

(1973) 10 DEL CK 0007

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 20 of 1973

Gurcharan Singe

APPELLANT

Vs

Ram Kaur etc.

RESPONDENT

Date of Decision : 29-10-1973

Acts Referred:

Citation : (1974) RLR 142

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Judgement

T.V.R. Tatachari, J.

(1) Respondent 1 applied to Respondent 2 for permission U/S 19 to sue the petitioner. Latter claimed that his wife and mother were living at Noor Mahal and he is maintaining two establishments and his income is thus not enough .Respondent 1 replied this by saying that petitioner had deserted his wife Petitioner repudiated this in an application along-with an affidavit and wanted the Authority to take on record the said application and also the affidavit "and also allow him to crossexamine the landlady but these prayers were rejected and he moved High Court U/Art. 227 of the Constitution. Para 4 onwards the judgment is :-

At The reasons given by the Competent Authority in the impugned order are that the Competent Authority under the Slum Areas Act does not function as a Court and, Therefore, the provisions of Order 19 Rules 1 and 2 of the C. P. C., are inapplicable to the proceedings before it. that the proceedings u/s 19 of the Slum Areas Act are of a summary nature and all that is required under the section is to give to the parties an opportunity of being heard, and the nature of the inquiry by it has been left to the discretion of the Competent Authority depending upon the circumstances of each case, and that the relief asked for by the petitioner for crossexamination of respondent 1 is not, Therefore, available to him As regards the taking of the further affidavit of the petitioner on record, he observed that respondent I had not brought any new facts in her affidavit, but only rebutted

the allegations of the petitioner, and that there would be no end to the proceedings if parties, after filing their evidence and rebuttal, again seek another opportunity to clarify points which they had opportunity to clarify and elaborate in the first instance, and that he would not, Therefore, allow the filing of the further affidavit.

(2) So far as the first reason is concerned, the Competent Authority seems to be under the impression that it has no jurisdiction or power to summon respondent 1 for cross- examination. It is true that the Competent Authority in exercising its jurisdiction u/s 19 of the Slum Areas Act is not a Court in the strict sense of the term, and the provisions" of the CPC are not in terms attracted, as held by V.S. Deshpande J. in *Mohinder Sinsh v. Competent Authority* 1973 R.C.R. 306. It is also true that inquiry U/S 19 of Slum Areas Act is of & summary nature. But, as held by a Division Bench of this Court (I. D. Dua C. J. and V. S. Deshpande J.) in *Ashok Kumar v. Competent Authority*, C. W. No. 896-D of 1966, decided on 14.8.1968 the power of the Competent Authority u/s 19(3) of the Slum Areas Act to hold such summary inquiry as it thinks fit includes the power to summon witnesses and documents and that without exercising such power it could not be said that the Competent Authority would be enabled in every case to hold such a summary Inquiry. The included Judge further observed that the power is hold the summary inquiry as is. thinks it clearly gives the Competent Authority the power to call for witnesses or for documents to complete the inquiry before it to its own satisfaction. The said view of the Division Bench was based on "the general principle that the Competent Authority being a. general natural justice Tribunal empowered to record evidence must be presumed to have the power of summoning witnesses or at any rate to request witnesses to attend before it to give evidence .The said principle has been enunciated in the following manner on page 436 of Halsbury's Laws of England, Volume 36, 1961 Edition :-

"THE powers conferred by an enabling statute include not only such as are expressly granted but also, by implication, all powers which are reasonably necessary for the accomplishment of the object intended to be secured."

(3) When one of the parties files an affidavit and the opposite party questions the truth of an averment in the affidavit, the Competent Authority has necessarily to decide the truth or otherwise of the said averment. For that purpose, the Competent Authority has to permit the opposite party to adduce evidence, oral or documentary, in rebuttal of the of the questioned averment. It may, however, be not possible in every case turn the opposite party to find oral or documentary evidence to disprove the averment, and in such a situation the only other manner in which the opposite party can disprove or shake the veracity of the person who swore to the affidavit is to subject the said person to cross-examination. It thus seems to me that the power of the Competent Authority U/S 19(3) to hold such summary inquiry as it thinks fit includes not only the power to summon witnesses and documents as held by the Division Bench", but also to summon the deponent of an "affidavit filed or a sworn statement made before it

for cross- examination either by itself or at the instance of the opposite I, Therefore, hold that the view of the Competent Authority that it had no power or jurisdiction to summon a person for cross-examination was not correct. As the impugned order of the Competent Authority proceeded on a view about its power or jurisdiction, it has to be set aside and the Competent Authority has to be directed to re-consider the application filed by the petitioner. As regards the taking of the further affidavit of the petitioner on record, it is in the discretion of the Competent Authority which discretion has, of course, to be exercised in a judicial manner. As the Competent Authority is being directed to re-consider the application of the petitioner, it is open to it to re-consider also the prayer of the petitioner for taking the further affidavit on record. The C. M. (M) 20 of 1973 is allowed, the impugned order of the Competent Authority dated February 1, 1973, is set aside, and the Competent Authority is directed to restore the application of the petitioner dated January 15, 1973, to it? file and dispose it of afresh in the light of the observation in this judgment and in accordance with law In the circumstances of the case, the "parties are directed to bear their own costs in this C. M. (M) 20 of 1973.