

(1971) 07 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ No. 659-D of 1964

Khia Ram (decd.) and Others

APPELLANT

Vs

Durga Pershad and Others

RESPONDENT

Date of Decision : 23-07-1971

Acts Referred:

Citation : AIR 1972 Delhi 265

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

Bench : Single Bench

Advocate : R.K. Makhija, for the Appellant; M.L. Mehra, for the Respondent

Judgement

1. This writ petition was originally filed by Khia Ram. Subsequently, he died and his legal representatives were brought on record as petitioners in the writ petition.

2. Khia Ram filed this writ petition praying for the issuance of an appropriate writ quashing two orders (Annexures "C" and "E"), dated 31.7.1964 and 26.8.1964, passed by Shri Manohar Lal, Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956. The respondents to the writ petition are : (1) Durga Parshad, (2) Smt. Jetho Rani, wife of Durga Parshad, (3) Smt. Promila, daughter of Durga Parshad, and (4) Shri Manohar Lal, Assistant Commissioner (Slum) with power of Competent Authority under the Slum Areas Act, 1956.

3. Khia Ram was a tenant of the aforesaid respondents Nos. 1 to 3 in respect of a shop No. 5464, Ward No. Vi, situated in Chandni Chowk, Delhi, on a rent of Rs. 193.31 p. per month. He was carrying on cloth business in that shop.

4. On 18.1.1961, a creditor for Khia Ram, M/s. Pujara Lal Radha Kishan & Company, Cloth Merchants of Katra Subash Chandni Chowk, Delhi filed an application under Sections 6, 7 and 9 of the Provincial Insolvency Act for declaring Khia Ram and his sons as insolvents. By an order, dated 22.2.1961, the Insolvency Judge, Delhi, appointed one Shri Jagdish Bhargawa as interim

Receiver, and the said interim Receiver took possession of the assets of Khia Ram and his sons including the shop in question. It was stated in the writ petition that a sum of Rs. 24,000/- was since recovered by the interim Receiver, and the amount has been lying in the Insolvency Court.

5. Respondents Nos. 1 to 3 filed an application in the Court of Shri Asa Singh Gill, Rent controller, Delhi, for eviction of Khia Ram from the shop in question on the ground of non-payment of rent. On 3.4.1963, the Rent Controller passed an order for eviction on the said ground of non-payment of rent. There after, respondents Nos. 1 to 3 filed an application (Annexure 'A') on 28.7.1963 u/s 19 of the Slum Areas (Improvement and Clearance) Act, 1956, before the Competent Authority (respondent No.4) for permission to execute the order for eviction as the shop in question is in a slum area.

6. Khia Ram filed a reply (Annexure B) on 27.2.1964 pleading, inter alia, that the shop in question was in the possession of the interim Receiver, that a sum of Rs. 24,000/- recovered by the interim Receiver was lying in the Insolvency Court and that respondents Nos. 1 to 3 could make an application to the Insolvency Court for the payment of the arrears of rent that may be legally due to them. He also pleaded that Durga Parshad (respondent No. 1) had filed previously an application praying that possession of the shop in dispute be given to him, that Durga Parshad admitted in that application that the interim Receiver was liable to pay the rent but that Durga Parshad did not pursue the said application. Khia Ram further pleaded that respondents Nos. 1 to 3 who were fully aware that all assets and the shop in question were taken possession of by the interim Receiver, should not be permitted to harass him by seeking an order for payment of arrears of rent against him, and that they may be directed to implead the interim Receiver as a party to the application for eviction as the said Receiver had taken possession of the assets and the shop and was thus a necessary party.

7. On 16.3.1964, the Competent Authority passed the following order :-

"Present : Shri Durga Prashad, one of the petitioners, with counsel. Counsel for the respondent. Eviction order has been obtained against the respondent on ground of non-payment of arrears of rent. A large sum of arrears exceeding Rs. 11,000 is outstanding against the respondent. The respondent has been directed to pay Rs.1000 on the next date. The petitioner has been directed to file replication if necessary. Case is adjourned to 7.5.64. Parties have been directed to appear before Shri Manohar Lal, Asstt. Commissioner, 5-B, Tibbia College, New Delhi.

Sd/- C.A.

16.3.1964."

On 7.5.1964, the Competent Authority passed an order in the following terms :-

"Present Petitioner with counsel. Son of the respondent with counsel. On the last date orders were passed asking the respondent to make payment of a sum of Rs.

