which is very disturbing and alarming, which required prompt action against them. The petitioners are traumatized by their own children and grandchildren, and thus seek removal of them from the house, and also adequate police protection. The grievance of the petitioners is that they are not allowed to live peacefully, making it difficult and humiliating experience with the petitioners to interact with their daughter and another son Anil Dass. It is to prevent such incidents that the petitioners are seeking protection under the Act. The petitioners have made it clear that they do not want any maintenance from the respondents 1 & 2. One of the major aims of the Act was to provide a suitable mechanism for the protection of life & property of older persons. Sec.2(f) defines property as under: “(f)Property means property of any kind, whether moveable and immovable, ancestral or self acquired, tangible or intangible, and includes rights or interests in such property.” The aforesaid would thus show the definition of property is wide and comprehensive with the object of securing the interest of the elders. Sec.6 makes the provisions of the Act to have overriding effect notwithstanding anything inconsistent therewith contained in any other enactment.

The petitioners have a tenancy right in the house, being the lawful tenant and no one else has any right to obstruct in their use and occupation of the same. That the house is under tenancy of the petitioners and the status of respondents and their family qua the house is that of trespassers who have forcefully grabbed the possession of the rooms by break opening the locks. The respondents alongwith their family are required to move out

of the house to permit the petitioners to live in peace without being forced to accommodate respondents and their family.

The tribunal thus issue the following order/directions:-

1. That the respondents (a) Sunny Paul (b) Victor Dass along with their respective family members shall vacate the entire rooms, store, toilets, open space of House No.19A, Raj Niwas Marg, Civil Lines, Delhi-54 to the extent that is under their unauthorised and illegal occupation within 10 days of the receipt of the order.
2. That all household goods, LCD, Almirah, Clothes etc. belonging to petitioners shall be handed over back by the respondents to the petitioners.
3. That the S.H.O., P.S. Civil Lines is directed to ensure enforcement/compliance of the directions (1) & (2) mentioned above, and also ensure that life and property of the petitioners is secured and no harassment is caused to them by the respondents and their family. Beat Staff be deputed for regular visits to the Senior Citizen petitioners, in order to safeguard the life and property of the Senior Citizen petitioners. Compliance report be sent to the tribunal within 15 days of the order.”

(emphasis supplied)

11. Upon a writ petition being filed by the petitioners, this Court, on 5th November, 2015, issued notice to explore the possibility of an amicable settlement.

12. On 09th May, 2016 both the counsel stated that the matter had been compromised in accordance with the terms and conditions mentioned in the joint compromise application. Consequently, the petition was disposed of in terms of joint compromise application which had been filed under Order XXIII Rule 3 CPC.

13. It is pertinent to mention that under the Settlement Agreement, both the petitioners had agreed to vacate the property and shift to another property of the respondent Nos. 2 and 3 at Kaithal, Haryana. Both the petitioners were to take possession of 500 sq. yards out of 1000 sq. yards of the Kaithal property.

14. Subsequently, petitioner No.1-Mr. Sunny Paul alleged that the property at Kaithal was less than 1000 sq. yards and prayed that the settlement agreement be revoked.

15. Petitioner No.2-Mr. Victor Dass filed an affidavit dated 16th January, 2017 stating that he had removed all his belongings and vacated the property in question in accordance with the consent order dated 09th May, 2016. In the said affidavit, it was further stated that Mr. Victor Dass had no concern of any nature whatsoever with the property in question.

16. However, as counsel for petitioner No.1-Mr. Sunny Paul insisted for recall of the compromise as well as consensual order dated 09th May, 2016, the said application was allowed on 10th January, 2017 and the matter was heard at length.

17. Mr. Viresh B. Saharya, learned counsel for petitioner No.1 submitted that the Maintenance Tribunal had exceeded its jurisdiction in passing the impugned eviction order dated 01st October, 2015 inasmuch as there was no claim for maintenance and the relief was founded only on the allegations of physical assault, mal-treatment, harassment and forceful ouster of respondent Nos. 2 and 3 from the property. He submitted that even in cases of parental abuse, no eviction order could be passed under the Act 2007. He further submitted that the conditions stipulated in Section 4 were not satisfied even if the expression "obligation" referred to in said Section was

read together with the 'Statement of Objects and Reasons' of the Act, 2007. In support of his submission, he relied upon the judgment of this Court in *Sanjay Walia v. Sneha Walia, 204 (2013) DLT 618*.

18. Mr. Saharya submitted that the Act, 2007 was also not attracted in the present case as respondent Nos. 2 and 3 were not the absolute owners of the property in question. He contended that as in the present case, respondents No.2 and 3 had not transferred any title in the property to petitioner No.1, Section 23 was not attracted to the present case.

19. According to him, in the absence of a property to be inherited by the children, the petition under the Act, 2007 was not maintainable. In support of this submission, he relied upon Rule 14(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (for short “Rules, 2009”), which reads as under:-

“14. Action by the Tribunal in other cases:-

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(3) While passing an order under sub-rule (1), directing the opposite party to pay maintenance to an applicant, Tribunal shall take the following into consideration:-

(a) amount needed by the applicant to meet his basic needs, especially food, clothing, accommodation and healthcare.

(b) income of the opposite party, and

(c) value of and actual and potential income from the property, if any, of the applicant which the opposite party would inherit and/or is in possession of.”

20. Consequently, Mr. Saharya submitted that an order of eviction could not be passed under the Act, 2007 in the present case as the conditions precedent in Section 23 of the Act, 2007 were not satisfied. In support of his submission, he relied upon the judgment of the Punjab & Haryana High Court in ***Harvinder Kaur Bawa vs. The Appellate Tribunal, Panchkula and Others, CWP No. 17482/2015, decided on 17th October, 2016.***

21. Learned counsel for petitioners contended that as the GNCTD had not prepared a comprehensive action plan for protection of life and property of the senior citizens, the Maintenance Tribunal had no jurisdiction to pass an eviction order.

22. Mr. Saharya lastly submitted that the Maintenance Tribunal could not assume the role of a civil Court and pass or enforce an eviction decree or issue directions to hand over possession under Section 23 of the Act, 2007. In support of his submission, he relied upon the order dated 13th April, 2016 passed by the Gujarat High Court in ***Kamleshkumari Shrivankumar Vs. Parvatiben Ramprasad Shukla & Ors., Special Civil Application No.10700 of 2015.***

23. On the other hand, Mr. Ashutosh Gupta, learned counsel for respondents No.2 and 3 stated that this Court vide order dated 05th November, 2015 had issued notice in the present writ petition limited for the purpose of exploring the possibility of an amicable settlement which was reiterated and reproduced in the order dated 18th April, 2016. He further stated that the petitioner No. 1 after entering into a settlement with the respondents No. 2 and 3 had retracted from the same and therefore, he is now estopped from arguing the present writ petition.

24. He pointed out that the admitted owner of the property i.e. BCTA had moved an application in the present writ petition seeking its impleadment wherein it had contended that the subject premises was given to the respondent No. 3 in lieu of his services with BCTA. He stated that the petitioner No.1 did not have any independent right, title or interest in the subject premises and therefore was precluded from challenging the right, title or interest of the respondents No. 2 and 3.

25. Mr. Gupta submitted that Section 4 of the Act, 2007 did not make it mandatory for a senior citizen to own a property from which he/she was seeking eviction of his/her children or relatives. He stated that a senior citizen who was not able to maintain himself/herself from his/her own earnings or from the earning of any of the properties owned by him/her was entitled to make an application under the Act, 2007. In support of his submission, he relied upon a judgment passed by a coordinate Bench of this Court in *Nasir Vs. Govt. of NCT of Delhi & Ors., 2015 (153) DRJ 259*.

26. Mr. Gupta also submitted that the arguments of the petitioner No. 1 did not hold water in view of the specific finding of the Maintenance Tribunal that the respondents No. 2 and 3 were subjected to mental and physical cruelty by the petitioners which fact was confirmed from the Medico Legal Document (MLC) filed by the respondents.

