

process of rectangulation a proper development scheme is to be framed otherwise it will lead to haphazard development, which will be contrary to regular and planned development. For the said purpose the land must be acquired by the authority, followed by the preparation of development plan, and subsequently allotted after realising the development charges and the cost of land etc. We are concerned by the fact that even after the passage of more than 4 decades the entire land in the notified area has not been acquired, and on the other hand the authority would not sanction the building plans in the areas where the land has not been acquired. In fact, the area in which the development is proposed by the authority in the notified area ought to be acquired within a reasonable period of time. During this period the authority would be justified in not sanctioning the building plans on the ground that the said areas are proposed to be developed as per the plans prepared by the authority. But in case the land in the notified area is not acquired within a reasonable period, the rejection of the building plans would clearly be illegal and arbitrary and would be violative of Article 300A of the Constitution of India.

75. In the present case, the facts are peculiar and probably the only solitary instance, as stated by the respondents, where, by a deed of exchange, the land has been allotted to the petitioner. Prior to allotment to the petitioner, the said land was acquired by the authority, and also shown in the master plan for residential purposes. It is only after following the entire procedure, the land was allotted, and it is on the said land that an application for sanction of the building plan was made by the petitioners. In the aforesaid circumstances, we do not find any reason for the authority not to consider the application of the petitioner for sanction of the building

plan, and the reasons for rejection, as already discussed, are clearly illegal and arbitrary.

76. Accordingly, for the reasons stated herein-above, the writ petition is **allowed**. The impugned orders dated 11.09.2023 and 10.04.2024 are quashed.

77. The matter is remitted to respondent No.2 to pass a fresh order considering the application for sanction of map on merits in light of the Regulations of 2010 treating the petitioner to be eligible for due consideration and sanction of the map, in accordance with law. Let the fresh exercise be carried out expeditiously, but not later than 4 weeks from the date a certified copy of this order is produced before him.

(2024) 11 ILRA 346

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 22.11.2024

BEFORE

**THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE DONADI RAMESH, J.**

Writ -C No. 33687 of 2021

Dinesh Ahuja @ Chinu & Anr.

...Petitioners

Versus

D.M. & Ors.

...Respondents

Counsel for the Petitioners:

Nitin Sharma

Counsel for the Respondents:

Abhitab Kumar Tiwari, C.S.C., Vinay Khare,
Vivek Saran

A. Civil Law – Maintenance and Welfare of Parents and Senior Citizens Act, 2007 – Object and Scope – Senior citizen's right of eviction – Imposing restriction to the right guaranteed under the Statute – Permissibility – Held, the Act and the

Rules offer a life preserving protective umbrella to all the aged members of the society, who may feel victimized or helpless at the hands of their children, or their relatives & ors., both with respect to provision for maintenance allowance and with respect to protection of their properties. Once that protection has been granted, there is no reason to restrict its operation – Held further, summary proceeding may remain subject to the outcome of any civil suit wherein larger issues and other rights may be involved – High Court disagreed with *Ravi Shankar's case* (Patna High Court) and *Simrat Randhawa's case* (Punjab and Haryana High Court) – *Krishna Kumar's case* was also held distinguishable as it relate to Ch. II, not Ch. V of the Act. (Para 30, 31 and 33)

B. Civil Law – Maintenance and Welfare of Parents and Senior Citizens Act, 2007 – S. 22 – UP Maintenance and Welfare of Parents and Senior Citizens Rules, 2014 – R. 21 – Allegation of initiation of proceeding by the father (F) as proxy proceeding for the benefit of elder son (S1) – Reliability – No material in support of allegation – Effect – Held, merely because 'S1' may either be neutral to the dispute between 'F' and 'S2' and / or merely because 'S1' may be supporting 'F' in his dispute with 'S2', it may not lead to the conclusion as suggested by learned counsel for the petitioner – High Court found the objection of the petitioner misconceived. (Para 22 and 23)

Writ petition dismissed. (E-1)

List of Cases cited:

1. Krishan Kumar Vs St. of U.P. & ors.; 2023:AHC-LKO:54220 decided on 18.08.2023 : 2023 9 ADJ 113
2. Simrat Randhawa Vs St. of Pun. & ors.; 2020 Supreme (P & H) 5
3. Smt. S. Vanitha Vs The Deputy Commissioner Bengaluru Urban District and Ors.; 2021 (15) SCC 730

4. Letters Patent Appeal No. 907 of 2023 in Civil Writ Jurisdiction Case No. 7851 of 2022; Ravi Shanker & anr. Vs St. of Bihar & ors. decided on 03.01.2024

5. Sau Rajani Vs Sau Smita & anr.; 2022 INSC 805

6. Shivani Verma Vs St. of U.P. ors.; 2023 (6) ADJ 496

7. Harcharan Singh Vs Bhagat Singh & ors.; 2019 (2) R.C.R. (Civil) 313

(Delivered by Hon'ble Saumitra Dayal Singh, J. & Hon'ble Donadi Ramesh, J.)

