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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9850/2016 & CM 39212/2016**

NARESH JAIN & ANR Petitioners
Through Mr Rajiv K. Garg, Mr Ashish Garg,
Advocates.

versus

THE COMPETENT AUTHORITY, DELHI
URBAN SHELTER IMPROVEMENT BOARD
& ANR

..... Respondents

Through Mr Satya Narayan Padhi, Advocate for
Respondent No. 2.

Ms Mini Pushkarna, Standing Counsel for DUSIB
with Ms Anushruti, Mr Vasundhara Nayyar,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
27.11.2017

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VIBHU BAKHRU, J

1. The petitioners have filed the present petition impugning an order dated 25.01.2016 passed by respondent no.1 (the Competent Authority, Delhi Urban Shelter Improvement Board and hereafter 'the Competent Authority') under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereafter 'the Slum Act'). By the impugned order, the Competent Authority has granted permission to respondent no.2 to initiate proceedings to evict the petitioners from the property occupied by them – bearing No. 4282, Gali Bahuji Bahadur Road, Azad Market, Delhi (hereafter 'the property').

2. Mr Rajiv Garg, the learned counsel appearing for the petitioners

contended that the impugned order was not sustainable, as the Competent Authority had failed to appreciate that respondent no.2 (who was the applicant before the Competent Authority) was not the owner of the property. He contended that respondent no.2 was claiming to be the owner of the property by virtue of a Will of One Smt Pushpa Devi, who was still alive, and therefore his claim of ownership was untenable.

3. Briefly stated, the relevant facts necessary to address the present controversy are that respondent no.2 had filed an application before the Competent Authority, DUSIB, seeking permission to institute a suit/proceedings for eviction of the petitioners on the ground of *bona fide* requirement and on account of non-payment of rent (Under section 14(1)(e) and 14(1)(a) of the Delhi Rent Control Act, 1958, respectively). The petitioners contested the respondent No.2's claim of being owner of the property in question.

4. The Competent Authority considered the same and held that the disputes regarding the ownership of the property in question were not relevant and the Competent Authority was only required to see whether there was a *prima facie* relationship of landlord and tenant between the parties.

5. The Competent Authority also proceeded to examine whether the petitioners had sufficient income and means to acquire an alternate accommodation in a non-slum area and whether their eviction from the tenanted premises would be in the interest of improvement and clearance of the slum in question. Respondent no.2 had claimed that the petitioners were well off and owned many transport buses. These assertions were not countered and the petitioners had not produced any material to indicate that

they were not persons of means or would be unable to afford alternate accommodation if they were evicted.

6. Considering the above, the Competent Authority concluded that the petitioners had the means to find alternate accommodation if they were evicted from the premises and, accordingly, passed the impugned order granting respondent no.2 permission to institute the eviction proceedings.

7. Mr Garg did not dispute that the petitioners own buses. He, however, contended that the same was irrelevant as the petitioners could not use buses for the purposes of their residence. This contention is plainly, unmerited. The fact that the petitioners owned transport buses established that they had considerable assets and would, obviously, have the necessary means to hire alternate accommodation. The buses were only indicative of the petitioners' wealth. Admittedly, the petitioners had not produced any material to indicate their income or wealth, which - as the Competent Authority rightly observed - was within their special knowledge.

8. It is also relevant to mention that the petitioners had asserted that they had tendered rent for the property in question by way of a money order that was not accepted, and thus it was implicit that they were tenants in the property.

9. The Competent Authority was not required to finally adjudicate the dispute whether respondent no.2 was the owner of the property and whether respondent no.2 could maintain proceedings for eviction of the petitioners from the property. These disputes are plainly extraneous to the legislative objective of requiring permission of the Competent Authority before initiation of eviction proceedings in relation to properties in Slum Areas.

10. At this stage, 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 Slum Act is set out below:-

“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 area;
- (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.”

11. Section 19 (4) of the Act sets out the factors required to be considered by the Competent Authority while considering a request for permission to initiate eviction proceedings. The principal factors to be considered are: (i) whether alternate accommodation would be within the means of the tenants if they were evicted, and (ii) whether the eviction would be in the interest of improvement and clearance of the slum area. As stated above, the fact that the petitioners own buses does indicate that they are persons of means and would be able to afford alternate accommodation if evicted. Concededly, the petitioners have not produced any material which would reflect that they do not have the wherewithal to seek alternate accommodation. Thus, on the anvil of the factors as specified under section 19(4) of the Slum Act, the decision of the Competent Authority to grant permission to respondent no. 2 to initiate eviction proceedings cannot be faulted.

12. The petition and pending application are, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 27, 2017/pkv