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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on: 19.05.2025*
Judgment delivered on: 27.05.2025

+ **LPA 12/2025 & CM APPL. 960/2025**

POOJA MEHTA & ORS.

.....Appellants

Through: Ms. Bansuri Swaraj, Sr. Adv. with
Mr. Siddhesh Kotwal, Mr. Harsh
Khanna, Mr. Paritosh Anil, Ms. Ana
Upadhyay, Mr. Vivek Jain, Ms.
Manya Hasija, Mr. Sandeep Khanna,
Ms. Tejasvi Gupta, Mr. Yatharth
Gupta and Mr. T. Illoyrasu, Advs.

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sameer Vashisht, SC for
GNCTD/R-1.

Mr. Vivek Chib, Sr. Adv with
Mr. Vaibhav Sethi, Ms. Priya Pathania
and Mr. Abdul Hasan Khan, Advs. for
R-2.

Mr. Vansh Chawla, Ms. Shruti Khosla,
Mr. Manoj Loomba and Ms. Nitika
Kohli, Advs for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA



J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

- :CHALLENGE: -

1. This *intra-court* appeal seeks exception to the judgment and order dated 04.10.2024 passed by learned Single Judge whereby, W.P. (C) 4643/2021, preferred by the appellant no.1 against the order dated 31.03.2021 passed by the Divisional Commissioner/Appellate Authority under Rule 22 (3)(1) of Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as 2009 Rules) and has been disposed of with certain directions.

By the order dated 31.03.2021, the appeals preferred by the appellant no.1 and the respondent no.3 against the order dated 18.09.2020 passed by the District Magistrate (South), Delhi (hereinafter referred to as 'DM') were dismissed.

We may note at this juncture that the DM *vide* his order dated 18.09.2020 had allowed the petition preferred by the respondent no.2 and her husband, late Vijay Mehta and ordered eviction of the appellants and respondent no.3 from the subject property, i.e. SAI NAMAN, Aster Estate, Khasra No.638, Bandh Road, Gadaipur, Mehrauli, New Delhi.

- :FACTS: -

2. Appellant no.1 is the daughter-in-law of the respondent no.2 and her husband late Vijay Mehta. Appellant nos. 2 and 3 are the children of



appellant no.1 from her earlier marriage. Respondent no.3 is the husband of appellant no.1, who married each other on 06.10.2013.

3. Further facts which can be gathered from the pleadings available on record are that after her marriage, the appellant no.1 has been residing at the “shared household” (the subject property) with respondent no.2 (mother-in-law) and late Vijay Mehta (father-in-law). It is alleged that after about five years of the second marriage of appellant no.1 and respondent no.3, tensions surfaced between respondent no.3 and his father, late Vijay Mehta, over a piece of land which is said to have later become subject matter of litigation in O.M.P.(I)(COMM.) No. 309/2018 before this Court, wherein an order was passed on 01.08.2018 directing the respondent no.3 to deposit a sum of Rs.2.05 Crores with the Registry of this Court before proceeding for alienation of the said land.

4. The record available before us on this appeal reveals that since May 2018, certain incidents are said to have taken place which resulted into lodging of FIRs. It is to note that the appellant no.1 lodged an FIR No. 209/2018 under Section 323, 354, 506, 509 of IPC against her father-in-law, late Vijay Mehta, at Police Station Naraina. Late Vijay Mehta also lodged FIRs against appellant no.1 (daughter-in-law) with the allegations of apprehension of physical harm at Police Stations Naraina and Mehrauli. Another FIR was lodged by late Vijay Mehta (father-in-law) bearing no. 754/2018 against the appellant no.1 (daughter-in-law) and respondent no.3 (son) with the allegations of theft.

5. Thereafter, a complaint was lodged under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as ‘DV



Act') by the appellant no.1 before the Mahila Court (South District), Saket, New Delhi. On the said complaint, the Mahila Court passed a protection order in favour of the appellant no.1 restraining the respondents in the said complaint, which included the respondent no.2 and her husband late Vijay Mehta, from dispossessing the appellant no.1 from the property in question, without following due process of law. Certain proceedings in the form of CO.PET. 02/2019 were also instituted before National Company Law Tribunal by Mr.Gautam Mehta (brother of respondent no.3) against the appellant no.1 and respondent no.3 with the allegations of mismanagement of the affairs of family business which is in the name of M/s. Mehta Offset Private Limited. The National Company Law Tribunal by means of an order dated 30.01.2019, granted an order for maintaining status quo regarding the shareholding and composition of the Board of Directors of the Company.

6. Respondent no.2 and her husband late Vijay Mehta thereafter filed a petition seeking eviction of the appellant no.1 and respondent no.3 before the DM under the relevant provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the Senior Citizens Act") and 2009 Rules. Notices were issued in the said proceedings instituted by the respondent no.2 and her husband, late Vijay Mehta. Thereafter, a final order was passed by the DM on 18.09.2020 directing that respondent no.3 and the appellant no.1 shall be evicted from the property of late Vijay Mehta within 30 days from the date of receipt of the order on the ground of ill-treatment and threats extended by them to the aged and hapless. The operative portion of the order dated 18.09.2020 passed by the DM is extracted herein below: -



“10. Using the powers entrusted to the undersigned under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, the application moved by the Petitioner is allowed and after examining all the documents/reports placed before the undersigned, I hereby order Sh. Nanak Mehta and Smt. Pooja Mehta, to evict from the property of Sh. Vijay Mehta and Smt. Manju Mehta, i.e., SAL NAMAN, Asher Estate, Kh NO. 638, Bandh Road, Gadaipur, Mehrauli, New Delhi, within 30 days from the date of receipt of this order on the ground of ill-treatment and threats made by them to the aged and hapless Petitioners. Directions issued to the Respondent to handover possession of the property to the Petitioners so as to lead a peaceful and secured life by the Petitioners. Deputy Commissioner of Police, South District, New Delhi, is also requested to ensure implementation of the order in its true letter and spirit in handing over the peaceful possession of the property to the Petitioners by the Respondents. Accordingly, the application of the Petitioners is disposed of.”