1. Mediation offered to the parties has failed. Accordingly, the matter has been proceeded

2. Heard Sri Nitin Sharma, learned counsel for the petitioners; Sri Vivek Saran, learned counsel for the private respondent and Ms. Kritika Singh, learned Additional Chief Standing Counsel for the State respondents.

3. Present writ petitions has been filed for the following relief :-

(i) *Issue a writ, order or direction in the nature of certiorari quashing the order dated 22.11.2021 (Annexure No.5 to this instant writ petition) passed by the Additional City Magistrate (Brahmpuri), Meerut (Respondent No.2) in Case No.4925 of 2021 (Computerized Case No.D202111520004925) title Inderjeet Ahuja versus Dinesh Ahuja @ Chinu and another, under Section 7(1) U.P. the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.*

(ii) *Issue a writ, order or direction in the nature of*

mandamus directing the respondent authority not to take any coercive action against the petitioners in pursuance of the order dated 22.11.2021.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondent authority not to interfere in the peaceful possession of the premises of the petitioners.

4. The factual matrix giving rise to the present writ petition is undisputed. The petitioner Dinesh Ahuja (herein after described as 'S2') is the younger son of respondent no.3 Indrajeet Ahuja (hereinafter referred to as 'F'). 'F' has another son (elder) born to him, namely, Hemant Ahuja (hereinafter described as 'S1'). It is also admitted to the parties that 'F' (along-with his sons 'S1' and 'S2' and their wives) is residing in the dwelling house described as House No.689/56, (Old No.B-99), Jwala Nagar, Sabun Godaam, Police Station T.P. Nagar, Meerut City, District Meerut (hereinafter described as 'property'). At present 'F' and 'S1' and his wife and family enjoy good relations to the extent there is no litigation between those parties, inter se. At the same time it does appear that petitioner 'S2' and his wife have fallen apart with 'S1' and his family. The petitioners allege that 'F' is acting in collusion and/or under the undue influence of 'S1' and his family. As a result, at the instigation and prompting offered by 'S1' and his family, 'F' instituted a proceeding under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'Act') read with Rule 21 of the Uttar Pradesh Maintenance and Welfare of Parents and Senior Citizens Rules, 2014 (hereinafter referred to as 'Rules'), on 24.09.2021.

5. Further, according to the petitioners, that proceeding was instituted by 'F' only to defeat the earlier suit proceedings instituted by the petitioner / 'S2' being O.S. No.837 of 2020, (Dinesh Ahuja versus Indrajeet Ahuja and another) seeking an injunction against 'F' and 'S1'. That suit proceeding is described to be pending. At the same time, no injunction has been granted in such proceedings.

6. In the proceedings instituted under Section 22 of the Act read with Rule 21 of the Rules, the petitioners appeared and filed their objections on 08.11.2021. It is their grievance that their objections have been wrongly rejected, and erroneously, a direction has been issued to evict the petitioners from the property in question.

7. In such facts, Sri Nitin Sharma, learned counsel for the petitioners has primarily raised three submissions. First, it has been submitted that the application filed by 'F' under Section 22 of the Act read with Rule 21 of the Rules is a proxy litigation at the behest and instigation of 'S1'. 'F' has no grievance with the petitioners. Only for reason of other disputes existing between 'S1' and 'S2', 'F' has been needlessly dragged into the situation, at the behest of 'S1'.

8. Second, it has been submitted, no proceeding may have been instituted under the Act read with the Rules seeking eviction simplicitor of the petitioners. At most, 'F' would have a right to seek right to claim maintenance allowance from such of his sons who may inherent to his property. Only in the event of default in payment of maintenance allowance if any awarded, a proceeding for eviction may follow. In the present facts, neither 'F' has claimed any maintenance allowance from the petitioners

nor there pre-exists any order providing for such maintenance allowance. In support of his submission, learned counsel for the petitioner has relied on a decision of a learned single judge of this Court in **Krishan Kumar versus State of U.P. & Ors. (Neutral Citation No. - 2023:AHC-LKO:54220) decided on 18.08.2023 in Writ Petition No.35884 of 2019 (2023 9 ADJ 113)**, wherein it has been observed as below :-

“29. Further, this court is of considered opinion that a Tribunal, under Chapter-II of Act, 2007 cannot direct eviction simplicitor from the property at the instance of senior citizens, though the Tribunal can direct the children and relatives to make available a residence to such senior citizens in pursuance of an application, filed under the abovesaid chapter. It further emerges that the District Magistrate as an appellate authority under the Act, 2007, can ensure that no one should make any hindrance to a senior citizen to enjoy the property as per his ‘need’ and the right to eviction is the last step, where such authority finds that the need of a senior citizen is not being fulfilled. The case in hands is that the present petitioner is living in one room with his wife and he is not making any hindrance in the peaceful living of the parents, in other part of the house and therefore, so far as the objective of the Act, 2007 is concerned, is no way hampered by the petitioner.”

