

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No. 1007 of 2013 (O&M)

Reserved on : 27.08.2013

Date of Decision: 26.09.2013

Justice Shanti Sarup Dewan, Chief Justice (Retired) and another

...Appellants

Versus

Union Territory, Chandigarh and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Puneet Bali, Senior Advocate with
Ms. Priyanka Ahuja, Advocate, for the appellants.

Mr. J.S.Toor, Advocate for Union Territory, Chandigarh.

Mr. Suvir Dewan, respondent No. 7 in person and
Mr. Sudeep Mahajan, Advocate with him.

SANJAY KISHAN KAUL

The filial affections of a father have cost him dearly in the
twilight years of his life!

2. The appellant No.1 aged about 85 years is a retired Chief
Justice of this Court while appellant No.2 is his wife aged about 74
years. The appellants have three progenies, one son and two daughters.

The appellants' elder son Suvir Dewan, aged about 49 years, a practicing Advocate of this Court, has been impleaded as respondent No. 7 herein. Suvir Dewan is married and has one daughter Shaina Dewan. The daughter of the appellant, namely, Joshita Budhraj is married to one Shri Sanjay Sen Budhraj having a daughter, namely, Nikita Budhraj. Their abode is Amritsar but they come to Chandigarh occasionally. Shri Sanjay Sen Budhraj is stated to be working in Punjab Council for Citrus and Agri. Juicing in Punjab and staying in a rented accommodation and Nikita Budhraj is staying with the appellants while pursuing her M.C.A. from Panjab University, Chandigarh. Third child of the appellants, namely, Sabina Grewal is married to Shri Harpreet Singh Grewal with a male child Udey Veer living in Auckland, Newzealand.

3. The cause of the dispute, as it often happens, is a property being House No. 642, Sector 11-B, Chandigarh, measuring 500 Sq. Yards, stated to have been purchased by appellant No.1 vide a Conveyance Deed dated 29.03.1962 in his own name. The Occupation Certificate was subsequently issued on 14.02.1967 by the Estate Officer (Capital Project), Chandigarh. It is the case of appellant No.1 that in the year 1980 he withdrew ₹ 20,000/- from his G.P.Fund to make additions and alterations in that house and a fresh Occupation Certificate was thereafter issued on 11.09.1990.

4. In true Indian tradition where the worry of the parents often is to ensure financial stability for their progenies, the appellant No.1

bought a plot No. 694, Sector 6, Panchkula for the benefit of his son. The plot was transferred from appellant No.1 to respondent No. 7 vide re-allotment letter dated 30.11.1990. Respondent No. 7 is stated to have sold the plot to Smt. Raj Rani vide letter dated 07.11.1991 and from the proceeds purchased a shamlat plot No. 1016, Sector 2, Panchkula, measuring 350 sq. yards while utilizing the balance amount for construction on that plot. However, respondent No. 7 continues to live with the appellants in their house in Sector 11, Chandigarh.

5. It is quite apparent that relationships between the appellants and their son respondent No. 7 became strained. Infact, the relationship is very strained with the whole family of respondent No.7. Suffice to say that the case of the appellants is that they want to reside in their own house and would like respondent No. 7 and his family to stay in their own house at Panchkula.

6. In view of the strained relationships inter-se the parties, the appellants filed a Civil Writ Petition under Articles 226/227 of the Constitution of India seeking directions against respondents No.1 to 6 to create a special cell to deal with the complaints of senior citizens and parents who are traumatized by their children. Respondents No.1 to 6 are Union Territory, Chandigarh, Home Secretary and police officers. The appellants also seek a direction to ensure shifting of respondent No. 7 from their house at Chandigarh to his own house at Panchkula and vide an interim measure seek adequate police protection.

7. The appellants have given various incidents which have occurred in their house vis-à-vis their son. It is not necessary to go into the details of the same but suffice to say there is a fair amount of acrimony largely on account of the belief of the appellants that their Chandigarh house is to be inherited by their daughters too. The allegations are of humiliation, use of unparliamentary language, raising of voice and shouting, showing lack of all sense of decency, etiquette etc. and so on. The appellant No.1 claims to be paying all the expenses including electricity, water, sewerage bills, Cable TV/Satellite TV rentals, newspapers bills, periodical bills for the library etc. The matter is stated to have so aggravated over the issue of visit of their younger daughter that due to this the appellant No.1 suffered a mild stroke on 19.12.2011. The appellants' infact allege that even their life has been threatened.

