

keeping in view the powers given to the authorities concerned under Section 22 of the 2007 Act, the petitioner-daughter-in-law as well as the son, who are creating problems for the respondent No.2-senior citizen, should be directed to vacate the premises in question.

3. Learned counsel for the petitioner further submits that the authority concerned under the 2007 Act without appreciating all the facts including the one that there is a matrimonial dispute persisting between the petitioner and her husband, the direction vide order dated 22.07.2021 (Annexure P-4) has been given to the petitioner along with her husband to vacate the premises in question, which order is not only contrary to the facts which were brought on record but also to the judgement of Hon'ble Supreme Court of India in Civil Appeal No.3822 of 2020 titled "***Smt. S. Vanitha Vs.The Deputy Commissioner, Bengaluru Urban District and ors.***", decided on 15.12.2020, wherein it has been held that, where the daughter-in-law has a right to share the matrimonial house and has raised a claim under the Domestic Violence Act qua the same and has got an order favourable to her, the said favourable order be given due consideration while passing a order against the daughter-in-law under 2007 Act.

4. In the present petition, the petitioner-daughter-in-law is before this Court raising a plea that because of the matrimonial dispute persisting between her and her husband, the respondent No.2-Senior Citizen has exercised the right to claim eviction from premises in question under the 2007 Act.

5. Learned counsel for the petitioner-daughter-in-law submits that the said act of the respondent No.2-Senior Citizen pursuing for evidence of

petitioner-daughter-in-law is not a bona fide one but is only done with the motive to throw the petitioner out of the said matrimonial house.

6. Learned counsel for the petitioner further submits that prior to the passing of the impugned order dated 22.07.2021 (Annexure P-4), an order had already been passed in favour of the petitioner by the competent Court of Law under the D.V Act dated 18.05.2021 (Annexure P-3) wherein, a direction has been given not to dispossess the petitioner from her shared household, despite which order, the impugned order dated 22.07.2021 (Annexure P-4) has been passed.

7. Learned counsel for the petitioner submits that the order dated 22.07.2021 (Annexure P-4) is liable to be set aside.

8. Learned counsel appearing on behalf of the respondent No.2-Senior Citizen submits that there is a matrimonial dispute persisting between the petitioner and the respondent No.3-husband but the respondent No.2-Senior Citizen is the real victim in this scenario as it has become difficult for her to sustain and lead a dignified life while staying in the premises hence, the respondent No.2-Senior citizen had approached the appropriate authorities under 2007 Act for purpose of issuing directions to both her son and his wife to vacate the premises in question so that the respondent No.2-Senior Citizen can live a dignified life in her own property.

9. The respondent No.3-husband who has also appeared submits that he has no objection in case, the prayer of the respondent No.2-Senior Citizen is accepted and both him and his wife are evicted as the husband is ready to get an accommodation on rent for the petitioner and she can live peacefully there which will be beneficial for all i.e, the petitioner, respondent No.3-husband and the respondent No.2-Senior Citizen and the

authorities exercising jurisdiction under Section 2007 Act have adopted the said process which should be upheld.

10. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

11. The argument of the learned counsel for the petitioner is that the petitioner has been dispossessed from her matrimonial home despite an interim order passed in her favour by the competent Court of Law under the proceedings initiated under the Domestic Violence Act, 2005 dated 18.05.2021 (Annexure P-3), whereas the impugned order dated 22.07.2021 (Annexure P-4) has been passed by the authorities exercising jurisdiction under the 2007 Act directing the petitioner to vacate the premises in question only on the ground that respondent No.2-Senior Citizen has failed to get the property vacated.

12. A bare perusal of the impugned order dated 22.07.2021 (Annexure P-4) would shows that the same has been passed only on the ground that the property belongs to the respondent No.2-Senior Citizen. The said mechanical way of passing an order is not appreciated and is also not correct. Once, a competent Court of Law had passed an order in favour of the petitioner stating therein that the petitioner is not to be removed from the premises, the same had to be given due effect rather being ignored.