9. Then reliance has been placed on another decision of a learned single

judge of the Punjab and Haryana High Court in **Simrat Randhawa versus State of Punjab & Others [2020 Supreme (P & H) 5]**, wherein a learned single judge of the Punjab and Haryana High Court declared unconstitutional the Comprehensive Action Plan (CAP in short), framed by the Punjab State Government under the provisions of the Act. Thus, a learned single judge of the Punjab and Haryana High Court reached the conclusion that there was no power vested under the Act and the delegated legislation arising thereunder, in support of eviction simplicitor from any immovable property, at the instance of the senior citizen who may be the owner of such property. To the same effect reliance has been placed on a decision of Supreme in **Smt. S. Vanitha versus The Deputy Commissioner Bengaluru Urban District and Ors. [2021 (15) SCC 730]**, wherein in the context of parallel proceedings having arisen under the Protection of Women from Domestic Violence Act, 2005 at the instance of a daughter-in-law of a senior citizen (seeking eviction from her property), the Supreme Court set aside the orders passed by the authorities under the Act and the Rules framed thereunder and thus protected the occupant daughter-in-law from her eviction from such premises.

10. Last, he has relied on a decision of a Division Bench of Patna High Court in **Ravi Shanker and another versus State of Bihar and others, Letters Patent Appeal No.907 of 2023 in Civil Writ Jurisdiction Case No.7851 of 2022, decided on 03.01.2024**, wherein following the Punjab and Patna High Court **Simrat Randhawa versus State of Punjab & Others (supra) and Smt. S. Vanitha versus The Deputy Commissioner Bengaluru Urban District and Ors. (supra)**, the Patna High Court has also ruled against eviction

simplicitor being offered at the instance of a senior citizen, under the provisions of the Act and Rules framed thereunder.

11. Third, it has been submitted that in any case, the proceedings under the Act and the Rules are summary in nature. Natural jurisdiction of the Civil Courts has neither be excluded nor eclipsed nor restricted. In face of civil suit seeking injunction instituted by the petitioner No.1/'S2' prior to the institution of application under the Act read with the Rules framed thereunder and in face of such suit proceedings being pending, specifically with respect to the property in dispute, no jurisdiction survived with the authorities constituted under the Act and the Rules framed thereunder to proceed to pass any order to evict the petitioners during pendency of O.S. No.837 of 2020, (Dinesh Ahuja versus Indrajeet Ahuja and another) pending in the court of Civil Judge (S.D.), Meerut. Again reliance has been placed on the above noted decisions specially in *Smt. S. Vanitha (supra)* and *Ravi Shanker and another (supra)*. Reliance has also been placed on another decision of Supreme Court in *Sau Rajani versus Sau Smita & another, 2022 INSC 805*.

12. On the other hand, Sri Vivek Saran, learned counsel for the respondent would submit that there is no collusion between 'F' and 'S-I'. 'F' has instituted the proceedings on his own account with respect to his own property for reason of his own grievance against 'S2'. Merely because 'S1' is not opposed to 'F' and merely because 'S1' may be supporting 'F' generally in life and specifically in the litigation between 'F' and 'S2', it may not be said-that therefore there exists collusion between 'F' and 'S1'. These being family

disputes and parties being closely related, it is not an uncommon occurrence that a parent may have no grievance with one of his two more children or that they may have grievance with another child. For reason of absence of grievance between the father of his first son / 'S1', it cannot be said that the father is acting under the influence of his first son or that the proceeding instituted by the father is a proxy litigation on behalf of his first son. No material or evidence exists on record in support of that objection raised by learned counsel for the petitioner.

13. Coming to the second point raised by learned counsel for the petitioner, it has been submitted that the issue is no longer res integra. Insofar as our court is concerned, the issue was squarely thrashed out by a co-ordinate bench in *Shivani Verma vs. State of U.P. and 4 others, 2023 (6) ADJ 496*. In that decision the co-ordinate bench had the occasion to take note of the comprehensive of CAP framed by Government of U.P. in the context of the Act and the Rules. For ready reference and useful to our discussion, we may note that the co-ordinate bench observed as below :-

"51. Chapter IV of the Rules 2014, mandates for providing the scheme for management of old age homes for indigent senior citizens.