27. Since this Court while deciding an interim application on the suit side had followed the judgment in the case of *Sanjay Walia v. Sneha Walia* (supra) and subsequently a Coordinate Bench in *Nasir* (supra) had taken a different view, this Court thought it proper to appoint Ms. Manmeet Arora as an Amicus Curiae.

28. Ms. Manmeet Arora, learned amicus curiae submitted that the High Courts of Punjab and Haryana and Gujarat had specifically upheld the power of the Maintenance Tribunal to pass eviction orders in exercise of its jurisdiction under Section 23 of the Act, 2007. She fairly stated that a contrary view had been expressed by the High Court of Kerala in ***C.K. Vasu v. The Circle Inspector of Police, WP(C) 20850 of 2011, decided on 25th May, 2012*** and by this Court in the case of ***Sanjay Walia v. Sneha Walia*** (supra). The learned Amicus Curiae referred to a large number of judgments dealing with various issues raised by the parties. The relevant portion of the judgments cited by her is reproduced hereinbelow:-

A) In ***C.K. Vasu (supra)***, the High Court of Kerala has held as under:-

“6. I heard Sri.K.I.Abdul Rasheed, learned counsel appearing for the petitioner, Smt.M.P.Sheeba, learned Government Pleader appearing for respondents 1 to 3 and Sri.M.P.Asok Kumar, learned counsel appearing for respondents 4 to 6. The first relief sought in the writ petition is to direct respondents 1 and 2 to enquire into Exts.P1 and P4 complaints and to take necessary action to ensure the peaceful living of the petitioner in his house. The second relief sought in the writ petition is for an order directing respondents 1 and 2 to remove the fourth respondent and his family members from the house where the petitioner is residing, to save him from their harassment and threat. He also seeks an order directing the registration of a criminal case and its investigation. From the averments in the counter affidavit filed on behalf of the second respondent it is evident that upon receipt of Exts.P1 and P4 complaints he had enquired into it and recorded the statements of respondents 4 to 6 and their mother Smt.Devaki aged 74 years. A copy of the said statement is on record as Ext.R2(a). The wife of the petitioner has in Ext.R2(a) stated that the fourth respondent is residing with the petitioner and that their other children residing away and that none of her sons have caused any inconvenience to their father or harassed him. She had also

stated that she does not know the reason why her husband has filed a complaint against their children. The second respondent has in the counter affidavit also stated that after enquiry into the complaints, respondents 4 to 6 were warned and instructed not to harass the petitioner or to cause disturbance to him. He has also undertaken that in the event of any complaint regarding harassment/ill-treatment of the petitioner by respondents 4 to 6, he will take prompt action against them. In the light of the stand taken by the second respondent in the counter affidavit and the statement made by the petitioner's wife before the Police, I am of the opinion that a direction as prayed for in reliefs 1 and 2 is not called for in the instant case.

7. That takes me to the question whether the third relief prayed for namely a direction to the third respondent to enquire into Ext.P2 complaint can be granted. The Act was enacted to provide for more effective provision for maintenance and welfare of parents and senior citizens. Under section 4 of the Act a senior citizen including a parent who is unable to maintain himself from his own earning or out of the property owned by him is entitled to make an application under section 5 against one or more of his children not being a minor. Section 2(b) of the Act defines the term maintenance to include a provision for food, clothing and residence and medical attendance and treatment. Section 5 of the Act empowers the Tribunal constituted under the Act to pass an order of maintenance pending the proceedings and to direct the children or the relative as the case may be to make payment of a monthly allowance by way of interim relief. The Tribunal is also empowered to pass an order of maintenance against the children or the relative as the case may be. It has also got the power to recover the amount awarded as maintenance. The Tribunal constituted under the Act can only pass an order for maintenance of a senior citizen or the parent unable to maintain himself if the Tribunal is satisfied that there was neglect or refusal on the part of the children or relatives to maintain him. The Act does not empower the Tribunal constituted under the Act to grant the reliefs prayed for in Ext.P2, one of which is to evict the fourth respondent and his family members from the

residence where the petitioner which he is residing. The only other relief sought in Ext.P2 is to prevent his children from trespassing into his house and from causing bodily injury. That is also a matter on which the Tribunal cannot grant any relief. It is evident from the pleadings and the materials on record, especially the statement made by the petitioner's wife before the Police that the petitioner is not a person who is incapable of maintaining himself from his own earning or out of the property owned by him. The petitioner admittedly owns 15 acres of land. He has no case that he is not earning any income from his lands. Therefore even if Ext.P2 is treated as an application for maintenance, on the admitted facts the petitioner is not entitled to any relief. The petitioner has alleged in paragraph 5 of Ext.P2 that his children forcibly took away the sum of Rs.1,50,000/- from the almirah on 29.4.2011. However in Ext.P4 complaint filed before the Police on 14.6.2001, he had no case that his children forcibly took away the sum of Rs.1,50,000/-. I am therefore of the considered opinion that the reliefs prayed for by the petitioner cannot be granted.”

(emphasis supplied)

B. In **Rajkanwar v. Sita Devi, AIR 2015 Raj 61**, the High Court of Rajasthan has been held as under:-

“10. The legislative intent of the Act of 2007 is unquestionable but a crucial question which has cropped up in the instant case is whether Will is a transfer of property within the four corners of Section 23 of the Act of 2007, more particularly when testator is alive?”

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12. A bare perusal of definition of "Will" (supra) makes it clear crystal clear that it does not involve any transfer, nor effect any transfer inter-vivos, but is a legal expression of the wishes and intention of a person in regard to his properties which he

desires to be carried into effect after his death. Thus, a Will directs the distribution of property in a particular way after death of the testator. It is trite that Wills are ambulatory and are by their nature revocable. A testator during his lifetime is well within his rights to revoke or cancel the Will. Taking into account the true construction of the Will and its legal effect during the lifetime of the testator, in my considered opinion, the learned Tribunal has committed a grave and serious jurisdictional error in declaring the Will as void by resorting to Section 23 of the Act of 2007. Learned Tribunal has, in fact, misconstrued the provisions of Section 23 of the Act of 2007 while passing the impugned order to the extent Will dated 30th of November 2011 is annulled. As the learned Tribunal has passed the order of eviction against the petitioner as a necessary consequence and corollary of declaring the Will null and void, the said order too cannot be sustained in the eye of law.”

(emphasis supplied)

C. In **Harvinder Kaur Bawa** (supra), the High Court of Punjab and Haryana has held as under:-

“.....Section 32 of the Act empowers the State Government to make rules and in pursuance thereto, the States of Punjab and Haryana and Union Territory, Chandigarh have framed their respective Rules, namely, the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 (hereinafter referred to as the “Punjab Rules”), the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 ((hereinafter referred to as the “Haryana Rules”) and the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 ((hereinafter referred to as the “Chandigarh Rules”). The action plan has also been provided under Section 22(2) of the Act read with Rule 22 of the Punjab Rules, 24 of the Haryana Rules and Rule 20 of the Chandigarh Rules. Accordingly, the States of Punjab, Haryana and the Union Territory, Chandigarh have notified their respective action plan(s) in respect of maintenance,

welfare and protection of life and property of the parents and senior citizens.

Since the property in question is in the State of Haryana, therefore, it would be apt to refer to the action plan of the State of Haryana. Section 22(2) of the Act categorically provides for the State Government to provide a comprehensive action plan for protection of life and property of the senior citizens. Thus, the action plan notified by the State of Haryana is divided into two parts, in which duties/authorities have been assigned to both the District Administration headed by the Deputy Commissioner and the Police Administration headed by the Senior Superintendent of Police. The Deputy Commissioner/District Magistrate has been given powers for passing of an order of eviction from the property/residential building belonging to/occupied by the senior citizens/parents.....

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It would be pertinent to mention that there is no reference of any Tribunal in the procedure provided in the action plan notified in terms of Section 22(2) of the Act. The entire exercise has to be conducted by the District Magistrate on the basis of a report of the SDM. On the contrary, in order to decide an application filed under Section 23(1) of the Act, the order has to be passed by the Tribunal. Section 23(1) of the Act is reproduced as under:-

“23. Transfer of property to be void in certain circumstances.--(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the

option of the transferor be declared void by the Tribunal.