1000 today. The respondent has filed an application that the he is arranging to draw a sum of Rs.1000 from the Judge Insolvency Estates and would pay the amount as soon as he gets it. He requests for time. Time is allowed. Case is adjourned 28.5.64.

Sd/- (Mohan Lal) C.A.

7.5.64."

8. It appears from the order sheets in the original file of the case received from the Competent Authority that the case was adjourned from 28.5.1964 to 23.6.1964. None of the parties was present on that date, and notices were directed to be issued to both the parties for 30.6.1964. On 30.6.1964, Durga Prashad was present in person but none appeared for Khia Ram. The Competent Authority directed the issue of a fresh notice to Khia Ram for 14.7.1964. It was added in the order that one notice should be sent by registered post and one by Process Server to the residential address of Khia Ram, one notice be sent to the address of Khia Ram at his counsel's office, and one notice be passed at the disputed premises. Again, on 14.7.1964, Durga Parshad was present but none appeared for Khia Ram. The Competent Authority ordered fresh notices to be issued to Khia Ram: one at his residential address by registered post, one through Process Server, one to be pasted on the suit premises in the presence of two independent witnesses, and one at the address of his counsel. On 27.7.1969, Durga Parshad was present in person, but none appeared for Khia Ram. On 27.7.1964, some officer in the office of the Competent Authority made a note in the order sheet as under :-

"Present Petitioner with counsel. None for the respondent. C.A. was to attend an urgent meeting at Town Hall. Case adjourned to 31.7.1964. Issue notice to the respondents. Sd/-

27.1.1964."

9. On 31.7.1964, the Competent Authority passed an order (Annexure "C") in which he observed that Khia Ram had been irregular in his attendance and set out the following statement showing the particulars regarding service of notices upon him :-

----- S. No Date of Presence Date of issue How
issued. Remark regarding service. hearing. of notice. -----

----- 1. 7.10.63 -- 27.8.63 R.A.D. Not delivered. Left W/o address. 13.8.63
P.S. Not delivered. Not available at house. 2. 5.11.63 -- 29.10.63 P.S. Not
delivered. Not available at house. 3. 21.11.68 -- 18.11.63 P.S. Pasted at disputed
premises. 4. 9.12.63 Son of the -- -- respondent 5. 6.2.64 Counsel -- -- -- 6.
27.2.64 Counsel -- -- -- 7. 16.3.64 Counsel -- -- -- 8. 7.5.64 Counsel -- -- -- 9.
28.5.64 -- -- -- -- 10. 23.6.64 -- 4.6.64 P.S. House locked. Not delivered. 11.

30.6.64 -- 26.6.64 P.S. Left the premises. Not delivered. 12. 14.7.64 -- 8.7.64 R.A.D. Left w/o address. Not delivered. 3.7.64 P.S. Left the house. Not delivered. 3.7.64 P.S. Pasted at the disputed premises. 3.7.64 C/o counsel Out of station. 13. 27.7.64 -- 18.7.64 R.A.D. Left w/o address. Not delivered. 15.7.64 P.S. Left w/o address. 15.7.64 P.S. Pasted at disputed premises. 15.7.64 C/o counsel Saw the notice but did not receive. 14. 31.7.64 -- -- -- -----

----- The particulars noted as against the date 27.7.1964 show that Khia Ram had left without giving address and fresh notices for 31.7.1964 were not delivered to him. One notice was pasted at the disputed premises while the notice sent at his counsel's address was seen by the counsel who, however, did not receive the same. The result was that Khia Ram was not present before the Competent Authority on 31.7.1964. The Competent Authority observed in his order that during the entire proceedings Khia Ram did not make any payment towards the arrears of rent, that Khia Ram had stated that the shop in question was in possession of the Insolvency Court and he was trying to draw money from that Court and pay to Durga Parshad, but that no payment had so far been made. The Competent Authority proceeded to observe that the Act provides protection to the tenant, but the tenant must pay the rent, that in a case where a decree for eviction has been obtained on grounds of non-payment of rent, the only way to provide protection to the tenant was to permit him to clear the arrears in Installments, that such opportunity was afforded to Khia Ram but he did not avail of it, that out of the fourteen days of hearing fixed in the case, Khia Ram did not offer any payment to Durga Parshad on even a single date, that the same clearly indicated that Khia Ram had no intention to make payment of the arrears of rent, and that in the circumstances it was difficult to afford Khia Ram the protection envisaged by Section 19 of the Slum Areas Act. The Competent Authority further observed that the question of status was never raised by either of the two parties, that Khia Ram had never stated that he was a poor person, and that the presumption, Therefore, was that he was not a poor person. The Competent Authority added that the fact that Khia Ram could afford to take a shop on rent of about Rs.200 per month in a locality like Chandni Chowk, indicated that he was not a poor person. In the result, the Competent Authority considered that in view of the above facts and the fact that Khia Ram had been absenting himself continuously from the proceedings in spite of service, there was no alternative but to pass exparte order granting permission for execution of the order for eviction. Accordingly, he granted permission to respondents Nos. 1 to 3 for execution of the order of eviction obtained by them against Khia Ram.