52. Chapter V, relevant for the purposes of the instant writ petition, provides for duties and power of the District Magistrates. The relevant portion of Rule 21 of Rules 2014, is extracted:

"21. Duties and Power 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."

53. On bare perusal the Sub-rule (i) of Sub-rule (2) of Rule 21, it employs the expression 'property' which is referable to the definition of 'property' defined under Sub-clause (f) of Section 2 of Act 2007. In other words, the expression 'residence', has not been employed in the Rules 2014. Though 'property' would include residential property but would certainly not include or mean the residence sought for maintenance by the senior citizen. The provision for residence could include property owned by the senior citizen or that of his children or relative as the case that may be setup by the senior citizen before the Tribunal claiming maintenance.

54. Further, Rules 2014 does not confer on the District Magistrate explicit power of eviction of the occupants from the residence of the senior citizen, though, it confers power upon the District Magistrate to ensure that the 'life and property' of the senior citizen is protected and they are able to live securely with dignity.

55. The State Government vide Government Order dated 21 March 2006, in purported exercise of powers under Sub-section (2) of

Section 22 of Act 2007, has framed policy for the senior citizen. The relevant portion reads thus:

विषय: उ.प्र. राज्य वरिष्ठ नागरिक नीति के सम्बन्ध में महोदय, उपर्युक्त विषय के सन्दर्भ में यह कहने का निर्देश हुआ है कि प्रदेश के ग्रामीण व शहरी क्षेत्र के वरिष्ठ नागरिकों की समस्याएं अलग-अलग हैं, यथा-स्वास्थ्य सेवाओं की अनुपलब्धता एवं गिरते स्वास्थ्य के कारण दैनिक कार्यों के साथ-साथ जीविकोपार्जन की समस्या परिवार के अन्य सदस्यों के रोजगार हेतु बाहर चले जाने पर उनके स्वयं की देख-भाल करने की समस्या, अधिक आयु एवं शारीरिक असमर्थता के कारण स्वयं की देख-भाल न कर पाने की स्थिति में किसी अन्य के सहायक न होने की समस्या, अधिक उम्र के कारण सक्रियता एवं गतिशीलता कम होने से एकाकीपन की समस्या इत्यादि। वरिष्ठ नागरिकों को विभिन्न सुरक्षा उपायों एवं कार्यक्रमों के माध्यम से शांतिपूर्वक, सुरक्षित एवं सम्मानजनक ढंग से जीवन-यापन का अवसर देने के उद्देश्य से प्रदेश के शहरी एवं ग्रामीण क्षेत्र के वरिष्ठ नागरिकों हेतु मा. मंत्रीपरिषद के आदेश अशासकीय पत्र सं० 4/2/3/2016-सी.एक्स. (1), दिनांक 14 मार्च, 2016 के क्रम में "उ.प्र. राज्य वरिष्ठ नागरिक नीति" निम्नवत बनायी जाती है-1. उत्तर प्रदेश राज्य वरिष्ठ नागरिक नीति के उद्देश्य निम्नवत् होंगे- प्रदेश के वरिष्ठ नागरिकों की आर्थिक सुरक्षा, आवासीय सुविधा, उनके समग्र कल्याण तथा उनकी आवश्यकताओं की पूर्ति हेतु यथावश्यक सहयोग की व्यवस्था सुनिश्चित करना। दुर्व्यवहार एवं शोषण से उनकी रक्षा की व्यवस्था सुनिश्चित करना।

56. Paragraph 2.4 of the policy with regard to the 'protection of life and property' reads thus:

वरिष्ठ नागरिकों को जीवन एवं सम्पत्ति का भय प्रायः तीन तरह के व्यक्तियों यथा-स्वयं के परिवार से, सेवाकारों से तथा अपराधीगण से होता है। सम्पत्ति की चाह में परिवारीगण से, अकेले रहने की दशा में घरेलू नौकरों से एवं सुनसान अकेले घरों में रहने के कारण घूमने वाले अपराधियों से वरिष्ठ नागरिक आसानी से शिकार हो जाते हैं। अतः समाज के उक्त श्रेणी के लोगों से वरिष्ठ नागरिक एवं उनकी सम्पत्ति की सुरक्षा किया जाना आवश्यक है। सड़क दुर्घटना भी वरिष्ठ नागरिक के लिए घातक है तथा इससे भी वृद्धजनों की सुरक्षा की जानी आवश्यक है।