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This provision, on dissection, lays down various parameters to be satisfied (i) the person who has filed the application must be a senior citizen; (ii) he or she must have transferred his property after commencement of the Act i.e. after 29.12.2007; (iii) the transfer of the property may be by way of gift or otherwise; (iv) the transfer shall be subject to the condition that a transferee shall provide the basic amenities and basic physical needs to the transferor; and (v) the transferee has to refuse or fail to provide such amenities or physical needs to the transferor.....

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Reverting back to the facts of this case, the application has been filed by the petitioner under Section 23(1) of the Act. In my considered opinion, the said application can only be filed in order to avoid a document by which title of the property has been transferred, without filing a suit for declaration in the Civil Court. All that has to be proved by the senior citizen/parent is that he/she had transferred the title of the property to the other party with a condition that the said party shall provide basic amenities and basic physical needs and has to prove that the said party has refused or failed to provide such amenities and physical needs. The parent/senior citizen is also required to prove that the said transfer of the property has been made after commencement of the Act, meaning thereby any transfer of the property prior to the commencement of this Act cannot be avoided by filing an application under Section 23(1) of the Act. The Tribunal, as constituted under Section 7 of the Act, has to follow a summary procedure and may declare that the transfer by the senior citizen/parent in favour of the other party was either an act of fraud or coercion or undue influence.

Thus, in view of the aforesaid facts and circumstances, the application filed by the petitioner under Section 23(1) of the Act

has rightly been dismissed as she was required to file an application under Section 22 (2) of the Act much-less under the action plan in which an altogether different procedure is to be followed.

(emphasis supplied)

D. In **Kamleshkumari Shravankumar Shukla** (supra), the Gujarat High Court has held as under:-

“5. A strong prima facie case is therefore made out. Therefore, Rule. Ad-interim relief granted earlier stands confirmed and shall operate as interim relief during the pendency of the petition. Learned advocate for the petitioner states that the petitioner is ready to keep mother-in-law in the house with her as per order of Deputy Collector.”

(emphasis supplied)

E. In **Sanjay Walia** (supra), this Court has held as under:-

“4. It would thus be seen that the power and jurisdiction of the Tribunal is restricted to grant of maintenance at the rate not exceeding Rs 10,000/- per month. It is, therefore, quite evident from a bare perusal of the above-referred Section that no power has been bestowed by the Legislature on the Tribunal to direct handing over the possession of a property to the applicant before it. Despite there being no such power conferred upon it, the Tribunal directed the petitioner before this Court to hand over the possession of the second floor to respondent No.1. Though the case of respondent No.1 is that the aforesaid floor belongs to her husband, who had bequeathed him and it was in her possession after the death of her husband, even if that be true, the appropriate remedy for respondent No.1 would be to approach a competent Civil Court in this regard and the Tribunal had absolutely no jurisdiction to handover possession of an immovable property of the respondent before him to the applicant before him. It would be pertinent to note here that case of the petitioner is that the aforesaid second floor was bequeathed by his father to him and was in his possession. This

disputed questions with respect to title and possession of an immovable property can be gone into by a Civil Court and not by a Tribunal, constituted under the provisions of the Act.”

(emphasis supplied)

F. In *Nasir* (supra), this Court has held as under:-

"4. The counsel for the petitioner argues that a Maintenance Tribunal constituted under the Senior Citizens Act supra is only entitled to pass an order of maintenance in favour of the senior citizens and is not entitled to issue any such directions as have been issued in the present case. Reliance in this regard is placed on the judgment of the Single Judge of this Court in Sanjay Walia Vs. Sneha Walia 204 (2013) DLT 618 to the extent laying down that the power and jurisdiction of the Maintenance Tribunal is restricted to grant of maintenance at the rate not exceeding Rs.10,000/- per month and that the Tribunal has not been bestowed by the Legislature with the power to direct handing over the possession of a property to the applicant before it, as had been done in that case.

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6. Section 9 of the Act, on which reliance was placed in the aforesaid judgment, is to be found in Chapter II of the said Act titled "Maintenance of Parents and Senior Citizens". Else, the Preamble of the Act describes the same as an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The statement of Objects and Reasons of the said Act is also to the effect that in the changing times, a number of elderly are not being looked after by their family and ageing has become a challenge and there is a need to give more attention to the care and protection of older persons and to cast an obligation on the persons who inherit the property of their aged relatives, to maintain such aged relatives. Section 3 of the

Act gives it an overriding effect over any other enactment or instrument. Section 4 (in Chapter II) titled "Maintenance of Parents and Senior Citizens" in sub-section (2) thereof provides that the obligation of children to maintain a senior citizen extends to the needs of such citizen so that the senior citizen may lead a normal life. Normal life would certainly include a right to peacefully live in one's own property and being not prevented from use thereof and recovering W.P.(C) No.9717/2015 Page 4 of 10 rent thereof, regarding which directions have been issued in the impugned order.

8. The judgment on which the counsel for the petitioner relies, has confined itself to an interpretation of Section 9 of the Act and did not have the occasion to consider the other provisions of the Act, particularly Chapter V. the same thus does not bind me in interpretation of provisions under Chapter V.

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11. Once it is found that it is the mother of the petitioner who is the owner of the subject property, no error can be found with the directions issued by the Maintenance Tribunal restraining the petitioner from interfering with his mother occupying the first floor of the property and / or from recovering the rental income of the other two floors of the property and further directing the petitioner to maintain peace in the house and not to disturb his aged mother. If in such a situation also, it is said that the respondent should have been relegated by the Maintenance Tribunal to the Civil Court, the same, in my view, would have been in negation of the very purpose of setting up of such Tribunals. While interpreting the provisions, the object of the Act has to be W.P.(C) No.9717/2015 Page 6 of 10 kept in mind. The object is to provide simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The provisions have to be liberally construed as the primary object is to give social justice to parents and senior citizens. The Supreme Court in Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan 1979 (2) SCC 468 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.

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15. There is another reason which prevails with me. Though the State Governments under Section 22(1)&(2) of the Act are required to prescribe comprehensive action plan for providing protection of life and property of senior citizens but the Government of National Capital Territory of Delhi does not appear to have done so till now. It is found that Governments of certain other States have made Rules in exercise of the said power for protection of the property of the senior citizens. The Government having failed in its duty, this Court in exercise of powers under Article 226 of the Constitution of India, would not undo what the Maintenance Tribunal has done and which would have been beyond the pale of controversy, had the GNCTD framed the Rules, as was expected by it.

(emphasis supplied)

G. In ***Jayantram Vallbhdas Meswania vs. Vallabhdas Govindram Meswania***, AIR 2013 Guj 160, it has been held as under:-

"14. The question which, therefore, arises is whether the term "transfer" in Section 23 of the Act should be construed so as to mean only actual transfer of ownership and title or the said expression should be construed, having regard to the object of the Act and the provisions under Sections 2(b), 2(d), 2(f), 2(h) and Section 4, so as to also include possession of the property as well.

14.1 It is noticed earlier that sub-section (4) of Section 4 provides, inter alia, that any person who would inherit the property (which includes right or interest in such property) and is "in possession of property" shall maintain such senior citizen which includes the needs of such senior citizen to lead normal life.

14.2 Having regard to the object of the Act and the intention of the legislature, there is no reason or justification or indication

to restrict the meaning and scope of the term "transfer" so as to mean only "actual transfer of title and ownership" and to exclude "possession of property" from the purview of Section 23 and/or from the term "transfer" employed in Section 23 of the Act.

14.3. There is no provision in the Act to suggest or to indicate that the said term carries very narrow, and literal meaning so as to mean only actual transfer of title and ownership and the concept of possession, which is recognized by the Act - particularly under Section 4 of the Act, has to be kept out.

14.4. On overall consideration and having regard to the provision under Sections 2(b), 2(d), 2(f), 4 and the object of the Act, the said term should receive wider meaning so as to include possession/occupation of property, as well. The said concept is already recognised, accepted and internalised by the Act vide Section 4 of the Act.

