

\$~13, 43, 45, 46, 47, 49, 50, 53 & 59

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

+ **W.P.(C) 6539/2018 & CM No. 24965/2018**

LAXMAN DASS

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD & ORS

..... Respondents

Through

WITH

+ **W.P.(C) 7241/2018 & CM No. 27611/2018**

LATE REVTI DEVI (DECEASED) THROUGH
SH VED PRAKASH

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD & ORS

..... Respondents

Through

WITH

+ **W.P.(C) 7245/2018 & CM No. 27638/2018**

MUKESH

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD & ORS

..... Respondents

Through

WITH

+ **W.P.(C) 7250/2018 & CM No. 27683/2018**

PURSHOTTAM THROUGH LR'S

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD AND ORS.

..... Respondents

Through

WITH

3
+ W.P.(C) 7252/2018 & CM No. 27664/2018

MOHIT

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD & ORS

..... Respondents

Through

+ W.P.(C) 7255/2018 & CM No. 27672/2018

NIKHIL

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD
AND ORS.

..... Respondents

Through

WITH

+ W.P.(C) 7258/2018 & CM No. 27676/2018

SAVITRI DEVI

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD
AND ORS.

..... Respondents

Through

WITH

+ W.P.(C) 7264/2018 & CM No. 27690/2018

PREMWATI DEVI THROUGH LR'S

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD
AND ORS.

..... Respondents

Through

AND

+ W.P.(C) 7161/2018 & CM No. 27305/2018

RUKMANI DEVI

..... Petitioner

Through

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD

4
AND ORS.

..... Respondents

Through: Mr Kamlesh Kumar Mishra (DHCLAS) with Mr Sanjay Baniwal, Advocates for petitioner in item nos.13, 43, 45, 46, 47, 49, 50, 53 & 59.

Mr Ripu Daman Bhardwaj, Advocate for R-2/UOI in item no.13.

Mr Amish Dabas, Advocate for R-3 in item no.13.

Mr Tushar Sannu with Ms Peehu Singh, Advocates for NDMC/R-5 in item no.13.

Mr Abhay Prakash Sahay, CGSC for R-2 in item no.43, 45, 46, 47, 50, 53 & 59.

Ms Mini Pushkarna, Standing Counsel for DUSIB with Ms Swagata Bhuyan and Ms Shiva Pandey, Advocates in item no.13, 43, 45, 46, 47, 49, 50, 53 & 59.

Mr Mohit Agarwal and Mr Abhishek Sharma, Advocates for R-3 in item no.45.

Mr Sumit Agarwal, Advocate for R-3 in item no.46.

Ms Madhu Sudan Bhayana, Advocates for R-3 in item no.50.

Mr Balendur Shekhar and Mr Rajkumar Maurya, Advocates for respondent/State of Maharashtra in item no.51.

Mr Jamal Akhtar, Advocate for GNCTD/R-3 in item no.53.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

16.07.2018

5

1. The petitioners have filed the present petitions impugning the orders – all dated 14.05.2018 – passed by the Competent Authority, Delhi Urban Shelter Improvement Board (hereafter ‘the Competent Authority’) whereby their respective applications for cross-examination of respondent no.4 was rejected.

2. The petitioners had filed their respective applications – which were similarly worded – in the proceedings instituted by respondent no.4 against each of the petitioners before the Competent Authority. The said proceedings were instituted under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereafter ‘the Slum Act’) seeking permission of the Competent Authority for instituting proceedings for eviction of the petitioners from premises known as Mahal Sarai, Chowk Rai Ji, Nai Sadak, Roshanpura, Delhi-06. It is claimed that the said premises consists of about 75 small rooms and 10 toilets on the ground floor.

3. The petitioners claim that they belong to the category of Scheduled Castes and the economically weaker section of the society. It is stated that most of the petitioners are daily wage workers or street vendors and, therefore, would be unable to afford any accommodation if they are evicted from the premises in question.

4. It is stated that respondent no.4 had purchased the entire premises, Mahal Sarai, Chowk Rai Ji, Nai Sadak, Roshanpura, Delhi-06, in 2006. Respondent no. 4 had, thereafter, filed separate applications against the petitioners under Section 19 of the Slum Act.

5. Each of the petitioners filed a separate application before the

Competent Authority, *inter alia*, praying that they be granted an opportunity to cross-examine respondent no.4. In their applications, they alleged that respondent no.4's application was based on false and fictitious allegations. It was also claimed that respondent no.4 was a person of means and had purchased the building in question for monetary benefits.