7. The order dated 18.09.2020 passed by the DM was challenged by the appellant no.1 as also by her husband (respondent no.3) before the Appellate Authority/Divisional Commissioner. The Divisional Commissioner, however, was not convinced and found that the respondent no.2 and her husband late Vijay Mehta, are victims of harassment and ill-treatment at the hands of their son and daughter-in-law. The Divisional Commissioner did not find any infirmity in the order passed by the DM and accordingly directed that they be evicted from the subject property and further that they shall not create any hassles in the peaceful life of the respondent no.2 and her husband late Vijay Mehta. They were further ordered to restrain themselves from causing any mental tension, threats and harassment to the respondent no. 2 and her husband late Vijay Mehta. The operative portion of the order dated 31.03.2021 passed by the Divisional Commissioner/Appellate Authority under the Senior Citizens Act and 2009 Rules framed under the said Act, is extracted herein below:



“13. In the light of the facts and circumstances and documents placed on record, this appellate authority find force in the contention of the respondents that they are victim of harassment and ill-treatment at the hands of the appellants. This appellate authority does not find any infirmity in the impugned order and thus appellants have no right to reside in the suit property contrary to the wishes of the parents/respondents. The appellants are directed to vacate the suit property and shall not create any hassles in the peaceful life of the respondents and further restrained themselves from causing any mental tension, threats and harassment to them.”

8. The order passed by the Divisional Commissioner/Appellate Authority was challenged before this Court by the appellants and respondent no.3 by instituting the proceedings of W.P. (C) No. 4643/2021. The said writ petition has been disposed of without interfering with the order of eviction passed by the DM, as affirmed by the Divisional Commissioner/Appellate Authority, issuing certain directions. The operative portion of the judgment and order dated 04.10.2024 passed by the learned Single Judge, which is under challenge in this appeal, is extracted herein below:

*“25. As per the judgement of the Supreme Court in **S. Vanitha**, the Court is required to balance Petitioner No. 1's right to residence with the Senior Citizen's right to live a life of dignity, free from daily distress. In light of the facts of the present case, the relationship between Petitioner Nos. 1 and 2 is not impeded by any matrimonial discord or other complications. The same can be demonstrated from their joint legal representation in the current proceedings as well as their coordinated approach to securing bail in the FIR concerning the theft of painting, artefacts and household items. Therefore, it is abundantly clear that Petitioner No. 1's rights are specifically pitted against her in-laws, and not her husband. Nevertheless, this Court is mindful of Petitioner No. 1's right to reside in the shared household, and recognizes that the primary responsibility for her maintenance, including the provision of alternate accommodation, rests with her husband, Petitioner No. 2. In the interest of balancing the rights of both parties, it is appropriate to allow Respondent No. 3 to fully exercise her ownership rights over the Subject Property. However, to ensure that Petitioner No. 1 is not left without suitable housing, this Court directs*



that she be provided with a monthly allowance sufficient to secure such accommodation. Therefore, in order to harmonize the senior citizen's rightful claims with Petitioner No. 1's residential rights under the DV Act, the following directives are issued:

(a) Petitioner No. 2, Mr. Nanak Mehta, is directed to provide financial assistance to his wife, Petitioner No. 1, by paying a sum of INR 75,000/- per month. This amount shall be credited to her bank account on or before the 10th of every month to enable her to secure alternative accommodation. Petitioner No. 1 shall provide the details of such bank account to Petitioner No. 2 within one week from today. If she fails to provide the details, payment shall be made through Demand Draft/Pay Order. Should Petitioner No. 2 fail to make these monthly payments or express an inability to fulfil this financial obligation, the responsibility to ensure payment shall fall upon Respondent No. 3.

(b) Once the financial support commences, the Petitioners shall vacate the Subject Property and hand over vacant possession to Respondent No. 3 within one month from the date of the first payment.

(c) The above directions are subject to any further directions which the Mahila Court may pass for granting additional maintenance to Petitioner No.1.

26. *With the aforesaid directions, the petition is disposed of, along with pending applications."*

- :SUBMISSIONS ON BEHALF OF THE APPELLANTS: -

9. Ms. Bansuri Swaraj, learned Senior Advocate representing the appellants while assailing the order under challenge herein, has emphatically urged three grounds: - (1) the order of eviction is vitiated and hence not sustainable on account of violation of mandatory requirements under Rule 22 (3)(1)(iv) & (v) of 2009 Rules; (2) the respondent no.2 is not entitled to relief granted to her in relation to the subject property for the reason the property is neither ancestral nor self-acquired but is owned by a company;



and (3) in the facts and circumstances of the case, the order of eviction against the appellants is not warranted.

10. It has been argued by Ms. Swaraj that Rule 22 (3)(1)(iv) & (v) of 2009 Rules mandates issuance of a separate Show cause notice(hereinafter referred to as 'SCN') by the DM after forming an opinion during the proceedings against the son or daughter or legal heir of the senior citizen regarding ill-treatment etc. requiring them to show cause as to why an order of eviction may not be passed. She has further stated that such a SCN is to be issued to all concerned, that is to say, to all persons who are or may be in occupation of or who claim interest in the premises. She further argued that such a notice requiring all interested persons to show cause has to be issued against the proposed order on or before the date specified in the notice, being a day not earlier than 10 days from the date of its issue. She has submitted that the record of the proceedings before the DM in this case does not show that any such notice was issued to the appellant no.1 before passing the order dated 18.09.2020. It has been argued that in absence of issuance of the said notice, the findings returned by the DM is erroneous and accordingly, the order of eviction is vitiated for the simple reason that the mandatory procedure as prescribed in Rule 22 (3)(1)(iv) & (v) of 2009 Rules has not been followed. Her submission is that provision of such a notice has to be traced in the fundamental principle of natural justice and since the said provision has been apparently violated, the order of eviction passed by the DM is not sustainable, which aspect of the matter has not been looked into by the Divisional Commissioner/Appellate Authority or even by the learned Single Judge.



11. It has also been argued on behalf of the appellants that Rule 22 (3)(1) of 2009 Rules provides that a senior citizen/parents may seek a relief of eviction of his son and daughter or legal heir from his property, whether movable or immovable, ancestral or self-acquired, tangible or intangible on account of his non-maintenance and ill-treatment. Accordingly, in her submission, it has been argued by Ms.Swaraj that an application seeking eviction under Rule 22 (3)(1) of the 2009 Rules is maintainable only in respect of ancestral or self-acquired property and since the subject property is owned by a company namely, M/s. Aster Estate Private Limited and respondent no.2 is only a share-holder in the said company; hence, eviction from the property of a company could not have been ordered by the DM. It is thus the submission of learned counsel representing the appellants that entertaining an application seeking eviction from the property, which is neither ancestral nor self-acquired, was beyond the jurisdiction and competence of the DM.

12. It has been stated in this regard that the subject property belongs to a company where the respondent no.2 is only a share-holder and in fact the property was originally purchased by husband of respondent no.2, late Vijay Mehta, which was subsequently transferred to the company and accordingly since the DM does not exercise any jurisdiction in respect of an application seeking eviction from a property which is neither self-acquired nor ancestral, any order of eviction passed in respect of such property under Rule 22 (3)(1) of 2009 Rules is completely illegal and without jurisdiction.

13. The third submission made by Ms.Swaraj, impeaching the orders passed by the DM, the Divisional Commissioner/Appellate Authority and



the learned Single Judge, is that under the facts and circumstances, the learned Single Judge has erred in law in not appreciating that order of eviction against the appellants could not be passed. In this regard, it has been stated that under Section 17 (1) of the DV Act, a married woman has a right to reside in a “shared household” irrespective of the fact as to whether she has any right, title or beneficial interest in the property. It has further been argued that it is recognizing this right available to the appellant no.1 under Section 17 of the DV Act that the learned Mahila Court had passed an order on 13.11.2018 on an application preferred by the appellant no.1, under Section 12 of the DV Act and till subsistence of the said interim order, any order of eviction under the provisions of Senior Citizens Act or the Rules framed thereunder could not have been passed. Relying on the judgment of Hon’ble Supreme Court in *S.Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Others, 2021 (15) SCC 730*, learned counsel representing the appellants has argued that Hon’ble Supreme Court in the said judgment has emphasized on harmonizing the interest of an aggrieved woman under DV Act and that of a senior citizen under the Senior Citizens Act. It is also the submission of learned counsel for the appellants that in view of the protection available under Section 17 of the DV Act, the appellant no.1 is to be protected in the “shared household” and thus the order directing her eviction is clearly negating her right available to her under law. Our attention has also been drawn to the report of the SDM, dated 17.12.2019, wherein it has been mentioned that the subject property is owned by a company and that there is no concrete evidence which establishes any ill-treatment.



14. It has thus been argued that in absence of any evidence establishing ill-treatment, the order of eviction passed in the instant case against the appellant no.1 is absolutely illegal, however since neither the Divisional Commissioner/Appellate Authority nor the learned Single Judge have appreciated these aspects, the orders passed by the DM, the Divisional Commissioner/Appellate Authority and the learned Single Judge are liable to be set aside.

- :SUBMISSIONS ON BEHALF OF RESPONDENT No.2: -

15. Countering the arguments made on behalf of the appellants, Mr. Vivek Chib, learned Senior Advocate representing the respondent no.2, has argued that the appellant no.1 has connived with her husband (son of respondent no.2) in an attempt to take shelter of the proceedings under the DV Act. He has stated that though the respondent no.3 (husband of the appellant no.1) had challenged the order passed by the DM by filing appeal before the Divisional Commissioner/Appellate Authority and had also filed the writ petition before the learned Single Judge, but has not filed any *intra-court* appeal against the order passed by the learned Single Judge. Drawing our attention to a judgment of this Court ***Vinay Verma v. Kanika Pasricha, 2019 SCC Online Delhi 11530***, it has been stated by Mr.Chib that striking a balance between the rights under the DV Act and the Senior Citizens Act, certain guidelines have been issued therein and the said guidelines have further been followed in various other cases, such as in the case of ***Ambika Jain v. Ram Prakash Sharma & Anr., 2019 SCC Online Delhi 11886***. He has also argued that in view of the law laid down by Hon'ble Supreme Court



in *S. Vanitha* (*supra*), the learned Single Judge has harmonized the rights under the DV Act and the Senior Citizens Act while passing the order under challenge herein, which does not call for any interference in this appeal.

16. In respect of the submission made on behalf of learned counsel for the appellants that principles of natural justice as embodied in Rule 22 (3)(1)(iv)(v) of 2009 Rules have been violated, the submission on behalf of the respondent no.2 is that though from the record it does not appear that the DM issued the SCN containing grounds on which the eviction order was proposed to be passed, however appellant no.1 or respondent no.3 cannot be said to have been prejudiced in any manner and that they were given and have availed ample opportunity of putting forth their contentions to resist the eviction. It has also been argued on behalf of the respondent no.2 that the contention in respect of violation of principles of natural justice on account of non-issuance of SCN containing the ground for passing the proposed order of eviction was not taken either by the appellant no.1 or by respondent no.3 at the first available opportunity i.e. at the time of filing the appeal against the order of DM before the Divisional Commissioner/Appellate Authority and therefore the said ground is now not available to the appellant no.1. It has also been submitted by Mr.Chib that the appellant no.1 and the respondent no.3, both participated on several occasions in the proceedings before the DM, i.e. on 25.07.2019, 02.08.2019, 07.08.2019 and 21.08.2019, and further that in the proceedings before the DM they filed multiple written submissions, and accordingly it cannot be said that they were in any manner prejudiced on account of non-issuance of the SCN containing the grounds of proposed order of eviction. On behalf of the respondents, it has thus been



argued that the record of the proceedings before the DM reveals that the appellant no.1 and the respondent no.3, both had actively participated in a full-fledged manner and never raised any objection before the DM in respect of non-issuance of SCN containing the grounds of the proposed order of eviction. Placing reliance on the judgment of Hon'ble Bombay High Court in the case of *Veena Estate Private Limited v. Commissioner of Income Tax, 2024 SCC Online Bombay 77*, it has been argued on behalf of the respondent no.2 that there is no pleading available either before the learned Single Judge in the proceedings of the writ petition or before this Court in the proceedings of the instant *intra-court* appeal to the effect that on account of the non-issuance of SCN by the DM, what prejudice has been caused to the appellants and the respondent no.3. His submission is that in absence of any assertion about prejudice having been caused, the plea taken by the appellants of non-issuance of the notice is not tenable. Reliance in this regard has been placed on a judgment of the High Court of Madras in the case of *KP. Munusamy Naicker v. State Officer, MANU/TN/0949/2002*. It has thus been argued that it is not that the appellant no.1/respondent no.3 were denied the opportunity for placing their case before the DM. In fact, in his submission, learned counsel for the respondent no.2 has stated that ample opportunities were given in the proceedings before the Sub-Divisional Magistrate (hereinafter referred to as 'SDM') as well as before the DM too and that the appellant no.1/respondent no.3 had duly participated in the proceedings before the DM by filing detailed written submissions and final written submissions.



17. It has also been argued that after the eviction order dated 18.09.2020 was passed by the DM, the appellant nos. 2 and 3, who are the adult children of the appellant no.1 and the respondent no.3, had instituted proceedings of W.P. (C) No. 7023/2022, wherein this Court passed an order on 28.09.2022 by granting order of status quo ante and providing liberty to them to approach the Divisional Commissioner by filing an appeal permitting them to raise all contentions before him, however the appellant no.2 and 3 never approached the Divisional Commissioner by filing any appellate proceedings. It has been stated that once the order of eviction passed by the DM was affirmed by the Divisional Commissioner/Appellate Authority that the appellant nos. 2 and 3 had approached this Court by filing the W.P. (C) No. 4643/2021. Relying on the judgment of Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Sudhir Kumar Singh, 2021 (19) SCC 706*, it has been argued that infraction of procedural or substantive provision of issuance of SCN will not necessarily lead to invalidity of the orders passed in absence of any prejudice being caused.

18. Lastly, it has been argued that the issue between the parties is concluded by cogent concurrent findings of abuse/ill-treatment of the elderly and therefore, the appellants or the respondent no. 3 cannot seek refuge in hyper-technical reading of Rule 22 (3)(1)(iv)(v) of 2009 Rules. Argument further is that the purpose of Senior Citizens Act cannot be defeated on the ground of hyper-technical arguments in the light of the fact that ample opportunity was given to the appellants as also to respondent no.3 before the DM to state their case, and therefore, having regard to the overall facts and circumstances of the case especially the concurrent findings recorded by the



DM, Divisional Commissioner/Appellate Authority and by learned Single Judge regarding ill-treatment meted to the respondent no.2 and her husband, late Vijay Mehta, and also taking into account the purpose of the Senior Citizens Act and the protections made available to senior citizens therein, no interference is called for in this *intra-court* appeal.

19. Regarding the submission made by learned counsel representing the appellants that the proceedings under Rule 22 (3)(1) of 2009 Rules permit eviction only from ancestral or self-acquired property and not from the property owned by a company, learned counsel representing the respondent no.2 has drawn our attention to Rule 22 (3)(1)(i) of 2009 Rules and has submitted that the said rule clearly provides that senior citizen/parents are entitled to make application before the DM for eviction not only from the ancestral or self-acquired property but from such property where the senior citizen or parents have some interest. His submission is that the remedy of eviction is available to the senior citizen/parents who has even a modicum of right or interest in the subject property. In this regard, Mr.Chib has submitted that the subject property is owned by M/s. Aster Estate Private Limited, in which the respondent no.2 is a 66% share-holder and that she has been residing in the subject property for several years and accordingly she has a substantial right and interest therein and therefore, the petition for eviction could be maintained under 2009 Rules. Mr. Chib, defending the order passed by the learned Single Judge, has argued that in view of the law laid down by the Hon'ble Supreme Court in the case of *S. Vanitha (supra)*, learned Single Judge has balanced the rights emanating from the DV Act and



the Senior Citizens Act and accordingly the judgment under challenge herein does not warrant any interference in this appeal.

- :DISCUSSION & ANALYSIS: -

20. Before advertng to the respective submissions made by the learned counsel representing the parties, we may note the scheme of the two Parliamentary enactments, namely: (1) the DV Act; and (2) the Senior Citizens Act to the extent it is relevant for appropriate resolution of the dispute in this appeal. It is to be noticed at this juncture itself that the DV Act was enacted by the Parliament at a prior point of time, i.e. in the year 2005, whereas the Senior Citizens Act has been enacted at a later point of time i.e. in the year 2007.

21. The statement of objects and reasons of the DV Act reveals that the said Act has been enacted acknowledging that domestic violence is undoubtedly a human rights issue and a serious deterrent to development. The Parliament while enacting the DV Act also noticed that phenomenon of domestic violence is widely prevalent and therefore the DV Act has been enacted keeping in view the fundamental rights guaranteed under Article 14, 15 & 21 of the Constitution of India for providing a remedy under civil law to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The Act thus seeks to achieve certain objects, including the object of protecting the rights of women to secure housing. The Act also aims to provide for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or right in such home or household.



22. The expression “shared household” has been defined in Section 2(s) of the DV Act. According to which, a “shared household” means a household where a person lives or at any stage has lived in a domestic relationship either singly or with others. The said expression includes a household whether owned or tenanted, either jointly or owned or tenanted singly.

23. Chapter IV of the DV Act provides for procedure for obtaining reliefs. Section 12 provides that an aggrieved person may file application before the Magistrate seeking certain relief under the said Act, including the relief for payment of compensation/damages, for injury caused by domestic violence. Various kinds of protection orders have been provided for in Chapter IV of the DV Act, including the protection order, residence order, monetary reliefs, vested with orders, and compensation orders. The Magistrate has also been given the power to grant interim relief or *ex-parte* orders.

