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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 18th December, 2025**Pronounced on: 12th March, 2026*

+ W.P.(C) 13357/2019 & CM APPL. 54368/2019, 26671/2023,
25567/2025

SMT. RENU

.....Petitioner

Through: Mr. Tushar Singh, Adv.

versus

GOVT. OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Rajneesh Roshan, Adv. for R-2.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Article 226 read with Article 227 of the Constitution of India, 1950 has been filed seeking the following prayers:-

“a. Issue a writ of certiorari or any other appropriate writ and quash the impugned order dated 18.11.2019 passed by the Hon'ble Appellate Court of Divisional Commissioner Office of the Pr. Secretary-Cum-Divisional Commissioner in Appeal No. 27 of 2018 or in the alternative.

b. In case the relief sought in the aforesaid para cannot be granted to the Petitioner, it is accordingly prayed that the Respondents No. 2 be directed to provide alternate residence to the Petitioner.



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c. Pass any other order as this Hon'ble Court deems fit.”

2. Relevant facts for adjudication of the present writ petition as pleaded are as follows:-

a) On 21.04.2006, the petitioner/ daughter-in-law and her husband got married as per Christian rites and customs, and from the said wedlock two daughters were born.

b) It is alleged that since the inception of the said marriage, the petitioner had been subjected to immense cruelty at the instance of her husband and respondent no. 2/ mother-in-law. It is further alleged that she was ousted from her matrimonial home/ shared household/ subject property on several occasions. Being constrained, the petitioner filed a criminal complaint against her husband and the respondent no. 2.

c) It is further alleged that the petitioner's husband had shown porn clips to his minor daughter and he had threatened to kill her and the petitioner, if she revealed such acts to the petitioner. Subsequently, the minor daughter disclosed the said act to the petitioner, which constrained the petitioner to file FIR bearing no. 0736/2015 against her husband on 05.10.2015 under Section 354A read with Section 506 of Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences Act, 2012. Subsequently, the petitioner's husband was arrested and later, released on bail on 09.11.2015.



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d) It is further alleged that the petitioner's husband with a malafide intent, colluded with the respondent no. 2 and executed a General Power of Attorney, Agreement to Sell, Affidavit and Will, all dated 19.11.2015, with respect to property bearing Plot no. 5, Third Floor, Asola Extn., New Delhi, 110074, Khasra no. 789 & 790, measuring 50 Sq. Yds. (for short "**subject property**"), in favour of the respondent no. 2 to frustrate the rights of the petitioner conferred under the Protection of Women from Domestic Violence Act, 2005 (for short "**DV Act**").

e) It is the case of the petitioner that she and her minor daughters were subjected to utmost cruelty/ humiliation and since, they were even under the threat of being thrown out of the said property, the petitioner filed a complaint bearing no. 145/1 on 11.12.2015 under section 12 of the DV Act against her husband and the respondent no. 2, praying for protection from being ejected from the subject property by the respondent no. 2.

f) *Vide* legal notice dated 19.12.2015, respondent no. 2 called upon the petitioner to vacate the subject property, as on account of non-repayment of loan of Rs. 9,40,000, the petitioner's husband sold the subject property to the respondent no. 2.

g) On 24.05.2016, respondent no. 2 filed a writ petition bearing no. 6348/2016 before this Court seeking eviction of the petitioner from the subject property.



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- h)** Learned Metropolitan Magistrate *vide* order dated 15.11.2016 in CC no. 145/1 passed a protection order in favour of the petitioner, protecting her from being evicted from the subject property.
- i)** *Vide* order dated 24.08.2017, this Court dismissed the W.P.(C) 6348/2016 observing that there was no infirmity in the action of police authority in closing the complaint of respondent no. 2 on the ground that dispute was essentially civil in nature. It was further observed that in view of the stand taken, it would be open to the respondent no. 2 to approach the Maintenance Tribunal under the said Act.
- j)** On 06.09.2017, respondent no. 2 filed an application bearing no. 13/17 in the Court of Senior Citizen Tribunal, South under Section 3(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2016 for eviction of the petitioner from the subject property on account of ill-treatment.
- k)** Subsequently, a procedural inquiry was conducted by the Sub-Divisional Magistrate and its inquiry report dated 19.02.2018, it was noted that the grounds stated by the respondent no. 2 are not substantial enough to evict the petitioner from the subject property and the respondent no. 2 did not produce any evidence for ill-treatment/ abuse to her by the petitioner. Further, District Magistrate, South, Saket, New Delhi, *vide* order dated 05.03.2018 dismissed the case no. 13/17 filed by the respondent no. 2 on the ground that as per the inquiry report dated 19.02.2018, alleged ill-treatment has not been



proved against the petitioner. However, District Magistrate advised the parties to reside amicably in the said property.

l) On 10.04.2018, aggrieved by the order dated 05.03.2018, respondent no. 2 filed an appeal bearing no. 27/2018 in Court of Divisional Commissioner under Rule 22(3)(4) of Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, 2009 read with Act of 2007.

m) *Vide* order 18.11.2019, Divisional Commissioner allowed the said appeal and directed the petitioner to vacate the subject property within 30 days from the date of issuance of the said order, so as to enable the respondent no. 2 to live peacefully as is the mandate of Act of 2007.

n) Aggrieved by the order dated 18.11.2019 (for short “**impugned order**”), present writ petition has been preferred by the petitioner.

