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

Date of Decision: 16th April, 2021

+ **W.P.(C) 4725/2021 & CM APPLs. 14574-75/2021**

TARUNA SAXENA

..... Petitioner

Through: Mr. Rakesh Kumar Shukla and Mr.
Trilok Nath Sharma, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. T.P. Singh, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through Video Conferencing.
2. The present petition has been filed challenging order dated 26th March, 2021 passed by the ADM, Karkardooma Courts under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter, 'Act'*).
3. The grievance of the Petitioner in this case is two-fold:-
 - (i) that advocates are not being permitted to appear before the Tribunal; and
 - (ii) that evidence is not being permitted to be led before the Tribunal.
4. Insofar as the first issue is concerned, Id. Counsel for the Petitioner relies upon the judgment of the Kerala High Court in *Adv. K.G. Suresh v. Union of India & Ors. [W.P.(C) No. 21946/2011, decided on 30th March, 2021]*. He submits that Section 17 of the Act has been declared to be *ultra vires* Section 30 of the Advocates Act, 1961.

5. Insofar as the second issue is concerned, the submission of Id. Counsel for the Petitioner is that under Section 8(3) of the Act, the Tribunal has to permit the leading of evidence in support of the parties' case and a direction in this regard may be passed.

6. Mr. Singh, Id. Counsel appearing for the Union of India, submits that under Section 8, the Tribunal follows summary procedure. Discretion is left to the Tribunal to follow the procedure in accordance with law considering the facts and circumstances of each case.

7. Mr. Shukla, Id. Counsel points out that the order under challenge, i.e., order dated 26th March, 2021, wherein the ADM has merely directed the filing of the applications by the parties, was listed today at 02:00 pm.

8. Firstly, this Court has perused the judgment of the Kerala High Court. The operative portion of the said judgment reads as under:-

“57. As Section 30 of the Advocates Act, 1961 has been brought into force from 15.06.2011, Advocates enrolled under the said Act have been conferred with an absolute right thereof, to practice before all the Courts and Tribunals. By virtue of Section 30 of the Advocates Act, 1961, coming into force, from 15.06.2011, the restriction imposed is taken away and in such circumstances, Article 19 of the Constitution of India, which guarantees the freedom to practice any profession, enables the Advocates to appear before all the Courts and the Tribunals, subject to Section 34 of the Advocates Act, 1961.

In the light of the above discussion and decisions, Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is declared as ultra vires of Section 30 of the Advocates Act, 1961 and thus, the petitioner is entitled for a declaration that he has a right to represent the parties before the Tribunal/ Appellate Tribunal/Court, constituted under

Act 56 of 2007. Accordingly, this writ petition is allowed.”

9. In view of the above, since Section 17 has been declared *ultra vires* Section 30 of the Advocates Act, 1961, it would obviously mean that an advocate would have the right to represent parties before the Tribunal under the Act. Ordered accordingly.

10. Insofar as the second issue is concerned, Section 8 of the Act reads as under:-

“8. Summary procedure in case of inquiry

1. In holding any **inquiry under section 5**, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

2. The Tribunal shall 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 material 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

3. Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.”

11. A perusal of the above provision shows that firstly, the procedure contemplated under Section 8 is a summary procedure. Secondly, it is an ‘Inquiry’ and not an adjudication which is usually done by the Courts. An ‘Inquiry’ is to be held under Section 5 to determine the amount payable.

12. Under The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016, the steps to be taken as part of the Inquiry, include:

- Verification of the title of the property and the facts of the case as stated in the application by the concerned SDM, within 15 days from the receipt of the application.
- Submission of the report by the SDM to the Deputy Commissioner/DM for final orders, within 21 days from the receipt of the application/complaint.
- If, on receipt of the report, the Deputy Commissioner/DM is of the opinion that any child/legal heir of a senior citizen/parents is not maintaining the senior citizen/parents or is ill-treating him/her while continuing to occupy the premises of the senior citizen, show cause notice is to be issued by the DM as to why the child/legal heir should not be evicted.
- In the show cause notice, the ground on which eviction is proposed to be made should be specified so that the child/legal heir can respond appropriately.
- The show cause notice would call upon all persons who are either occupying the premises or claim interest in the premises, to provide reasons as to why they should not be evicted. Such a show cause would give at least 10 days' time to the recipient of the notice to respond.
- As per Rule 22 (3)(2), the Deputy Commissioner/DM would consider the case put up by the noticees, including any evidence which may be

produced, and after giving a hearing, pass a reasoned order on eviction.

- Insofar as the nature of evidence is concerned, the Act or The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016, do not specify as to whether the evidence should be oral/documentary.

The statutory scheme, as set out above, itself shows that the process is time-sensitive and is summary in nature.