वरिष्ठ नागरिकों के जीवन एवं सम्पत्ति की सुरक्षा हेतु कदम उठाए जाएंगे।

57. *Most of the senior citizens live with their parents (sic children). They face tussle over inheritance or division of property. Elders come under intense pressure to sell off their property or transfer ownership to their sons and are subjected to various forms of abuse if they relent. Senior citizens face harassment and threat from neighbours, encroachment of property, etc.*

58. *In the event, property of a senior citizen as defined under Sub-clause (f) of Section 2 of Rules 2014, is under threat from any person, District Magistrate has been conferred power to protect the life and property of the senior citizen.*

59. *Property can be tangible items, viz., homes, cars or appliances or it can refer to intangible items that carry the promise of future worth, such as, stock and bond certificates. Intellectual property refers to idea such as logo, design and patents.*

60. *Chapter V, in particular, Section 22, read with, Rule 21(2)(i) and the Government action plan/policy framed by the State Government, it mandates and directs the District Magistrate/District Police officers to protect the property of the senior citizen. Protection of property without the power and authority of eviction would render the provision meaningless. Protection of property would certainly include the power to order eviction of the occupant*

and restoration of the property to the senior citizen.

61. *The question that follows is which kind of property and against whom. Any kind of property [Section 2(f)] in the possession or threat of dispossession by the senior citizen from the relatives, family member, helps, service providers or anti social/criminals. Family members would include children of senior citizen. The senior citizen in respect of such property other than covered under maintenance (residence), would have to approach the District Magistrate for protection.*

62. *In other words, the expression 'property' would not include the property claimed by the senior citizen for 'maintenance' before the Tribunal for provision of residence. Accordingly, a senior citizen seeking maintenance, other than monetary maintenance, i.e., only residence to the exclusion of his children and relative of a property in his possession or otherwise owned by him, the remedy for such property (residence) would lie before the Tribunal.*

63. *In this backdrop, it follows that protection of 'life and property' would confer implicit power upon the District Magistrate to evict unauthorized occupant of the property, including, children/relative or third party from the property of the senior citizen. However, Tribunal alone would have power to order eviction from the property of a senior citizen/parent on an application claiming maintenance towards*

residence to the exclusion of his children/grand-children.

64. *The senior citizen while making an application (Form A) before the Tribunal may claim only residence as maintenance for his need to enable him to lead a normal and peaceful life, irrespective of the plea that his children/relatives are subjecting the senior citizen to harassment or not. The plea of harassment is not a prerequisite to maintain an application for an order of maintenance for provision for residence. In the event, Tribunal if (sic) satisfied on the claim of the senior citizen, it would order maintenance for residence, that would necessarily include eviction of the occupant of the residence being a consequence of the maintenance order. [Rule 14] In other words, Tribunal while exercising powers on an application seeking maintenance of residence by a senior citizen, while making order of maintenance for provision of residence, in consequence can direct eviction of the occupants, i.e., children/relative but not against minor children. An order of residence towards maintenance without passing the consequential order of eviction would render the power and authority of the Tribunal meaningless.*

65. *It follows that Tribunal has power to deal only with a particular kind of property (residence) sought for maintenance but lacks powers to adjudicate upon any other kind of property of the senior citizen. Such power is*

vested with the District Magistrate under Chapter V to protect any kind of property, movable or immovable, tangible or intangible against any person, i.e., children/relative or third party, but would not include the property sought by the senior citizen for residence towards maintenance from his children/relatives. Any other interpretation would be conferring power upon the District Magistrate to deal and adjudicate upon property sought by the senior citizen for provision of maintenance, merely for the reason that the power of eviction has to be read exclusively into the expression 'protection' of the property of senior citizen. Tribunal has a limited power while adjudicating the issue of property required only for the maintenance of the senior citizen.

66. *Tribunal can be approached by senior citizen or parent, as the case may be, for maintenance. Whereas, senior citizen alone can approach the District Magistrate for protection of his life and property of any kind, other than the property (residence) involved in proceedings before the Tribunal."*

14. Thereafter, the co-ordinate bench recorded its conclusions. Conclusion number "iv" reads as below :-

"(iv) Chapter V is confined to protection of life and property of the senior citizen alone. Protection of property would also include eviction of the occupant from the tangible property. The power is

conferred on the District Magistrate. The occupant could be children / relatives or third party.”

15. Thus, it has been submitted, insofar as the State of U.P. is concerned, there is no doubt as to existence of CAP. The same has never been declared unconstitutional. There is no challenge to the CAP in these proceedings. As to the power of the District Magistrate under Chapter V of the Act, there exists no doubt. A senior citizen may apply and the District Magistrate may provide for eviction simplicitor from an immovable property belonging to a senior citizen.

