

demonstrate that it is the case of the petitioner that she is residing at Mumbai along with her family and is permanent resident of the village in which the land in question is situated. It is also stated by the petitioner that during the absence of the petitioner from the village, the neighbour of the petitioner being respondent no 5 has illegally taken possession of the land of the petitioner adjoining the residence of the petitioner in the village and post- karia gopalpur, Police Station-Devgaon, District-Azamgarh, Uttar Pradesh.

3. Heard learned counsel for the petitioner and learned standing counsel for the respondent-State.

4. It is submitted by learned counsel for the petitioner that the petitioner has moved an application before the District Magistrate, seeking eviction of private respondent no.5 from the land adjoining the residence of petitioner. It is also submitted that the petitioner is living with her family at Mumbai and during her absence, neighbour has taken possession over the land adjoining the residence of petitioner. It is submitted on behalf of learned counsel for the petitioner that The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to "Act of 2007") has been enacted by the legislature providing for welfare & protection to the senior citizens and parents. It is also submitted by learned counsel for the petitioner that under the aforesaid Act of 2007, the Uttar Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2014 (hereinafter referred to "Rules of 2014") has been framed and under Rule 21 of the Rules of 2014, the District Magistrate is enjoined with the duty to

ensure that the life and property of senior citizens of the district is protected and they are able to live with security and dignity. It is further submitted by learned counsel for the petitioner that under Rule 22 of the Rules of 2014, an action plan for the protection of life and property of senior citizen has been envisaged and on the aforesaid basis, petitioner seeks direction for ejection of the private respondent from the land in question.

5. Before considering the claim of the petitioner arising out of the present writ petition, it is necessary that the scheme of the Act of 2007 be examined.

6. The Act of 2007 is enacted with the object to provide 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, objects and reasons of the aforesaid Bill is as under :-

"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973 (Act No.2 of 1974), the

procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for :

(i) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;

(ii) providing better medical facilities to senior citizens;

(iii) for institutionalisation of a suitable mechanism for protection of life and property of older persons; and

(iv) setting up of old age homes in every district.

4. The Bill seeks to achieve the above objectives."

7. The aforesaid Act is primarily divided into seven chapters providing for maintenance and welfare of parents and senior citizens.

8. Chapter I of the aforesaid Act provides the definition of "maintenance" and "property". The definition as envisaged under the aforesaid Act is as under :-

"2 (b) "maintenance" includes provision for food, clothing, residence and medical attendance and treatment;

(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;"

Maintenance' is defined in an inclusive manner to incorporate, among other things, provisions for food, clothing, residence, medical assistance and treatment. In defining the expression 'property', the legislation uses broad terminology encompassing "property of any kind" and to include "rights or interests in such property" . Further, overriding effect is given to the provisions of the enactment by virtue of Section 3.

9. Chapter II of the aforesaid Act provides for maintenance of parents and senior citizens. Under the aforesaid Chapter, the Maintenance Tribunal has been constituted providing for redressal of grievance. The Maintenance Tribunal is constituted under Section 7 of the aforesaid Act. Further, Section 4 recognises a corresponding obligation on the part of the children or relative to maintain a senior citizen, extending to such needs as would enable them to lead a normal life. In the case of a relative, the obligation is if they are in possession of the property of the senior citizen or would inherit property from them whereas in the case of the children of a senior citizen, the obligation to maintain a parent is not conditional on being in possession of property of the senior citizen or upon a right of future inheritance.

10. Further, Section 8 of the aforesaid Act provides that the procedure before the Tribunal would be a summary procedure and the Tribunal would have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents

and materials objects and for such other purposes as may be prescribed and the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

11. Section 9 of the aforesaid Act, provides the tribunal with the power to order for maintenance if the children and relatives has neglected or refused to maintain a senior citizen being unable to maintain himself.

12. Further, Section 15 of the aforesaid Act provides Appellate Tribunal to be constituted against any order passed by the Maintenance Tribunal and any senior citizens or parents aggrieved by the order of the Tribunal can prefer an appeal before the Appellate Tribunal.