3. The dispute in the present case is between the petitioner and the respondent no. 2, who are daughter-in-law and mother-in-law respectively. Initially, respondent no. 2 had filed an application under Section 3(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2016, seeking eviction of the petitioner on the ground that she is the sole owner of the subject property. However, the same was rejected by the District Magistrate, South, Saket, New Delhi, *vide* order dated 05.03.2018. Against the said order, an appeal no. 27/2018 was preferred by respondent no. 2, wherein, the impugned order dated 18.11.2019 was passed by the Appellate



Court of Divisional Commissioner/ Office of the Pr. Secretary-cum-Divisional Commissioner, Department of Revenue, Government of NCT of Delhi. *Vide* impugned order dated 18.11.2019, appeal filed by the respondent no. 2 was allowed and order dated 05.03.2018 was set-aside and it was ordered that the petitioner be evicted from the subject property within 30 days from the date of issuance of the said order.

4. Learned counsel for the petitioner submits that respondent no. 2 had initiated the proceedings under the Act of 2007 and Rules made in the State of NCT of Delhi under the said Act to oust the petitioner and to circumvent/avert the order dated 15.11.2016 passed by learned Metropolitan Magistrate granting interim protection of residence to the petitioner with respect to the subject property. Reliance has been placed on the judgment of Hon'ble Supreme Court in **S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors.**¹, and it is contended that the right of a woman to secure a residence order with respect to a shared household cannot be defeated by securing an eviction order under the Act of 2007. It is further submitted that the facts in the case of **S. Vanitha (supra)** were similar to the facts in the present case.

5. It is further submitted that the prerequisite for initiating proceedings under the Act of 2007 is that the elderly must lack sufficient resources to support themselves, thus depending on their legal heirs for assistance. The

¹ 2020 SCC OnLine SC 1023



intention of the said Act is not to give a weapon in the hand of a senior citizen to be used for evicting their children/ daughter-in-law as in the present case.

6. It is further submitted that respondent no. 2 has taken recourse of Section 23 of the Act of 2007 to prove that the subject property was not transferred to her by the husband of the petitioner (her son) with any malicious intention as the said property was acquired in the name of her son with the expectation that he would look after the needs of her and as he could not take care of her anymore, the subject property was transferred to the respondent no. 2. It is the case of the petitioner that respondent no. 2 has been consistently changing her pleas regarding the ownership and transfer of the subject property. It is pointed out that in her legal notice dated 19.12.2015, it was asserted by the respondent no. 2 that her son had sold the subject property to her, as he failed to repay loan of Rs. 9,40,000/- given by her. However, subsequently, she changed her stand and claimed that she had purchased the subject property in her son's name with an understanding that he would cater to her basic needs and support her and as he could not fulfil his obligations, property was transferred to her.

7. It is submitted that the sequence of events suggests malicious intent of respondent no. 2 and that the proceedings initiated by her were solely aimed at evicting the petitioner from the subject property. It is the case of the petitioner that her husband/ respondent no. 2's son had executed the General Power of Attorney, Agreement to Sell and Will, all dated 19.11.2015, in



favour of his mother/ respondent no. 2 only after the matrimonial disputes had arisen between them.

8. It is submitted that the Appellate Court failed to appreciate the law laid down by the Hon'ble Supreme Court in **Suraj lamp & Industries (P) v. State of Haryana & Anr.**² that “contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

9. It is further submitted on behalf of the petitioner that respondent no. 2 has used the provisions of the Act of 2007 to evict the petitioner, and, even if, the case of respondent no. 2 with respect to maintenance is accepted to be true, the same does not apply to the present case as the ingredients of Section 23(1) of the Act of 2007 are not fulfilled. It is the case of the petitioner that respondent no. 2 has been unable to establish the conditions and explain the circumstances under which her son had transferred the subject property in her name and how he was unable to look her after or maintain her. Reliance has been placed on the Judgment of Hon'ble Supreme Court in **Sudesh Chhikara**

² (2012) 1 SCC 656



v. **Ramti Devi & Anr.**³, to contend that when it is alleged that conditions mentioned in Section 23(1) of the Act of 2007 are attached to a transfer, the existence of such conditions must be established before the Tribunal. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor/ senior citizen is *sine qua non* for applicability of Section 23(1) of the Act of 2007.

10. It is submitted on behalf of the petitioner that respondent no. 2 had sought eviction of the petitioner from the subject property on the sole ground that she is the owner of the said property and the petitioner does not allow her to enter into the said property. It is submitted that respondent no. 2 does not reside in the said property, as has been claimed by her and the same is evident from the fact that address of respondent no. 2 on various documents is not that of the subject property but of her own flat in Kalkaji, Delhi, and same has not been refuted by her. It is further submitted that inquiry report of the SDM, Saket, dated 19.02.2018 also concludes that the petitioner should not be evicted from the subject property on the ground that respondent no. 2 does not reside in the subject property.

11. It is submitted that, in the present case, respondent no. 2 has not been able to establish as to how her son has not been able to take care of her and fulfil her basic needs. Further, respondent no. 2 does not have any grievance against her son to the said extent and she had not impleaded her son as necessary party in any of the proceedings initiated by or on her behalf. As per

³ Civil Appeal Number 174 of 2021



the petitioner, this shows that the subject proceedings have been initiated by respondent no. 2 while acting in collusion and connivance with her son solely with the aim to eject the petitioner from the subject property and the same has nothing to do with respondent no. 2's son being unable to maintain her.

12. It is submitted that the impugned order is in derogation of the guidelines passed by this Court *vide* Judgment dated 29.11.2019 titled as **Vinay Varma v. Kanika Pasricha & Anr.**⁴ wherein this Court held that if the relationship between the parents and the son are peaceful and the parents are seen colluding with the son, then an obligation to provide shelter to the daughter-in-law remain on the in-laws and an alternate accommodation would have to be provided by them to the daughter-in-law.

