

(1959) 10 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 432 of 1958

Ajudhia Pershad and Others

APPELLANT

Vs

Chief Commissioner, Delhi and Others

RESPONDENT

Date of Decision : 12-10-1959

Acts Referred:

Slum Areas (Improvement and Clearance) Act, 1956 — Section 10(7), 19, 19(4), 20, 30

Citation : AIR 1960 P&H 110

Hon'ble Judges : D. Falshaw, J; A.N. Grover, J

Bench : Division Bench

Judgement

A.N. Grover, J.

(1) This judgment will dispose of Civil Writ No. 432 of 1958 which has been referred to a Division Bench by Bishan Narain J. by his order dated 18-11-1958 and the connected petitions (Civil Writs Nos. 64-D, 203-D, 274-D, 426-D and 584-O of 1959).

(2) The only point that requires decision is whether any appeal is competent under the Slum Areas (Improvement and Clearance) Act 1956, against an order made by the competent authority under S. 19 of that Act granting permission to execute a decree for eviction granted in favour of the landlord against the tenant under the provisions of the Delhi Rent Restriction Act.

(3) The aforesaid Act was enacted to provide for the improvement and clearance of slum areas and for the protection of tenants from such areas from eviction. The Act is divided into various chapters. Chapter I is preliminary. Chapter II contains provisions relating to declaration of slum areas. Chapter III deals with slum improvement. Chapter IV relates to slum clearance and re-development. Chapter V provides for acquisition of land. Chapter VI is headed, "Protection of tenants in slum areas from eviction" and it consists of three sections only. Chapter VII contains miscellaneous provisions. It will be useful now to set out Ss. 19 and 20 appearing in Chapter VI.

"19 TENANTS IN SLUM AREAS NOT TO BE EVICTED WITHOUT PERMISSION OF THE COMPETENT AUTHORITY.--(1) Notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority.

(2) Every person desiring to obtain the permission referred to in sub-s. (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 tenant 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 such permission or refuse to grant such permission.

(4) 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.

20. APPEALS--Any person aggrieved by an order of the competent authority refusing to grant the permission referred to in sub-s. (1) of S. 19 may, within such time as may be prescribed, prefer an appeal to the Administrator and the decision of the Administrator on such appeal shall be final."

Section 30 which appears in the chapter containing miscellaneous provisions is in the following terms:

"30. APPEALS-(1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the competent authority may appeal to the Administrator within a period of thirty days from the date of issue of such notice, order or direction.

(2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice order or direction appealed against.

(3) On the admission of an appeal all proceedings to enforce the notice, order or direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and if the notice, order or direction is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

(4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner.

(5) The decision of the Administrator on appeal shall be final and shall not be questioned in any Court."

(4) Section 19 clearly lays down that no decree or order of eviction of a tenant from any building in a slum area can be executed unless the competent authority

gives permission in writing. Sub-section (4) of that section makes it incumbent on the competent authority to record a brief statement of the reasons for refusal to grant the permission if it decides to do so and furnish a copy thereof to the applicant. It is only against the refusal to grant permission that section 20 confers the right of appeal on the aggrieved party. The contention that has been raised is that although an order granting permission to execute the decree against the tenant is not appealable u/s 20, it is appealable u/s 30 and that appeals filed u/s 30 should have been entertained by the Administrator who should have further given an opportunity to the parties to be heard.

This contention cannot possibly be accepted if the entire scheme of the Act and the provisions contained in Chapter VI are kept in view. As provided by the preamble the Act was intended inter alia for the protection of tenants in the slum areas from eviction. Chapter VI contains all the provisions for giving effect to that purpose and what is contemplated by Section 19 is that the competent authority will apply its mind to the question of granting permission or refusing permission to execute the decree which the landlord has already obtained from the Court under provisions of the Rent Restriction Act. Section 19(4) read with section 20 makes it clear that the legislature intend and provided for a right of appeal against an order made u/s 19 only when permission was to be refused. It is significant that when an order is made granting permission, it is not incumbent on the competent authority to record the reasons for giving such permission and to furnish a copy thereof to the applicant.

This shows that no right of appeal was conferred against an order granting permission. Section 20 gives no such right and the only point is whether Section 30 being a general provision would give such a right of appeal. As appeal is the creature of statute, it is to Section 20 alone that one has to look for the conferment of such right against any order made u/s 19 because Section 20 specifically refers to Section 19 and the order of refusal made thereunder. It is implicit in Section 20 that no right of appeal exists against an order granting permission.

The reason that no right of appeal has been given against the latter class of orders obviously is that the competent authority has the power to withhold the permission to execute the decree, and such an order seriously affects the rights of the decree holder and therefore, it was necessary that superior authority should be empowered to rehear the matter by way of appeal. But if permission is granted, then hearing by way of appeal was not considered necessary because a competent Court has already passed a decree for eviction and the same has to be executed in the normal course. It is not possible to envisage a right of appeal being conferred u/s 30 against orders granting permission when no such right of appeal is clearly intended to be conferred under Chapter VI.

(5) The learned counsel for the petitioners relied on certain authorities, namely, *Thames Conservators v. Smeed, Dean and Co.* (1897) 2 QB 334, and *In re, Schmarr* (1902) 1 Ch. 326. There the statutory provisions which were being

considered were of an entirely different nature. It is not possible to draw any assistance from those decisions as those statutes were not in pari materia with the Act under consideration.

(6) It has also been pointed out that according to Section 30 an appeal would lie except as otherwise expressly provided. It is submitted that as there is no express provision barring an appeal against an order giving permission u/s 19, the appeal filed by the petitioners would be covered by Section 30(1). The learned counsel could not point to any provision in the Act where appeal is expressly barred. On the contrary under certain provisions a separate right of appeal has been granted, for instance u/s 10 the proviso to sub-section (7) says that an owner who is aggrieved by a restriction or condition so imposed on the user of his land or by a subsequent refusal of the competent authority to cancel or modify any such restriction or condition may at any time appeal to the Administrator.

Section 30 being a general provision appearing in the miscellaneous chapter and Section 20 being a special provision giving a right of appeal to the decree holder only, the meaning sought to be placed on the opening part of S. 30 cannot be accepted. These words appear to have reference to the provisions other than S. 30 which specifically confer a right of appeal in certain eventualities against certain orders. In other words, if an appeal has been expressly provided for by other sections of the Act, Section 30 would have no applicability. Thus for the purpose of deciding whether any right of appeal against an order made under S. 19, S. 20 alone will have to be referred, with the result that no appeal will lie against an order of the competent authority granting permission. In Civil Writ No. 294-D of 1957 decided by Mehar Singh J. on 13-11-1957 (Punj) it was held that no such appeal lay u/s 30 of the Act. I respectfully agree with that view.

(7) In the result, all these petitions fails and are dismissed but keeping in view the nature of the point involved, the parties are left to bear their own costs.

(8) D. Falshaw, J.

I agree.

9. Petitions dismissed.