6. The Competent Authority considered the aforesaid applications and rejected the requests made by the petitioners principally for the reason that the petitioners had not indicated any specific testimony of respondent no.4, which they desired to discredit. The Competent Authority also reasoned that it was not required to conduct a full fledged trial and could accept evidence by way of affidavits. The Competent Authority observed that it is only in cases where it is not possible for the parties to disprove averments through affidavits that an opportunity may be granted for cross-examination of the concerned witness.

7. Mr Mishra, the learned counsel appearing for the petitioners contends that the petitioners would have a right to cross-examine respondent no.4 in order to elicit the truth of the averments made by him. Mr Mishra also referred to the decision of this Court in ***Gurcharan Singh v. Ram Kaur and Anr.***: AIR 1975, Delhi 36 in support of his contention.

8. Ms Pushkarna countered the aforesaid submissions and submitted that proceedings under Section 19 of the Slum Act are summary in nature and, therefore, the Competent Authority has the discretion to decide whether to permit the cross-examination of a witnesses or not. She submitted that in the present case the Competent Authority had, in its discretion, concluded

that cross-examination of respondent no.4 was not warranted. She further submitted that the petitioners had not indicated any reason why it was imperative for them to cross-examine respondent no.4. She also relied on the decision of a Coordinate Bench of this Court in *Ashwani Raj v. Shiv Mandir Dharamshala Rajputana Gomail Kshatriya Prabndhak Committee (Regd.) & Ors. : 243 (2017) DLT 580* in support of her contentions.

9. At the outset, it would be relevant to refer to Section 19 of the Slum Act, which expressly proscribes any person from initiating proceedings for eviction of the tenants without the permission of the Competent Authority. Section 19 of the Act 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,

8

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 subsection (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.]”

10. A bare reading of Section 19(4) of the Act indicates the factors that are required to be considered by the Competent Authority while examining whether to grant permission for initiation of the eviction proceedings. Essentially, the Competent Authority has to consider whether the tenants against whom eviction proceedings are sought to be initiated have the means to afford an alternative accommodation if evicted. Further, the examination by the Competent Authority is focused on ascertaining whether such eviction would be in the interest of improvement and clearance of the slum areas.

11. As it is apparent from the above, the object of examination under Section 19 of the Slum Act is not related to the respective rights of a

landlord and a tenant. The nature of the proceedings before the Competent Authority must be considered in the aforesaid context.

12. It is well settled that such proceedings are summary in nature.

13. Rule 7 of the Slum Areas (Improvement and Clearance) Rules, 1957 provides for the form of application under Section 19 of the Slum Act. Rule 7A of the said Rules provides for the procedure to be followed by the Competent Authority for dealing with an application under Section 19 of the Act. Rule 7A of the said Rules is set out below:-

“7A. Procedure to be followed by the competent authority.—

(1) On receipt of an application under rule 7, the competent authority shall, for the purpose of giving an opportunity to the parties of being heard, fix a date for hearing the parties and cause a notice (intimating such date) to be issued to them.

(2) On the date fixed for hearing, or on such other date or dates to which the hearing may be adjourned, the competent authority shall hear the parties, examine the witnesses, if any, produced, and the documents filed, by them.

(3) If either of the parties is absent on any date of hearing, the competent authority may in his absence, and after hearing the party present, pass such order, as it thinks fit.”

14. In view of the above, there can be no dispute that the Competent Authority does have the power to permit cross-examination of any witness. However, it is not necessary that this power be exercised in each and every case.

15. In *Gurcharan Singh v. Ram Kaur and Anr.: AIR 1975, Delhi 36* this court had observed as under:-

10

“6. So far as the first reason is concerned, the Competent Authority seems to be under the impression that it has no jurisdiction or power to summon Respondent 1 for cross-examination. It is true that the Competent Authority in exercising its jurisdiction under Sec. 19 of the Slum Areas Act is not a Court in the strict sense of the term, and the provisions of the Code of Civil procedure are not in terms attracted as held by V. S. Deshpande, J. in *Mohinder Singh v. Competent Authority*: AIR 1974 Delhi 219. It is also true that inquiry by the Competent Authority under Section 19 of the Slum Areas Act is of a summary nature. But, as held by a Division Bench of this Court (I. D. Dua, C. J. and V. S. Deshpande, J.) in *Ashok Kumar v. Competent Authority*, Civil Writ Petition No. 896-D of 1966 decided on August 14, 1968 (Delhi) the power of the Competent Authority under Section 19(3) of the Slum Areas Act to hold such summary inquiry as it thinks fit includes the power to summon witnesses and documents. V. S. Deshpande, J., who spoke for the Court, observed that without exercising such a power it could not be said that the Competent Authority would be enabled in every case to hold such a summary inquiry. The learned Judge further observed that the power to hold the summary inquiry as it thinks fit clearly gives the Competent Authority the power to call for witnesses or for documents to complete the inquiry before it to its own satisfaction. The said view of the Division Bench was based on