8. It is stated that the appellants are staying in a part of the ground floor of the house. The first floor has been occupied by respondent No. 7 and his family and part of the ground floor is utilized by respondent No. 7 for his office. Appellant No.1 claims that he wanted to donate his legal books during his life time to some institution, at which respondent No. 7 lost his temper and had locked the office from 02.05.2013 onwards. The house at Chandigarh has three bed rooms on the ground floor (out of which one bed room is used by respondent No. 7 for his office) drawing room, dining room and a

kitchen, while the first floor again has three bed rooms, a drawing room, a dining room and a kitchen.

9. On the other hand, the house at Panchkula owned by respondent No. 7 has three bed rooms alongwith attached bathrooms, one drawing cum dining room, one kitchen while the first floor has one constructed room and there are front and back courtyards.

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

11. The learned Single Judge, however, opined that the issue as regards eviction of respondent No. 7 from the premises in question cannot be gone into by the Court in exercise of writ jurisdiction as it would necessarily entail the determination of the nature of the property i.e. as to whether the same is self acquired or ancestral, the determination of rights inter-se the petitioners and respondent No. 7 in respect thereof etc. This would require formulation of triable issues

which are left to be adjudicated at the hands of the Civil Court. The said act being a comprehensive legislation, provisions of the same could be invoked. However, a direction was issued to the Senior Superintendent of Police to visit the appellants at their residence within 24 hours from the communication of the order and interact with them and take stock of the situation.

12. The writ petition was disposed of even without issuing notice to the respondents.

13. The appellants aggrieved by this impugned order dated 17.05.2013 preferred the present Letters Patent Appeal. Notice was issued in this appeal on 22.05.2013 and it was recorded that the controversy deserved to be resolved amicably and peacefully through the good offices of family friends, counsellors and mediators and called upon both the parties to submit their respective list of such persons to whom the onerous duty of mediation and counselling could be entrusted.

14. However, on the next date, respondent No. 7 filed the counter affidavit as none had been filed before the learned Single Judge. A list of Hon'ble Judges, who were willing to mediate, was handed over by learned counsel for the appellants while learned counsel for respondent No. 7 had sought time to obtain instructions. Order dated 28.05.2013 also records that round-the-clock security be provided to the appellants at their residence and it was impressed upon learned counsel for Union Territory, Chandigarh to look into the

provisions of the said Act and take up the matter at the highest level for notifying the statutory authorities under the Act.

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

16. Respondent No. 7 alleges that appellant No.1 not only made arrangements for him for purchasing a plot at Panchkula but had gifted a plot of one kanal to his sister Joshita and another plot to his sister Sabina. There is a categorical admission of the gift of a Panchkula plot to respondent No. 7 and from the sale proceeds of which a plot in Panchkula was purchased on which ground floor has been constructed.

17. Respondent No. 7 claims that his brother-in-law Sanjay Sen Budhraj started temporarily residing with them and it is because of that the mild misunderstanding between his wife and his mother get blown out of proportion at the instigation of his sister and her husband. In

view of two plots of one Kanals each gifted to his sisters, it is claimed that they had already got their share in the property but they started eyeing the house at Chandigarh and that his brother-in-law was instigating his father to sell the Chandigarh property to which he protested that it was a joint family dwelling house and his wife's matrimonial house. Once again there are allegations about harassment of respondent No. 7 and his wife by obscene writing against his wife painted outside on the gate pillars of the house, for which police complaints were lodged. The rear glass pane of his wife's car was suddenly found smashed. A few pieces of jewellery went missing from the Almirah of the wife of respondent No. 7 and so on. He alleges that he was compelled to take his kitchen upstairs but wanted 45 days for the same and soon thereafter he came to know about filing the writ petition. Respondent No. 7 claims that he has highest regards for his parents but he blames his brother-in-law and sister for their greed.