13. It is further submitted that the impugned order is also in derogation of the law passed by the Punjab & Haryana High Court in **Major Harmohinder Singh v. State of Punjab & Ors.**⁵ wherein the Court held that even a potent and protective legislation like the DV Act will be rendered effete, if it were to be wrongly assumed that a father/ mother can throw out his/ her daughter-in-law and that the provisions of the Act of 2007 and the DV Act cannot be used for cross purposes, one annihilating the other. It also submitted that in the said Judgment it was also held that a parent who invokes the provisions of the Act of 2007 cannot create a situation that makes the right of a female under the DV Act irrelevant.

⁴ CM(M) 1582/2018

⁵ LPA no. 1588/2014, dated 14.10.2014



14. Learned counsel for the petitioner also submits that respondent no. 2 in her legal notice dated 19.12.2015 has stated that she had given a loan of Rs. 9,40,000 to her son and on account of non-repayment of the same, her son sold the subject property to respondent no. 2, pursuant to which the petitioner was required to handover possession of the subject property to the respondent no. 2. Thus, it is the case of the petitioner that the respondent no. 2's own stand demonstrate that the present dispute does not fall within the ambit of the Act of 2007 read with its Rules but is rather a case of alleged recovery of loan and not one of eviction. Consequently, the provisions of the Act of 2007 cannot be invoked to evict the petitioner/ daughter-in-law as the statutory requirement mandated under the said Act has not been fulfilled. Further, reliance has been placed upon the Judgment of Bombay High Court dated 08.12.2025 in **Jitendra Gorakh Megh v. Additional Collector & Appellate Tribunal**⁶ to contend that no eviction order can be passed under the Act of 2007 until the statutory requirement in being fulfilled.

15. It is submitted on behalf of the petitioner that in the application bearing no. 13/17, respondent no. 2 did not make out any case with respect to a claim for maintenance. In fact, the application itself reflects that the dispute is purely a family dispute. Further, the SDM, in its inquiry report had also observed that the issue between the parties is a family dispute and that no case for maintenance or ill-treatment has been made out. Accordingly, it is submitted that the District Magistrate, South had rightly dismissed the said application, holding that the dispute between the parties pertains to a family

⁶ W.P. (C) 31614/2025



dispute and not of ill-treatment or non-maintenance. However, it is the case of the petitioner that the Appellate Tribunal *vide* impugned order, without considering the fact that no case of ill-treatment or claim for maintenance was made out, erroneously directed the petitioner to vacate the property in question. Further, reliance is again placed on the **Jitendra Gorakh (supra)** Judgment to contend that an eviction order under the Act of 2007 cannot be passed in the absence of any claim for maintenance by the senior citizen. It is, therefore, prayed that the impugned order dated 18.11.2019 passed by the Divisional Commissioner directing the petitioner to vacate the subject property be set aside. Further, in alternative, it is prayed that respondent no. 2 be directed to provide alternate residence to the petitioner.

16. *Per contra*, learned counsel for respondent no. 2 submits that the latter was working in Ahuja Radio, 215 – Okhla Industrial Area Phase-3, New Delhi-110020 as a wireman in electronics department and had bought her first property, *i.e.*, 151, Subhash Khand, Giri Nagar, Kalkaji, New Delhi, in 1973, with the help of her employer company before her marriage and had paid all installments with her own money. It is further submitted that petitioner and her son's marriage was solemnized and respondent no. 2 sold her old house and offered the receipts of the sale to her son, so that they could buy Plot No. 5, IIIrd Floor, Khasra No.789-790, Asola Extension, Chhatarpur, New Delhi-110074, (the subject property).

17. It is the case of respondent no. 2 that the subject property was bought in the name of her son with the expectation that he would look after her for the



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rest of her life, and the purchase of the said property was, in effect, a gift by respondent no. 2 to her son, and for the purpose of Section 23 of the Act of 2007 the same should be considered as a self-acquired property. It is further submitted that there is dispute between the petitioner and respondent no. 2 with respect to the possession of the subject property and the relationship between both of them is not cordial and various complaints have also been filed by respondent no. 2 against the petitioner for physically abusing her. It is further the case of respondent no. 2 that she did not collude with her son to execute the General Power of Attorney, Agreement to Sell and Will, all dated 19.11.2015 in her favour.

18. It has been argued on behalf of respondent no. 2 that the subject property was bought from the sale receipts of old house, which was a self-acquired property of respondent no. 2 and the same has also been admitted by the petitioner herself in her cross-examination conducted on 18.12.2018 in C.C. no. 145/1/15 titled as 'Renu v. Arun Kumar'.

19. It is further submitted that during matrimony, it was discovered that the petitioner was maintaining illicit relationships with multiple men and she had left her matrimonial home on 29.07.2014 to marry a man-'R', who later on refused to marry her.

20. It is the case of respondent no. 2 that after the family shifted into the subject property, the petitioner compelled her to leave the said property by taunting and making threats to get her beaten up by her brother. Thus, in order



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to lead a peaceful life, respondent no. 2 left the subject property in June 2015. However, when on 29.09.2015, respondent no. 2 returned to the subject property, the petitioner refused to let her in and when she went away after locking the door, respondent no. 2 broke open the door with the assistance of Police. It is further the case of respondent no. 2 that thereafter she was badly beaten up by the brother of the petitioner and was threatened to falsely being implicated in a case, if she did not leave the subject property.