16. The ratio of the learned single judge decision in *Krishna Kumar (supra)* to the extent it runs contrary to the ratio in *Shivani Verma (supra)* remains per incuriam and does not declare binding law.

17. With respect to the decision of the Punjab and Haryana, High Court, in *Simrat Randhawa (supra)* a point of distinction has been drawn on the reasoning that in the present facts there is no challenge to the CAP and again in view of co-ordinate bench decision in *Shivani Verma (supra)* the ratio in *Simrat Randhawa (supra)* may remain of non persuasive value. Also, it has been pointed out that there exists an earlier decision of Punjab and *Haryana, High Court in Harcharan Singh vs. Bhagat Singh and others 2019 (2) R.C.R. (Civil) 313*, wherein it was observed as below:-

“The petitioner, herein, is residing in the house of respondent No.1 on the basis of concession given by his father in the property owned by him. He, as a licensee, is only permitted to enjoy the possession of

the property licensed but without creating any interest in the property. A licence stands terminated the moment the licensor conveys a notice of termination of a licence. There is no vested right of any type to remain in possession of the property of respondent No.1. Admittedly, respondent No.1 is owner of the property, in dispute. Respondent no.1 is required to be protected as mandated by Section 22 of the Act read with Rule 23 of the Rules and para 1 of the Action Plan. There cannot be any effective protection of property of the senior citizens unless the District Magistrate has the power to put the senior citizen into possession of the property and/or to restrain or eject the person who interferes in the possession of the property of the senior citizen. The protection of the property of a senior citizen includes all incidences, rights and obligations in respect of property in question. Once a senior citizen makes a complaint to District Magistrate against his son to vacate the premises of which the son is a licensee, such summary procedure ensures for the benefit of the senior citizen. The petitioner has no right to resist his eviction only on the ground that he is the only son or he does not have any source of income. The eviction is one part of the right to protect 8 of 10 the property of a senior citizen and this right can be exercised by a senior citizen in terms of provisions of the statute, Rules framed and the Action Plan notified.”

18. As to the decision of the Supreme Court in *Smt. S.*

Vanitha (surpa), it has been submitted that, that decision has no bearing to the present facts. In the first place the Supreme Court has not ruled or reasoned that no summary eviction may arise under the provisions of the Act and the Rules framed thereunder. Second, in the facts of that case, summary eviction ordered under the Act was set aside for reason of those proceedings being a device.

19. That point of distinction as supported by the reasoning of the co-ordinate bench of this Court in *Shivani Verma (supra)* has also been pressed against the applicability of ratio of the Patna High Court decision in *Ravi Shankar (supra)*.

20. As to the third submission advanced by learned counsel for the petitioner, it has been submitted, in absence of any jurisdictional error on part of the statutory authority, it cannot be said that the proceedings thus initiated would abate or be placed in abeyance during the pendency of a civil suit instituted by one of the parties, whose eviction has been sought. If that were to be applied by way of principle in law, no proceeding for eviction may ever arise under the Act and Rules framed thereunder as the party at risk of eviction may only file a civil suit and defeat the entire object and purpose of the Act and the Rules framed thereunder.

21. Once the Parliament has recognized the vulnerability

factor of the aged members of the society and has enacted the special welfare provisions to protect senior citizens from exploitation and abuse, occasioned by their vulnerability, accompanying feeble health and frugal means, there exists no room to accept the line of reasoning being canvassed by learned counsel for the petitioner.

22. Having heard leaned counsel for the parties and perused the record, in the first place we do not find any evidence or material to reach an exceptional finding that the proceedings instituted by 'F' are proxy proceedings instituted by him for the benefit of 'S1'. Merely because 'S1' may either be neutral to the dispute between 'F' and 'S2' and / or merely because 'S1' may be supporting 'F' in his dispute with 'S2', it may not lead to the conclusion as suggested by learned counsel for the petitioner.

23. No pleading made by 'F' and no process applied by 'F' is shown to be one instituted or performed by 'S1' for his benefit. To that extent the objection raised by the petitioner is found to be misconceived and unfounded, on facts and evidence.

24. As to the second objection, we may have been invited to offer a detailed discussion with respect to the submissions advanced by learned counsel for the parties. However, as noted above, the co-ordinate bench in *Shivani Verma (supra)* speaking through Suneet Kumar (J) has

made a detailed, lucid and nuanced discussion covering all aspects and facets of the submission presently advanced. The decision of the Supreme Court in *Smt. S. Vanitha (supra)* was also considered. Having quoted in extenso the reasoning offered by the coordinate bench, no useful or further purpose may be served in repeating the same. Suffice to record, we find ourselves in complete agreement with the reasoning of the coordinate bench. There being proceedings referable to Chapter V of the Act, the pre-condition of claim / or maintenance allowance does not exist. The application filed by 'F' before the District Magistrate was wholly maintainable.