14.5 It is not in dispute that the property is in name of the respondent and he has the right to receive maintenance i.e. income/earning from the said property.

14.6 In view of the said provisions, the term "transfer of property" should receive wide and liberal construction so as to include an act of allowing possession and/or occupation of premises or part of the premises provided, of course, the possession is not allowed for consideration (including rent).

14.7 Sub-Section (2) of Section 23 contemplates a situation where the transferor has right to receive maintenance from such property then such transferor can enforce the right to receive maintenance from the transferee.

14.8 For the purpose of the said provision the transferee would mean person who is allowed possession and/or occupation of the premises/property or part of the premises/ property from which the transferor i.e. the; owner of the premises/property can, otherwise, receive income/earning i.e. maintenance.

14.9 The provisions under Section 23 of the Act cannot be, and need not be, read in isolation or by divorcing the said provision

from other provisions, particularly Section 4 of the Act read with Sections 2(b), 2(f), 2(g) & 2(h) of the Act.

15. It emerges from the record that the respondent needs the property to maintain himself since the petitioner, the respondent's son, does not seem to be taking sufficient and proper care of the respondent. It emerges that the respondent needs to generate earning/income (e.g. rent) from the said part of premises i.e. to receive maintenance from the said part of premises so as to maintain himself. He, therefore, asked the petitioner to handover the possession of the property in view of petitioner's failure or refusal to properly maintain him. However, the petitioner seems to have declined to handover the possession of the part of the property which compelled the respondent to prefer the application before the authority constituted under the Act. The competent authorities have, after considering the relevant facts, directed the petitioner to handover the possession of the part of the property/premises which is in his possession.

16. In view of the foregoing discussion and the scope and purview of the provisions under Section 23 read with Section 4 of the Act and having regard to the object of the Act, the impugned orders and the direction to handover the possession of the property to the respondent cannot be said to be without jurisdiction or beyond the scope of Section 23 read with Sections 4, 2(b), 2(d) and 2(f) of the Act. The impugned direction, therefore, cannot be faulted.

17. On overall consideration of the matter this Court is not inclined to accept and entertain the petition and to interfere with the order and in light of the stipulations by learned counsel for petitioner, the Court does not consider it necessary to set aside the impugned orders.

18. Time as requested for by learned counsel for the petitioner is granted. It will be open to the petitioner to continue to be in occupation in part of the premises in question until 31.12.2012 and thereafter the petitioner shall vacate the premises in question and handover the possession to the respondent without

any delay. With the aforesaid clarification and directions, the petition stands disposed of.”

(emphasis supplied)

H. In ***Promil Tomar and others vs. State of Haryana and others, (2014) 175 (1) PLR 94***, the Punjab and Haryana High Court has held as under:-

.....Learned counsel for the petitioners has argued that the Maintenance Tribunal, Panchkula, had no jurisdiction or power to interfere in the application under Section 23 of the Maintenance Act regarding the properties which were not received/ inherited by the petitioners from respondent No.5 in terms of Section 23 of the Maintenance Act. The Tribunal has no power, authority or jurisdiction to order eviction of petitioners from House No. 174, Sector 6, Panchkula, or to order execution as such jurisdiction vests only with Civil Court. Respondent No.3 has entertained the execution application filed by respondent No.5 and has wrongly issued warrants of possession through police for vacation of the portion of House No. 174, Sector 6, Panchkula. Bias has been alleged against respondent No.4 who is member of the Maintenance Tribunal on the ground that he is also a witness to the testamentary documents executed by respondent No.5 i.e. Will as such he should have recluse himself from the hearing. The malafide has been alleged against respondent No.5 by petitioner No.1, his daughter-in-law, claiming that as she did not submit to the lust of respondent No.5, she has been termed as a characterless lady.

So far as the rights in the properties are concerned, counsel for the petitioners has submitted that 50% share of House No. 174, Sector 6, Panchkula and 75% share in House No. 5-B/4 IInd Floor, Purvi Marg, Opposite Sir Ganga Ram Hospital, Rajender Nagar, New Delhi was owned and possessed by deceased mother of petitioner No.2 and 90% share of the third property i.e. Shop Nos. G-1 to G-4, Local Shopping Complex, Mayur Vihar, New Delhi, were owned and possessed by petitioner No.2 as the absolute owner in terms of Section 14 of the Hindu Succession Act, 1956 as such respondent No.5

could not have a claim against the properties. The provisions of Section 14 of the Hindu Succession Act and Benami Transaction (Prohibition) Act, 1988, were relied upon in support of said contention.

The main contention of learned counsel for the petitioners is that the properties which are subject matter of the application under Section 23 of the Maintenance Act are absolutely out of the purview of the Maintenance Act and that the Maintenance Tribunal had no jurisdiction to entertain the application filed by respondent No.5. The application filed is based upon misconceived presumption that he had purchased the properties and latter transferred them in the name of petitioners or that the petitioners failed to serve him as such the application under Section 23 of the Maintenance Act was maintainable.

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In R.M.D. Chamarbaugwalla Vs. Union of India, AIR 1957 SC 628, the Apex Court observed that a statute is to be construed to the intent of them that make it. This principle has been, with approval and consistently reiterated by the Supreme Court in many judgments. It is a settled principle of law as well as conventional way of interpreting a statute to seek the intention of the makers of law. The Courts interpret the law while keeping in mind the object of the statute and intent of the Legislature. A Court is required to look essentially to the words of the statute to discern reference aiding their effort as much as possible by the context. While interpreting Section 23 of the Maintenance Act, the objects and reasons which have been mentioned hereinbefore cannot be ignored. The object is to maintain the traditional norms and values of India Society which laid stress of providing care to the elderly. Considering the provisions of maintenance under other laws, time consuming and expensive, the endeavour of the legislation was to have simple, inexpensive and speedy provisions for maintenance of the parents. The Maintenance Act proposed to cast an obligation on the person who inherit the property of their aged relatives, to maintain such aged relatives. The objective of the Maintenance Act was also to provide to set up appropriate mechanism to provide

need based maintenance to the parents, senior citizens and setting up of old age homes in every district. A peaceful living for the senior citizens in their property is the apparent objective of the Maintenance Act. The property in dispute had been transferred and purchased in the name of petitioners in December 2009 and June 2010 after the commencement of the Maintenance Act. It is claimed that it was purchased on solemn assurance of the petitioners that they will provide basic amenities and physical needs to respondent No.5. It is claimed by respondent No.5 that the petitioners had started torturing him in every possible manner as such the property is liable to be reverted back to him as such the facts fall within the purview of Section 23 of the Maintenance Act. Continuance of the petitioners in the house of respondent No.5 is detrimental to the life and property of respondent No.5. There are allegations that they have stolen valuable documents of respondent No.5 and house hold goods belonging to him. The allegations have been levelled by petitioner No.1 that on account of respondent No.5 having not been able to satisfy his lust, she has been made a victim, is clearly indicative of the fact that the provisions of the Maintenance Act would enable respondent No.5 to get transfer, by way of gift or otherwise, declared void. Once the transfer of the property to the petitioners is held void by the Tribunal on account of the conduct of the petitioners for having failed to provide amenities and physical needs, the consequential benefit would be to restore respondent No.5 in a position which would be in the shape of status quo ante i.e. a situation which existed prior to the transfer so far as title and possession is concerned.

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.....In context to the conduct of senior citizen, the scope of the different provisions of the Maintenance Act had not been taken into consideration. The observation of the Kerala High Court appear to be obiter dicta not laying down any absolute principle of law. A Division Bench of our High Court in Justice Shanti Sarup Dewan, Chief Justice (Retd.) and another Vs. Union Territory, Chandigarh and others, in an appeal filed by the petitioner, sought a direction to the State authorities to

ensure the shifting of his son from his residential house. It was observed by the Division Bench that the Maintenance Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'. The Division Bench of this Court, with an objective to achieve the objectives of the Maintenance Act had exercised the powers under Article 226 of the Constitution of India to issue direction to vacate the house belonging to the senior citizen. In view of the observations of the said Division Bench judgment, an order of ejection can be passed by the Tribunal in favour of a senior citizen.