“the general Principle that the Competent Authority being a general natural justice Tribunal empowered to record evidence must be presumed to have the power of summoning witnesses or at any rate to request witnesses to attend before it to give evidence.”

The said Principle has been enunciated in the following manner on p. 436 of Halsbury's Laws of England. Vol. 36. 1961, Edition:-

“The Powers conferred by an enabling statute include not only such as are expressly granted but also, by implication all powers which are reasonably necessary for

))

the accomplishment of the object intended to be secured.”

When one of the Parties files an affidavit and the opposite Party questions the truth of an averment in the affidavit, the Competent Authority has necessarily to decide the truth or otherwise of the said averment. For that purpose the Competent Authority has to permit the opposite party to adduce evidence, oral or documentary, in rebuttal of the truth of the questioned averment. It may, however, be not possible in every case for the opposite party to find oral or documentary evidence to disprove the averment and in such a situation the only other manner in which the opposite party can disprove or shake the veracity of the person who swore to the affidavit is to subject the said person to cross-examination. It thus seems to me that the Power of the Competent Authority under Section 19(3) to hold such summary inquiry as it thinks fit includes not only the power to summon witnesses and documents as held by the Division Bench, but also to summon the deponent of an affidavit filed or a sworn statement made before it for cross-examination either by itself or at the instance of the opposite party. I Therefore, hold that the view of the Competent Authority that it had no power or jurisdiction to summon a person for cross-examination was not correct.”

16. As is apparent from the above, the court had rejected the contention that the Competent Authority did not have the power to summon any witness for cross examination. But, the court had also explained that proceedings were summary in nature and the Competent Authority would hold such enquiry as it thinks fit.

17. Since, the proceedings before the Competent Authority are summary in nature, the Competent Authority would have to evaluate whether cross-examination of any person is necessary in a particular case. In the facts of the present case, the petitioners have been unable to establish as to why cross examination of respondent no. 4 is necessary and, as to how they

W

would be prejudiced by denial of such cross-examination.

18. In the present petitions, the petitioners have relied on the following passage from their respective applications – which are all similarly worded – filed before the Competent Authority to support their contention that cross-examination of respondent no.4 is necessary:-

“That the petitioner is man of means and having other properties and he is purchased this building just to demolish it and for the monetary benefits and he had earlier also purchased such type of properties and therefore needs to be cross examined for the extraction of truth and it can be when he is confronted and cross examined and therefore this application.”

19. Thus, according to the petitioners, it is necessary to cross-examine respondent no.4 to establish that he is a person of means and has purchased the property in question for monetary benefits. Plainly, the issue whether respondent no.4 is a person of means or has purchased the premises for monetary gains is not material to consider his application under Section 19 of the Act. As observed earlier the focus of examination under Section 19 of the Slum Act is to determine whether eviction would be in the interest of improvement and clearance of slum areas. Thus, the decision of the Competent Authority to deny the petitioners' request for cross-examination of respondent no.4 cannot be faulted.

20. Mr Mishra, the learned counsel appearing for the petitioners contended that respondent no.4 had also stated that the petitioners were persons of means and, therefore, the petitioners ought to be given an opportunity to establish that the said statement is incorrect. The issue

13

whether the petitioners are not persons of means, can be established by the petitioners by producing evidence which is in their control. This would include their bank accounts, statement of incomes etc. Mr Mishra further contended that respondent no. 4's statement that the petitioners were persons of means was a bald statement without any basis. If this is so, it is obvious that it is not necessary for the petitioners to cross-examine respondent no.4 to disprove the same and it is open for the petitioners to establish their financial/economic condition by adducing the material within their control.

21. In view of the above, the present petitions are dismissed. The pending applications are also disposed of.



VIBHU BAKHRU, J

JULY 16, 2018

pkv