25. At the same time, with respect to the decision in *Smt. S. Vanitha (supra)*, we may add that the said decision arose in the context of facts that were entirely different. The applicable law and its effect was also found different. In the present case, no proceeding has been instituted under the Protection of Women From Domestic Violence Act, 2005, on the contrary here the senior citizen 'F' is seeking the eviction of both 'S2' and his wife. In *Smt. S. Vanitha (supra)*, the senior citizen (mother-in-law), was seeking eviction of her daughter-in-law alone, the latter having suffered proceeding for dissolution of her marriage. Further, the property in issue (in that case) was originally purchased by the son of the senior

citizen. He sold it to his father who in turn gifted it to his wife.

26. Then, the said daughter-in-law had also instituted proceedings seeking residence under the Protection of Women From Domestic Violence Act, 2005. Therefore, it was also her objection that the proceeding set up under the Act were by way of a device to defeat her just claim under that special Act.

27. Last, before the Supreme Court, the submissions as were advanced on behalf of the daughter-in-law were recorded in paragraph 9 in *Smt. S. Vanitha (supra)* as below :-

“9. The appellant, aggrieved by the judgement of the Division Bench of the High Court, has preferred the present special leave petition. Mr Yatish Mohan, learned Counsel appearing on behalf of the appellant submitted that:

(i) The appellant is residing in her matrimonial home as the lawfully wedded spouse of the Fourth respondent and she cannot be evicted from her shared household, in view of the protection offered by Section 17 of the Protection of Women from Domestic Violence Act 2005.

(ii) The proceeding under Section 3 and 4 of the Senior Citizens Act

2007 was filed by her mother-in-law and father-in-law in connivance with her estranged spouse to deprive her of her matrimonial home;

(iii) The finding of the Division Bench on the appellant's current residential status was based on a fraudulent set up. The alleged postal cover was dispatched on 21 June 2018, during the pendency of the proceedings before the Single Judge, and merely indicated a postal endorsement ("no such person") as it arrived when nobody was present at home to receive it;

(iv) The decree for the dissolution of marriage which was passed against the appellant by the Trial Judge on 5 December 2013 has been set aside by the High Court on 14 January 2016 and the proceedings have been remanded back to the jurisdictional Family Court for a disposal afresh. Hence, as of date, the appellant continues to be in a lawful relationship of marriage with the Fourth respondent and she has no other place to live except the suit premises, with her minor daughter;

(v) The provisions of the Senior Citizens Act 2007 have been manipulated to defeat the

rights of the appellant. The manner in which the premises were transferred by the spouse of the appellant to his father and the gift deed thereafter to mother-in-law of the appellant are indicative of an attempt to misuse the provisions of the Act, to defeat the claims of the appellant; and

(vi) In asserting her right under Section 17 of the PWDV Act 2005, the appellant relies on the decision of this Court in *Satish Chander Ahuja vs. Sneha Ahuja (Civil Appeal No. 2483 of 2020, decided on 15 October 2020)*. In sum and substance, it has been urged that the authorities constituted under the Senior Citizens Act, 2007 had no jurisdiction to order the eviction of the appellant. Moreover, the proceedings have been utilised to secure the eviction of the appellant so as to deny her claim of a right to reside in the shared household under the PWDV Act 2005."

28. Thus, no submission was advanced to the effect that authorities constituted under the Act and the Rules framed thereunder have no jurisdiction to seek eviction simplicitor under Chapter V of the Act. Though, that nature of submission may have existed earlier before the Karnataka High Court in the writ petition and the writ appeal, at the same

time, that submission was not advanced before the Supreme Court. Therefore, the same has not been considered by the Supreme Court. That is not part of the ratio of the decision of the Supreme Court.

29. In fact the Supreme Court observed in summation point 24(ii) and 24(iv) that the daughter-in-law (in that case) may not be evicted summarily during pendency of her proceedings under the Protection of Women From Domestic Violence Act, 2005. Thus, it appears to us the Supreme Court itself was cognizant that the summary eviction proceeding may otherwise arise and be concluded under the Act and the Rules framed thereunder. However, it reasoned that such proceeding may not be concluded and made final during the pendency of another proceedings under another special Act. To that extent, discussion exists in the decision of the Supreme Court itself that Protection of Women From Domestic Violence Act, 2005 and the protections thereunder are not to be trifled or ignored.