18. On 30.05.2013, the Division Bench considered it appropriate to request Justice Kuldeep Singh, former Judge of the Supreme Court of India, Shri M.L.Sarin, Senior Advocate and Shri Ravinder Krishan, Advocate-cum-Consultant, to devote some time to find out a solution. However, simultaneously, the Bench expressed its dis-satisfaction with the steps taken by the Chandigarh Administration qua constitution and composition of various authorities under the said Act specially keeping in mind the legislative intentment and to provide an effective mechanism to achieve the statutory objects

in their true letter and spirit. The matter was re-notified for 05.07.2013 when the Bench was informed that some more time was required by the committee. Simultaneously, Union Territory of Chandigarh was granted liberty to file its affidavit in the Court.

19. A perusal of the affidavit filed by Union Territory of Chandigarh through the Director, Social Welfare, Chandigarh shows that there are two old Age Homes/Senior Citizens Homes functioning in Chandigarh and there was a proposal to construct another one. In pursuance to sub Section (3) of Section 1 of the said Act, the Administrator, Union Territory, Chandigarh had enforced the said Act with effect from 22.10.2008 vide a notification of the even date. A panel of 11 Conciliation Officers had been notified to assist the Sub Divisional Magistrates designated as Maintenance Tribunal vide notifications dated 20.08.2009 and 02.06.2010. The Programmer ICDS Cell, Union Territory, Chandigarh was designated as Maintenance Officer under Section 18 of the said Act vide order dated 17.04.2012. It has been emphasized that Chandigarh police has been taking special care of the security needs of old persons living alone, inter-alia by establishing a toll free helpline. The State Council of Senior Citizens in terms of sub clause (2) of Rule 21 under Chapter VII of “The Maintenance and Welfare of Parents and Senior Citizens Rules, 2009” (hereinafter referred to as the said Rules”) has been constituted to advise the State Government on effective implementation of the provisions of the said Act. Dr. Satbir Singh, Senior Medical Officer has

been appointed as a Nodal Officer of Geriatric Care and free advice is tendered to senior citizens to keep contacts on phone with their neighbours and friends etc. Identity cards are stated to have been issued and certain facilities have been provided. Adequate publicity has been given to the said Rules. Programmes have been held in collaboration with the State Legal Services Authority and wide publicity has been given by holding different programmes.

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

unoccupied ever since its construction. The panel unanimously offered a proposal to the parties as under:-

- “i) Respondent No. 7 and his family should immediately vacate House No. 642, Sector 11-B, Chandigarh and shift to his own House No. 1016, Sector 2, Panchkula. We felt that this is the only way to enable the appellants to spend the evening of their lives with peace.
- ii) In case respondent No. 7 agrees to the first proposal then appellant No.1 shall revoke the Will wherein he has disinherited respondent No. 7 from his property totally. He shall leave the immovable property to take its own course in accordance with law, after the appellant’s demise.
- iii) The appellants shall also pay ₹ 10,000/- per month to respondent No. 7 and his family to cover the expenses for commuting from Panchkula to Chandigarh. This shall be operative only for a period of two years.”

21. The appellants were persuaded to accept this proposal despite the bitterness of appellant No.1 about third aspect of the aforesaid proposal. He thought that it should be the other way round but he did finally agree. Unfortunately, respondent No. 7 and his wife still did not accept the proposal as they insisted that they would live in the house in Chandigarh and would not go anywhere else. The report states that since the work entrusted to them was really not a type of mediation envisaged under the Code of Civil Procedure, they had taken the liberty to submit the details.

22. It would thus be seen that despite having gifted a house to his son, agreeing to revoke his Will, and thus leaving the immovable

property to devolve in accordance with law and even agreeing to pay ₹ 10,000/- per month to respondent No. 7 to cover the expenses for commuting for a period of two years, the appellant No.1 is still being denied the right to exclusively enjoy his house with his wife even with such strained relationships with his son.