21. It is further submitted on behalf of the respondent no. 2 that in such circumstances, she was forced to file a police complaint on 02.10.2015. However, as a counter blast to the said police complaint, petitioner lodged a false complaint against respondent no. 2's son alleging that he had shown pornographic content to their minor daughter and subsequently, her son was arrested in the said FIR lodged by the petitioner.

22. It is submitted that after release of respondent no. 2's son on bail on 16.11.2015, respondent no. 2 got the subject property transferred back into her name *vide* General Power of Attorney, Agreement to Sell and Will, all dated 19.11.2015, as the same was initially bought through respondent no. 2's fund on the condition that petitioner's husband will take care of her in her own age. However, the same was not possible on account of the fact that the petitioner was unwilling to let respondent no. 2 enter into the subject property. In view of the same, respondent no. 2 sent a legal notice dated 19.12.2015 to the petitioner for vacating the subject property and handing over of respondent no. 2's articles which were in her possession.



23. It is further submitted that since the petitioner did not reply to the said legal notice, respondent no. 2 filed a complaint dated 28.01.2016 before the Commissioner of Police, Delhi, to get her house/ subject property vacated under the provisions of the Act of 2007 and to take strong action against the petitioner, her brother and her mother. However, the police took no action in response to her complaint.

24. It is further the case of respondent no. 2 that she is a senior citizen and has been mistreated by the petitioner, as the latter has not been allowing her to stay in the subject property which is owned by her. It is therefore prayed that the impugned order does not require any interference as the same has been passed by the Divisional Commissioner, after taking into consideration overall facts and circumstances of the present case.

25. Learned counsel for the respondents no. 2 placed reliance on the Judgment dated 30.10.2025 passed by the learned Division Bench of this Court in **Manju Arora v. Neelam Arora**⁷ in support of her case.

26. Heard learned counsels for the parties and perused the records.

27. On an application bearing no. 13/17 filed by the respondent no. 2, the Sub-Divisional Magistrate had conducted an procedural inquiry and filed its inquiry report dated 19.02.2018, wherein it was recorded as under:

⁷ RFA (OS) 64/2025



“4. On 24/10/2017 vide dy. No. 48743 a submission from Smt. Violet Dass (complainant) alleged that she is residing at 3rd Floor, Plot no. 5, Kh. No. 789 & 790, Asola Extension from December 2015 when the building was not property constructed. She also submitted that her daughter in law Smt. Renu (Respondent) was not residing here from the beginning. She has submitted that she has purchased this flat by selling her flat at flat no. 151, Giri Nagar, Govindpuri, Subhash Khand, Kalkaji. She further submitted that the submission by the Respondent Smt. Renu that she (complainant) is not staying with Smt. Renu is completed wrong. For this she has referred on complaint filed in 11 December 2015 by Smt. Renu in Domestic Violence Act, 2005. She has alleged that on 28/11/2015, when she reached at flat of brother of Smt. Renu (Respondent) for taking key of her flat at Plot no. 5, Kh. No. 789 & 790, Asola Extension, she was beaten by verbally assaulted by Smt. Renu, her brother and sister in law.

5. After hearing both the parties, the area Halqua Patwari was directed to conduct local inquiry and submit detailed visit report. In a report submitted by Halqua Patwari he has submitted that he has visited the said property bearing No. 789 and 790 Asola Extension, New Delhi, which was on third floor in the said building. In local enquiry it came forwarded that Smt. Renu was staying in flat no. 151, Giri Nagar, Govindpuri, Subhash Khand, Kalkaji alongwith her family including Smt. Violet Dass (complainant), Smt. Violet Dass (complainant) sold out the said flat no. 151, Giri Nagar, Govindpuri, Subhash Khand Kalkaji and distributed money within all the children. Sh. Arun (Husband of Smt. Renu and Son of Smt. Violet Dass) has purchased the flat at Plot no.5, Kh. No. 789 & 790, Asola Extension, New Delhi. The complainant does not stay at this premises. At present Smt. Renu is staying with her 06 years old daughter.

CONCLUSION:

After detailed inquiry in this matter by the undersigned and after considering the report of Halqa Patwari, it is found that:

1. Ownership:- A Notorized General Power of Attorney of 2015 was submitted by Smt. Violet Dass of the property bearing no. Plot no. 5, Lh. No. 789 & 790, Asola Extension, New Delhi.
2. In the inquiry it is appeared that this is matter of family dispute and conflict between mother in law (Smt. Violet Dass), daughter in law (Smt. Renu) and son (Sh. Arun Kumar). There is no issued related to maintenance between both the parties as applicant Smt. Violet Dass has not claimed any maintenance from the respondent Smt. Renu.
3. The complainant has submitted one document of the complaint under section 12 of the protection of Woman from Domestic Violence Act, 2005



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dated 11/12/2015 before the Hon'ble Court of Chief Metropolitan Magistrate Saket Court. As per this document Smt. Renu has shown her address at H.No.15, Subhash Khand, Kalkaji, New Delhi-110019 and 3rd Floor, Sant Ram Plot C/o Joginder Kahari, Asola Extn. Fatehpur Beri, New Delhi-110074 and the address of complainant Smt. Violet Dass is mentioned as H. No. 78 & 151, Subhash Khand Giri Nagar, Kalkaji, New Delhi-110019.

4. Further, as per submission of both the parties, a divorce case was filed by Sh. Arun Kumar in the civil court which is pending.

5. In view of the above, it appears that there is family dispute between husband (Sh. Arun Kumar) and wife (Smt. Renu). There is dispute between the complainant (Smt. Violet Dass) and the respondent (Smt. Renu) over the possession of property at flat Plot no. 5, Kh. No. 789 & 790, Asola Extension. No evidences were produced by the complainant for ill-treatment / abuse to her by the respondent Smt. Renu. One incidence dated 28/11/2015 was referred by the complainant, which is incident of quarrel between them over key of the flat no. 5, Kh. No. 789 & 790, Asola Extension, New Delhi.

6. Therefore, I of the opinion that the grounds by the complainant are not substantial enough to evict the respondent from property bearing no. Plot no. 5, Kh. No. 789 & 790, Asola Extension as the complainant failed to produce evidences for ill-treatment and abuse by the respondent. ”

28. Subsequently, District Magistrate (South) *vide* order dated 05.03.2018 dismissed the application no. 13/17 and held as under:

“ This order shall dispose of the application filed by Mrs. Violet Dass, W/o. Late Sh. Shri Charles Morris, resident Plot No.5, Kh.789 & 790, Asola Extn., Chhatarpur, New Delhi-74, (presently residing at 62, Tilak Khand, Giri Nagar, Kalkaji, New Delhi) against Smt. Renu, daughter-in-law, W/o. Arun Kumar, resident of Plot No.5, IIIrd Floor,Kh. No. 789 & 790, Asola Extn., Chhattarpur, New Delhi, for seeking eviction under the provisions of the Maintenance of and Welfare of Parents & Senior Citizens Act, 2007 read with rule 22(2) the Delhi, Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 and Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2016.

Notices were issued to the petitioner and respondent on 13.09.2017 to appear before the undersigned on 20.09.2017. Both the parties appeared before the undersigned on the date of hearing. The Petitioner has



submitted that she has been forcefully made homeless by her daughter-in-law, Smt.Renu. It Is also mentioned that a divorce case was filed by Sh.Arun Kumar, Son of the Petitioner, in the civil court which is pending. Therefore, Petitioner has requested to evict the Respondent from the said property for peaceful possession of the same.

After considering the above, the Court has directed the Sub-Divisional Magistrate (Saket) to submit factual inquiry report after conducting a thorough inquiry in the matter. Sh. Ramchandra M. Shingare vide report dated 19.02.2018 has submitted that both the parties were heard and a local enquiry was conducted through Halqa Patwari. SDM in his report has submitted the following:

1. That Smt. Renu denied all the allegations leveled by the Petitioner against her and added that the Petitioner, mother-in-law of the Respondent, is not residing with her at the above mentioned address

2. That vide written representation the Petitioner mentioned that she is residing at 3rd Floor, Plot No.5, Kh No. 789 8. 790, Asola Extn, from Dec., 2015 when the building was not property constructed. She alleged that the Respondent was not residing here from the beginning. Petitioner also submitted that she has purchased this flat by selling her flat No, 151, Giri Nagar, Govindpuri, Subhash Khand. Kalkaji. Petitioner also informed that one complaint was filed on 11,12,2015 against her by the Respondent under Domestic Violence Act, 2005.

SDM (Saket) concluded his report with the observation that this is a matter of mutual family dispute between mother-in-law and daughter-in-law & son. There is no issue related to maintenance between both the parties. It is also mentioned that a divorce case was filed by Sh, Arun Kumar, Son of the Petitioner, against the Respondent in the civil court which is pending. It Is also submitted in the report that no evidences were produced by the Petitioner for ill-treatment/abuse to her by the Respondent.

Several hearings were held in the instant matter and finally heard on 05.03.2018. On the date of final hearing, petitioner has reiterated her grounds, as already elucidated in the application and requested to evict the Respondent immediately for peaceful possession of her property. On the other hand, Respondent denied all the allegations made by the Petitioner.

Under the Senior Citizen Act, District Magistrate is empowered to evict the son and daughter or legal heir from the self acquired property of a senior citizen on account of his non-maintenance / ill-treatment. After going through the Inquiry Report submitted by the SDM (Saket) and submissions made by the parties before the undersigned on various



hearings and finally on 05.03.2018, I am fully convinced with the opinion of the SDM (Saket) that this is a matter of mutual family dispute and conflict between mother-in-law, son & daughter-in-law. Accordingly, I am of the considered opinion that the Petitioner and Respondent should restrain themselves from involving in complaints on each other which may further disrupt their family life.

Since nothing has been proved against the alleged ill-treatment against the Petitioner, as per the inquiry report submitted by Sub-Divisional Magistrate (Saket), which is very crucial to act against the Respondent in the present matter, both the parties are advised to lead a peaceful life amicably in their mutual interest. I am inclined to give an opportunity to both the parties, on humanitarian grounds, to live peacefully in the said property, and refrain themselves from fighting and abusing each other.

Accordingly, the application of the Petitioner is rejected.”

29. However, the aforesaid order dated 05.03.2018 was set aside by the Divisional Commissioner *vide* impugned order dated 18.11.2019 and the operative part of the said order reads as under:

“23. Thus, the argument of District Magistrate (South) that there is no maintenance issue in the instant case would not hold. In light of above cited judgments, the ill-treatment of a senior citizen alone is a sufficient ground for eviction. As discussed above, the title of the property is not disputed and is in favour of the appellant. SDM report stated that there is dispute between the appellant and the respondent over the possession of property. There are police complaints on record filed by the appellant. The relationship between the appellant and respondent is not cordial and is strained. Even after DM’s order giving opportunity to both parties to live peacefully in the said property, as stated by the appellant during hearing, she was not allowed by respondent to stay in her property. The respondent despite opportunity didn’t appeal before this court. Not allowing the appellant to stay in her own property itself amounts to ill treatment. As per the provisions of Senior Citizen Act and Rules, the proceedings are of summary nature and without prejudice to the rights of any party in subject property which may be determined by Civil Court in accordance with law.

24. In light of the aforesaid facts and circumstances of the case, the provisions of the Maintenance and Welfare of Parents and Senior Citizen



Act and Delhi Maintenance and Welfare of Parents and Senior Citizen Rules, as amended time to time, and on careful consideration of the material on record, I am of the considered opinion that the ends of justice would be met, if appeal is allowed and the order dated 05.03.2018, passed by District Magistrate (South) is hereby set aside. It is further, ordered that the respondent Smt. Renu, W/o Sh. Arun Kumar, be evicted from the property bearing No. Plot No. 5, IIIrd Floor, Khasra No. 789-790, Asola Extension, Chhatarpur, New Delhi-110074, within 30 days from the date of issue of this order so as to enable the appellant to live peacefully as is the mandate of the Act. ”

30. The Hon’ble Supreme Court in **S. Vanitha** (*supra*) held as under:

“E. Harmonising competing reliefs under the PWDV Act, 2005 and the Senior Citizens Act, 2007

34. Section 36 [“36. Act not in derogation of any other law.— The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.”] of the PWDV Act, 2005 stipulates that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. This is intended to ensure that the remedies provided under the enactment are in addition to other remedies and do not displace them. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is undoubtedly a later Act and as we have noticed earlier, Section 3 stipulates that its provisions will have effect, notwithstanding anything inconsistent contained in any other enactment. However, the provisions of Section 3 of the Senior Citizens Act, 2007 giving it overriding force and effect, would not by themselves be conclusive of an intent to deprive a woman who claims a right in a shared household, as under the PWDV Act, 2005. Principles of statutory interpretation dictate that in the event of two special Acts containing non obstante clauses, the later law shall typically prevail. [*Solidaire (India) Ltd. v. Fairgrowth Financial Services Ltd.*, (2001) 3 SCC 71] In the present case, as we have seen, the Senior Citizen's Act, 2007 contains a non obstante clause. However, in the event of a conflict between special Acts, the dominant purpose of both statutes would have to be analysed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonise, not excise. A two-Judge Bench of this Court, in *Bank of India v. Ketan Parekh* [*Bank of India v. Ketan Parekh*, (2008)



8 SCC 148] , in examining a similar factual scenario, observed that :
(SCC p. 160, para 28)

“28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993.”

(emphasis supplied)

This principle of statutory interpretation was also affirmed by a three-Judge Bench of this Court in *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* [*Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1] .

35. In the present case, Section 36 of the PWDV Act, 2005, albeit not in the nature of a non obstante clause, has to be construed harmoniously with the non obstante clause in Section 3 of the Senior Citizens Act, 2007 that operates in a separate field.

36. In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act, 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, “is widely prevalent but has remained largely invisible in the public domain”. The Statement of Objects and Reasons indicates that while Section 498-A



of the Penal Code, 1860 created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would “provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society”. The ambit of the Bill has been explained thus:

“4. The Bill, inter alia, seeks to provide for the following—

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved



person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.”

37. The above extract indicates that a significant object of the legislation is to provide for and recognise the rights of women to secure housing and to recognise the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act, 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act, 2005, would defeat the object and purpose which Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act, 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. **Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act, 2007.**

38. This Court is cognizant that the Senior Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the civil courts, under Section 8. The jurisdiction of the civil courts has been explicitly barred under Section 27 of the Senior Citizens Act, 2007. **However, the overriding effect for remedies sought by the applicants under the Senior Citizens Act, 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act, 2005.** The PWDV Act,



2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. **In deference to the dominant purpose of both the legislations, it would be appropriate for a tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under Section 2(b) of the Senior Citizens Act, 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act, 2005.** Section 26 [“26. Relief in other suits and legal proceedings.—(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”] of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. **Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act, 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act, 2005 and the Senior Citizens Act, 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to override and nullify other protections in law, particularly that of a woman's right to a “shared household” under Section 17 of the PWDV Act, 2005.** In the event that the “aggrieved woman” obtains a relief from a tribunal constituted under the Senior Citizens Act, 2007, she shall be duty-bound to inform the Magistrate under the PWDV Act, 2005, as per sub-section (3) of Section 26 of the PWDV Act, 2005. This course of action would ensure that the common intent of the Senior Citizens Act, 2007 and the PWDV Act, 2005, of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realised. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realisation.



39. Adverting to the factual situation at hand, on construing the provisions of sub-section (2) of Section 23 of the Senior Citizens Act, 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her "shared household" within the meaning of Section 2(s) of the PWDV Act, 2005. We have also seen the series of transactions which took place in respect of the property : the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the second and third respondents instituted an application under the Senior Citizens Act, 2007. The fact that specific proceedings under the PWDV Act, 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. **Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizens Act, 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (second and third respondents) or that her estranged spouse (fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005.**



F. Summation

40. For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act, 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act, 2007. The second and third respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act, 2007 for alteration of the maintenance allowance, before the appropriate forum.”

(emphasis supplied)

31. Further, Hon’ble Supreme Court in **Sudesh Chhikara** (*supra*) held as under:

“ 13. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. **Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.**

14. Careful perusal of the petition under Section 23 filed by respondent no.1 shows that it is not even pleaded that the release deed was executed subject to a condition that the transferees (the daughters of respondent no.1) would provide the basic amenities and basic physical needs to respondent no.1. Even in the impugned order dated 22nd May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. **Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of sub-section (1) of Section 23.** In the present case, as stated earlier, it is not even pleaded by respondent no.1 that the release deed was executed subject to such a condition.