12. Further, as per the judgment of the Hon'ble Supreme Court of India in *Smt. Vanitha's case (supra)*, it has been held that where the proceedings have been initiated under the Domestic Violence Act, 2005 by a daughter-in-law and simultaneously under the 2007 Act proceedings have been initiated by the Senior Citizen, both should be balanced in a way so that no prejudice is caused to the daughter-in-law.

13. In the present case, it is a conceded fact that there is a matrimonial dispute persisting between the petitioner and her husband. The application filed by the petitioner under the Domestic Violence, Act, 2005 has already been allowed and adjudicated upon so as to allow her to retain the shared premises i.e. the premises qua which the respondent No.2-Senior Citizen has raised the claim under 2007 Act for eviction qua the petitioner-daughter-in-law.

14. As per the judgment in *Smt. Vanitha's case (supra)*, the direction given by the authorities concerned under the 2007 Act, while passing the impugned order cannot be accepted.

15. Keeping in view the settled principle of law as well as the facts and circumstances of the present case, once the premises in question is a matrimonial house of the petitioner and there is already an interim order in favour of the petitioner stating that the petitioner-daughter-in-law is not to be dispossessed from the said house, passing a contradictory order by the authorities exercising jurisdiction under the 2007 Act, cannot be accepted.

16. Keeping in view the above, the impugned order dated 22.07.2021 (Annexure P-4) is set aside.

17. Learned counsel or the respondent No.2-Senior Citizen submits that once this becomes an undisputed fact that, the respondent No.2-Senior Citizen is the exclusive owner of the property in question, she has full right to get the others evicted.

18. It may be noticed that the said right is not an exclusive one but it is to be balanced with the rights of the others in view of the law prevalent. Once, the Hon'ble Supreme Court of India while passing the judgment in *Smt. Vanitha's case (supra)*, has held that the daughter-in-law has a right to

share the matrimonial house and she cannot be dispossessed and in case, any such order is there, stipulating about dispossessing the daughter-in-law the same has to be appreciated by the authorities exercising jurisdiction under the 2007 Act hence, the argument being raised by respondent No.2-Senior Citizen that she has an exclusive right to get the premises vacated, cannot be accepted.

19. Learned counsel for the respondent No.2-Senior Citizen further submits that the order passed by the competent Court of Law under the Domestic Violence Act, 2005 dated 18.05.2021 was passed after filing of the claim petition by the respondent No.2-Senior Citizen and as such, the said order was rightly not noticed by the authorities exercising jurisdiction under the 2007 Act while adjudicating upon the claim petition of the respondent No.2-Senior Citizen.

20. Even if it is assumed for the sake of argument that the said order was not in existence when proceedings under the 2007 Act were initiated by the Senior Citizens but the said order has been passed and it is a conceded fact before this Court that the same was passed before passing the impugned order, which order cannot be ignored so as to uphold the order passed by the authorities under the 2007 Act, which is contrary to the directions given by the competent Court of Law on an application moved by the petitioner under the Domestic Violence Act, 2005.

21. In the present case, the litigation raised by the respondent No.2-Senior Citizen does not seem to be a bona fide one rather it seems to have been raised with the only object to throw the petitioner-daughter-in-law out of the premises, which fact becomes clear that the respondent No.3-son is with the respondent No.2-mother-in-law to say that the order passed by the

authorities concerned, as impugned by the petitioner is acceptable to him and he wants to leave the premises and can secure a house on tenancy so that the respondent No.2-Senior Citizen can live happily. These facts would go to show that the litigation raised by the respondent No.2-Senior Citizen is not bona fide but for the purpose other than the one stated in the application filed under the 2007 Act, which cannot be accepted even otherwise.

22. Writ petition is allowed. Impugned order dated 22.07.2021 (Annexure P-4) is set aside.

22. Pending application, if any, also stands disposed of.

12-03-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO