

(1973) 10 DEL CK 0013
In the Delhi High Court
Case No : C.M. (Main) No. 20 of 1973

Gurcharan Singh

APPELLANT

Vs

Ram Kaur and Another

RESPONDENT

Date of Decision : 19-10-1973

Acts Referred:

Citation : AIR 1975 Delhi 36

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

Bench : Single Bench

Advocate : S.N. Kumar, for the Appellant; Gopal Narain, for the Respondent

Judgement

1. This petition. C. M. (Main) 20 of 1973 has been filed by Sardar Gurcharan Singh under Article 227 of the Constitution. The respondents are (1) Shrimati Ram Kaur and (2) Shri H. C. Arora, who is the Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956. (hereinafter referred to as the Slum Areas Act).

2. Respondent 1 is the owner of a house at Arjun Nagar, Kotla Mubarakpur. The Petitioner is the tenant in respect of two rooms, a verandah and a kitchen with common bathroom and latrine on a monthly rent of Rs. 70/- per month. Respondent 1 applied to Respondent 2 on February 10, 1971 under clause (a) of sub-section (1) of Section 19 of the Slum Areas Act for permission to institute proceedings for eviction of the petitioner from the aforesaid tenancy premises on the ground that the said premises was required bona fide by her for occupation as residence by herself. The petitioner contested the application inter alias denying the factor of the alleged bona fide need, and submitting that he had been occupying the premises for the last ten years, and that Respondent 1 had been making attempts to charge enhanced rent and had been harassing the petitioner by reporting to the police, etc.

3. Respondent 1 stated in her application before the Competent Authority, inter alia, that the family of the petitioner consisted of himself, his sister-in-law and a

nephew only that he was drawing about Rs. 1,200/- per month as his pay, and that he could Therefore, very well afford to hire a suitable accommodation in any locality fit for his status. In reply thereto, the petitioner stated in his written statement that he was getting only Rs. 935/- per month including all allowances, etc. that he had a large family to support, that he had a widowed sister-in-law along with her son staying with him in the premises in question that his wife, along with two dependent children, was living at Noor Mahal, District Jullundur, for the education of the said children, and that he had thus to maintain two establishments and had to incur lot of expenses on that account. He also stated that his mother also, was living with his wife at Noor Mahal. Respondent 1 filed a replication and also an affidavit on or about July 17, 1971 in which she alleged that the petitioner had deserted his wife and children for the last many years, and that the latter had been, residing separately and were not dependant upon the petitioner.

4. The petitioner filed an application on January 27, 1972 to summon the record in certain criminal proceedings alleging that there was a compromise between the parties in those proceedings, Respondent 1 filed a reply to that application on February 3, 1972 in which she denied the compromise and also reiterated her allegation of desertion of his wife and children by the petitioner. The Competent Authority dismissed that application on July 20, 1972. Thereafter in view of the allegation of desertion, the petitioner wanted to cross-examine Respondent 1, and filed an application on January 15, 1973, along with a detailed affidavit before the Competent Authority controverting the aforesaid allegation and praying that the affidavit may be taken on record and Respondent 1 be summoned for the purpose of cross-examination. By his order, dated February 1, 1973 the Competent Authority dismissed the said application. Thereupon, the petitioner filed the are sent petition under Art. 227 of the Constitution praying for a direction to the Competent Authority. Respondent 2, to take the affidavit on record and either allow the petitioner to cross-examine Shrimati Ram Kaur or to produce his witnesses to prove his case.

5. The reasons given by the Competent Authority in the impugned order for dismissing the application of the petitioner for cross-examination of respondent 1 and for filing a detailed affidavit 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 CPC 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 cross-examination 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 1 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.

6. 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 under Sec. 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 Singh Vs. The Competent Authority (II) Slum Areas Delhi and Another*, . It is also true that inquiry by the Competent Authority u/s 19 of the Slum Areas Act is of a 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*, Civil Writ Petition No. 896-D of 1966 decided on August 14, 1968 (Delhi) the Dower of the Competent Authority u/s 19(3) of the Slum Areas Act to hold such summary inquire as it thinks fit includes the power to summon witnesses and documents. V. S. Deshpande, J., who spoke for the Court, observed that without exercising such a power it could not be said that the Competent Authority would be enabled in every case to hold such a summary inquiry. The learned Judge further observed that the Dower to hold the summary inquire as it thinks fit clearly gives the Competent Authority the power to call for witnesses or for documents to complete the inquire 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 p. 436 of Halsbury's Laws of England. Vol. 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."

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 truth of the questioned averment. It may, however, be not possible in every case for 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 Dower 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 dependent of an affidavit filed or a sworn statement made before it for cross-examination either by itself or at the instance of the opposite party. 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.

7. As the impugned order of the Competent Authority proceeded on a wrong view about its power or jurisdiction, it has to be set aside and the Competent Authority has to be directed to reconsider the application filed by the petitioner.

8. 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 reconsider the application of the petitioner, it is open to it to reconsider also the prayer of the petitioner for taking the further affidavit on record.

9. 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 its file and dispose it of afresh in the light of the observations 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.

10. Petition allowed.