15. We have perused the counter affidavit filed by respondent no.1. Even in the counter, it is not pleaded that the release was subject to such a condition. It is merely pleaded that the appellant had no intention to take care of her mother. Thus, the order of the Maintenance Tribunal cannot be sustained as the twin conditions incorporated in sub-Section (1) of Section 23 were not satisfied. Unfortunately, the High Court has not adverted to the merits of the case at all.”

(emphasis supplied)

32. The grounds taken by the respondent no. 2 in application no. 13/17 are as follows:

“17. That in the above circumstances the applicant is filling this application for eviction of the respondent on the following grounds:-

A. Because the respondent no. 2 has no right on the house of the applicant because the house was purchased using the money of applicant which she got by selling her property at Giri Nagar, Kalkaji, New Delhi and no any money of any other person either of family or outside the family was used in purchasing the house.

B. Because the respondent No.2 with intention to grab the house from the applicant and her son first compelled the applicant to go applicant in a serious case so that he may not enter the house and the respondent No.2 will get the sole occupation of the house.

C. Because the respondent no.2 is nymphomaniac lady and for the fulfilment of her personal grudge she had compelled to the applicant and the son of the applicant to leave the house so that she may do what she wants without in hurdle and hindrance, occupying the house of the applicant illegally.

D. Because the applicant is a Senior Citizen, Old & Sick lady and suffering from Asthama and during this period she had got three time serious attacks and if the house was not got vacated from the respondent under provisions of the Section 3(1)(i) of Delhi Welfare and Maintenance of Senior Citizen and Parents (Amendment) Act 2016, the applicant will fact irreparable loss and injury which cannot be fulfilled in any manner.

E. Because the applicant is the sole owner of the house on which her daughter-in-law Renu the respondent No.2 is occupying on which there



is no right of her as per Supreme Court direction in S.R. Batra & Ors. Vs. Taruma Batra in Civil (Appeal) No. 5837 of 2006 and Vimalben Ajitbai Patel Vs. Vatsalabeen shokbai Patel & Ors. Civil Appeal No. 2003 of 2008 and similar Verdict has been passed by this Hon'ble Court also in Crl. M.C. No. 3497/2008 in matter of Ekta Arora Vs. Ajay Arora & Anr and CS (OS) No. 41/2005 in matter of Smt. Shumita Didi Sandhu Vs. Mr. Sanjay Singh Sandhu & Ors and judgment of Punjab & Haryana High Court in CWP No. 18009 of 2015 (O & M) Hamina Kang Vs. District Magistrate (U.T.), Chandigarh also in the judgment passed by Hon'ble Justice Manmohan Singh in WP(Civil) No. 10463/2015 Sunny Paul & Anr. Vs. State & Ors it is said that adult children can be evicted. using her own articles and house which is bought by her due to the atrocities of the respondent No.2 which is never allowing her to enter the house and whenever the applicant had gone, the respondent No. 2 had never allowed to enter her own house and thrown her out using abusive languages. Thus eviction of respondent from the house will be judicious in the interest of justice.”

(emphasis supplied)

33. Before moving the said application, it is an admitted case that the respondent no. 2 also got a legal notice dated 19.12.2015 issued against the petitioner, which claimed as under:

“Under instruction and on behalf of my client Mrs Violet Dass D/o Mr. Samuel dass R/O J.51, Subhash Khand Giri Nagar, Kalkaji, New Delhi-110019, serve upon you the following notice.

1. That my client has given loan for a sum of Rs.9,40,000/- (Rs. Nine Lacs, Forty Thousand Only) to her son Arun Kuma S/O Late Mr. Charles Morris R/O Plot No. 5, 3rd Floor-C, Khasra No. 789 & 790, Asola Extn., New Delhi-110074, but failed to repay the said loan to my client as Mr. Arun Kumar failed to pay the loan amount so Arun Kumar sold his flat i.e. Plot no. 5, 3rd Floor C, Khasra No. 789 &790, Asola Extn., New Delhi to my client along with articles as per list annexed as ANNEXURE-B.

2. That now my client have full right in the above noted Flat and articles mentioned in ANNEXURE-B Plot no. 5, 3rd Floor C, Khasra No. 789 & 790, Asola Extn., New Delhi and Remaining articles as per list attached which is annexed as ANNEXURE-B, are kept by my client and is the absolute owner of Item mentioned in list B, and if any damage to the item



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mentioned in list -B, caused by you, you will be held responsible and cost of damage will be paid by you.

3. That the item mentioned in list B be handover to my client within a 15 days and the possession of the above said flat alongwith item mentioned in list-B, be handed over 'to the owner i.e. Smt. Violet Dass D/O Mr. Samuel Dass R/O 151, Subhash Khand Giri Nagar, Kalkaji, New Delhi.

In view of the averments made above you are hereby called upon to the possession of the above said flat alongwith item mentioned in list -B, be handed over to the owner i.e. Smt. Violet Dass D/O Mr. Samuel Dass R/O 151, Subhash Khand Giri Nagar, Kalkaji, New Delhi failing for which I have clear instruction to initiate appropriate criminal as well as civil action against you thereby declare all actions solely taken by you as illegal at your cost risk and consequences within 15 das from the date of receipt of this legal notice.