Respondent No.5 in his application under Section 23 of the Maintenance Act had pleaded that petitioners No.1 and 2 have been living with him on the first floor of the house at Panchkula since their marriage in the year 2009. Petitioner No.2 being a drug addict was once arrested by Bhunter Police District Kullu on January 23, 2009 and he was convicted and confined by the Court.

Mr.Sanjeev Sharma, Sr. Advocate argued that the said property was never transferred by way of gift or by any other means in favour of the petitioners as such no transfer in their favour can be said to be void, suffering from the vice of fraud, coercion or undue influence.

I have carefully considered the said contention of learned counsel for the petitioners and I am of the opinion that Section 23 (1) of the Maintenance Act provides that "where any senior citizen has transferred by way of gift or otherwise, his property, and the transferee refuses or fails to provide amenities and physical needs, the said transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal." The transfer by a senior citizen in first

part of Section 23 (1) of the Maintenance Act could be a gift or otherwise. The property transferred by gift or otherwise would include the transfer of the possession of a property or part of it by a senior citizen. The word “otherwise” used under Section 23 (1) of the Maintenance Act by the legislation would include transfer of ownership, transfer of possession by way of a lease deed, mortgage, gift or sale deed. Even a transfer of possession to a licensee by a senior citizen will also fall under the ambit of Section 23 (1) of the Maintenance Act. The word “otherwise” cannot be ignored for the objective of Section 23 (1) of the Maintenance Act. In context to the objectives of the Act, “transfer” would mean that transfer of property by senior citizen need not be a gift only but it could be any transfer within the meaning of Transfer of Property Act or would even include transferring of any right of the nature of title or possession. Section 23 (1) of the Maintenance Act further provides that if the transfer is subject to a condition that transferee shall provide basic amenities and basic physical needs to the transferor and transferee refused to do so, the transfer of property shall be deemed to have been made by fraud, coercion or undue influence and would be declared so by the Maintenance Tribunal on the option of transferor. A senior citizen who had transferred his right, title or interest to any other person by gift or otherwise (which would include transfer of possession by lease, mortgage or licence) would become void in the event of transferee refusing to provide amenities and physical needs. The said transfer in such circumstances would be termed as fraud and would be void.

(emphasis supplied)

I. In **Justice Shanti Sarup Dewan, Chief Justice (Retired) & Anr. vs. Union Territory, Chandigarh & Ors., LPA No.1007/2013**, the Punjab and Haryana High Court has held as under:-

6. In view of the strained relationships inter-se the parties, the appellants filed a Civil Writ Petition under Articles 226/227 of the Constitution of India seeking directions against respondents

No.1 to 6 to create a special cell to deal with the complaints of senior citizens and parents who are traumatized by their children. Respondents No.1 to 6 are Union Territory, Chandigarh, Home Secretary and police officers. The appellants also seek a direction to ensure shifting of respondent No. 7 from their house at Chandigarh to his own house at Panchkula and vide an interim measure seek adequate police protection.

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10. The grievance of the appellants is that his daughters are not allowed to peacefully stay or enter the house making it difficult and humiliating experience with the appellants to interact with their daughters and their family. It is to prevent such incidents that the appellants are seeking protection under the “Maintenance & Welfare of Parents & Senior Citizens Act, 2007 (hereinafter referred to as the said Act). The appellants have made it clear that they do not want any maintenance from their son i.e. respondent No. 7. It is stated that the appellants have no other efficacious remedy on account of failure of respondents No.1 to 6 to make appropriate arrangements under the said Act for protection of the persons like the appellants.

11. The learned Single Judge, however, opined that the issue as regards eviction of respondent No. 7 from the premises in question cannot be gone into by the Court in exercise of writ jurisdiction as it would necessarily entail the determination of the nature of the property i.e. as to whether the same is self acquired or ancestral, the determination of rights inter-se the petitioners and respondent No. 7 in respect thereof etc. This would require formulation of triable issues which are left to be adjudicated at the hands of the Civil Court. The said act being a comprehensive legislation, provisions of the same could be invoked. However, a direction was issued to the Senior Superintendent of Police to visit the appellants at their residence within 24 hours from the communication of the order and interact with them and take stock of the situation.

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15. The writ petition was contested by respondent No.7. He has pleaded that he was born in the house in Chandigarh which is a joint Hindu Family property. The house in question is a Hindu Undivided Family (HUF) house. He is a coparcener along with his wife and daughter and is residing in the same. The said respondent claims that they have a common kitchen on the ground floor which he had got renovated when his parents had gone to visit their younger daughter Sabina Grewal in Auckland. It has been admitted that daily expenses are borne by appellant No.1 but claims that he had offered the same but it is the appellant No.1 who refused to accept any money, though for all major expenses, the said respondent always pooled in the money.

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20. The report of the Committee was received by this Court duly signed by all the three members. Unfortunately, there was no success. The report records that each member of the committee had meetings with the appellants and respondent No. 7 and his wife on different dates. The crux of the dispute, as stated above, was found to be house in Chandigarh which was claimed by appellant No.1 to be self acquired property while respondent No. 7 was of the opinion that the same was H.U.F. property as it was shown as such in the Income Tax Returns by appellant No.1 and thus he was of the view that his sisters had no right in the property. Appellant No.1 disclosed to Justice Kuldeep Singh that he had been so upset as he had executed a Will disinheriting respondent No.7 from all his assets moveable or immovable. In the deliberations, it was found that the feelings of the appellants towards respondent No. 7 were such that it was not possible for them to live together in the same house. Panchkula house, undisputedly gifted by appellant No.1 to respondent No. 7, was lying unoccupied ever since its construction. The panel unanimously offered a proposal to the parties as under:-

“i) Respondent No. 7 and his family should immediately vacate House No. 642, Sector 11-B, Chandigarh and shift to his own

House No. 1016, Sector 2, Panchkula. We felt that this is the only way to enable the appellants to spend the evening of their lives with peace.

ii) In case respondent No. 7 agrees to the first proposal then appellant No.1 shall revoke the Will wherein he has disinherited respondent No. 7 from his property totally. He shall leave the immovable property to take its own course in accordance with law, after the appellant's demise.

iii) The appellants shall also pay ` 10,000/- per month to respondent No. 7 and his family to cover the expenses for commuting from Panchkula to Chandigarh. This shall be operative only for a period of two years."

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22. It would thus be seen that despite having gifted a house to his son, agreeing to revoke his Will, and thus leaving the immovable property to devolve in accordance with law and even agreeing to pay Rs. 10,000/- per month to respondent No. 7 to cover the expenses for commuting for a period of two years, the appellant No.1 is still being denied the right to exclusively enjoy his house with his wife even with such strained relationships with his son.

23. The appeal was listed before this Bench on 20.08.2013 and it was prima-facie noticed that we may not be able to determine the civil rights of the parties. However, qua house we further noticed that the stand of the appellants is that it was their individual property while on the other hand respondent No. 7 claims it to be HUF property. In view of the fact that there were two daughters of the appellants, even if the property for the sake of arguments is assumed to be HUF property, as per the current law, the share of respondent No. 7 would at best be 20%. Despite this, respondent No. 7 is occupying the complete first floor and part of the ground floor of the house. We thus put to learned counsel for respondent No. 7 that we were prima-facie inclined to relegate the parties to the civil suit with a direction in the present proceedings confining the occupation of respondent No. 7 to only 20% house of the property and remaining will have to be vacated by him

forthwith. On this, learned counsel for respondent No. 7 sought time to obtain requisite instructions.

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27. On hearing learned counsel for the parties, two crucial questions arise for consideration:-

i) Whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act?

ii) Whether the writ petition could be maintained for the said purpose especially in the alleged absence of so called failure of Union Territory Administration in complying with its obligations under the said Act?

28. SCHEME OF THE ACT

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of 'life and property of older persons'.