10. Khia Ram stated in the writ petition that he had been appearing before the Competent Authority, that 28.5.1964 was fixed as the date of hearing, but Pandit Jawahar Lal Nehru, the then Prime Minister of India died on 27.5.1964 and 28.5.1964 was, Therefore declared as a holiday, that on 29.5.1964 he sent his son, Jhonki Das, to the office of the Competent Authority to enquire about the date fixed for his case, and his son informed him that he (the son) had met the

Reader of the Competent Authority and was told that no date had been fixed and intimation of the date fixed would be sent to Khia Ram, that as Khia Ram had already shifted from the previous residence to premises NO.65-A Romesh Nagar, New Delhi, his son furnished the fresh address to the Reader so that the notices may be served on Khia Ram at that fresh address, but that no notice of any date of hearing was received by him thereafter. He further stated in the writ petition, that on 4.8.1964 he happened to pass in front of the shop in dispute and saw a notice pasted on the closed shop, that he being illiterate removed the notice and to do the same to his counsel who told him that the notice was for 27.7.1964 which had already passed, that his counsel inspected the record of the Court on 5.8.1964, and it transpired that on 31.7.1964 permission was granted to respondents Nos. 1 to 3 to execute the order of eviction, that it further transpired on inspection of the Court record that no notice for appearance before the Competent Authority was served upon him after 28.5.1964 and that there was an order on record, dated 27.7.1964, in which it was mentioned that notice should be issued to him for 31.7.1964 but that no such notice for appearance on 31.7.1964 was issued though the record contained a duplicate notice prepared by the office the Competent Authority on 31.7.1964.

11. Thereupon, Khia Ram filed an application (Annexure "D") on 7.8.1964 before the Competent Authority praying that the ex parte order (Annexure "C") dated 31.7.1964, be set aside. But, by an order (Annexure "E") dated 26.8.1964, the Competent Authority rejected the said application declining to set aside the ex parte order. It appears that the counsel for Khia Ram, while pointing out to the Competent Authority inter alia, that no notice was sent to Khia Ram as per the order, dated 27.7.1964, and Therefore should be set aside, stated before the Competent Authority that Khia Ram would need about six weeks time to arrange payment of Rs. 1000 as already ordered and full payment of the outstanding amount of about Rs.12000 would be cleared in about a year. On the other hand, the counsel for respondents Nos. 1 to 3 appears to have contended that the amount of rent then outstanding would be about Rs.14000 that he was present on 27.7.1964 and the order to issue a notice was not recorded in his presence, that Khia Ram was free to agitate the matter in Higher Courts, that it was the duty of Khia Ram to find out the next date fixed for the case as 28.7.1964 was declared to be a holiday, and that Khia Ram was likely to create a slum on eviction. After referring to the said respective contentions, the Competent Authority observed that the main thing was the payment of rent, that Khia Ram had not so far proved his bona fides on that point and should, Therefore, make a payment of at least a sum of Rs.8000 in a week's time that the counsel for Khia Ram, however, stated that his client would not be able to make the said payment in such a short period of time, that the counsel for respondents Nos. 1 to 3 agreed to reduced the amount of Rs. 8000 to Rs.7000 if Khia Ram makes payment within a week, but that the counsel for Khia Ram stated that even that would not be possible. In those circumstances the Competent Authority rejected the application and affirmed the order which he had passed on 31.7.1964.

12. Feeling aggrieved, Khia Ram hereinafter referred to as the petitioner, filed the present writ petition praying that an appropriate writ be issued quashing the orders (Annexures "C" and "E"), dated 31.7.1964 and 26.8.1964. As already stated Khia Ram died during the pendency of the writ petition, and his legal representatives came on record as petitioners. In opposition to the writ petition, a counter affidavit of respondent No.1 was filed on behalf of respondents Nos. 1 to 3.

