

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

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Judgment Reserved on: 16th August, 2016
Judgment Delivered on: 16th March, 2017

+ **W.P.(C) 3533/2012**

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

versus

C.P.SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Ms Mini Pushkarna, Ms Namrata Mukim, Ms Anushruti
and Ms. Vasundhara, Advocates.

For the Respondent:

Mr Lalit Kumar, Advocate with respondent in person

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The petitioner – Municipal Corporation of Delhi impugns order dated 25.08.2011, passed by the Competent Authority (DUSIB) in Petition No.CA/1517/2005. By the impugned order, the Competent Authority has allowed the application filed by the respondent under Section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 (hereinafter referred to as 'the Act') granting permission to the respondent to initiate eviction proceedings against the petitioner.

2. The petitioner – Municipal Corporation of Delhi contends to be running a school in the property bearing No.1799, Part B & C, situated at Ram Gali, Sohan Ganj, Sabzi Mandi, Delhi-110007 for the last over 50 years.

3. It is contended that the premises were earlier owned by Mr. Ram Singh, who bequeathed the property in favour of his daughter Smt. Laxmi Devi, who subsequently bequeathed the property in favour of her son Deepak Bharti. The respondent is the purchaser from Sh. Deepak Bharti, having purchased the said property in the year 1995.

4. Since the premises is situated in a notified slum area, An application under Section 19 of the Act was filed by the respondent seeking permission of the competent authority to initiate eviction proceedings against the petitioner citing several grounds on which eviction proceedings were proposed to be initiated.

5. The competent authority, by the impugned order dated 25.08.2011, has noted the contention of the respondent that the petitioner was a defaulter in making payment of rent and had not paid the arrears of rent. Further, it is noticed that the petitioner is a Government body and has enough property and places where it can open schools and has no dearth of finances. The competent authority also noticed that permission under Section 19 of the Act was granted

to the previous owner by order dated 11.01.2002.

6. The petitioner MCD had defended the application primarily on the ground that there was no relationship of landlord and tenant between the parties.

7. The Competent Authority relied upon judgments of this Court¹, wherein, it has been held that if a tenant is not making the payment of rent to his landlord or is in arrears thereof as on date of filing of an application under Section 19 of the Act, the tenant is not entitled to any protection under Section 19 and there is no need for holding any further enquiry into the means of financial status of the tenant and permission is to be granted.

8. The competent authority, noticed that the petitioner MCD was totally silent about the payment of rent either to the previous owner or to the respondent and finding that the petitioner MCD was in default in making payment of rent, granted permission under Section 19 of the Act to the respondent to initiate eviction proceedings.

9. The petitioner has impugned the said order primarily on the ground that there is no relationship of landlord and tenant between the parties. It is contended that the competent authority has to see the *prima facie* ownership of the property with regard to the payment of

¹ *Abdul Ghaffoor Vs. Abdul Wahid etc.*: 1976 RLR 62 (Note) & *Shadi Lai (Deceased) through L.Rs, Vs. Competent Authority & Others* 87(2000), DLT 578.

rent.

10. It is contended that the petitioner MCD used to pay rent to the earlier landlord upon receiving the pre-receipted bills. The petitioner used to process the release of the rent in favour of the landlord upon receiving the pre-receipted bills. It is contended that since the pre-receipted bills were not issued by the respondent nor any communication with regard to the change of ownership had been made by the earlier landlord, the rent was not paid.

11. It is also contended that the competent authority was bound to make a preliminary enquiry into the existence of relationship of landlord and tenant between the parties. It is contended that the respondent has failed to submit any document to show that any intimation was given to the petitioner regarding change of ownership.

12. It is contended that since MCD is running the school in the premises for last over 50 years and the eviction from the premises would not result in clearance of slums but rather would result in creation of slums.

13. Per contra, the respondent landlord has denied the contention of the petitioner that there is no relationship of landlord and tenant. It is contended that both the respondent as well as previous owner have written to the petitioner about change of ownership. It is contended

that the petitioner has even accepted the ownership of the respondent and has even mutated the property in favour of the respondent. It is contended that there is a relationship of landlord and tenant between the parties. It is contended that the petitioner failed to pay the rent despite being intimated that the respondent had become the owner of the property and despite a demand notice being duly served on the petitioner.

