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

+ W.P.(C) 3824/2008

Date of decision: 23rd October, 2009

MOHD. MUSHIR ALAM Petitioner
Through Mr. Arun K. Yadav, Advocate.

versus

SHIV CHARAN BHARTI & ANR. Respondents
Through Mr. Santosh Manglam, Advocate for
respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

ORDER

1. The present writ petition under Articles 226 and 227 of the Constitution of India is directed against order dated 7th February, 2008 passed by the competent authority under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956.

2. The petitioner herein, Mohd. Mushir Alam, claims that he is a tenant of the respondent No. 1, Mr. Shiv Charan Bharti, in respect of one shop forming part of property No.BB-271, Gali No. 3, Ashoka Basti, Nabi Karim, Paharganj, New Delhi on a monthly rent of R.300/-. The respondent No.

1, on the other hand, claims that the property was rented out to one Mr. Abdul Hannan, the respondent No. 2, on a monthly rent of Rs.2,500/- and he has vacated the property and sublet the same to the petitioner.

3. The petitioner herein has not challenged and questioned the permission granted to the respondent No. 1 under Section 19(4) of the Act. The petitioner herein has questioned findings recorded in the impugned order by the competent authority to the effect that the respondent No. 2 is a tenant of the respondent No. 1 and it is submitted that the findings recorded are beyond the jurisdiction and the scope of the Act and are also contradictory.

4. It is well settled that competent authority while deciding a petition under the Act is required to examine the capacity of the tenant to acquire an alternative accommodation. The object and purpose behind the Act is to prevent creation of further slums by eviction of a tenant. The competent authority while deciding the said question goes into the financial status of the tenant to determine whether the tenant will be able to acquire an alternative accommodation. The merits of the dispute on other aspects is not required to be gone into by the competent authority.

A Division Bench of this Court in ***Mohammed Sayeed (deceased) Through His Legal Representatives versus Chiranjilal Gupta and Others***, 24 (1983) DLT 93 has observed as under:-

"8. In our view, the review application is misconceived. The applicant is not correct in

saying that we have not dealt with the contention of the learned counsel. In the appeals before us the question involved was how the Competent Authority is to exercise his powers in granting or not granting permission in the context of the provisions of Sub-section (4) of Section 19 of the Act. It was not within the ambit of the controversy in the appeals as to whether the protection of Section 19 of the Act is or is not available to a particular party keeping in view the provisions of Section 2(1) of the Delhi Rent Control Act. It is for that reason that towards the end of our judgment we observed that all the other enquiries, including whether a person is a tenant or is not a tenant, or a landlord needs or does not need the premises, are outside the scope of the enquiry contemplated by Section 19 of the Act. Those are matters which have to be considered by civil courts or by Rent Controllers. In the appeals before us, we could not possibly have decided whether the heirs of Mod. Sayeed are or are not tenants within the meaning of Section 2(1) of the Delhi Rent Control Act. That is why we did not decide it and made only the observation referred to above. Section 25 of the Delhi Rent Control Act permits a decree or an eviction order to be executed against anybody. It was entirely for the applicants to decide whether or not to pursue their applications under Section 19 of the Act moved against Mohd. Sayeed vis-à-vis the properties in question."

(emphasis supplied)

5. A similar view has also been taken by a single Judge of this Court in ***Devi Pershad versus Ghanshyam Das***, 31 (1987) DLT 62 holding that for deciding an application under Section 19 of the Act the only aspect which is required to be seen is whether a tenant if evicted is likely to create a slum and for this purpose, his capacity to acquire alternative

accommodation has to be seen. If there is any other challenge to the eviction petition on merits regarding existence of tenancy or relationship of landlord and tenant, the same is to be made subject matter of the eviction petition or civil suit and not in an application under Section 19 of the Act.

6. In the impugned order, the competent authority noticed the judgment of the Division Bench in the case of ***Mohammed Sayeed*** (supra) and has held that all enquiries including whether a person is a tenant or not a tenant are outside the scope of the enquiry contemplated under Section 19 of the Act. However, thereafter the competent authority has made some other observations on the scope and benefit of protection under Section 19(4) of the Act and the said protection is conferred on tenants alone and not upon an occupier or a sub tenant. The competent authority has also referred to the decision in the case of ***Shadi Lal (Deceased) Through LRs versus Competent Authority & Others***, 87 (2000) DLT 587 wherein it has been held that in case of default in payment of rent, permission under Section 19 of the Act should be granted to the landlord without enquiring into the financial status of the tenant.

7. The aforesaid findings recorded in the impugned order are only tentative and prima facie. These will not be binding on the authorities under the Delhi Rent Control Act, 1956, who will examine contentions of the parties on the question of tenancy rights, sub tenancy, etc., as claimed

by the petitioner and the respondent No. 1 independently and without being influenced by the observations made in the impugned order.

8. The effect of the impugned order passed by the competent authority is that permission has been granted to respondent No. 1 to file an eviction proceeding under the Delhi Rent Control Act, 1956 against the respondent No. 2 and not against the petitioner. In case respondent No. 1 succeeds and it is established that the respondent No. 2 is a tenant in the proceedings under the Delhi Rent Control Act, 1956, an eviction order may be passed upon satisfaction of conditions mentioned in Section 14 of the Delhi Rent Control Act, 1956 against the respondent No. 2. An eviction order may also be passed against the petitioner herein if it is established and proved that he is a sub tenant of respondent No. 2. This is because permission under Section 19(4) of the Act is only required to be obtained against a tenant and not against a sub tenant (refer ***Shri Kishan and another versus Mahabir Singh and others***, AIR 1972 DELHI 196 and ***Kailash Chand versus Ganpat Rai***, 1989 RLR 274). In case it is held by the Rent Controller that the petitioner is a tenant of respondent No. 1, the eviction petition will be dismissed on the ground of failure of the respondent No. 1 to obtain necessary permission as the respondent No. 1 does not have any permission under Section 19 of the Act to file eviction proceedings against the petitioner. In the said situation, merits of the eviction petition under Section 14 of the Delhi Rent Control Act, 1956 need

not be examined and gone into. The writ petition is accordingly disposed of with the aforesaid clarification.

9. Observations and findings recorded in the impugned order will be read in accordance with the directions given above. Observations made on merits, will not influence and are not binding in the eviction proceedings under the Delhi Rent Control Act, 1956. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

**OCTOBER 23, 2009
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