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

24. On 27.08.2013, the sale-deed dated 29.03.1962 in respect of the property in question in Chandigarh was taken on record and respondent No. 7 was permitted to place on record an additional

affidavit. We admitted the appeal and proceeded to hear the parties. Respondent No. 7 chose to argue the defence in the appeal in person and was quite categorical that even what was proposed on the last date was not acceptable and he wanted to continue to reside in the first floor of the property. Other than stating that he wanted further time to negotiate with his father, he was not looking for anything else. We infact put to him if such time is given and he failed to settle with his father, whether he would abide by the settlement negotiated by three mediators but even that was not acceptable to him. On conclusion of the arguments, judgment was reserved on the said date.

25. The copy of the sale deed placed on record qua Chandigarh property makes it clear that it is executed in the individual name of appellant No.1. Additional affidavit brought on record by respondent No. 7 avers that his share could not be capped at 20% of the HUF property as a share of a member of a coparcenary property depends upon the number of existing members at the given point of time besides some other factors. A reference has been made to the allegation of property being HUF property and to Mitakshara law. No civil suit for partition of the property had been filed and thus no partition by metes and bounds was possible. In respect of the amendment carried to Section 6 of the Hindu Succession Act, 1956, it has been pleaded that the provisions do not apply to a daughter married before the commencement of Hindu Succession (Amendment) Act of 2005 and since his sisters were married earlier, they could not even seek partition

in view of the judgment of the Supreme Court in Ganduri Koteshwaramma and another Vs. Capri Yanadi and another 2011 (9) Supreme Court Cases 788 where it was held that an unmarried daughter can seek partition of the joint family property. A reference has also been made to Chandigarh Estate Rules, 2007 and Chandigarh Apartment Rules, 2005 to contend that no fragmentation of property can take place nor further dwelling units can be created. Once again emphasis has been laid on the role played by his brother-in-law in instigating the proceedings. In the end, he claims that he wants to make all efforts to seek blessings of the appellants and undertakes that he will make all possible efforts that all the family members are back together again like old times.

26. After we had reserved orders in the matter, an application came to be filed by Union Territory, Chandigarh seeking to bring on record an additional affidavit alongwith annexures. A reference was made to their earlier affidavit wherein it was submitted that the proposal for constitution of Special Cell under Section 22 of the said Act was underway. This Special Cell is stated to have been created vide notification dated 20.08.2013 for the purposes of protecting the life and property of senior citizens under Sections 22(2) of the said Act. The Special Cell consists of Deputy Commissioner of Union Territory, Chandigarh alongwith 13 other members. On the other hand, the submission of learned Senior Counsel for the appellants was that the notification in the official gazette has still not been published and what

was sought to be done was not in conformity with Section 22 of the said Act as conferment of powers and duties of a District Magistrate was required under Sub Section (1) of Section 22 as also a comprehensive action plan under Sub Section (2) of that Section. Learned Senior Counsel for the appellants had also drawn our attention to Section 32 (2), Clauses (e) and (f) to state that there was no notification published or rules made for carrying out the purposes of the Act.

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

- i) Whether any direction in the given facts and circumstances of the case can be given to protect the rights of the appellants under the said Act?
- ii) Whether the writ petition could be maintained for the said purpose especially in the alleged absence of so called failure of Union Territory Administration in complying with its obligations under the said Act?

28. **SCHEME OF THE ACT**

In order to appreciate and answer the aforesaid questions in the context of the factual matrix, it is necessary to analyze the relevant provisions of the said Act. The Statement of Objects and Reasons set out that the traditional norms and values of the Indian Society which lay stress on providing care for elderly getting diluted due to the

withering of the joint family system, the elders are facing emotional neglect and lack of physical and financial support. Thus, aging has become a major social challenge and despite the provisions of the Code of Criminal Procedure, 1973 for maintenance, it was deemed necessary that there should be simple, inexpensive and speedy provisions to claim maintenance for the parents. The Act is not restricted to only providing maintenance but cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives. One of the major aims was to provide for the institutionalization of a suitable mechanism for the protection of **‘life and property of older persons’**.