13. Chapter III of the aforesaid Act further directs the establishment of old age homes for senior citizens in furtherance of welfare of senior citizens.

14. Chapter IV of the aforesaid Act provides medical care of senior citizens and in this respect various directions have been issued under Section 20 of the Act of 2007, to the State Government for ensuring the medical treatment of senior citizens.

15. Under Chapter V of the aforesaid Act, protection of life and property of senior citizens is envisaged. In this respect following provisions are required to be noticed. Sections 21, 22 and 23 are quoted hereinbelow:-

"21. Measures for publicity, awareness, etc., for welfare of senior

citizens. - The State Government shall, take all measures to ensure that -

(i) the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals;

(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;

(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.

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

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

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 basis 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 organization referred to in Explanation to sub-section (1) of Section 5."

16. Sub-section (1) of Section 23 covers a situation where property has been transferred after the enactment of the legislation by a senior citizen (by gift or otherwise) subject to the condition that the transferee must provide the basic amenities and physical needs to the transferor. In other words, Sub-section (1) deals with a situation where the transfer of the property is accompanied by a specific condition to provide for the maintenance and needs of a senior citizen. In such an event, if the transferee fails to provide the maintenance and physical needs, the transfer of the property is deemed to have been vitiated by fraud, coercion or under undue influence. Section 23(1), in other words, creates a deeming fiction of the law where the transfer of the property is subject to a condition and the condition of providing

for maintenance and the basic needs of a senior citizen is not fulfilled by the person upon whom the obligation is imposed. Then, at the option of the transferor, the transfer can be declared as void by the Tribunal. On the other hand, Sub-section (2) of Section 23 envisages a situation where a senior citizen has a right to receive maintenance out of an estate. Where such a right exists, the right of maintenance can be enforced where the estate or a portion of it, is transferred against a transferor who has notice of the right; or if the transfer is gratuitous. The right however cannot be enforced against a transferee for consideration and without notice of the right.

17. The Sub-section (1) of Section 23 envisages a situation where the transfer of property is by the senior citizen. This is evident from the language of sub-Section (1) namely "where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property...". On the other hand, sub-Section (2) of Section 23 does not confine itself to a transfer by a senior citizen, unlike sub-Section (1). Sub-Section (2) uses the expression "such estate or part thereof is transferred". Where a senior citizen has a right to receive maintenance out of the estate and any part of it is transferred, sub-section 2 permits the enforcement of the right to receive maintenance out of the estate against a transferee with notice or against a gratuitous transferee. Sub-Section (2), in other words, may cover a situation where the transfer of the estate (in which a senior citizen has a right to maintenance) is by a third party, in which event, the provision provides the right to enforce the claim of maintenance against such transferee (other than those transferees for consideration or without notice of the

preexisting right). Arguably, the language of subsection (2) is broad enough to also cover a situation where the transfer is by the senior citizen, in which event the transferee with notice of the right; or a gratuitous transferee, can be made subject to the enforcement of the right against the transferred estate. Further, under sub-Section (1), where a transfer has been made by a senior citizen subject to the condition that the transferee will provided for basic amenities or physical needs of the transferor and if there is a failure of the transferee to fulfil the condition, two consequences follow: (i) the transfer of property shall be deemed to have been made by fraud or coercion or under undue influence; and (ii) the transfer shall, at the option of the transferor, be declared to be void by the Tribunal. The deeming consequence which is provided for in sub-Section (1) is not incorporated in sub-Section (2). Sub-Section (2), in contradistinction, stipulates that the right to receive maintenance can be enforced against a gratuitous transferee or a transferee with notice of the pre-existing right of a citizen to receive maintenance out of an estate notwithstanding who is the transferee of the estate. In keeping with the salutary public purpose underlying the enactment of the legislation, the expression 'transfer' would include not only the absolute transfer of property but also transfer of a right or interest in the property. This would also be in consonance with the provisions of Section 2(f) which defines the expression property to include 'rights or interests in such property'. The expression 'transfer' not having been defined specifically by the legislation, it must receive an interpretation which would advance the beneficent object and purpose of its provisions. Sub-section (2) of section

23 speaks of the enforcement of the "right to receive maintenance" which is more comprehensive in its nature, than merely enforcing an order for maintenance passed under Section 9 of the Act.

18. Chapter VI of the aforesaid Act provides for offences and procedure for trial of the aforesaid offence against senior citizens and parents.

19. Under Section 32 of the aforesaid Act, the State Government has been empowered to make rules for carrying out the purposes of the Act. Sub-section (2) (f) of Section 32 enables the State Government to make Rules for a comprehensive action plan for providing protection of life and property of senior citizens.

20. Under Sub-section (2) of Section 22 of the Act it is directed that State Government shall provide a comprehensive action plan for providing protection of life and property of senior citizens. The State Government in exercise of power under Section 32 of the Act of 2007 has framed the Rules of 2014.

21. Rule 21 of the aforesaid Rules of 2014 provide duties and powers of the District Magistrate. Under the Rule 21 sub-Rule 2(i) it is directed that it is the duty of the District Magistrate to ensure that life and property of senior citizens of the districts are protected and they are able to live with security and dignity. For convenience Rule 21 of the aforesaid Rules of 2014 is quoted hereinbelow:-

"21. Duties and Powers of the District Magistrate. - (1) The District Magistrate shall perform the duties and

exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2) It shall be the duty of the District Magistrate to :

(i) ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity;

(ii) oversee and monitor the work of Maintenance Tribunals and Maintenance Officers of the district with a view to ensuring timely and fair disposal of applications for maintenance, and execution of Tribunals' orders;

(iii) oversee and monitor the working of old homes in the district so as to ensure that they conform to the standards laid down in these rules and any other guidelines and orders of the Government;

(iv) ensure regular and wide publicity of the provisions of the Act, and Central and State Governments, programmes for the welfare of senior citizens;

(v) encourage and co-ordinate with panchayats, municipalities, Nehru Yuva Kendras, educational institutions and especially their National Service Scheme Units, Organisations, specialists, experts, activists, etc. working in the district so that their resources and efforts are effectively pooled for the welfare of senior citizens of the district;

(vi) ensure provision of timely assistance and relief to senior citizens in the event of natural calamities and other emergencies;

(vii) ensure periodic sensitisation of officers of various Departments and Local Bodies concerned with welfare of senior citizens, towards the needs of such citizens, and the duty of the officers towards the latter;

(viii) review the progress of investigation and trial of cases relating to senior citizens in the district, except in cities having a Divisional Inspector General of Police;

(ix) ensure that adequate number of prescribed application forms for maintenance are available in offices of common contact for citizens like Panchayats, Block Development Offices, Tahsildar Offices, District Social Welfare Offices, Collectorate, Police Station etc.;

(x) promote establishment of dedicated helplines for senior citizens at district headquarters, to begin with; and

(xi) perform such other functions as the Government, may by order, assign to the District magistrate in this behalf, from time to time.

(3) With a view to performing the duties mentioned in sub-rule (2), the District Magistrate shall be competent to issue such directions, not inconsistent with the Act; these rules, and general guidelines of the Government, as may be necessary, to any concerned Government or statutory agency or body working in the district, and especially to the following:

(a) Officers of the State Government in the Police, Health and Publicity Departments, and the Department dealing with welfare of senior citizens;

(b) Maintenance Tribunals and Conciliation Officers;

(c) Panchayats and Municipalities; and

(d) Educational Institution."

22. Under Rule 22 of the Rules, 2014 an action plan for the protection of life and property of senior citizens is provided. For convenience Rule 22 of the aforesaid Rules is quoted hereinbelow:-

"22. Action Plan for the protection of life and property of senior citizens.-

(1) The District Superintendent of Police and in the case of cities having Divisional Inspector General of Police, such Divisional Inspector General of Police shall take all necessary steps, subject to such guidelines as the Government may issue from time to time for the protection of life any property of senior citizens.

(2) Without prejudice to the generality of sub-rule (1) :

(i) each police station shall maintain an up-to-date list of senior citizens living within its jurisdiction, especially those who are living by themselves (i.e. without there being member in their household who is not a senior citizen);

(ii) a representative of the police station together as far as possible, with a social worker or volunteer, shall visit such senior citizens at regular intervals of at least once a month, and shall, in addition, visit them as quickly as possible on receipt of a request of assistance from them;

(iii) complaints/problems of senior citizens shall be promptly attended to, by the local police;

(iv) one or more Volunteer Committee(s) shall be formed for each Police Station which shall ensure regular contact between the senior citizens, especially those living by themselves, on the one hand, and the police and the district administration on the other;

(v) the District Superintendent of Police or, the Divisional Inspector General of Police as the case may be, shall cause to be publicised widely in the media and through the Police Station, at regular intervals, the steps being taken for the

protection of life and property of senior citizens;

(vi) each Police Station shall maintain a separate register containing all important particulars relating to offences committed against Senior Citizens as in Annexure IV:

(vii) the register referred to in clause (vi) shall be kept available for public inspection, and every officer inspecting a Police Station shall invariably review the status as entered in the register;

(viii) the Police Station shall send a monthly report of such crimes to the District Superintendent of Police by the 10th of every month;

(ix) list of Do's and Don'ts to be followed by senior citizens, in the interest of their safety, will be widely publicised;

(x) antecedents of domestic servants and others working for senior citizens shall be promptly verified, on the request of such citizens;

(xi) community policing for the security of senior citizens will be undertaken in conjunction with citizens living in the neighborhood, Residents' Welfare Association, Youth Volunteers, Non-Government Organizations, etc;

(xii) the District Superintendent of Police shall submit to the Director General of Police and to the District Magistrate, a monthly report by the 20th of every monthly, about the status of crimes against senior citizens during the previous month, including progress of investigation and prosecution of registered offences, and preventive steps taken during the month, as in Annexure V;

(xiii) the District Magistrate shall cause the report to be placed before the District Level Committee constituted under Rule 24;

(xiv) the Director General of Police shall cause the reports submitted under clause (xii) to be complied, once a quarter, and shall submit them to the Government every quarter as well as every year for, inter alia, being placed before the State Council of Senior Citizens constituted under Rule 23."

23. It is to be seen that under Rule 21 Sub-Rule (2)(i) of the Rules of 2014, the District Magistrate has been conferred with the duty to ensure the life and property of senior citizens of the district are protected and they are able to live with security & dignity and further under Rule 22 a comprehensive action plan has been envisaged for the welfare of senior citizens. The power conferred on the District Magistrate by Rule 21 of the Rules of 2014 are for the purpose of providing protection to the life and property of the senior citizens.

24. The scheme of the Act would go to show that in respect of maintenance of the senior citizens under Chapter II of the Act of 2007, adjudicatory mechanism has been placed under the Act of 2007. For the purpose of maintenance of senior citizens, a Maintenance Tribunal has been constituted under Section 7 to adjudicate upon the issue with regard to maintenance of senior citizens and parents and the aforesaid Tribunal has been conferred with the power of civil court under Section 8 of the Act for the purpose of determination of the issues before the Maintenance Tribunal. It is further to be seen that adjudicatory mechanism has been provided under Chapter II of the Act of 2007, for which the Tribunal is the authority to adjudicate the dispute.

25. In so far as the power conferred under Rule 21 to the District Magistrate is concerned, the said power is limited to the protection of the life and property of the senior citizens. No such power has been conferred on the District Magistrate to be part of adjudicatory mechanism under the act and the power of the District Magistrate are executive in nature and he is only required to protect the property of the senior citizens, where from the records or otherwise, it can be found that the title of the property or rights to the property is vested in the senior citizen. The proceedings before the District Magistrate are summary in nature and only limited inquiry can be made by the District Magistrate for the purpose of carrying out the object of Rule 21, to find out whether the property belongs to senior citizens or not or the senior citizen has any right in the property in question. Rule does not in any manner permit the District Magistrate to consider the disputed claim of the parties in respect of title or rights to the property. The "protection" of property must therefore be understood to mean where a senior citizen retains a property in his name or possession for his welfare and well being.