29. Section 2 contains the definitions and clause (f) defines 'property' as under:-

Definitions:- In this Act, unless the context otherwise requires:-

- a) xx xx xx
- b) xx xx xx
- c) xx xx xx
- d) xx xx xx
- e) xx xx xx

“(f) Property” means property of any kind, whether movable or immovable, ancestral or self acquired, tangible or intangible and includes rights or interests in such property.”

The aforesaid would thus show the definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read alongwith Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

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34. In the context of the aforesaid discussion about the provisions of the Act, now we proceed to analyze two crucial questions referred to aforesaid:-

Question No. (i):-

The stand of respondent No. 7 before the Court is not that there was any contribution given by him for acquisition of the plot at Chandigarh. It is also not his say that the property is an inherited property. The registered document of title is also in favour of only appellant No.1. Infact, out of his own earnings, appellant No.1 gifted the plot to respondent No. 7 as well as two other plots to his daughters. There is just a bald statement that the property at Chandigarh is joint Hindu family property. The

failure, which has been attributed to Administration of Union Territory, Chandigarh, is qua the provisions of Section 32 read with Section 22 of the said Act. There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of Section 32 of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for implementation of the provisions of the said Act under sub section (1) of Section 22 (clause (e) of sub section (2) of Section 32) and a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of Section 32). No such Rules have been notified. The grievance thus being made is that in the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under section 22 (2) of the Act would not suffice. Infact sub section (1) of Section 22 of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of the problem at hand, this is absent.

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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 overriding 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 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.

38. Though it is not directly relevant but it is not even as if respondent no. 7 is without a roof over his head as he is a beneficiary of a gift from his father-appellant No.1 of a plot which was sold, smaller plot purchased and constructed upon and the house is lying vacant. What can be a greater travesty of justice in this situation where respondent No. 7 insists that he will not stay in his own house built by him lying vacant, but insists on staying with his parents who do not want him or his family to live with them. We don't have the slightest of hesitation in coming to a conclusion that all necessary directions can thus be made under the said Act to ensure that the appellants live peacefully in their house without being forced to accommodate respondent No. 7.

Question No. (ii)

39. A lot of hue and cry has been raised on the issue as to whether directions can be issued in writ proceedings under Articles 226/227 of the Constitution of India to enforce the provisions of the said Act. We have already noticed above that a proper mechanism for enforcement of the provisions of the said Act for protecting the property rights of the appellants under Section 22 of the said Act has not been put in place by the Union Territory Administration and enforcement would be a big issue. How and through which machinery can a Special Cell ensure the eviction of respondent No. 7 from the property so that the

appellants can live in peace in their house? Can we say that the Courts would be powerless both in equity and law to enforce such an order when primacy has been given to the provisions of the said Act over all other law. The answer to these questions should be in the negative. If the State fails to perform the functions envisaged under an Act, it would certainly give rise to a jurisdiction to be exercised under Article 226 of the Constitution of India. (A.B.L. International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd. 2004(3) S.C.C. 553 and Mrs. Sanjana M.Wig Vs. Hindustan Petro Corporation Ltd. AIR 2005 SC 3454).

40. In the present case, there is, as noticed, a failure to provide mechanism and thus the protection of the property of the appellants envisaged under the salutary provisions of the said Act certainly can be enforced under Article 226 of the Constitution of India. We have already noticed above that if there is a legal right to share the property at Chandigarh, which respondent No. 7 seeks to establish, for whatever it is worth, it is for respondent No. 7 to approach the Civil Court and not vice-versa. The right of exclusive possession of a self owned property by a registered document of title can well be enforced under the provisions of the said Act by issuing appropriate directions in exercise of jurisdiction under Article 226 of the Constitution of India. We have thus once again in no hesitation in coming to the conclusion that there is nothing which prohibits the writ jurisdiction to be exercised in such a case.

CONCLUSION

41. Now we come to moulding of the appropriate relief to be granted under Article 226 of the Constitution of India given the aforesaid legal position and the facts of the case. We have already observed that the Courts cannot be left helpless to assist the senior citizens whose rights are protected under the said Act because of obdurate and unreasonable stand of the son/respondent No. 7. We thus issue the following directions:-

- i) *The Administration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under Section 32(1) of the said Act for the purposes mentioned under sub section (2) of Section 32 more specifically clauses (e) and (f) so as to protect the life and property of senior citizens as envisaged under Section 22 of the said Act. This should include a comprehensive action plan including enforcement mechanism and conferring relevant powers to the District Magistrate or officers subordinate to him as envisaged under sub section (1) of Section 22 of the said Act. Such action may be taken within one month from today.*
- ii) *Respondent No. 7 and his family members are directed to vacate the property bearing House No. 642, Sector 11-B, Chandigarh to the extent it is occupied by them and the keys be handed over to appellant No.1 within a period of 15 days from today.*
- iii) *The Senior Superintendent of Police of Union Territory, Chandigarh/respondent No.3 is directed to ensure enforcement of the direction (ii) mentioned above.*
- iv) *If respondent No. 7 wants to establish any legal right or share in the aforesaid house, he is free to file appropriate civil proceedings but without infringing the exclusive rights of the appellants in the interregnum period implying that there would be no interim injunction qua occupation by the civil court as that would be a violation of the provisions of the said Act.*

The impugned order of the learned Single Judge dated 17.05.2013 is consequently set-aside to the aforesaid extent.

We part with the feelings of dismay at the attitude of respondent No. 7 despite all efforts by the Committee and the Court but with the hope that at some stage sanity would dawn and he would recognize the contribution made by his father

including monetarily towards establishing him in an independent house gifted to him.

The appeal is accordingly allowed with costs quantified at Rs. 50,000/- in favour of the appellants and against respondent No. 7 to be paid within 15 days.

(emphasis supplied)

COURT'S REASONING

A. *IN VIEW OF THE LIMITED NOTICE ISSUED BY THIS COURT ON 5TH NOVEMBER, 2015, THE PETITIONER NO. 1 IS ESTOPPED FROM ARGUING THE PRESENT WRIT PETITION ON MERITS*

29. This Court is in agreement with the submission of Mr. Ashutosh Gupta, learned counsel for respondents No. 2 and 3 that in view of the limited notice issued by this Court on 5th November, 2015, the petitioner No. 1 is estopped from arguing the present writ petition. It is pertinent to mention that on 5th November, 2015 notice had been issued in the present petition only for the purpose of exploring the possibility of a settlement.

30. The Supreme Court in *Spring Meadows Hospital & Anr. vs. Harjol Ahluwalia Through K.S. Ahluwalia & Anr.*, (1998) 4 SCC 39 has held as under:-

"These two appeals arise out of the order dated 16-6-1997 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the Commission") in Original Petition No. 292 of 1994. The hospital is the appellant in Civil Appeal No. 7708 of 1997 while the insurance company is the appellant in the other appeal. When the special leave applications out of which the two aforesaid appeals arise were listed for preliminary hearing, the Court had issued notice limited to the award of Rs 5 lakhs as compensation to the parents of the child even though the

insurance company has raised the question of its liability to pay the compensation in question.

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6. The learned counsel for the appellant appearing for the hospital contended that the complaint having been filed by the minor child who was the in-patient in the hospital through his parents the said minor child can only be the consumer and the parents cannot claim any compensation under the Consumer Protection Act for the mental agony they have suffered and as such the award of compensation to the tune of Rs 5 lakhs in favour of the parents is beyond the competence of the Commission. The learned counsel then urged that under the Consumer Protection Act the consumer to whom services has been provided can make a complaint and in the case in hand the services having been provided to the minor patient, he becomes the consumer and consequently no compensation can be awarded in favour of the parents of the consumer and according to the learned counsel it is apparent from the provisions of Section 12(1)(a) of the Consumer Protection Act. The learned counsel lastly contended that under Section 14(1)(d) of the Act the Commission would be entitled to pay such amount as compensation to the consumer for any loss or damage suffered by such consumer and in the case in hand the minor child being the consumer the Commission was not competent to award compensation to the parents for the mental agony they have suffered. The learned counsel for the insurer-appellant in the other appeal vehemently contended that the insurer cannot be held liable to indemnify the hospital who is the insured as the said hospital had employed unqualified people to treat the patients and the direction of the Commission that the insurer would indemnify the insured is unsustainable in law. But we are not in a position to examine this contention advanced on behalf of the learned counsel appearing for the insurer in view of the limited notice issued by this Court. It would not be open for us to entertain this question for consideration as the notice issued by this Court indicates that only the award of compensation to

the parents of the minor child and the legality of the same can only be considered. We are, therefore, unable to examine the contention raised by the learned counsel appearing for the insurer."

