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

+ **W.P.(C) 9265/2018**

KISHAN CHAND & ORS Petitioners
Through: Mr Yogesh Swaroop and Mr Kapil
Kishor Kaushik, Advocates.
versus

GOVIND RAM AGGARWAL Respondent
Through: Mr Sanjeev Narula, CGSC with Mr
Shravan Kumar Shukla, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **04.09.2018**

CM No. 35798/2018

1. Allowed, subject to all just exceptions.

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2. The petitioners have filed the present petition impugning an order dated 02.05.2018 (hereafter 'the impugned order') passed by the Competent Authority, Delhi Urban Shelter Improvement Board (hereafter 'the Competent Authority'), under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereafter 'the Slum Act').

3. By the impugned order, the Competent Authority has granted permission to the respondent to institute proceedings for eviction of the petitioners from two *kothries*/rooms and the common use of courtyard in front of the said *kothries* and latrine on the ground floor of the property bearing no. 458-461, Mohalla Mantola, Paharganj, New Delhi (hereafter

referred to as ‘the tenanted premises’).

4. On 16.02.2017, the respondent had filed an application under Section 19(1)(a) of the Slum Act bearing application no. C.A. (DUSIB)/1/28/2017, *inter alia*, claiming to be the owner of the tenanted premises. The respondent claimed that he had acquired the tenanted premises from the previous owners, Smt Narangi Devi and Ram Kanya, through a registered sale deed. He further claimed that the petitioners were the legal heirs of the original tenant Sh Puran Chand (the father of the petitioners). It is further claimed that Sh Puran Chand had been inducted as a tenant by the previous owner of the tenanted premises, Smt Ghisi Bai, who had subsequently bequeathed the tenanted premises to Smt Narangi Devi and Ram Kanya.

5. This was disputed by the petitioners. They claimed that their grand father Sukhram was the original tenant, who used to pay the rent to the actual owner, Sh Hari Kishan Dass. They stated that after the demise of Sh Hari Kishan Dass nobody had claimed any rent and that they were occupying the tenanted premises as legal heirs of Puran Chand, who had inherited the tenancy from Sukh Ram.

6. The respondent disputes that Sh Hari Kishan Dass was the owner of the tenanted premises. He claims that Sh Hari Kishan Dass was also a tenant inducted by Smt Ghisi Bai. He was also authorized to collect rent from other occupiers. The respondent claims that after the demise of Sh Hari Kishan Dass, his son, Sunder Lal Bansal inherited the tenancy and after his demise, the same was inherited by his son Sh Hemant Kumar Bansal. The respondent claims that Sh Hemant Kumar Bansal had deposited the arrears of rent and had also surrendered the premises occupied by him to the respondent by a deed of surrender of tenancy and possession dated

08.03.2015.

7. The petitioners also claimed that the documents relied upon by the respondent were forged. The Competent Authority considered the above contentions and concluded that *prima facie* a relationship of landlord and tenant between the petitioners and the respondent was established. The Competent Authority further proceeded to examine whether the petitioners had the means to secure an alternative accommodation if they were evicted from the tenanted premises and concluded in the affirmative. The Competent Authority noted that the respondent had alleged that the income of Kishan Chand and his two sons was ₹40,000/- and ₹50,000/- per month and that of Sh Sanjay and Manoj (petitioner nos. 2 and 4) was ₹20,000/- each. The respondent had also claimed that the monthly income of Mr Shyam Sunder and Sh Santosh Kumari (petitioner nos. 3 and 5) was ₹50,000/- each. In addition, the respondent had also stated that the petitioners owned items like mobile, colour T.V., fridge, two wheelers and four wheelers, etc. The petitioners, on the other hand, did not produce any material to indicate their assets or their income. Admittedly, the petitioners did not produce their bank accounts or any other material, which would establish that the petitioners did not have sufficient means to secure an alternate accommodation. Accordingly, the Competent Authority drew an adverse inference and accepted the averments made by the respondent.

8. The learned counsel appearing for the petitioners assailed the impugned order on two fronts. First, he submitted that the Competent Authority had not examined the evidence on record and had erroneously concluded that a relationship of landlord and tenant existed between the petitioners and the respondent. Second, he submitted that the Competent

Authority had not passed any order for providing any alternate accommodation to the petitioners.

9. I have heard the learned counsel for the petitioners.

10. Section 19 of the Slum Act expressly prohibits any person from initiating proceedings for eviction of the tenants without permission of the Competent Authority. Section 19 (4) of the Slum Act indicates the factors that are required to be taken into account by the Competent Authority while considering an application under Section 19 of the Slum Act. 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 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.”

11. It is apparent from the above that the two given factors that are required to be considered by the Competent Authority are: (i) whether alternate accommodation would be within the means of the tenants if they are evicted; and (ii) whether eviction would be in the interest of improvement and clearance of the slum area. In the present case, the Competent Authority had concluded that an alternate accommodation was within the means of the petitioners if they were evicted. This Court finds no infirmity with the said conclusion. It is also relevant to observe that the learned counsel for the petitioners had not advanced any submissions to challenge this finding.

12. In view of the above, this Court is unable to accept that any interference with the impugned order is called for as it is clear that the Competent Authority had considered the relevant factor while granting permission to the respondent to initiate appropriate proceedings for eviction of the petitioners.

13. The contention that the Competent Authority was required to hold a trial to determine whether a relationship of landlord and tenant existed between the respondent and the petitioners is unmerited. The Competent Authority does not have the jurisdiction to finally determine the said dispute. He is merely to take a *prima facie* view; which he undisputedly has. The observations of the Competent Authority in this regard would not preclude the petitioners from disputing that they are not tenants of the respondent in the proceedings that may be instituted by the respondent. The question whether the respondent is the owner of the tenanted premises and is entitled to evict the petitioners would have to be independently examined by the concerned Court/Tribunal in the eviction proceedings that may be instituted by the respondent.

14. The contention that the Competent Authority is also required to pass an order for providing alternate accommodation to the petitioners is unmerited. There is no provision in the Slum Act which requires the Competent Authority to do so while considering an application under Section 19 of the Slum Act.

15. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

SEPTEMBER 04, 2018/pkv