0 13. Out of the two impugned orders, the order (Annexure "E") dated 26.8.1994, was passed by the Competent Authority on the application (Annexure "D") for setting aside the earlier ex parte order (Annexure "C"), dated 31.7.1964. The question for consideration by the Competent Authority in that application was whether there was sufficient cause for the non-appearance of the petitioner before the Competent Authority on 31.7.1964. The case of the petitioner was that the petition for eviction originally stood posted to 28.2.1964, that the same was however adjourned as 28th February, 1964 was declared as a holiday on account of the passing away of the then Prime Minister, that there away a note in the order sheet made posting the case to 31.7.1964 and directing a notice to be sent to the petitioner about the adjourned date, but the no notice was served upon the petitioner, and that consequently he could not be present before the Competent Authority on 31.7.1964. These allegations were not considered by the Competent Authority in his order dated 26.8.1964. Bur stating that the main question was about the payment of the arrears of rent by the petitioner, and that the petitioner was not prepared to make that payment the Competent Authority declined to set aside the ex parte order. As the Competent Authority had not considered the ground by the petitioner for setting aside the ex parte order, Shri Makhija, learned counsel for the petitioner, contended that the Competent Authority failed to consider and give his finding regarding the aforesaid ground pleaded by the petitioner and the order of the Competent Authority should, Therefore, be quashed. The argument prima facie appears to be plausible, but has really no force in view of the reason given by the Competent Authority for declining to set aside the earlier ex parte order. The said reason was that the petitioner had not paid the arrears of rent and his counsel expressed the inability of the petitioner to pay the same within the time mentioned by the Competent Authority.

14. In this connection, a few facts have to be referred to. As stated already in the narration of the facts, an order was passed by the Competent Authority on 16.3.1964 directing the petitioner to pay Rs.1000 on the next date of hearing viz. 7.5.1964. A large sum of arrears exceeding Rs. 11000 was outstanding against the petitioner even by the date of that order. On 7.5.1964, the petitioner filed an application stating that he was arranging to draw the sum of Rs.1000 from the insolvency Court and that he would pay the amount of Rs.1000 as soon as he receives the same. His application was allowed on 7.5.1964 and further time for payment was granted till 28.5.1964. But, the petitioner did not make the payment of Rs.1000 either by 28.5.1964 or even thereafter. Thus, the petitioner

did not comply with the order of the Competent Authority regarding the payment of arrears of rent. In his order (Annexure "C") dated 31.7.1964, the Competent Authority took the default of the petitioner into consideration, and taking the view that although Slum Areas (Improvement and Clearance) Act provides protection to the tenant, the tenant would be given the protection only if he pays the arrears of rent, that though the petitioner was afforded an opportunity to make the payment, he did not avail of it, that the petitioner's conduct indicated that he had no intention to make the payment of the arrears of rent, and that it was Therefore difficult to afford him the protection envisaged by Section 19 of the Act, the Competent Authority passed the order of eviction. Again, on 26.8.1964, the Competent Authority in view of the large amount of arrears of rent of about Rupees 12000 or Rs.14000 outstanding by that date, required the petitioner to make a payment of Rs.8000 within a week. But, the counsel for the petitioner stated that the petitioner would not be able to make that payment. The counsel for respondents Nos. 1 to 3 then offered that the amount may be reduced even to Rs.7000 if the petitioner makes the payment within a week. But, the counsel for the petitioner stated that the petitioner would not be able to pay even the amount of Rs. 7000 within a week. Thus, the Competent Authority gave a fresh opportunity to the petitioner, but the latter did not avail of it. It was in those circumstances that the Competent Authority expresses his view that the petitioner-tenant would be given protection under the Slum Areas (Improvement and Clearance) Act only if he pays the arrears of rent, and since the petitioner failed to avail of the opportunity given to him to pay the arrears, declined to set aside the earlier ex parte order.