(emphasis supplied)

31. Consequently, the petitioner no. 1-Mr. Sunny Paul having got the settlement rescinded is estopped from arguing the present writ petition. However, as this Court had heard extensive arguments and the issues raised in the present petition arise in a number of petitions, this Court is pronouncing on the various legal issues raised by the parties.

B. WHETHER A CLAIM FOR EVICTION BEFORE THE MAINTENANCE TRIBUNAL IS MAINTAINABLE UNDER SECTION 23 OF ACT 2007 AND THAT TOO ON ALLEGATIONS OF FORCEFUL OUSTER AND IN THE ABSENCE OF A CLAIM FOR MAINTENANCE?

32. The Act 2007 has two separate objectives. While the first objective is to institutionalise a mechanism for protection of life and property of senior citizens (Chapter V), the second objective is to set up an appropriate mechanism for providing need-based maintenance to parents and senior citizens (Chapter II).

33. The relevant portions of Sections 4, 5 and 23 of the Act, 2007 are reproduced hereinbelow:-

"4. Maintenance of parents and senior citizens--(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5....."

5. Application for maintenance.--(1) An application for maintenance under section 4, may be made--....."

23 Transfer of property to be void in certain circumstances.

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal."

34. Consequently, while Section 4 empowers the senior citizen to seek payment of maintenance, Section 23 empowers the senior citizen to seek a declaration in certain circumstances from the Maintenance Tribunal that the transfer of property is void.

35. Rule 14(3) of the Rules, 2009 deals with grant of relief of maintenance under Section 4 of Chapter II and not with void transfers under Section 23 of Chapter V.

36. The Courts have repeatedly acknowledged the right of the senior citizens or parents to live peacefully and with dignity. In ***Promil Tomar*** (supra) the Punjab and Haryana High Court has held that peaceful living for the senior citizens in their property is the apparent objective of the Maintenance Act.

37. In the present case, though the allegation of the respondents No. 2 and 3 is of the trespass and forcible occupation of the property by the petitioners, yet even if it is presumed, as alleged by the petitioner No. 1, that he had been permitted to stay in the property, then also it would amount to transfer

of the property in question. Needless to state, that even this permissive use amounts to transfer and that too on the condition that petitioner No.1-son would not harm them physically or mentally. In fact, in the Indian context, there would be a presumption that the transfer was subject to petitioner No.1-son providing all the basic necessities and looking after the physical needs of the senior citizens. Since the Maintenance Tribunal has found that the petitioner No.1-son has committed acts of physical assault and mental cruelty on the senior citizens, the pre-conditions mentioned in Section 23 stand satisfied.

38. There is nothing in the language or purported intent of Section 23 of the Act 2007 to indicate that the Tribunal has the power to declare a transfer of property void if and only if the senior citizen is seeking maintenance under the Act from the opposite party.

39. In *Justice Shanti Sarup Dewan* (supra), the Punjab & Haryana High Court passed an eviction order under the Act, 2007 where not only no maintenance had been sought by the senior citizen, but in fact the senior citizen had volunteered to pay Rs.10,000/- as monthly maintenance to his son.

40. Consequently, Section 4 and Section 23 are separate and distinct remedies and the claim for maintenance is not a condition precedent for passing an eviction order under Section 23 of the Act, 2007.

C. WHETHER A CLAIM FOR EVICTION IS MAINTAINABLE WHEN THE SENIOR CITIZEN IS NOT THE ABSOLUTE OWNER OF THE PROPERTY IN QUESTION?

41. The petitioners have themselves admitted in the writ petition that the respondents 2 and 3 are tenants in the property. The owner of the property

(BCTA) has also filed an application on record stating that it had permitted the respondent No.3 to occupy the property as a term of his employment. BCTA has also admitted that petitioners are occupying the property in their capacity as sons of respondents No. 2 and 3. Accordingly, the respondents No. 2 and 3's superior right to the property stands established and the petitioners do not have any independent right in the property other than through their parents.

42. Sections 2(f), (g) and 4 of the Act, 2007 also evidence that the statute acknowledges transfer of possession to a third person by the parent or senior citizen to fall within its ambit. Some of the Courts have even placed reliance on the phrase '*normal life*' in Section 4(2) and (3) of the Act 2007 to issue eviction order to enable the parents to live in the property peacefully.

43. Property as defined under Section 2 (f) of the Act 2007 includes *any right or interest in any immovable property*, and is not limited to ownership of the property.

44. Section 105 of the Transfer of Property Act, 1882 defines a "lease" of immovable property as a transfer of a right to enjoy such property. Section 52 of the Easements Act, 1882 defines a "license" as a right to do something over immovable property that would otherwise be unlawful in the absence of such right.

45. Further, from the case law reproduced hereinabove, it is apparent that the High Courts have held that bald disputes raised by the children challenging the title of the parent to the property are not sufficient to prevent the Courts from granting the relief.

46. Consequently, the interest of the respondents in the property, whether as licencees or tenants, falls within the definition of "property" under

sections 2(f) and 23 of the Act 2007 and their claim for eviction is maintainable, even though they are not the owners of the property in question.

D. WHETHER A CLAIM FOR EVICTING THE CHILDREN FROM THE PROPERTY IS MAINTAINABLE BEFORE THE MAINTENANCE TRIBUNAL WHEN THE CHILDREN ARE NOT IN LINE TO INHERIT SUCH PROPERTY?

47. The requirement that the children or relatives must be in line to inherit the property is mandated only in Section 4(4) of the Act 2007 for issuing direction with regard to maintenance. To invoke jurisdiction either under Section 22 or Section 23 of the Act 2007, no such pre-condition has to be satisfied.

48. Section 23 of the Act, 2007 uses the expression “transfer”, ostensibly to offer the widest possible protection to the senior citizens. In fact, this Court in *Kanakdhara Credits Pvt. Ltd. vs. Mukesh Kapil & Another, CS(OS) 2670/2011* decided on **9th May, 2013** has held that expression 'transfer' is of wide amplitude. The relevant portion of the aforesaid judgment reads as under:-

“20. In the opinion of this Court, the expression ‘transfer’ as used in Clause 2 of the Special Power of Attorney is of extremely wide amplitude. In Black’s Law Dictionary, Ninth Edition, the expression ‘transfer’ is stated to mean “any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance.....the term embraces every method—direct or indirect, absolute or conditional, voluntary or involuntary—of disposing of or parting with property or with an interest in property.”

(emphasis supplied)

49. The High Court of Punjab and Haryana has held in the case of *Promil Tomar* (supra) that a senior citizen is said to have transferred his right, title or interest to any other person by gift or otherwise which would include even transfer of possession – like in the present case.

50. The Gujarat High Court in *Jayantram* (supra) has also held that in light of the objective of the Act and the intention of the legislature, there is no reason, justification or indication to restrict the scope of the expression “transfer” under Section 23 and exclude “possession of property” from its purview.

51. Consequently, directions to remove the children from the property is necessary in certain cases like the present to ensure a normal life of the senior citizens.

E. WHETHER IN THE ABSENCE OF A COMPREHENSIVE ACTION PLAN FOR PROTECTING THE LIFE AND PROPERTY OF SENIOR CITIZENS UNDER SECTION 22 OF THE ACT, 2007 THE MAINTENANCE TRIBUNAL HAS THE JURISDICTION TO ORDER EVICTION?

