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

+ **W.P.(C) 55/2018 & CM 258/2018 (stay)**

RAJ BALA AND ORS

..... Petitioners

Through Mr Harish Khanna, Advocate.

versus

COMPETENT AUTHORITY (DUSIB) AND ANR..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.01.2018

1. The petitioners have filed the present petition impugning an order dated 31.08.2017 (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'). By the impugned order, the Competent Authority has granted permission to respondent no.2 (the applicant before the Competent Authority, DUSIB) to initiate proceedings for eviction against the petitioners in respect of one shop on the ground floor out of property no. 903, Ward no. III, Gali Inder Wali, Kucha Pati Ram, Sita Ram Bazar, Delhi- 110006 (hereafter 'the Property').

2. The principal controversy involved in the present petition is whether the Competent Authority has erred in granting permission for institution of the proceedings for eviction of the petitioners from the property. The

petitioners claim that there is no relationship of landlord and tenant between respondent no.2 and the petitioners. Further, the application filed on behalf of respondent no.2 was unauthorized and thus not maintainable.

3. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as follows:

3.1 The Property was earlier owned by Ms Kokila, who inherited the Property from her ancestors. She executed a Will dated 21.01.1920 and bequeathed the Property in favour of one Shyam Lal.

3.2 According to respondent no.2, prior to the demise of Sh Shyam Lal he established a temple known as Mandir Shri krishanji Maharaj on the property. The remaining property was occupied by various tenants.

3.3 Sh Ashok Kumar is the founder Trustee of respondent no. 2 and is a grandson of late Sh Shyam Lal. It was asserted by respondent no.2 that Sh Ashok Kumar has been looking after the temple and the property in conformity with the wishes of late Sh Shyam Lal. It is further asserted that the trust deed pertaining to respondent no.2 was registered to honour the desire of late Sh Shyam Lal. The petitioners are heirs of late Babu Ram, who was at the time of his demise a tenant of the said property. The petitioners claim to have become tenants of the property after the demise of Sh Babu Lal. Whereas according to respondent no.2, the petitioners are statutory tenants, the petitioners claim that they are contractual tenants.

4. Mr. Harish Khanna, learned counsel for the petitioners has assailed the impugned order essentially on two fronts. First, he submitted that there

was no relationship of landlord and tenant between the petitioners and respondent no.2 and the impugned order accepting that the petitioners were *prima facie* tenants of respondent no.2, is erroneous. Second, Mr Khanna submitted that Ashok Kumar had no authority to file an application under Section 19 of the Slum Act on behalf of respondent no.2. He referred to the trust deed dated 09.06.2010 and stated that Sh Ashok Kumar was described as a founder and one Sh Shyam Lal Ji was designated as a President/first trustee. He submitted that in terms of the trust deed only the President of respondent no.2 was entitled to sue for and on behalf of the Trust.

5. It is apparent from the above that although the petitioners dispute that respondent no.2 is the landlord, there is no dispute that the petitioners are tenants in the property.

6. It is also admitted that Sh Ashok Kumar had caused a legal notice to be issued on behalf of Trust Shyam Lal to the petitioners on 22.12.2006 asserting that the petitioners were tenants of Trust Shyam Lal and calling upon the petitioners to pay the arrears of rent along with interest and future rent at the revised rate along with house tax. The petitioners were also called upon to remove illegal constructions, additions and alterations in the property.

7. The petitioners responded to the aforesaid legal notice by a letter dated 31.01.2007 sent through their advocate. In the said response, the petitioners clearly stated that as far as tenancy of the shop is concerned, it was not disputed that the same was let out by Trust Lala Shyam Lal to Sh Babu Ram on the monthly rent of ₹5/-. However, the petitioners disputed

that either Sh Ashok Kumar or Sh Satish Johri - at the instance of whom the legal notice had been issued - were trustees of Trust Lala Shyam Lal.

8. It is clear from the above that there is some controversy as to the Trust deed of Trust Lala Shyam Lal, who are admittedly the landlords of the property. Respondent no.2 claims that Sh. Ashok Kumar is the grandson of Sh Shyam Lal. It is further claimed that he was looking after the property as the managers appointed by Sh Shyam Lal could not devote time towards the property and it is for the said purpose that the trust deed dated 09.06.2010 was registered.

9. Plainly, the above controversy is not required to be examined and determined by the Competent Authority. The role of the Competent Authority under the Slum Act is limited. At this stage it would be relevant to set out the relevant statutory provisions. 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.”

10. The objective of indicating Section 19 of the Slum Act is to ensure that proceedings for eviction of tenants, who have no means for alternate accommodation or whose eviction would not be in the interest of improvement and clearance of slum areas, are not instituted. The substrata rationale for proscribing any eviction proceedings without the permission of the Competent Authority is to ensure that any eviction, if any, is in the interest of improvement and clearance of slum areas. Thus, the attention of

the Competent Authority is necessarily to be focused on the question whether the tenants are persons of means and have resources to arrange alternate accommodation if they are evicted. The Competent Authority is not required to Act as an Additional Court or Tribunal to adjudicate the matters of controversy that may be raised by the parties in eviction proceedings.

11. In the present case, respondent no.2 had expressly alleged as under:-

“That the respondent are leading luxurious life and have got all luxurious amenities at their disposal; they are well to do and persons of means, income and status and they can easily acquire alternative accommodation out-side the slum areas within their own means. Moreover, in case of their eviction from the tenanted premises in dispute, they shall not create any other or further slum.

That the respondents and their family are dealing in various business and have got many moveable and immovable properties within the NCT of Delhi valuing lacs of rupees and the total income of the respondents from all sources is more than Rs.2,00,000/- which in total comes to Rs.2,00,000/- Per month.”

12. The petitioner had denied the above and had asserted that petitioner no.3 was only doing petty work and was hardly earning ₹2000/- to ₹3000/- per month.

13. Apart from such denial, petitioners have not produced any other material to indicate the extent of their income such as books of accounts, passbooks, bank accounts etc. In the aforesaid context, the Competent Authority had drawn an adverse inference against the petitioners.

14. Insofar as the contention that the impugned order is erroneous as

having been passed without any material on record, is concerned; it is seen that although the averments made by respondent no.2 were denied by the petitioners, they did not produce any material to indicate their real income. The question of petitioners' income was within the special knowledge of the petitioners and it was incumbent upon the petitioners to produce all relevant materials to establish that they were not having any significant earnings. Admittedly, the petitioners have failed to do so and, therefore, the Competent Authority had proceeded on the basis that the petitioners were persons of means and if evicted would be able to arrange alternate accommodation. This Court finds no infirmity with this approach. Mere bald denial of the averments made by respondent no.2 is clearly not sufficient to discharge the burden placed on the petitioners. It was incumbent upon the petitioners to have produced material to indicate their real income. Having failed to do so, the petitioners cannot now be heard to fault the Competent Authority's decision.

15. In view of the above, the petition is dismissed. The pending application is also disposed of.

16. It is clarified that all contentions of the petitioners to resist the eviction proceedings, as and when instituted, are reserved.

VIBHU BAKHRU, J

JANUARY 05, 2018/pkv