24. So far as the instant case is concerned, the issue raised herein is in respect of the right to seek a residence order available under Section 19, read with Section 17 of the DV Act. Section 17 provides that every woman in a domestic relationship shall have the right to reside in the “shared household”, whether or not she has any right, title or beneficial interest in the same. It is to be noticed that Section 17 contains a non-obstante clause which would mean that the provisions of Section 17 shall prevail even if anything to the contrary is contained in any other law in force. Section 17 of the DV Act is extracted herein below:

“17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the



shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

25. One of the residence orders as prescribed in Section 19 which can be passed is an order restraining the respondent in the proceedings from dispossessing or in any other manner disturbing the possession of the aggrieved person from the “shared household”, whether or not the respondent has a legal or equitable interest in the “shared household”. Section 19 (1) (a) of the DV Act is also extracted herein below:

“19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;”

26. So far as the Senior Citizens Act is concerned, as already observed above, this Act has been enacted at a later point of time and aims at providing for more effective provisions for maintenance and welfare of parents and senior citizens and the matters connected therewith. Chapter II of the Senior Citizens Act provides for the maintenance of parents and senior citizens. Section 4, *inter alia*, makes it obligatory for the children or relative to maintain the senior citizen, which extends to the needs of such citizens so that senior citizens may lead a normal life. Section 4 of the Senior Citizens Act is extracted herein below:



“4. Maintenance of parents and senior citizens.—(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—

- (i) parent or grand-parent, against one or more of his children not being a minor;*
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.*

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.”

27. Section 5 provides for a mechanism for seeking relief of maintenance, according to which an application for maintenance is to be made under Section 4 before the Tribunal, which in terms of Section 2(j) is to be constituted under Section 7 and is known as “Maintenance Tribunal”. Whereas, Chapter II of the Senior Citizens Act is in respect of maintenance of parents and senior citizens, Chapter V provides for the protection of life and property of senior citizens. Section 21 of the Act provides for the State Government to take certain measures for providing protection of life and property of senior citizens. Section 22 of the Act enables the State Government to confer such powers and impose such duties on a DM, as may



be necessary to ensure that the provisions of the Act are properly carried out. It also permits the DM to specify a subordinate officer, who shall exercise all or any of the powers and perform all or any of the duties conferred or imposed on him, and such powers and duties shall be carried out by the officers as may be prescribed. Sub-section 2 of Section 22 mandates that the State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. Section 22 of the Senior Citizens Act is extracted herein below:

“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.”

28. Thus, the scheme of Senior Citizens Act contains provisions for: (a) maintenance of parents and senior citizens (Chapter-II), and (b) protection of life and property of senior citizens (Chapter-V). It is also to be noticed that Section 3 of the Senior Citizens Act contains a clause, according to which the provisions of this Act are to have effect notwithstanding anything inconsistent with such provisions contained in any other enactment or in any instrument having effect by virtue of any enactment other than the Senior Citizens Act. Thus, the provisions of the Senior Citizens Act by virtue of operation of Section 3 have the overriding effect. We may also note at this



juncture that Section 17 of the DV Act also contains a non-obstante clause. The issue of presence of non-obstante clause in Section 17 of DV Act and overriding effect clause in Section 3 of the Senior Citizens Act drew attention of the Hon'ble Supreme Court in *S. Vanitha(supra)*, and though the Hon'ble Supreme Court recognized the well-established principle that in the event of two special Acts containing non-obstante clauses, the later law shall typically prevail, however having regard to the fact that both these legislations are intended to deal with salutary aspects of public welfare and interest, the Hon'ble Supreme Court held that in deference to the dominant purpose of both the legislations, it would be appropriate for the Tribunal under the Senior Citizens Act to grant such remedies of maintenance which do not result in obviating competing remedies under other special enactments, such as the DV Act. Paragraphs 37 and 38 of the judgment in *S. Vanitha(supra)* are quoted herein below:

“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.”

29. It is to be noticed that for the purposes of giving effect to the provisions of the Senior Citizens Act, the 2009 Rules have been framed, which *inter-alia* provides for the procedure for eviction from the property/residential building of a senior citizen/parents. We have already noticed that Section 22 of the Senior Citizens Act empowers the State Government to confer such powers and impose such duties on the DM as may be necessary to ensure that the provisions of the Act are properly carried out. Accordingly, the provisions contained in Rule 22 (3)(1) of the 2009 Rules, which provides for the procedure for eviction from the property/residential building of senior citizens/parents, are referable to Section 22 of the Senior Citizens Act. Rule 22 (3)(1) of 2009 Rules is extracted herein below:-

“(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents,-

[(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.]

(ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.



(iii) The Sub-Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.

[(iv) The Deputy Commissioner/District Magistrate during summary proceedings for the protection of senior citizen parents, shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/District Magistrate shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.]

(v)The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.”

30. A perusal of the afore-quoted Rule 22 (3)(1) reveals that the said provision provides for making of an application by a senior citizen/parent before the DM for eviction of his son or daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self-acquired, tangible or intangible and include right or interest in such property, on account of his non-maintenance or ill-treatment. Thus, the application by senior citizen/parents can be moved under the said provision before the DM for eviction in case of non-maintenance and ill-treatment. What is significant to note here is that Rule 22 (3)(1)(i) of the 2009 Rules provides relief to a



senior citizen/parents to mitigate his/her sufferings on account of non-maintenance and ill-treatment. In other words, if before the DM, a senior citizen/parents is able to establish that he/she is not being maintained or is being ill-treated, he/she may seek eviction of his son or daughter or legal heir from his property. Clause (ii) of Rule 22 (3)(1) of 2009 Rules requires the DM to forward the application received by him under Clause (i) to the concerned SDM for verification of the title of the property and the facts of the case, whereupon SDM is obligated to submit his report to the DM for final orders.

31. Rule 22 (3)(1)(iv) of 2009 Rules requires the DM to consider all the relevant facts of the Act and if he is of the opinion that any person is not maintaining the senior citizen or his parents and ill-treating him and yet is occupying the property of any kind that they should be evicted, then he shall issue a notice calling upon the persons concerned to show cause as to why an order of eviction should not be passed. Clause (v) provides that notice to be issued in Clause (iv) shall set out the grounds on which order of eviction is proposed to be passed and that it shall require all persons concerned i.e. all persons who are or may be in occupation of or who claim interest in the property, to show cause.