You are also liable to pay a sum of Rs.21,000/- (Rs. Eleven Thousand Only) towards the expenses of legal notice.

Copy of this notice is retained in my office for further action.

Sd/
S.K.Sharma
Advocate”
(emphasis supplied)

34. In the present case the subject property was purchased by the husband of the petitioner who transferred the same to the respondent no. 2, after disputes between the parties began and more specifically after registration of FIR no. 0736//2015 dated 05.10.2015, *vide* General Power of Attorney, Agreement to sell, Affidavit and Will, all dated 19.11.2015. It has been claimed by the respondent no. 2 that she had given funds to the petitioner's husband to purchase the subject property on the condition that she will be looked after.

35. At this stage, it will be useful to refer to the provisions of Section 23 of the Act of 2007, which reads as under:-



“23. Transfer of property to be void in certain circumstances.—(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.”

36. Further, it also important to refer Rule 22(3)(1)(i) of Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, which reads as under:

“(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self-acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.”

37. As held by Hon’ble Supreme Court in **Sudesh Chhikara** (*supra*), if the conditions mentioned in Sub-Section 1 of Section 23 of the Act of 2007 were attached to a transfer, then existence of such conditions must be established before the Tribunal. In the present case, the initial purchase of the property was by the petitioner’s husband. Further, it has come on record that respondent no. 2 was not residing at the subject property. In the legal notice



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dated 19.12.2015, issued on behalf of the respondent no. 2, there is no mention regarding such a condition being attached with the initial purchase of the subject property. It is only in the application no. 13/17 filed before the Maintenance Tribunal that an averment to the aforesaid effect was made. However, in the grounds taken as noted hereinbefore no such plea was taken. Moreover, admittedly, the said application before the Maintenance Tribunal was filed after the protection of eviction from a shared household was granted by the learned Metropolitan Magistrate *vide* order dated 15.11.2016 in CC no. 145/1 (Domestic Violence complaint) filed on behalf of the petitioner.

38. The facts of the present case are covered by **S. Vanitha (*supra*)**. In the said case series of transactions had taken place with respect to the subject property. It was noted that the spouse of the appellant therein had purchased the said property in his own name few months before the marriage but subsequently sold it after a few years under a registered sale deed at the same price to his father, who in turn had gifted the same to his spouse, *i.e.*, the mother-in-law of the appellant therein after divorce proceedings were initiated by the husband of the said appellant. In the said case, the in-laws of the appellant had initiated proceedings under the Act of 2007, wherein the order of eviction was passed. In the said case, the proceedings under the Protection of Women from Domestic Violence Act, 2005 (for short '**PWDV Act**') had not been initiated by the appellant and in spite of that it was observed that recourse to the summary procedure as contemplated under Act of 2007 was not available to parties for the purpose of "facilitating strategies that are designed to defeat the claim of the appellant in respect of shared household".



It was further held that merely because the ownership of the property had been subsequently transferred to the appellant's in-laws would be no ground to deprive the said appellant from protection under the PWDV Act. In the present case, despite their being an interim order dated 15.11.2016 protecting the petitioner from eviction of the shared household, the eviction order was passed by the Divisional Commissioner *vide* impugned order.

39. Reliance was placed by learned counsel for respondent no. 2 on Division Bench Judgment in **Manju Arora (supra)**. It is noted that the said Judgment was not rendered in respect of proceedings under the Act of 2007 but it was in respect of an eviction order passed by granting decree of mandatory injunction to vacate the subject property therein on a suit filed on behalf of the parents-in-law who were senior citizens against the appellant therein. In the said case it was also observed that the parents-in-law were willing and had made alternate arrangements for the appellant's residence under Section 19(1)(f) of the PWDV Act so as to ensure that her rights are duly safeguarded while they could live peacefully in their own home. It is also a matter of record that in the said case, the parents-in-law had been the owner of the subject property from the very inception and not by way of transfer as has taken place in the present case.

40. The Divisional Commissioner in the present case had set aside the order passed by the Deputy Commissioner by observing that respondent no. 2 was entitled to the eviction order on account of ill-treatment by not allowing the respondent no. 2 to stay in her own property. The report given by the



Halqua Patwari was ignored. The said report clearly spells out that the petitioner was staying at the subject property and the dispute was with respect to possession of the property. It is not case where respondent no. 2 was staying at the subject property and was being ill-treated or thrown out of her residence by the petitioner.

41. The Proceedings under the PWDV Act initiated by the petitioner was already pending at the time of initiation of the proceedings before the Tribunal in which respondent no. 2 was also a party.

42. In view of the Judgment of Hon'ble Supreme Court in **S. Vanitha** (*supra*) the resort to the remedy under the Act of 2007 by respondent no. 2 could not have been deployed to override and nullify the “petitioner’s right to a shared household under Section 17 of the PWDV Act”.

43. In the facts and circumstances of the case, the impugned order 18.11.2019 is set aside. Since the proceedings before the PWDV Act is still pending, where respondent no. 2 is also a party. The learned Court while determining the competing rights and interests of the parties shall determine the *lis* in accordance of law. Further in case respondent no. 2 is ready and willing to provide an alternate accommodation to the petitioner under Section 17 of the PWDV Act, the same shall be duly considered by the learned Metropolitan Magistrate in accordance with law.

44. The petition is allowed and disposed of accordingly.



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45. Pending application(s), if any, also stand disposed of.
46. Copy of the judgment be sent to the concerned Divisional Commissioner, Department of Revenue, GNCTD, for necessary information and compliance.
47. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
(JUDGE)**

MARCH 12, 2026/sn/sg