30. In view of that reason offered by us, we find ourselves in respectful disagreement with the decision of the Patna High Court in *Ravi Shankar (supra)* and the decision of the Punjab and Haryana High Court in *Simrat Randhawa (supra)*. The decision of the learned single judge of this Court in *Krishna Kumar (supra)* is distinguishable, that being referable to proceedings under Chapter II of the Act and not Chapter V of the Act, as is the present case.

31. As to the third objection raised by learned counsel for the petitioner based on the decision of the Supreme Court in *Sau Rajani (supra)*, we find the same has no application in the present case. While

the jurisdiction of the Civil Courts may survive summary proceedings for eviction under Chapter V of the Act read with the Rules framed thereunder, read with the CAP, that summary proceeding may remain subject to the out come of any civil suit wherein larger issues and other rights may be involved.

32. At present, we make it clear that we are not proposing to rule as to the exact extent and nature of proceedings to which the summary eviction proceedings under Chapter V of the Act may remain subject to. However, solely to deal with the objections raised on the strength of plenary jurisdiction of the Civil Courts, we provide that the summary eviction under the Act would remain subject to final out come of O.S. No. 837 of 2020 (Dinesh Ahuja vs. Indrajeet Ahuja and another) pending in the Court of Civil Judge (Senior Division), Meerut. In those proceedings larger and other rights of the parties may be contested and decided. Any other construction made would defeat the entire object and purpose of the special welfare law, namely, the Act and the Rules framed thereunder.

33. Unfortunate as it may be, it is a hard reality of life that upon breaking down of joint families and perhaps as a direct result of smaller units of family, the aged are feeling isolated and at times abused. Whatever be the true reasons that may exist in particular families, the Act and the Rules offer a life preserving protective umbrella to all the aged members of the society, who may feel victimized or helpless at the hands of their children, or their relatives and others, both with respect to provision for maintenance allowance and with respect to protection of their properties. Once that protection has been granted, there is no reason to restrict its operation. Any margin

of restriction created by courts may be wholly counter productive to fulfillment of the legislative and societal needs as those standing under the umbrella of protection offered by the Act and the Rules framed thereunder are in their sunset years and do not have decades of time or abundance of energy and resources or the motivation or the conviction to contest legal proceeding—that too often with those who came into the world through them.

34. In view of the above, we find no merit in the submissions advanced by learned counsel for the petitioner. In absence of any other submissions, the writ petition fails and is **dismissed**.

35. No order as to costs.

(2024) 11 ILRA 359
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.11.2024

BEFORE

THE HON'BLE ANJANI KUMAR MISHRA, J.
THE HON'BLE JAYANT BANERJI, J.

Writ -C No. 34710 of 2022

Gram Panchayat & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Anoop Kumar Mishra, Sr. Adv.

Counsel for the Respondents:
C.S.C.

A. Local Body Law – Constitution of India,1950 - Article – 243-Q – UP Municipalities Act, 1916 – Sections 3(2) & 4 – Inclusion of Gram Panchayat in the transitional area of Nagar Panchayat – Non-consideration of the petitioner's objection – Effect – Held, the object of S.

4 is to provide opportunity to the general public to file objections against the proposal. The objection could be on various aspects, which is an invaluable right conferred in the general public, with avowed object of strengthening their hands in all facets of local self-governance – High Court quashed the impugned notification. (Para 15 and 20)

Writ petition allowed. (E-1)

List of Cases cited:

1. Surjit & ors. Vs St. of U.P. & ors.; 2022 (11) ADJ 111 (DB)
2. St. of U.P. & ors. Vs Pradhan Sangh Kshetra Samiti & ors.; (1995) Supp2 SCC 305
3. Narendra Singh Rana Vs St. of Uttarakhand & ors.; AIR 2017 Uttarakhand 3
4. Nagar Palika Parishad & ors. Vs St. of U.P. & ors.; 2010 (3) ADJ 703 (DB)
5. Baldev Singh & ors. Vs St. of H.P. & ors.; (1987) 2 SCC 510
6. St. of Orissa Vs Sridhar Kumar Mallik; AIR 1985 SC 1411

(Delivered by Hon'ble Jayant Banerji, J.)

1. This writ petition has been filed challenging the notification no.3130/9-1-2022-88T.A./22 Lucknow dated 13.10.2022 issued by the State Government in exercise of powers under clause (2) of Article 243-Q of the Constitution of India read with sub-section (2) of Section 3 of the Uttar Pradesh Municipalities Act, 1916¹ including the areas specified in the Schedule appended to the notification in the transitional area of Nagar Panchayat Barsana in District Mathura for purpose mentioned in Part IX-A of the Constitution. The petitioners are aggrieved by this notification insofar as it relates to inclusion of Gram Panchayat Barsana Dehat in the aforesaid transitional area of Nagar Panchayat Barsana.