32. We now proceed to examine the respective arguments made by learned counsel for the parties in relation to non-compliance of provisions of Rule 22(3)(1)(iv)(v) of 2009 Rules. It has vehemently been argued on behalf of the appellants that admittedly, the SCN as contemplated under Clauses (iv) (v) of Rule 22(3)(1) of 2009 Rules was not issued by the DM as no such notice specifying the grounds on which order of eviction was issued by the



DM before passing the final order of eviction. It has also been argued that the SCN requiring all persons concerned to show cause against the proposed order, was not issued which vitiates the entire proceedings drawn by the DM and accordingly, the Order 18.09.2020, passed by the DM is also vitiated and is liable to be set aside.

33. The original record of the proceedings drawn and conducted before the DM was produced by the learned Standing Counsel representing the State Government which has been perused by us. The record so produced, on perusal, does not reveal that any notice as contemplated, in Rule 22(3)(1)(iv)(v) of 2009 Rules was issued to the appellants.

34. The factual position that no such notice was issued by the DM has not been denied by learned counsel representing respondent no.2; rather it has been admitted that no such SCN was issued. However, it has been argued on behalf of the respondents that non-issuance of the said notice will not vitiate either the proceedings conducted before the DM or the order passed on conclusion thereof, unless the appellants are able to show and establish that any prejudice was caused to the appellants. It has further been argued on behalf of the respondents that as a matter of fact, at the most it can be said to be a case of an inadequate opportunity of hearing as against a complete denial of such opportunity for the reason that appellant no.1 and respondent no.3 had put in their appearance and participated in all proceedings before the SDM and DM as well.

35. Additionally, it has also been argued by learned counsel representing the respondents that if any provision of law embodies principles of natural justice, their infraction does not lead to invalidity of the orders passed



necessarily unless, some prejudice is shown to have been caused to the party concerned and in absence of any prejudice having been caused to the appellants and merely, because the non-issuance of the notice as contemplated under Rule 22(3)(1)(iv)(v) of 2009 Rules, it cannot be said that opportunity of hearing to the appellants was not provided and therefore, it is not a case where plea of non-observance of principles of natural justice is available to the appellants.

36. As already observed above, perusal of the original records of the proceedings drawn before the DM does not reveal that any notice in terms of the requirement of Rule 22(3)(1)(iv)(v) of 2009 Rules was issued to the appellants. This fact is rather admitted by the learned counsel representing respondent no.2.

37. We may also note that before the Appellate Authority/Divisional Commissioner, in the appeal filed by appellant no.1 a ground was clearly taken that the order passed by the DM was illegal as no SCN in terms of Rule 22(3)(1)(iv)(v) of 2009 Rules was issued. The said statement of fact can be found in paragraph 2(e) of the memorandum of appeal filed before the Divisional Commissioner. Paragraph no.2(e) of the memorandum of appeal filed before the Divisional Commissioner is extracted herein below:-

“e. The Impugned Order is otherwise illegal as no show cause notice was issued in terms of Rule 22(3)(1)(iv)-(v) of the DMWPSCR.”

38. Similarly, ground F.1. taken in the appeal filed before the Appellate Authority/Divisional Commissioner clearly mentions that the order impugned before the Appellate Authority was illegal as no SCN was issued in terms of Rule 22(3)(1)(iv)(v) of 2009 Rules. Ground F.1 mentioned in the



grounds of appeal filed before the Appellate Authority/Divisional Commissioner is extracted herein below:-

“F.1. BECAUSE the Impugned Order is otherwise illegal as it is clear from the record that no Show-Cause Notice was issued to the Appellant in terms of Rule 22(3)(1)(iv)-(v) of the DMWPSCR. Therefore, the Impugned Order itself is non-est as it was passed without following the process laid down in the DMWPSCR.”

39. We may also notice that in in W.P.(C) 4643/2021, where challenge to the order dated 31.03.2021 passed by the Appellate Authority/Divisional Commissioner was made, a specific ground was taken by the petitioners of the said writ petition that the Appellate Authority failed to address the issue which arose on account of non-issuance of SCN in terms of Rule 22(3)(1)(iv)(v) of 2009 Rules. Ground B of the writ petition is extracted herein below:-

“B. BECAUSE the Impugned Order fails to address specific grounds of appeal raised by the Petitioner Nos. 1 and 2, including but not limited to, grounds of the ownership of the Shared Household being with a company which is a distinct person in the eyes of the law; no show cause notice having been issued to the Petitioner Nos. 1 and 2 under Rule 22(3)(1)(iv) - (v) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, (Amendment) Rules, 2016; and the nature of the proceedings being malicious inasmuch as, inter alia, they were a counterblast to the Petitioner No. 1 rebuffing the sexual advances of the Respondent No. 2 and lodging a FIR against the Respondent No. 2.”

40. The said issue was specifically reiterated in ground Q of the writ petition as well which reads as under:-

“Q. BECAUSE the Appealed Order was also otherwise illegal and the Appellate Authority could not have upheld it in law. No show cause notice was issued in terms of Rule 22(3)(1)(iv) -(v) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, (Amendment) Rules, 2016 to the Petitioner No. 1. Without following the process laid down in the Rules, the Appealed Order itself was non-est and the only legal recourse was for



the Appellate Authority to remand the matter back so that the procedure established by law may be followed:

"22(3)(1)(iv). The Deputy Commissioner/DM during summary proceedings for the protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her

(v) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof."

As is abundantly clear from the record, no show cause notice was ever issued let alone issued to Petitioner Nos. 3 and 4 who also were evicted earlier. As such there is no clarity in the Impugned Order if the same applies to the Petitioner Nos. 3 and 4 who are majors and not parties to the proceedings under the MWPSA."

41. Accordingly, what we notice is that admittedly, SCN as contemplated in Rule 22(3)(1)(iv)(v) of 2009 Rules was not issued by the DM. It is also not in dispute that such ground of non-observance of the provisions of Rule 22(3)(1)(iv)(v) of 2009 Rules was taken both before the Appellant Authority and learned Single Judge. However, the said aspect of the matter has neither been considered nor decided by either the Appellate Authority or even by learned Single Judge.