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

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

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

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

The aforesaid would thus show the definition of property within the meaning of the Act is wide and comprehensive with the object of securing the interest of the elders. This is to be read alongwith

Section 6 which makes the provisions of the said Act to have overriding effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act including any instrument having effect under any other Act.

30. Chapter-II of the said Act deals with the maintenance of parents and senior citizens while Chapter-IV deals with the medical care. However, since the appellants before us are claiming neither, we are not delving these provisions in any detail. The relevant Chapter-V provides for protection of life and property of senior citizens. Section 21 provides for measures of publicity, awareness etc. for welfare of senior citizens, while Section 22 provides for the Authorities who may be specified for implementing the provisions of the said Act. Section 22 reads as under:-

“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.”

Thus what is envisaged is both protection of life and protection of property through a comprehensive action plan.

31. In order to prevent interference by Civil Courts qua any action taken in furtherance of the provisions of the said Act, Section 27 bars the jurisdiction of the Civil Courts, especially in respect of injunction. Section 27 of the said Act reads as under:-

“27. Jurisdiction of civil courts barred

No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.”

32. Sub Section (1) of Section 32 of the said Act requires the State Government to make rules for carrying out the purposes of this Act which in turn would imply that the same inter-alia provides for protection of life and property of senior citizens under clause (f) of sub section (2) of section 32 of the said Act.

33. The major grievance made by the appellants in the context of the aforesaid provisions thus is that there is failure to make statutory rules in terms of Section 32, as envisaged aforesaid, by the Chandigarh Administration which itself compelled the appellants to approach this Court under Articles 226/227 of the Constitution of India.

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

Question No. (i):-

The stand of respondent No. 7 before the Court is not that there was any contribution given by him for acquisition of the plot at Chandigarh. It is also not his say that the property is an inherited property. The registered document of title is also in favour of only appellant No.1. Infact, out of his own earnings, appellant No.1 gifted the plot to respondent No. 7 as well as two other plots to his daughters. There is just a bald statement that the property at Chandigarh is joint Hindu family property. The failure, which has been attributed to Administration of Union Territory, Chandigarh, is qua the provisions of Section 32 read with Section 22 of the said Act. There are rules required to be made by a notification in the official gazette for carrying out the purposes of the Act under sub section (1) of Section 32 of the said Act. These Rules without prejudice to the generality of the powers, inter-alia are to provide for implementation of the provisions of the said Act under sub section (1) of Section 22 (clause (e) of sub section (2) of Section 32) and a comprehensive action plan for providing protection of life and property to senior citizens under sub section (2) of Section 22 (Clause (f) of sub section (2) of Section 32). No such Rules have been notified. The grievance thus being made is that in the absence of the Rules there is no effective procedure for the protection of life and property of senior citizens and issuing a notification by the Social Welfare Department dated 20.08.2013 constituting a Special Cell qua the life and property to be protected under section 22 (2) of the Act

would not suffice. Infact sub section (1) of Section 22 of the said Act requires the State Government to confer powers and impose duties on a District Magistrate to ensure that the provisions of the Act are properly carried out. There has to be thus an enforcement mechanism set in place especially qua the protection of property as envisaged under the said Act. When we examine it from the context of the problem at hand, this is absent.

35. What is the right of respondent No. 7 and his family members to insist on occupying a portion of the house of appellant No.1 especially when the sale-deed is registered in the name of appellant No.1 in his individual name? Merely stating that it is a joint Hindu family property would not suffice. In order to establish that the property belongs to joint family, it must be established that a joint family had a sufficient nucleus at the time of its acquisition. (**P. S. Sairam and another V. P.S.Rama Rao Pisey and others (2004) 11 SCC 320**). Leave aside the corpus, it is not even alleged that the funds other than the individual funds of appellant No.1 were utilized to purchase the plot at Chandigarh. Respondent No. 7 could not have even alleged so as he actually received a self acquired plot at Panchkula from appellant No.1 by way of gift while daughters of appellant No.1 received one plot each in Karnal. Other than the oblique motive to grab the property at Chandigarh and keep possession of the same against the wishes of the owner, there can be no other reason. Infact, it was quite clear during the course of arguments that not only respondent No. 7

wants to deprive the appellant No.1 to deal with his property as per his wishes but wanted to grab the whole property for himself denying the share of his sisters.