52. Section 22(2) of the Act, 2007 mandates that the State Government shall provide a comprehensive action plan for protecting the life and property of senior citizens. Section 22(1) contemplates that the State Government may confer powers and impose duties on the District Magistrate for implementing the provisions of this Act.

53. Section 32(2) (e) and (f) of the Act, 2007 contemplates that the State Government shall make rules to give effect to the provisions of Section 22(1) and (2) of the Act.

54. The State of Haryana in furtherance of the aforesaid powers by its Action Plan for the Protection of Life and Property of Senior Citizens (notified on May 26, 2015) has vested the District Magistrate with the powers to pass an eviction order under the Act against unauthorized occupants and laid out the procedure for eviction from property belonging to or occupied by senior citizen, and provided rules for enforcing such orders for eviction.

55. However, on the date the present petition had been filed the Government of NCT Delhi, had not framed such rules under Section 22(1) and (2) of the Act 2007 concerning the property of senior citizens and had not prepared a comprehensive action plan for protecting the life and property of senior citizens.

56. In fact, the High Court of Punjab and Haryana in *Justice Dewan* (supra) exercised its jurisdiction to evict the children of an aggrieved senior citizen under Section 22 of the Act, noting the failure of the said State Government to set up an appropriate mechanism to protect senior citizens in the State.

57. Further, a coordinate Bench of this Court in *Nasir* (supra) has observed that since the Government of NCT Delhi has “*failed in its duty [under the Act], this Court in exercise of its powers under Article 226 of the Constitution of India, would not undo what the Maintenance Tribunal has done and which would have been beyond the pale of controversy, had the GNCTD framed the Rules, as was expected by it.*”

58. Consequently, even in the absence of a comprehensive action plan for protecting the life and property of senior citizens under Section 22 of the Act, 2007, on the date the impugned order was passed, the Maintenance

Tribunal had the jurisdiction to pass an order of eviction.

59. In fact, while doing research for the judgment, this Court found that Government of NCT of Delhi vide Notification dated 19th December, 2016 had amended Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. The relevant portion of the said Rules is reproduced hereinbelow:-

“(3) (1) Procedure for eviction from property/residential building of Senior citizen/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.”

(emphasis supplied)

60. In the opinion of this Court, the aforesaid Rule is contrary to the express language of the Statute and the judgment of this Court in *Nasir* (supra). Consequently, this Court directs Government of NCT of Delhi to amend/formulate its Rules framed under Section 32 read with Clause (i) of Section 2 of Act, 2007 as well as an action plan under Section 22(2) of Act, 2007 in conformity with this judgment.

F. WHETHER THE MAINTENANCE TRIBUNAL CONSTITUTED UNDER THE ACT, 2007 HAS THE JURISDICTION TO ISSUE DIRECTIONS TO GIVE EFFECT TO AN EVICTION ORDER UNDER SECTION 23 OF THE ACT, 2007?

61. One of the avowed objects and reasons of the Act, 2007 is to *institutionalise a suitable mechanism for protection of life and property of senior citizens.* The relevant portion of the Statement of Objects and Reasons of the Act, 2007 is reproduced hereinbelow:-

63. Section 27 of the Act 2007 stipulates that the jurisdiction of civil Courts is barred with respect to any matter to which any provision of the Act, 2007 applies. Further, by virtue of Section 3, the Act, 2007 has an overriding effect notwithstanding anything inconsistent contained in any other Statute. The Courts have relied on Section 23 to hold that an application can be filed to avoid a transfer of the property including title documents, without seeking a declaration in the civil Court.

64. The High Courts of Punjab and Haryana and Gujarat have specifically upheld the power of the Maintenance Tribunal to direct eviction in exercise of its jurisdiction under Section 23 of the Act, 2007. [See *Justice Shanti Sarup Dewan, Chief Justice (Retired) & Anr.* (supra); *Jayantram Vallabhdas Meswania* (supra)]. Though a contrary view has been expressed by the High Court of Kerala in *C.K. Vasu* (supra) and a coordinate Bench of this Court in *Sanjay Walia* (supra) wherein it held that the Maintenance Tribunal does not have the power to direct eviction, yet the said view has not been accepted by another coordinate Bench of this Court in the case of *Nasir* (supra).

65. This Court is of the opinion that the judgments relied upon by the learned counsel for petitioner No. 1 are confined to interpretation of Section 9 of the Act, 2007 and do not consider other provisions of the Act, specially those contained in Chapter V. This Court is in agreement with the view expressed by a Coordinate Bench of this Court in the case of *Nasir* (supra) that the provisions of Act, 2007 have to be liberally construed as one of the primary objects of the Act is to protect the life and property of senior citizens.

66. Further, the order dated 13th April, 2016 passed by the Gujarat High Court in *Kamleshkumari Shravankumar* (supra) is only an interim order and offers no assistance to the petitioner No. 1 as there is a binding judgment of this Court in the case of *Nasir* (supra).

67. Consequently, this Court is of the opinion that under Section 23 of the Act, 2007, the Maintenance Tribunal can issue an eviction order to ensure that senior citizens live peacefully in their house without being forced to accommodate a son who physically assaults and mentally harasses them or threatens to dispossess them. It is pertinent to mention that the respondents No. 2 and 3 allegations that petitioner No.1 is an alcoholic whose services had been terminated by Delhi Police on the ground of misconduct and against whom a number of police complaints are pending had not been denied during the course of hearing.

68. This Court is also of the opinion that since the Act, 2007 confers on the Maintenance Tribunal the express power to declare a transfer of property void at the option of the transferor under Section 23, it has to be presumed that the intent of the Legislature is to empower the Maintenance Tribunal to pass effective and meaningful orders including all consequential directions to give effect to the said order. In *Union of India and Another v. Paras Laminates (P) Ltd., (1990) 4 SCC 453*, the Supreme Court has held as under:-

"8. There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal,

nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution”. ”

(emphasis supplied)

69. The direction of eviction is a necessary consequential relief or a corollary to which a senior citizen would be entitled upon a transfer being declared void. In **Promil Tomar and Others** (supra) the Punjab and Haryana High Court has held that once the transfer of the property to the petitioners is held void by the Tribunal, the consequential benefit would be to restore senior citizens to a position which would be in the shape of status quo ante i.e. a situation which existed prior to the transfer so far as title and possession is concerned.

70. This view is also in consonance with the statutory scheme of Section 34 of the Specific Relief Act, 1934. In fact, a civil suit seeking declaration without such a consequential relief would be dismissed as being not maintainable. In **Venkataraja and Others, v. Vidyane Doureradjaperumal (Dead) Through Legal Representatives and Others, (2014) 14 SCC 502** the Supreme Court has held as under:-

"25 . In *Muni Lal v. Oriental Fire & General Insurance Co. Ltd.* [(1996) 1 SCC 90] this Court dealt with declaratory decree, and observed that: (SCC p. 93, para 4)

"4. ... mere declaration without consequential relief does not provide the needed relief in the suit; it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the court to refuse the grant of declaratory relief."

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27. In view of the above, it is evident that the suit filed by the appellant-plaintiffs was not maintainable, as they did not claim consequential relief. Respondents 3 and 10 being admittedly in possession of the suit property, the appellant-plaintiffs had to necessarily claim the consequential relief of possession of the property....."

(emphasis supplied)

71. Consequently, the Maintenance Tribunal has the jurisdiction to not only pass an eviction order but also to issue directions to give effect to the same under Section 23 of the Act 2007.

72. Before parting with the matter, this Court places on record its appreciation for the hard work put in by the Amicus Curiae. She not only argued with clarity, but also did extensive research on a large number of legal issues.

CONCLUSION

73. Keeping in view the aforesaid conclusions, this Court is of the view that the Act, 2007, amongst other remedies, provides for eviction of adult children in cases of parental abuse—like in the present case. Accordingly, the present writ petition and application are dismissed and the concerned SDM and SHO, Police Station Civil Lines, are directed to forthwith comply

with the impugned order dated 1st October, 2015 passed by the Maintenance Tribunal, Central District, Delhi.

Order dasti under signature of Court Master.

MANMOHAN, J

MARCH 15, 2017

js/rn

