

(2020) 07 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 1142 Of 2020

Basant Kumari Sikka

APPELLANT

Vs

Maintenance Tribunal And Ors

RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Delhi Maintenance And Welfare Of Parents And Senior Citizens Rules, 2009 — Rule 3(3), 3(3)(a), 22(3), 22(3)(1), 22(3)(1)(i)
Maintenance And Welfare Of Parents and Senior Citizens Act, 2007 — Section 2(j), 15(1), 23

Citation : (2020) 07 DEL CK 0036

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Amjad Khan, Ramesh Singh, Saumya Tandon, Vipul, Avantika Rohtagi, Shakeel Ahmad Saifi

Final Decision : Disposed Of

Judgement

Navin Chawla, J

CM No.3767/2020 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 1142/2020

1. This petition has been filed by the petitioner challenging the order dated 19.08.2019 passed by the District Magistrate (East), acting as the

â??Tribunalâ?? under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the

â??Actâ??), in Eviction Petition No.126/2019, Smt.Basant Kumari Sikka v. Sh. Hema Sikka.

2. It is the case of the petitioner that the complaint before the Tribunal was filed

under Section 23 of Act and in terms of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended from time to time (hereinafter referred to as the "Rules"), the Presiding Officer of the Tribunal had to be the Additional District Magistrate and not the District Magistrate and therefore, the Impugned Order has been passed by an authority who had no jurisdiction.

3. The learned counsel for the respondent no.1 does not dispute the above position, however, submits that the petitioner had participated in such proceedings and even filed an appeal challenging the order impugned in the present petition. He submits that even otherwise, the District Magistrate is the Appellate Authority in terms of the Notification dated 11.02.2011 issued under Section 15(1) of the Act and Rule 3(3) of the Rules and therefore, he is discharging functions both as the Tribunal and also the Appellate Authority in varying situations. He submits that in the present case, as the District Magistrate has passed the present order, the Divisional Commissioner can act as an Appellate Authority.

4. The learned counsels for the respondent nos.2 and 3 support the submissions of the learned counsel for the respondent no.1 and submit that as the petitioner has not only participated in the proceedings before the District Magistrate but has also filed an appeal challenging the order impugned in the present petition before the Appellate Authority being the Divisional Commissioner, and hence, this Court should not entertain the present petition.

5. The learned counsel for the petitioner controverts the above submissions by submitting that before the District Magistrate the parties have to represent themselves in person and not being well versed in law, the submission regarding the incompetence of the District Magistrate to entertain complaint made by the petitioner could not be raised. This was realized only at the time of filing of the appeal before the Divisional Commissioner and the petitioner has already filed an application seeking withdrawal of the said appeal. The appeal, as also the application seeking withdrawal thereof, have not been listed before the Divisional Commissioner till date.

6. I have considered the submissions made by the learned counsels for the parties. The complaint filed by the petitioner prayed for the following reliefs:

1. An order in favor of applicant and against the respondent for the

Cancellation of the Gift Deed Vide Registration No. 5508, Book No.

I, Volume No. 135, on pages 129 to 133 executed on 28/10/2017 in favor of respondent Mrs. Hema Sikka by declaring the same as Null,

Void and Non effective from the date of its execution i.e. 28/10/2017, as this Gift Deed has been executed without the Consent, Will & Wish

of applicant and also by misrepresentation and fraud.

2. An order in favor of applicant against the respondent, restraining the respondent and her agents, assigns or legal heirs permanently

from transferring the above mentioned property to any person in any manner, whatsoever or creating third party interest in any manner and

from dispossessing the applicant from her own self acquired property.â??

7. These prayers clearly fall within the ambit of Section 23 of the Act, which is reproduced hereinbelow:

â??23. Transfer of property to be void in certain circumstances.â?"(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.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to

receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not

against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the

organisation referred to in Explanation to sub-section (1) of section 5.â??

8. The â??Tribunalâ?? has been defined in Section 2(j) of the Act as under:

â??2. Definitions.â?"In this Act, unless the context otherwise requires,â?

xxx

(j) â??Tribunalâ?? means the Maintenance Tribunal constituted under section

7.â??

9. Rule 3(3)(a) of the Rules prescribes that the Additional District Magistrate shall be the Presiding Officer of the Maintenance Tribunal. Therefore,

the Tribunal for purposes of Section 23 of the Act is the one presided by the Additional District Magistrate.

10. At the same time, Rule 22(3)(1) prescribes the procedure of eviction from the property/residential building of senior citizens/parents. In terms of

Rule 22(3)(1)(i), such application has to be filed before the Deputy Commissioner/District Magistrate. Therefore, the â??Tribunalâ?? under Rule

22(3)(1)(i) is separate from the â??Tribunalâ?? as defined under the Act and as notified in the Rules.

11. Clearly, in the present case, the problem arose as the complaint filed by the petitioner was treated to be one under Rule 22(3) instead of being one

under Section 23 of the Act as was supposed to be. The application under Section 23 has to be heard and adjudicated by the Additional District

Magistrate as prescribed in the Rules, however, as the application was considered as one under Rule 22(3), it was heard and decided by the District

Magistrate.

12. In view of the above, as the Impugned Order has been passed by an incompetent authority, the same cannot be sustained. It is settled position in

law that an order passed by an authority which has no jurisdiction, is a nullity. It is a case of coram non judice.

13. The participation of the petitioner and the filing of an appeal by her cannot vest jurisdiction in a Court/Tribunal which otherwise lacks such

jurisdiction. Similarly, because the District Magistrate can act as an Appellate Authority, would also not vest jurisdiction in such authority as an original

authority to adjudicate such application. Reference in this regard may be made to the judgment of the Supreme Court in Jagmittar Sain Bhagat & Ors.

vs. Director, Health Services, Haryana & Ors. (2013) 10 SCC 136.

14. As far as the appeal filed by the petitioner is concerned, the learned counsel for the petitioner reiterates that the petitioner has already filed an

application seeking withdrawal of the same. In any case, the petitioner shall remain bound by the statement and the appeal shall be treated as

withdrawn before the Appellate Authority.

15. In view of the above, the Impugned Order dated 19.08.2019 is set aside. It

is directed that the application filed by the petitioner shall be adjudicated by the concerned Additional District Magistrate acting as the Presiding Officer of the Tribunal in accordance with the Rules, remaining uninfluenced by any observation made in the order dated 19.08.2019. In such proceedings either party shall be free to agitate all their submissions afresh. As the application of the petitioner has been pending adjudication for a long period, the Tribunal is directed to consider and adjudicate on the same expeditiously and preferably within a period of six weeks from the receipt of a copy of this order. The file relating to the complaint shall be transferred by the office of the District Magistrate (East) to the concerned Additional District Magistrate forthwith.

16. As far as the prayer of the petitioner is concerned, the same has to be adjudicated by the Tribunal constituted under the Act and

therefore, this Court refrains itself from making any comments on the same.

17. The petition is disposed of in the above terms, with no order as to cost.