36. In Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another 2011(9) SCC 788 it has been held by the Supreme Court that in view of the amendment of Section 6 of the Hindu Succession Act, 1956, a daughter is entitled to share in the ancestral property and is a co-parcener as if she had been a son w.e.f. 09.09.2005. Daughter of a co-parcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The only exception carved out is that where the disposition or alienation has taken place before 20.12.2004 and where testamentary disposition of property has been made before the said date.

37. It cannot be said that in such a situation, where respondent No. 7 was at best living with the permission of his parents, which permission stands long withdrawn, the appellants and more specifically appellant No.1 should be compelled to knock the door of the civil court and fight a legal battle to obtain exclusive possession of the property. This would defeat the very purpose of the said Act which has an overriding effect qua any other enactment in view of Section 3 of the said Act. Infact, the Civil Court has been precluded from entertaining any matter qua which jurisdiction is vested under the said Act and specifically bars granting any injunction. Respondent No. 7 is thus

required to move out of the premises to permit the appellants to live in peace and civil proceedings can be only qua a claim thereafter if respondent No. 7 so chooses to make in respect of the property at Chandigarh but without any interim injunction. It is not the other way round that respondent No. 7 with his family keeps staying in the house and asking the appellants to go to the Civil Court to establish their rights knowing fully well that the time consuming civil proceedings may not be finished during the life time of appellant No.1. Infact, that is the very objective of respondent No. 7.

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

Question No. (ii)

39. A lot of hue and cry has been raised on the issue as to whether directions can be issued in writ proceedings under Articles 226/227 of the Constitution of India to enforce the provisions of the said Act. We have already noticed above that a proper mechanism for enforcement of the provisions of the said Act for protecting the property rights of the appellants under Section 22 of the said Act has not been put in place by the Union Territory Administration and enforcement would be a big issue. How and through which machinery can a Special Cell ensure the eviction of respondent No. 7 from the property so that the appellants can live in peace in their house? Can we say that the Courts would be powerless both in equity and law to enforce such an order when primacy has been given to the provisions of the said Act over all other law. The answer to these questions should be in the negative. If the State fails to perform the functions envisaged under an Act, it would certainly give rise to a jurisdiction to be exercised under Article 226 of the Constitution of India. (**A.B.L. International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd. 2004(3) S.C.C. 553** and **Mrs. Sanjana M.Wig Vs. Hindustan Petro Corporation Ltd. AIR 2005 SC 3454**).

40. In the present case, there is, as noticed, a failure to provide mechanism and thus the protection of the property of the appellants envisaged under the salutary provisions of the said Act certainly can be

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

CONCLUSION

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

- i) The Administration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under Section 32(1) of the said Act for the purposes mentioned under sub section (2) of Section 32 more specifically

clauses (e) and (f) so as to protect the life and property of senior citizens as envisaged under Section 22 of the said Act. This should include a comprehensive action plan including enforcement mechanism and conferring relevant powers to the District Magistrate or officers subordinate to him as envisaged under sub section (1) of Section 22 of the said Act. Such action may be taken within one month from today.

- ii) Respondent No. 7 and his family members are directed to vacate the property bearing House No. 642, Sector 11-B, Chandigarh to the extent it is occupied by them and the keys be handed over to appellant No.1 within a period of 15 days from today.
- iii) The Senior Superintendent of Police of Union Territory, Chandigarh/respondent No.3 is directed to ensure enforcement of the direction (ii) mentioned above.
- iv) If respondent No. 7 wants to establish any legal right or share in the aforesaid house, he is free to file appropriate civil proceedings but without infringing the exclusive rights of the appellants in the interregnum period implying that there would be no interim injunction qua occupation by the civil court as that would be a violation of the provisions of the said Act.

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

We part with the feelings of dismay at the attitude of respondent No. 7 despite all efforts by the Committee and the Court but with the hope that at some stage sanity would dawn and he would recognize the contribution made by his father including monetarily towards establishing him in an independent house gifted to him.

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

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

26.09.2013

'ravinder'