

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.11.2014

+ **W.P.(C) 6874/2012 & CM No. 17894/2012**

**SHRI MAM CHAND SINCE DECEASED
NOW REPRESENTED BY HIS LEGAL
HEIRS MRS JAI RANI GUPTA**

..... Petitioner

versus

SAT NARAIN GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Kumar.

For the Respondent : Mr Satish Kumar.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 03.04.2012 of the Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956 (hereafter referred to as the 'impugned order'). By the impugned order, the Competent Authority has allowed the application of the respondent under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereafter the 'Act') to initiate the proceedings for eviction of the petitioner from a shop occupied by the petitioner in Khari Baoli, Delhi.

2. According to the petitioner, the impugned order is erroneous and is barred by the principles of *res judicata*. It is further contended that the petition filed by the respondent under Section 19 of the Act was not

maintainable as the respondent was not the landlord of the premises in question. The controversy that has to be addressed in the present petition is whether the application under Section 19 of the Act was barred by principles of *res judicata* and whether the same was maintainable at the instance of the respondent.

3. Briefly stated the relevant facts for considering the controversy are as under:-

3.1 The petitioner is, admittedly, a tenant in a shop on the Ground Floor in the property bearing No.6630, Khari Baoli, Delhi (hereafter the 'said property') at a monthly rent of ₹110/-. It was further stated that the petitioner is liable to pay chabutra charges @ ₹384 per annum beside the monthly rent of ₹110/- for the said property.

3.2 The respondent had earlier filed an application under Section 19 of the Act (bearing no. CA(S)/9156/1997) before the Competent Authority which was contested by the petitioner. However, the respondent failed to pursue the said petition and the same was dismissed in default on 01.11.2006.

3.3 Subsequently, the respondent filed another petition under Section 19 of the Act (being CA(S)/38/2009) on 25.05.2009 seeking permission to institute eviction proceedings on several grounds including non-payment of rent, sub-letting, misuse and damage to the said property. The said petition was allowed by the Competent Authority by the impugned order dated 03.04.2012.

3.4 Aggrieved by the same, the petitioner has preferred this petition.

4. The learned counsel for the petitioner has contended:

4.1 that the Competent Authority erred in not appreciating that the petition was not maintainable on the principles of *res judicata* as a similar petition filed by the respondent had been dismissed in default on 01.11.2006;

4.2 that the Competent Authority erred in proceeding on the basis that the petitioner had failed to discharge his onus to prove his financial state. It is contended that the burden of proof lay squarely on the petitioner before the Competent Authority to prove the necessary facts for sustaining his petition;

4.3 that the respondent had transferred his interest. The Competent Authority did not consider that the respondent had transferred his interest to his son and, therefore, had seized to be the owner of the said property. Therefore, the respondent could not maintain the petition before the Competent Authority.

5. I have heard the learned counsel for the parties.

6. Before proceeding further, it would be relevant to refer to Section 19 of the Act, which reads as under:-

“19. Proceedings for eviction of tenants not to be taken without permission of the competent authority.—(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority.—

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under sub-section (3) the competent authority shall take into account the following factors, namely:--

(a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum areas;

(c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.”

7. It is apparent from a plain reading of Section 19(4) of the Act that the Competent Authority is not required to examine the merits of the dispute or the validity of the grounds on which eviction is sought by the landlord. The

specific factors that are required to be considered are whether the tenant would have means for arranging an alternative accommodation and whether the eviction would be in the interest of improvement and clearance of slum areas. The residuary clause (i.e. clause (c) of Section 19(4) of the Act) must also be read in conjunction with clause (a) and clause (b) of Section 19(4) of the Act. In other words, the decision of the Competent Authority whether to grant permission or not would be guided not by the *inter se* disputes between the landlord and tenant but by factors that are relevant for improvement and clearance of slum areas. It is obvious that if a tenant has the means to arrange alternative accommodation, his eviction would not lead to further increase or congestion in any slum area.

8. A bare perusal of the impugned order indicates that the Competent Authority has focused its attention to determine whether the petitioner had sufficient means to acquire alternative accommodation. The Competent Authority had noted that the petitioner owned a house in Krishna Nagar, Delhi and further found that the petitioner had failed to adduce any evidence or material to effectively refute the allegations made by the respondent, that the petitioner was a person of substantial means.

