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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 448/2017 & CM No.15280/2017 (for stay)
ASHWANI RAJ Petitioner

Through: Ms. Ashu Singh, Adv.

Versus

SHIV MANDIR DHARAMSHALA RAJPUTANA GOMAIL
KSHATRIYA PRABNDHAK COMMITTEE
(REGD.) & ORS. ... Respondents

Through: Mr. Abhishek Gupta, Adv. for R-1.
Mr. Sunil Kumar, Adv. for R-2,4&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.08.2017**

1. This petition under Article 227 of the Constitution of India impugns the order dated 7th April, 2017 in Petition No.CA(DUSIB) 196/2011 of the Court of Competent Authority, Delhi Urban Shelter Improvement Board (DUSIB) under the provisions of Slum Areas (Improvement & Clearance) Act, 1956, of dismissal of the application of the petitioner for cross-examination of the witness of the respondent no.1.

2. Notice of the petition was issued and vide subsequent order dated 1st May, 2017, till the next date of hearing, the Competent Authority (DUSIB) was restrained from pronouncing orders on the petition filed by the respondent no.1 under Section 19 of the Slum Act aforesaid for permission to file petition for eviction against the petitioner and respondents no.2 to 5 herein. Thereafter on 11th May, 2017, the matter was adjourned to 22nd May, 2017 and the interim order continued and on 22nd May, 2017, the matter was posted for today for arguments.

3. The counsel for the petitioner Ms. Ashu Singh, wrongly recorded as Mr. Ashu Singh, Advocate in earlier orders, mentioned the matter before lunch to request for adjournment on the ground that Mr. Ratnesh Bansal, Advocate has suffered bereavement of his uncle and is not available. However the said request was opposed by the counsel for the respondent no.1 and the request for adjournment was declined.

4. Now when the matter is called for hearing on its turn, the counsel for the petitioner again seeks adjournment on the same ground.

5. The counsel for the respondent no.1 states that the proceedings before the Competent Authority (DUSIB) are listed next on 25th August, 2017 and the request for adjournment is designed to delay those proceedings. Attention is invited to the order dated 24th April, 2017, when the same Ms. Ashu Singh, Advocate had appeared and argued to have the notice of this petition issued. Attention is next invited to the order dated 1st May, 2017 when stay of further proceedings before the Competent Authority (DUSIB) was granted, again on the arguments of Ms. Ashu Singh, Advocate. Even on 11th May, 2017 Ms. Ashu Singh, Advocate had appeared. Though the order dated 22nd May, 2017 merely of adjourning the matter to today records the presence of Mr. Ratnesh Bansal, Advocate but it is not as if Ms. Ashu Singh, Advocate has been replaced, inasmuch as she is still appearing. This petition is also drafted and filed by Ms. Ashu Singh, Advocate.

6. There is merit in the contention of the counsel for the respondent no.1.

7. Ms. Ashu Singh, Advocate has been given an opportunity to argue but has not availed thereof.

8. The learned Competent Authority (DUSIB) has in the impugned order reasoned i) that earlier, the respondent no.2 Omprakash, had in December, 2012 moved an application seeking permission to cross-examine the witness of respondent no.1 on the same plea as the petitioner had raised and which application was dismissed vide order dated 2nd June, 2015; ii) that as per the procedure applicable to the Court of Competent Authority (DUSIB), before an opportunity to cross-examine is to be furnished, the Competent Authority (DUSIB) has to satisfy itself of existence of reasons therefor in the context of “whether there is *prima facie* relationship of landlord and tenant between the parties and alternative accommodation within the means of the tenant would be available, if the tenant was to be evicted”; iii) that filing of the application by the petitioner, after the dismissal of the application of the respondent no.2 Omprakash, was nothing but dialatory; iv) that in any case no ground to allow the petitioner to cross-examine the witness of the respondent no.1 was made out.

9. Though after the dismissal of the application, the Competent Authority (DUSIB) posted the matter to 18th April, 2017 for final arguments but the hearing of the final arguments has been held up owing to the interim order in this petition.

10. The counsel for the respondent no.1 has stated that the respondent no.2 Omprakash is the father of the present petitioner and has relied upon the order dated 5th November, 2015 in W.P.(C) No.10239/2015 titled Om Prakash Vs. Shiv Mandir Dharamshala Rajputana Gomail Kshatriya Prabandhak Committee (Regd.) laying down that the jurisdiction and / or

scope of enquiry before the Competent Authority (DUSIB) earlier known as Competent Authority (Slum) is limited; the best person to prove his own financial status would be that person himself; that even if the witness of the landlord before the Competent Authority in his affidavit by way of evidence deposes that the tenant is financially well off, it is always open to the tenant to in his evidence make a clean breast of his own financial status, negating what has been deposed against him.

11. The counsel for the respondent no.1 on enquiry states that the stand of the petitioner and his father respondent no.2 Omprakash is the same before the Competent Authority and there are no differences between the two and both are opposing the respondent no.1. On further enquiry, it is informed that the proceedings before the Competent Authority (DUSIB) are already pending for the last six years, since the year 2011.

12. The enquiry before the Competent Authority (DUSIB) is required to be summary in nature. It is for this reason only that no right of cross-examination, save by order in writing giving reasons, has been conferred. It is unfortunate that the proceedings remain pending for equal number of years or more than the time which would be taken in a petition for eviction before the Additional Rent Controller.

13. At this stage Ms. Ashu Singh, Advocate states that she wants to argue “partially”.

14. Though the said conduct again shows the dialatory tactics being practiced but nevertheless she has been permitted to submit whatever she wants to.

15. She has referred to *Gurcharan Singh Vs. Ram Kaur* AIR 1975 Delhi 36 and *K.K. Velusamy Vs. N. Palanisamy* (2011) 11 SCC 275 and has handed over copies thereof, again showing that though she is fully prepared But is still seeking adjournment. However while she is arguing, she again states that she would rather have Mr. Ratnesh Bansal, Advocate argue the matter.

16. I have considered the challenge. I agree that not only is the petitioner bound by earlier order dismissing identical application of his father respondent no.2 Omprakash, but even otherwise, the petitioner has not made out any ground for being allowed to cross-examine witness of respondent no.1.

17. The petitioner seeks to cross-examine the witness of respondent no.1 on the aspect of ownership of respondent no.1 of the premises with respect to which the petition under Section 19 of Slum Act is filed. However the Competent Authority (DUSIB) is not competent to decide questions of title and in the event of permission sought by respondent no.1 being granted by the Competent Authority (DUSIB) and the respondent no.1 filing a petition for eviction of petitioner and respondents no.2 to 5, it would be open to the petitioner to take all pleas in the said proceedings.

18. The judgments cited by the counsel for the petitioner do not hold otherwise.