26. The adjudicatory mechanism under the present constitutional frame work is provided to the ordinary courts of law and executive is not conferred with powers to determine the rights of the parties in respect of property. Where ever the power has been conferred on the executive to adjudicate the rights of the parties under any law, the power has been well defined and the jurisdiction of executive authority under the relevant law is also prescribed. In the Act of 2007, no power have been prescribed of any adjudicatory mechanism being conferred on the District Magistrate

for deciding the disputed question of title, right and interest in the property.

27. It is also to be seen that the dispute in respect title or right to property would require leading of evidence and recording of finding on the basis of evidence led with regard to the right and ownership of the property. The said powers under the constitutional framework is to be exercised by the ordinary courts of law and such a mechanism without there being any provisions in the Act of 2007, cannot be permitted to be conferred on the District Magistrate in the garb of Rule 21 which is limited to protection of property of the senior citizens.

28. Under section 23, the transfer of property in certain circumstances have been declared to be void and the senior citizen is permitted to approach the tribunal for declaration of the transfer is void or for maintenance as the case may be. In respect of the protection of the property and rights of the senior citizen arising out of the property under section 23, the adjudicatory mechanism has been conferred on the maintenance Tribunal constituted under chapter 2 of the Act of 2007.

29. Under the scheme of the above-mentioned act, wherever the adjudication of the right of a senior citizen is required, the power has been conferred under the aforesaid act on the tribunal. The tribunal has also been conferred with the powers of the civil court under Section 8 of the Act of 2007. The orders passed by the tribunal under the act is subjected to an appeal under Section 16 of the Act of 2007. It is to be seen that the adjudicatory mechanism in place under the aforesaid act for the purpose of maintenance of senior citizen and for protection of the rights conferred under Section 23 of the Act of 2007, indicate that the

power of the District Magistrate under the aforesaid act for protection of the property & life of the senior citizen is san of any adjudication at the behest of the District Magistrate in respect of any disputed claim to the property or the rights of the senior citizen.

30. The District Magistrate under Rule 21 of Rules of 2014 is not an adjudicatory forum in respect of serious dispute of title between the senior citizen and the third party. The provisions contained in the Act of 2007 and the rules framed thereunder merely provide for protection of the rights of the senior citizen over the property with the object of maintenance of such property. The act does not intend to create any new forum for adjudication or determination of the property dispute or rights in the property between individuals. The powers of the District Magistrate under the Rules of 2014 would require the District Magistrate to ascertain that the applicant before the aforesaid authority is a senior citizen and further the property in respect of which the protection is being sought is in the ownership of the senior citizen or the senior citizen has any right, interest or title in the property in dispute. The right or title or interest in the property as claimed by the senior citizen should be an existing right which is without any cloud on the title, interest or right of the senior citizen in the aforesaid property. Where there are serious dispute with regard to the title, interest or right of the senior citizen to the property in question and the aforesaid dispute can only be resolved by leading evidence and further by recording a finding in respect of title of the property, the district magistrate in such circumstances would not have the authority to consider upon the rival claims of the parties specifically in the case where the dispute with regard to the property is with the third party who is neither the relative nor the children of the senior citizen.

31. It is further to be seen that under the Act of 2007, no adjudicatory powers have been conferred on the District Magistrate and under section 22 of the Act of 2007 a direction was issued to the state government to prescribe a comprehensive action plan for providing protection to life and property of the senior citizen. The State government while exercising the powers under section 32 of the Act of 2007 has framed the Rules of 2014 where under the District Magistrate has been conferred with the powers to protect the property & life of the senior citizen. It is for the legislature to confer adjudicatory powers on any authority and we have already observed that such power of adjudication, in respect of disputed claim to property is neither intended to be conferred upon the District Magistrate nor has actually been conferred upon the District Magistrate. We are therefore inclined to read down Rule 21 in light of the statutory scheme and clarify that the power vested in the District Magistrate vide Rule 21 does not extend to potential claims in respect of property where title, interest or possession needs determination/adjudication. For the aforesaid purpose the District Magistrate can make a summary enquiry as regard to the title, interest of the senior citizen in the property in question however the intrinsic question of title or right which requires evidence and adjudication could not be gone into by the District Magistrate under the aforesaid Rule of 2014.