9. At this stage, it is relevant to note the averments made by the respondent in his petition before the Competent Authority and the same are reproduced below for ready reference :-

“That the respondent is a business dealing in the wholesale and retail sale of Pooja items including Dhoop Batti and Agar Batti etc. and further the respondent is also running a factory of Dhoop Batti and Aggar Batti etc. at D- 6/21, Mandir Marg Krishan Nagar, Delhi which is a multi storied property

owned by the respondent. The respondent has about 25 employee working under him day and night. The respondent in due course of business has been maintaining regular books of accounts with turnover in lakh of Rupees and the respondent and his 'family members are Income Tax Assessee. The respondent has supplied all over India and further respondent has also started the retail business of allied items of Pooja. The respondent further has various Bank accounts in his personal name, his family members and their associated firm where huge amount are lying to their credit.

That the family members of the respondent are also working hands and financially contributing the respondent and the total income of the respondent from all sources is more than Rs.2,00,000/- (Rupees Two (sic) Lac Only) per month. The respondent owes several movable and immovable properties at Delhi and also outside of Delhi worth of Crores of Rupees including property No. D-6/21, Mandir Marg, Krishna Nagar, Delhi. Further the respondent his family members are leading a luxuries life with all modern amentias of life including Land line telephone, mobile phonons, television, Air Conditioners, Refrigerators, modern Furniture Gas connections, Car, Scooter etc. and the respondent deserves no protection under the Act and shall not create any other or further slum in case of his eviction from the suit premises as the premises in dispute has been sublet by the respondent.”

10. Although, it was admitted that the petitioner owned the house in Krishna Nagar, the petitioner had simply denied other averments without mentioning any particulars or adducing any specific evidence/material. The petitioner had contended that his income was wrongly stated, however, the petitioner did not provide any particulars of his income or his financial status.

11. The Competent Authority considered the averments and came to the conclusion that since the facts relating to the income and earning of the

petitioner were within his special knowledge he ought to have brought some material on record to refute the claim made by the respondent. I find no infirmity with this approach and I am unable to accept the contention that onus to prove the petitioner's income and earning was on the respondent. The respondent had made specific allegations and the petitioner's bald denials were inadequate to traverse the allegations. It was incumbent upon the petitioner to provide material as to his income and earnings as well as his financial assets. It is noted that the petitioner had specifically averred that the petitioner was residing with family members and all modern amenities were available to the petitioner including air conditioner, refrigerator, car, scooter etc. The respondent had specifically averred that the petitioner's income was more than - ₹2 lacs. Although, it was denied by the petitioner, he failed to disclose any specific particulars regarding his income. In my view, the Competent Authority rightly inferred that the petitioner would have the means to arrange alternate accommodation.

12. I am also unable to accept the contention that the respondent's petition before the Competent Authority was barred by principles of *res judicata*. The earlier petition had been dismissed in default and the Competent Authority had not arrived at any conclusive finding. Section 11 of the Code of Civil Procedure clearly indicates that an action would be barred by principles of *res judicata* if the issue which has been raised had been earlier "heard and finally decided" by the Court. Since admittedly, the dispute raised in the earlier proceedings was not conclusively decided, the principles of *res judicata* would not be applicable. Accordingly, the

respondent was entitled to maintain the petition before the Competent Authority.

13. The decisions of this Court in **Chameli Dev. v. G. C. Jain & Anr.:** 49 (1993) DLT 506 and **Nem Chand v. Laxmi Chand:** (1977) 13 DLT 33 would have no application since in those cases specific finding had been arrived at by the Competent Authority and the applications filed under Section 19 of the Act had been rejected. In those circumstances, this Court held that subsequent proceedings under Section 19 of the Act would not be maintainable unless the petitioner could satisfy that there was a change in circumstances after the rejection of the earlier proceedings. It is trite law that if an issue between parties has been decided by a Competent Court, the said parties would not be permitted to re-agitate the same. However, in the present case, there was no finding by the Competent Authority with regard to the factors as indicated in Section 19(4) of the Act in the earlier proceedings instituted by the respondent and therefore, the respondent would not be precluded from filing a second petition under Section 19 of the Act.

14. Insofar as, the petitioner's contention that the respondent is not the landlord of the said premises is concerned, it is not disputed that the petitioner was paying rent to the respondent. In the given circumstances, the Competent Authority was of a *prima facie* view – and in my view rightly so - that a relationship of landlord and tenant existed between the respondent and the petitioner. As pointed out earlier, the Competent Authority was not required to adjudicate the disputes between the parties while considering whether permission to institute proceedings for eviction

should be granted, as those would be agitated by the parties before the concerned forum where an action of eviction is instituted. The Competent Authority was only required to form a *prima facie* view as was done by the Competent Authority.

15. In view of the aforesaid, the petition and pending application are dismissed as being without any merit. No order as to costs.

NOVEMBER 17, 2014
MK/RK

VIBHU BAKHRU, J