42. Coming to the argument made on behalf of learned counsel for respondent no.2 that since the provisions of Rule 22(3)(1)(iv)(v) of 2009 Rules embody in itself rules of natural justice and therefore, unless some prejudice caused to the appellants is shown, its non-compliance will neither



vitiating the proceedings nor the order passed by the DM, we may observe that in our considered opinion communication of grounds on which order of eviction is proposed to be passed by the DM in itself constitutes a substantive right of the persons against whom such an order is proposed. The reason for the right of communication of the ground, on which order of eviction is proposed to be made, being substantive, can be found in the language in which Rule 22(3)(1)(iv)(v) of 2009 Rules is couched.

43. Rule 22(3)(1)(i) of 2009 Rules permits a senior citizen/parents to make an application before the DM for eviction. Clause (ii) of Rule 22(3)(1) of 2009 Rules mandates the DM to forward such application immediately to the concerned SDM for verification of the title of the property and facts of the case. Sub-Rule 3 mandates the SDM to submit its report to the DM for final orders.

44. Once the report is submitted as per the requirement of Rule 22(3)(1)(iii) of 2009 Rules to the DM, the DM is obligated to consider all relevant provisions of the Act and on such consideration if the DM forms an opinion that any person is not maintaining the senior citizen and ill-treating him and yet is occupying the property, he is mandated thereafter, to issue a notice in writing in the manner provided there for. The manner in which notice as mentioned in Rule 22(3)(1)(iv) of 2009 Rules is to be issued is given in Sub-Clause (v) of said Rule, according to which the notice to be issued has to spell out grounds on which order of eviction is proposed to be made. Sub-Clause (v) of the said Rule also mandates that such a notice shall require the persons concerned to show cause against the proposed order of eviction.



45. Sub-Clause (v) of Rule 22(3)(1) of 2009 Rules is in two parts and both the parts i.e. part (a) and (b) provides for the nature of the notice to be issued once the DM forms his opinion under Sub-Clause (iv). The nature of the notice as specified and provided for in Sub-Clause (v) of Rule 22(3)(1) of 2009 Rules is that such notice has mentioned the grounds of proposed order of eviction and further, such notice shall require all the persons to show cause against the proposed order of eviction. Our reading of Rule 22(3)(1)(iv)(v) of 2009 Rules is that the rule making authority has found it appropriate to provide for issuance of the SCN which is not a simple SCN rather such SCN has to clearly state the grounds of the proposed eviction order and such grounds of the proposed eviction order are to be based on the opinion of the DM that a party is not maintaining the senior citizen and yet is occupying the property. Such an opinion by the DM is to be formed on the basis of material which may be available before him on the proceedings instituted by the senior citizen/parents under Rule 22(3)(1)(i) of 2009 Rules and the report of the SDM about title of the property and facts of the case as contemplated in Sub-Clauses (ii) and (iii) of Rule 22(3)(1) of 2009 Rules.

46. It is true that Rule 22(3)(1)(iv) of 2009 Rules state that the DM has to form his opinion on consideration of relevant the provisions of the Act in summary proceedings, however, once such an opinion is formed that the senior citizen/parents is not being maintained and is being ill-treated and yet the person ill-treating the senior citizen is occupying the property and therefore order of eviction needs to be passed, he is mandated to communicate grounds on which proposed order of eviction is to be made.



47. The opportunity as contemplated in Rule 22(3)(1)(iv)(v) of 2009 Rules to be provided to the person against whom order of eviction is proposed to be passed, cannot be said, in our opinion to be an empty formality, even if party concerned had participated in the proceedings before the DM till the stage of formation of opinion contemplated in Sub-Clause (iv) of Rule 22(3)(1) of 2009 Rules.

48. Communication of ground on which order of eviction is proposed to be made though appears to be procedural in nature, however, in our opinion it is a substantive right available to the person against whom order of eviction is proposed to be passed for the reason that unless such an opportunity is given, the party against whom order of eviction is proposed to be made will never come to know the reason on the basis of which opinion as contemplated in Sub-Clause (iv) is formed by the DM which is the basis of ground on which order of eviction may be proposed to be made by him.

49. In our opinion, non-communication of the ground on which eviction order is proposed to be made in itself causes a serious prejudice to the person against whom such an order is proposed as it deprives him of the opportunity to submit his explanation to the basis of such opinion formed by the DM.

50. Even otherwise, it is trite law that if a statutory prescription provides that a particular thing is to be done in a particular manner, the same has to be done in the manner it is provided for or not at all. Accordingly, if Sub-Clause (iv) and (v) of Rule 22(3)(1) of 2009 Rules provide for issuance of SCN, that too in a particular form, setting out the grounds on which the order of eviction is proposed to be passed and requiring the person against



whom such an order is proposed to show cause against the proposed order, final order can be passed only on following the said requirement. We may also notice that in Sub-Clause (iii) which requires the SDM to submit his report, Sub-Clause (iv) which requires the DM to consider all relevant provisions of the Act and form his opinion and in Sub-Clause (v) which requires notice to be issued, occurrence of the phrase “shall” makes such requirement mandatory.

51. There is yet another reason for us to hold that in absence of the SCN as contemplated in Rule 22(3)(1)(iv)(v) of 2009 Rules, the order of eviction shall be vitiated and the reason is that eviction order has very serious consequences for the person who is occupying the property. The person against whom eviction order is passed is suddenly, sometimes deprived of a dwelling space or a space where he may have been carrying on a business or any other activity for earning his/her livelihood. If the result of passing of an order of eviction bears such serious consequences which is directly related to ones survival, in our opinion holding that requirement of issuance of SCN as contemplated in Rule 22(3)(1)(iv)(v) of 2009 Rules is not mandatory, may have a cascading effect on the person who is proposed to be evicted.