32. In the present case, the pleadings in the writ petition are of significance as in the writ petition, the petitioner has not disclosed that she is a senior citizen. It is also to be seen that in the application filed before the District Magistrate which is annexed as Annexure No.1 to the writ petition, it is not stated that the petitioner is

a senior citizen. The pleadings in this respect are wholly vague in nature in the writ petition as well as the application filed by the petitioner before the District Magistrate.

33. The Pleadings are the foundation of litigation. In pleadings, the necessary and relevant particulars and material must be included and unnecessary and irrelevant material must be excluded. Pleadings in a particular case are the factual foundation on which the case of the litigant is based on. The pleadings should be specific in the petition and should disclose the complete cause of action for approaching the court. If the factual foundation for the cause of action in approaching the court is missing or is vague then it is always open for the court to deny the relief to the petitioner/litigant in the facts and circumstances of the particular case.

34. It is also to be seen that in an application filed before the District Magistrate annexed as Annexure No.1 to the writ petition, petitioner has only stated that the land adjacent to the residence of the petitioner has been occupied by the private respondent and boundary wall has been made on the aforesaid land. It is further to be seen that the pleadings in the writ petition does not demonstrate as to how the ownership of the aforesaid land is vested with the petitioner and what right the petitioner has on the aforesaid land in question. The pleadings in writ petition are apparently silent on the aforesaid aspect and unless the petitioner comes up with a specific pleadings showing her established title or rights to the property, the direction in the writ petition cannot be issued.

35. It is further to be seen that in the present writ petition it has not been

1 All. C/M Sri Ishwar Maharaj Uchchatar Madhyamik Vidyalaya Inter College, Agra & Anr. Vs. 305 State of U.P. & Ors.

stated/disclosed as to the date when the land in question was encroached upon by the private respondent and when the wall was constructed. It is only stated in the application that the petitioner is living at Mumbai and in her absence, the neighbour/private respondent has occupied the land in question. The details & identification of the land in question has neither been given in the writ petition nor in the application filed before the District Magistrate and the application as well as the writ petition is lacking the factual foundation for initiation of proceedings under the Act of 2007.

36. It is further to be noted that third party has already created a boundary on the land in question and, as such, there prima facie exists a dispute, which is required to be considered and decided by the court of competent jurisdiction and the District Magistrate in exercise of Rule 21, would not have the power to decide the dispute between petitioner and the private respondent, who is third party in respect of title and ownership of the land in question and the aforesaid would require the evidence to be led by the parties before the court of competent jurisdiction.

37. The petitioner in the present writ petition has prayed for direction to the District Magistrate to demolish the illegal encroachment over the petitioners adjoining land and handover the possession in favour of the petitioner. While considering the aforesaid prayer, it was imperative on the part of the petitioner to have laid the factual foundation with regard to right, title or interest of the petitioner in the property in question, in the writ petition. The

direction as prayed by the petitioner can only be issued where the petitioner shows that he has any right, title or interest in the property in question. In the writ petition neither any document has been produced to indicate the right, title or interest nor the pleadings in this respect has been provided in the writ petition.

38. In view of the aforesaid, the present writ petition lacks merit and is dismissed.

(2022)01ILR A305
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.12.2021

BEFORE

THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.

Writ C No. 30240 of 2021

C/M Sri Ishwar Maharaj Uchchatar
Madhyamik Vidyalaya Inter College, Agra
& Anr. ...Petitioners

Versus

State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Sri Saurabh Singh, Sri Amit Saxena (Sr. Advocate), Sri Rohit Upadhyay

Counsel for the Respondents:

C.S.C.

A. Committee of Management – Election dispute – Rival claim – Order for single operation was passed by D.I.O.S. – No reason recorded – Effect – Held, it is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. (Para 16)