13. The constitutional validity of Rule 22(3) and 22(4) of The Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016, has been upheld by a Division Bench of this Court in *Aarshya Gulati (Through: next friend Mrs. Divya Gulati) & Ors. v. GNCTD & Ors. [W.P.(C) 347/1028, decided on 30th May, 2019]*, wherein the Court has observed as under:

“60. Now the question is whether the State Government could have formulated a summary procedure for eviction. We must bear in mind the objective for which the Parliament has enacted the Act, that is because of withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support which clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection of the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, a need was felt to have simple, inexpensive and

speedy mechanism for parents / senior citizens to claim maintenance. The Act also provide for protection of the life and property of the senior citizens / parents. The “protection of property” must be understood to mean where a senior citizen retains the property in his name and possession for his welfare and well being.

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

...

63. So, it must be held that the Act empowers the State Government to formulate summary procedure for eviction of children / legal heir of senior citizens, in the eventuality of ill-treatment or non-maintenance of Sr. Citizen / Parents.

...

66. In the case in hand, it is seen that the Parliament has expressed itself through the Act, the objective of which has already been narrated above. It is seen from

the objective of the Act and from Section 22 whereby the State Government has been empowered to prescribe “a comprehensive action plan for providing protection of life and property of Senior Citizens”. This being so, the protection of life and property basically pertains to law and order, which is a State subject. Therefore, the obligation to prepare Action Plan has been put on the State Government. So, it follows that a policy has been determined by the Parliament for the protection of life and property of the Senior Citizen by the District Magistrate on the basis of Action Plan / Rules framed by the State Government. The action plan to be prescribed is the one, which is speedy and to be implemented by the District Magistrate, that is by an authority other than Civil Court, as the jurisdiction of Civil Courts is barred. So, the confirmation of such a power, even on an administrative authority, is justified. While exercising the powers bestowed under the Act / action plan / rules, the District Magistrate / Deputy Commissioner ceases to be an administrative authority as understood in normal parlance (even though there is no bar). He performs quasi-judicial functions as different from administrative functions. Further, the rules framed by the Government of NCT of Delhi, indicate the parameters on which the District Magistrate / Deputy Commissioner shall act, which includes, on an application by Senior Citizen / Parent(s) for eviction of his / her son, daughter or legal heir from his / her property (as defined under Section 2(f) of the Act of 2007), the District Magistrate, after getting the title of the property verified through SDM, and on consideration of the provisions of the Act of 2007, and forming an opinion that the son, daughter or legal heir are ill treating him / her by occupying their property, after following the principles of natural justice, by giving hearing to all persons concerned, pass an order of eviction.”

Thus, the remedy provided under the Act and the Rules is a 'simple', 'inexpensive' and 'speedy' remedy. The provisions have to be thus interpreted in this context.

14. In the present case, vide impugned order dated 26th March, 2021, the Tribunal has directed as under:

“Case called applicant presented HC order which says an councillor or relative can represent applicant’s case in maintenance Tribunal, 10 minutes was given to applicant to submit application in writing.

Applicant gave an application stating that Mr. Sanjeev Kumar is my choice to represent him in Maintenance Tribunal case.

Tribunal allowed applicant’s choice Mr. Sanjeev Kumar to represent the case. Mr. Sanjeev Kumar was allowed to submit his application in writing within 10 days, whatever applicant wants to record as evidence. Respondent No.1 Mrs. Vinita Saxena wanted she had already submitted an application. She was advised to submit her submission to tribunal once again.

Respondent Ms. Taruna Saxena submitted that she was not allowed to enter the house to haste after her father applicant.

All applicant and respondent were advised to submit application to Tribunal before 6th April, 2021. The next hearing of case would be heard on 16th April, 2021, 1400 hrs.”

From the above, it is clear that the Tribunal has allowed the parties to submit applications specifying as to what evidence they wish to lead. The procedure being summary in nature, there is no doubt that the Tribunal is vested with the power to exercise discretion upon the facts and circumstances of each case. In a particular case, if the Tribunal is of the opinion that the attendance of the witnesses and proving of documents is required, it has the power

under Section 8(2) of the Civil Court for the purpose of taking evidence on record and enforcing attendance of witnesses. This, however, would not mean that in every case, the Tribunal would have to record oral evidence or take on record documentary evidence. The nature of the proceedings itself being summary, the discretion vests with the Tribunal to adopt the procedure as may be suitable to the facts and circumstances of each case. Moreover, even if lawyers are allowed to represent the litigants, the summary procedure cannot be permitted to be converted into a long-drawn trial and adjudication, so as to defeat the very purpose of the legislation itself.

15. In the present case, the Tribunal has allowed parties to file their applications in respect of any evidence which they wish to record. The said applications would thus be considered in accordance with law, in terms of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules made thereunder.

16. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 16, 2021
MR/T