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

\+ W.P.(C) 3875/2018 & CM Nos. 15287-15288/2018, CAV 338/2018

SH. OM PRAKASH AND ORS. ..... Petitioners

Through: Mr Ratnesh Bansal and Ms Ashu Singh, Advocates.

versus

SHIV MANDIR DHARMASHALA RAJPUTANA GOMAIL KSHATRIYA PRABANDHAK COMMITTEE REGD. AND ORS. ..... Respondents

Through: Mr Abhishek Gupta, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 23.07.2018

1. The petitioners have filed the present petition impugning an order dated 30.10.2017 (hereafter 'the impugned order') passed by the Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956 (hereafter 'the Slum Act'). By the impugned order, the Competent Authority has allowed respondent no.1's application under Section 19(1)(a) of the Slum Act and has permitted respondent no.1 to institute proceedings for evicting the petitioners from a shop in a property bearing No. 2868, Gali Dharamshala, Subze Mandi, Delhi-110007 (hereafter 'the Property').

2. Petitioner nos. 1 to 3 (arrayed as respondent nos. 1, 4 and 5 before the Competent Authority) are stated to be in the possession of the property. The petitioners claim that a part of the property is being used to run a Tea shop

and the remaining part is being used to run a toy and general mercantile shop. The petitioners had resisted the application filed by respondent no.1 under Section 19(1)(a) of the Slum Act on several grounds including that respondent no.1 was not the owner of the Property and that the petitioners did not have sufficient means to re-establish themselves if they were evicted.

3. The contention that respondent no.1 was not the landlord of the Property was not accepted, as the Competent Authority found that, admittedly, rentals were being paid/deposited by the petitioners for the occupation of the Property.

4. The contention that only petitioner no.1 (arrayed as respondent no.1 before the Competent Authority) was working and was earning an income of only ₹4000/- to ₹5000/- in a month, was not accepted. The Competent Authority held that the petitioners (respondents therein) had not produced any material or documents to substantiate or corroborate their statements that petitioner no.1's income was only about ₹4000/- to ₹5000/- a month.

5. Mr Bansal, learned counsel appearing for the petitioners had contended that the Competent Authority had grossly erred in disbelieving the statement that the income of petitioner no.1 was not more than ₹4000/- to ₹5000/- in a month on the ground that the petitioners had not produced any material or documents on record. He submitted that the petitioners neither filed any Income Tax Returns nor maintained any books of accounts and, therefore, there could be no record that could be produced by the petitioners to substantiate their assertion that petitioner no.1's income was only ₹4000/- to ₹5000/- per month.

Reasons and Conclusion

6. At the outset, it is relevant to refer to Section 19(4) of the Act which indicates the factors required to be taken into account by the Competent Authority in determining whether to grant or refuse permission under Section 19(3) of the Act. Section 19(4) of the Slum Act reads as under:-

> "19. Proceedings for eviction of tenants not to be taken without permission of the competent authority.—
>
> xxxx xxxx xxxx xxxx
>
> (4) In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:—
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> (a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
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> (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."

7. It is apparent from the above that the principal factors to be considered by the Competent Authority are whether the tenant would be able to arrange alternate accommodation, if evicted and whether eviction would be in the interest of improvement and clearance of the slum areas.

8. In the present case, the petitioners claim that petitioner no.1 was carrying on the business from the Property and petitioner nos. 2 and 3 were also involved in running the business being sons of petitioner no.1.

9. The respondents had alleged that petitioner no.1 was an owner of

three immovable properties bearing No. 2874-75, Gali Bata Wali, Arya Pura, Subzi Mandi, New Delhi as well as Property bearing No. 2901, Gali Pipal Wali, Subzi Mandi, Delhi. The petitioners had disputed that petitioner no.1 was the owner of those properties but had admitted that he was the co-owner of all the three properties. The petitioners claimed that the said properties were residential in nature and, therefore, could not be used for business purposes. The nature of the properties owned/co-owned by petitioner no.1 is not relevant, since the object is to only ascertain whether petitioners were person of means who could afford to arrange alternative accommodation, if evicted. Clearly, the fact that petitioner no. 1 had interest in immovable properties would be an important indicator of his ability to arrange alternate accommodation, if evicted.

10. Although, it has been contended that the petitioners do not file any Income Tax Returns and do not maintain any bills or receipts, it is difficult to accept that the petitioners can produce no material to establish their monthly income. Admittedly, a General Mercantile shop/Toy shop is being run in the Property. Plainly, the petitioners would have some accounts as to their monthly sales, even though they may not be in the form of proper books of accounts. Further, the petitioners would have bank accounts and disclosure of the same would indicate the extent of periodic deposits and withdrawals. In addition, the petitioners also state that petitioner no. 1 has been running a tea stall from the Property. Even if it is accepted that proper accounts are not being maintained, there would be some rudimentary form of accounts that the petitioners would necessarily maintain considering that they have been running their business since past several years.

11. Concededly, the petitioners had not produced any material whatsoever to establish their monthly income. The Competent Authority had, thus, proceeded to draw an adverse opinion and in the view of this Court, rightly so.

12. This Court finds no infirmity with the impugned order. The petition is, thus, unmerited and is, accordingly, dismissed. The pending application is also disposed of. The caveat stands discharged.

VIBHU BAKHRU, J

JULY 23, 2018
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