52. So far as the facts of the instant case are concerned indisputably, no notice as contemplated in Rule 22(3)(1)(iv)(v) of 2009 Rules was issued by the DM, though, on institution of the proceedings under Rule 22(3)(1)(i) of 2009 Rules, notice was issued to the appellants who submitted their reply and written submissions as well, however, what we need to notice is that as per the requirement of Sub-Clause (iv) of Rule 22(3)(1) of 2009 Rules the



DM has to form his opinion on the basis of the material available before him after submission of the report by the SDM as to whether the senior citizen/parents is not being maintained or is being ill-treated and the other person is yet occupying the property. As already discussed above, after formation of his opinion, the DM is required to issue notice which shall contain grounds on which order of eviction is proposed to be passed and therefore, participation of the person who is proposed to be evicted in the proceedings till the stage of formation of opinion by the DM cannot be said to be fulfillment of requirement of communication of grounds on which the order of eviction is proposed to be made and therefore, we are of the opinion that such participation will not be in fulfillment of the mandatory requirement of Sub-Clauses (iv) (v) of Rule 22(3)(1) of 2009 Rules.

53. Since in this case, the provisions contained in Rule 22(3)(1)(iv)(v) of 2009 Rules have not been followed which not only vest a substantive right in the person proposed to be evicted but deprivation of such opportunity causes a serious prejudice to such a person, in our opinion, any order passed by the DM in violation of the said provisions will be vitiated and therefore, not sustainable.

54. The Appellate Authority/Divisional Commissioner and even the learned Single Judge did not take into account while passing the Appellate Order and the order in the writ petition the aforesaid aspect of the matter which is crucial and prejudicially affects the right of the appellant. Once ground of non-observance of the provisions of Rule 22(3)(1)(iv)(v) of 2009 Rules was taken in the appeal and also before the learned Single Judge in the writ petition, such issue ought to have been considered by the Appellate



Authority/Divisional Commissioner as also by the learned Single Judge and by not doing so in our opinion the Appellate Authority/Divisional Commissioner as also the learned Single Judge have erred in law.

55. We have already noticed the law laid down by Hon'ble Supreme Court in ***S.Vanitha*** (*supra*) according to which, in a fact situation where certain rights are being claimed under the D.V. Act, as also under Senior Citizens Act, both sets of legislations have to be harmonized. Hon'ble Supreme Court in the said case has also held that right of a woman to secure a residence order in respect of her shared household cannot be defeated by simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act.

56. Hon'ble Supreme Court has also observed in ***S.Vanitha***(*supra*) that "it would be appropriate for a Tribunal under 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 PWDB Act 2005". The aforesaid principle enunciated by Hon'ble Supreme Court in ***S.Vanitha***(*supra*) which calls upon harmonizing the two legislations also helps the Court to come to the conclusion that non-issuance of the notice contemplated in Rule 22(3)(1)(iv)(v) of 2009 Rules will vitiate the proceedings and orders based on such proceedings.

57. The aforesaid aspect of the matter appears to have lost sight of by the learned Single Judge while deciding the writ petition filed against the order of the Divisional Commissioner dated 31.03.2021 and therefore we do not



find the order of the learned Single Judge dated 04.10.2024 to be sustainable.

58. We would now consider the other ground pleaded by the appellants that since the subject property is neither ancestral nor self-acquired hence, no order in respect thereof is permissible to be passed by the DM in exercise of his powers under Rule 22(3)(1) of 2009 Rules.

59. As per the report of the SDM dated 17.12.2019, the subject property is owned by a company, namely, M/s Aster Estates Pvt. Ltd. where respondent no.2 is a shareholder. The subject property was originally purchased and owned by late Mr.Vijay Mehta, the husband of respondent no.2 which was subsequently transferred to M/s Aster Estates Pvt. Ltd. *vide* sale deed dated 29.12.2004.

60. The fact that the subject property is owned by M/s Aster Estates Pvt. Ltd. is not denied by respondent no.2, however, it is to be noticed that the respondent no.2 has sufficient shareholding in the said company. The nature of property in respect of which an order of eviction can be obtained by a senior citizen/parents is described in Rule 22(3)(1)(i) of 2009 Rules. According to the said rule an application is maintainable on behalf of senior citizen/parents for eviction from property of any kind where moveable or immovable, ancestral or self-acquired, tangible or intangible; and the same includes rights or interest in such property. The pre-condition of eviction from the property is the finding that the senior citizen/parents is found to be ill-treated or not being maintained. The occurrence of the phrase “include rights or interest in such property” in Rule 22(3)(1)(i) of 2009 Rules and also in Rule 22(3)(1)(iii) of 2009 Rules makes it abundantly clear that a



senior citizen/parents can maintain an application seeking an order of eviction from a property which may or may not be ancestral or self-acquired but if he has a right or interest in the said property. In the facts of the case, it cannot be said that respondent no.2 does not have interest in the subject property and therefore, submission of the learned counsel for the appellant that the application seeking order of eviction was not maintainable under Rule 22(3)(1) of 2009 Rules in, our opinion, merits rejection.

61. It is also to be noticed that in the subject property undisputedly, the respondent no.2 has been residing since fairly a long time and accordingly, she has ample interest in the subject property, though it may not be ancestral or self-acquired by her. In this view, we hold that DM has ample jurisdiction to entertain and draw proceedings for eviction under Rule 22(3)(1) of 2009 Rules in the instant case.

-:CONCLUSION:-

62. In view of the discussions made and reasons given above, we find that the order of the DM, that of the appellate Authority/Divisional Commissioner and also the order passed by learned single Judge which is under challenge herein, deserve to be set aside.

63. Resultantly, the appeal is allowed and the order dated 18.09.2020, passed by the Divisional Commissioner, the order dated 31.03.2021 passed by the DM and the order dated 04.10.2024, passed by the learned single Judge are hereby set aside.

64. The proceedings of the petition/application made under Rule 22(3)(1) of Delhi Maintenance and Welfare of Parents and Senior Citizens Rules,



2009 are revived and restored to the file of the DM, who is directed to conclude the same and pass final orders within two months from today, in accordance with law and also taking into account the observations made hereinabove in this judgment.

65. There shall be no orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

MAY 27, 2025
“shailndra”/MJ