

(1993) 03 DEL CK 0012

In the Delhi High Court

Case No : Second Appeal No. 401 of 1987 and Civil Miscellaneous Appeal No. 3693 of 1987

Albein Plywood Ltd.

APPELLANT

Vs

Janak Kapur and Others

RESPONDENT

Date of Decision : 01-03-1993

Acts Referred:

Slum Areas (Improvement and Clearance) Act, 1956 — Section 19

Citation : (1993) 50 DLT 228 : (1993) 26 DRJ 16

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Vijay Kishan and K.K. Buchar, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This second appeal is directed against the judgment of the Rent Control Tribunal dated November 11, 1987 by which he had affirmed the order of eviction passed by the Controller on the ground of eviction covered by clause (b) of the proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act.

(2) The two courts below have given a concurrent finding of fact that the tenant namely M/s. Albein Plywood Ltd. has sublet the premises to M/s. Sen & Company.

(3) Council for the appellant has raised a question of jurisdiction of the Rent Controller in entertaining the eviction petition for want of permission u/s 19 of the Slum Areas (Improvement & Clearance) Act. 1956. He has produced on record a . notification dated April 20, 1957 Sro 1252 issued u/s 3 of the said Act showing that the property in question namely 2155 Desh Bandhu Gupta Road known as 8/4 Desh Bandhu Gupta Road, New Delhi is located in the slum area to which the provisions of the said Act apply. He has moved an application for permission to lead additional evidence in this respect As the notification is published in the official Gazette a judicial notice of this notification can be taken. It is now not in dispute that the provisions of Slum Areas (Improvement &

Clearance) Act. 1956 were applicable to the premises in question at the time the eviction petition was brought.

(4) The learned counsel for the appellant has referred to judgment of the Supreme Court given in Civil Appeal No. 1906 of 1987 Mohd Usman & Others Vs. Mohd. Siddique 4 Another decided on August 26.1987 wherein it has been new categorically laid down that the permission to initiate eviction proceedings is a pro-requisite as provided in Section 19 of the said Act. He has then referred to Puran Chand Vs. Nathu @ Nathauli & Others S.A.O. No. 60 of 1970 decided on April 26, 1974 wherein it has been held by this Court that 17 unless the requisite permission as contemplated by Section 19 of the Slum Areas (Improvement & Clearance) Act 1956 is obtained for initiating the proceedings of eviction under the provisions of the Delhi Rent Control Act, the Controller under the Act would have no jurisdiction to try such a petition and if eviction order is passed in absence of such permission such an order would be nullity and the objection with regard to order being nullity passed by the court which has no jurisdiction to deal with the matter can be raised even in the execution proceedings. There legal propositions are not being disputed by the learned counsel for the respondent before me and rightly so.

(5) The learned counsel for the respondent has however drawn my attention to the provisions of the Slum Areas (Improvement & Clearance) Act. 1956 particularly its preamble which lays down that the said Act is enacted for the improvement and clearance of slum are as in certain union territories and for protection of tenants in such areas from eviction. It is argued that in the present case a finding of fact has been given by the two courts below that the tenant had not been in physical possession of the premises at any point of time and thus such a tenant was not meant to be protected by the objects laid down in the preamble of the said Act. He has argued that where the facts are as have been proved in the present case that the tenant has never been in physical possession of the premises located in the slum area there could arise no occasion for considering as to whether he would or would not create a slum if evicted from the premises located in the areas to which provisions of the Slum Areas (Improvement & Clearance) Act apply. He has argued that Section 19 should be read in consonance with the objects of the Act contained in the preamble.

(6) It is quite settled principle of law that if the language of the Section admits of no doubt and is clear then the objects given in the preamble need not be taken note of Section 19 clearly lays down that notwithstanding any thing contained in any other law for the time being in force no person shall except the previous permission in writing of the Competent Authority institute after the commencement of the Slum Areas (Improvement & Clearance) Amendment Act. 1964 any suitor proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in the slum area. It is quite clear from the language of the statute that no suit or proceeding can be initiated for obtaining any decree or order for eviction of a tenant. It would mean that question

whether a tenant has been or has not been in possession of a particular building in not to be gone into for deciding whether a particular proceeding or suit could be instituted or not for eviction of a tenant from the building.

(7) The respondent in the present case has initiated proceedings seeking an order of eviction of the tenant from the building located in the slum area. Thus this language of Section 19 completely bars the initiation of such proceedings without obtaining necessary permission from the Competent Authority under the Slum Areas (Improvement & Clearance) Act..

(8) u/s 19(4) of the said Act the Competent Authority has been enabled to take into account certain factors to decide whether a permission, should or should not be granted for initiating such proceedings by the landlord against a tenant. Where one of the conditions is whether the tenant has acquired alternative accommodation which is within the means of the tenant. There are various grounds of eviction given in proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act and one of such grounds is where the tenant has acquired or built another residential accommodation. Another ground of eviction 18 is where neither the tenant himself nor his family members have been residing in the premises for more than six months preceding the filing of the eviction petition. In such cases also the tenant would be deemed to have means to obtain alternative accommodation. If the contention of the learned counsel for the respondent is correct, then in such cases also no permission should be necessary to be obtained from the Competent Authority under the Slum Areas (Improvement & Clearance) Act before initiating the proceedings for eviction. If the legislature intended so then the legislature would have provided in Section 19 itself that in such like cases no permission would be needed from the Competent Authority before initiation of eviction proceedings against a tenant.

(9) In absence of any such Explanation being provided in Section 19 in this manner it is not possible to hold that no permission would be required for initiating the eviction proceeding against a tenant if it is found as a matter of fact that tenant has never been in possession of the demised premises. It is already held by the Supreme Court that obtaining of permission u/s 19 is mandatory and is pre-requisite for initiating the eviction proceeding. In the present case as no such permission has been obtained u/s 19 of the Slum Areas (Improvement & Clearance) Act the Additional Rent Controller has no jurisdiction to proceed in the matter and thus could not have passed the eviction order.

(10) Counsel for the respondent has referred to Kishan Lal Mahadeo Pershad and Another Vs. I.K. Sharma and Another, in support of his contention. In the said case a permission had been obtained u/s 19 of the Slum Areas (Improvement & Clearance) Act but a writ petition was filed challenging the said permission taking the plea that the Competent Authority has not gone into the question of financial status of the tenant. The High Court declined to interfere with the order and opined as follows:

"A careful study of the order of the Competent Authority would show that he declined to determine the status of petitioner No. 1 because there was no need to do so as the petitioner No. 1 was not established as being a person in possession of the shop in question or a person carrying on business at Delhi. If that be so his eviction from the shop in question cannot create a slum for there will be no occasion for him to take or make premises for carrying on the business which he alleges he carries on in Delhi."

(11) The question whether a particular tenant would create a slum or not is to be gone into by the Competent Authority only-under the Slum Areas (Improvement & clearance) Act and the observations made by the court as quoted above were with regard to the exercise of jurisdiction by the Competent Authority under the said Act for giving the permission as required by Section 19 of the said Act. So these observations do not lay down the law that where the premises are situated in slum area an eviction petition can be brought without obtaining the requisite permission u/s 19 if the Controller was to come to the conclusion that the tenant would not create the slum as he was never in possession of the demised premises. So, this judgment cannot help the respondent in the present case.

(12) I allow the appeal set aside the impugned orders and dismiss the eviction petition as, not maintainable for want of requisite permission u/s 19 of the Slum Areas (Improvement & Clearance) Act 1956. The parties are however left to bear their own costs throughout.