14. The respondent has denied knowledge of any system of submission of pre-receipted bills. It is further submitted that there is no such agreement between the petitioner and the respondent that rent would be paid only on submission of pre-receipted bills. It is contended that the competent authority has rightly granted permission since the petitioner has admittedly not paid the rent and eviction of the petitioner would not lead to creation of another slum.

15. 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 (43 of 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.”*

16. Section 19(4) *inter alia* requires a competent authority to take into account whether alternative accommodation within the means of tenant would be available to him if he were evicted and/or whether eviction is in the interest of improvement and clearance of the slum areas.

17. In the instant case, the petitioner is the Municipal Corporation of Delhi. The contention of the Municipal Corporation of Delhi that if it were evicted from the premises, it would not have sufficient means to acquire an alternative accommodation or it would lead to creation of a slum, is liable to be rejected outrightly. The responsibility of the petitioner Municipal Corporation is to *inter alia* provide civic services and to ensure upliftment of slums.

18. Further, the contention of the petitioner that there is no relationship of landlord or tenant between the parties, *prima facie*, has not found favour with the competent authority. The competent authority has noticed that the respondent has been able to establish

that the relationship of landlord and tenant is not in dispute.

19. The respondent had placed on record before the competent authority, a copy of the sale deed by which the respondent had acquired the property. Further, the Petitioner/Municipal Corporation of Delhi, which is concerned, with the mutation of a property consequent to its transfer, after considering the documents submitted by the respondent, mutated the property in favour of the respondent. The act of mutation of the property in favour of the respondent establishes that the petitioner has accepted the documents submitted by the respondent and has accepted the respondent as an owner of the property.

20. Once the property has been mutated by the petitioner in favour of the respondent, the petitioner cannot be permitted to even contend that the respondent has not been able to establish that the respondent is an owner of the property. The petitioner would be estopped from denying the ownership of the respondent.

21. Further, the denial of the relationship of landlord and tenant has also not found favour with the competent authority. The competent authority, based on the documents produced, has come to a finding that there is relationship of landlord and tenant between the parties. In view of the above facts, I find no reason to disagree with the finding returned by the competent authority that the respondent is an owner

and there exists a relationship of landlord and tenant between the parties.

22. Admittedly, in the present case, the petitioner has not paid rent to the respondent. The contention that the rent has not been paid because there exists no relationship of landlord and tenant and because the respondent had not submitted pre-receipted bills are self contradictory. It is only where the petitioner accepts relationship of landlord and tenant that the petitioner would require pre-receipted bills from the respondent.

23. The respondent has categorically averred that a demand notice dated 08.01.2007 was duly served on the petitioner. However, despite service of the said notice, the petitioner failed to pay the rent. In response to the application under Section 19 of the Act, the petitioner has admitted that the demand notice was received. The petitioner, in its written statement in paragraph 10, has specifically admitted receipt of the notice but has merely contended that the contents of the notice are wrong and denied and that the notice is vague. The petitioner has neither complied with the notice nor given any explanation as to why rent was not payable to the respondent.

24. A Coordinate Bench of this Court in **Shadi Lal (Deceased) through LRs.** (supra) relying on the decision of the Full Bench of this Court in **Digambar Prasad vs. S.L. Dhani: ILR 1969 Delhi 1016**

(FB) held that since the tenant despite notice had failed to pay arrears, the competent authority could not be faulted with for granting permission under Section 19 of the Act.

25. In Mohd. Usman vs. Mohd. Sadik: 1986 (10) DRJ Page 51, a Coordinate Bench of this Court held that a second application for eviction of the tenant was competent on the basis of the earlier permission granted by the competent authority even if the eviction petition filed consequent thereof had failed.

26. Even though, in the instant case, the respondent has applied for a fresh permission under Section 19 of the Act, which has been granted by the impugned order, the respondent could have filed an eviction petition based on the permission earlier granted to the erstwhile owner of the property on 11.01.2002.

27. In view of the fact that the petitioner is admittedly in arrears of rent and being a Municipal Corporation, eviction of the petitioner would not lead to creation of another slum, the permission granted by the competent authority, by virtue of the impugned order, cannot be faulted.

28. I find no infirmity with the view taken by the competent authority. The writ petition is, accordingly, dismissed with costs quantified at Rs. 25,000/-.

March 16th, 2017/st

SANJEEV SACHDEVA, J