15. The aforesaid view of the Competent Authority has to be held to be correct in view of the observations of a Full Bench (H.R. Khanna, C. J., V.S. Deshpande and S. Rangarajan, JJ.) or this Court in Digambar Prasad v. S.L. Dhani 1970 Ren 404. In that case, a decree for ejectment was passed against a tenant on the ground of non payment of rent. The tenant failed to pay arrears of rent even in the proceedings u/s 19 of the Slum Areas (Improvement and Clearance) Act. The Competent Authority granted permission to execute the ejectment decree against the tenant on the ground that the tenant failed to pay the arrears of rent, and did not consider the question of the status of the tenant i.e. whether alternative accommodation within the means of the tenant would be available to him if he were evicted. The tenant filed a writ petition in this Court challenging the said order of the Competent Authority on the ground that the Competent Authority had failed to consider his status and his means to get an alternative accommodation. It was held by the Full Bench that the tenant could not insist upon occupation of the premises without payment of rent, and that the conduct of the tenant is not paying the rent disentitles him to any relief under Article 226 of the Constitution. The learned Chief Justice observed in his judgment as follows :-

"In our opinion, the above conduct of the petitioner (failure to pay the arrears of rent) disentitles him to obtain the relief sought by him in this petition under

Article 226 of the Constitution of India. The petitioner in the present case seeks a writ of certiorari to quash the order of the Competent Authority. The grant of such a writ is in the discretion of the court and the petitioner is not entitled to it as a matter of course. Such a discretion has to be exercised judicially to further the cause of justice and not arbitrarily and capriciously or in a manner which results in manifest injustice. The court would be justified in declining to exercise such a discretion in the petitioner's favor where he does not come to the court with clean hands it would be inequitable and unjust to grant him the relief. The payment of rent is an essential requisite of the occupation of premises by the tenant. A tenant normally cannot insist upon occupation of a premises without payment of rent. The court in any event would be loath to exercise its discretion in favor of a tenant who in spite of opportunity offered to him fails to pay the arrears of rent. Any other approach would have the effect of putting a premium on the default committed by a tenant."

The above observations fully support the view taken by the Competent Authority in the present case. They, in any case, preclude interference under Article 226 with the impugned orders of the Competent Authority in view of the failure of the petitioner to pay the arrears of rent.

16. It is true that the Competent Authority did not consider the contentions of the parties regarding the reason for the non-appearance of the petitioner before the Competent Authority on 31.7.1964 and give his finding. Apparently, the Competent Authority felt that even if the Explanation of the petitioner for his non-appearance on 31.7.1964 was accepted, the only result would have been to set aside the ex parte order passed against the petitioner and to dispose of afresh the application of respondents Nos. 1 to 3 for permission to execute the order of eviction against the petitioner, and that in the course of the said disposal the main question of payment of arrears of rent would have arisen and the petitioner would have been required to pay the arrears of rent. That was why he observed in his order, dated 26.8.1964, that the main thing was the payment of rent gave a fresh opportunity to the petitioner to pay at least Rs.7000 out of the arrears of rent in order to show his bona fides, which the petitioner, however, did not avail of. Thus, no practical purpose would have been served by accepting the Explanation of the petitioner, setting aside the ex parte order, dated 31.7.1964, and again passing an order granting permission for execution of the order of eviction against the petitioner on the ground of his failure to pay the arrears of rent. There is, Therefore no force in the contention of Shri Makhija that the order of the Competent Authority, dated 26.3.1964 should be quashed on the ground that he had not considered the Explanation of the petitioner for his non-appearance on 31.7.1964 and given his finding thereon.

17. Shri Makhija also contended that the Competent Authority should not have directed the petitioner to pay the arrears of rent as the petitioner was in insolvent circumstances and all his assets including the shop in dispute were in the possession of the interim Receiver appointed in the course of the proceedings

for the adjudication of the petitioner as an insolvent. It has to be stated here that Shri Makhija himself stated before me that the petitioner was adjudicated as insolvent sometime towards the end of the year 1964, that he went up in appeal to the Court of the Additional District Judge, and that the Appellate Court allowed the appeal sometime in March, 1966, and dismissed the application filed by the petitioner's creditor for adjudication of the petitioner. It is Therefore clear that when the order, dated 16.3.1964, was passed by the Competent Authority. Directing the petitioner to pay Rs. 1000/- out of the arrears of rent then outstanding, and on 31.7.1964 when the impugned exparte order was passed as well as on 26.8.1964 when the other impugned order declining to set aside the ex parte order was passed, the petitioner had not yet been adjudicated as an insolvent and only an interim Receiver was appointed. Admittedly, sum of Rs.24000/- recovered by the interim Receiver was lying in deposit in the Court of Insolvency. It was quite open to the petitioner to take suitable steps in the Insolvency Court for directions to the interim Receiver regarding the payment of the arrears of rent directed by the Competent authority. In fact, the petitioner filed an application before the Competent Authority in which he stated that he was arranging to draw a sum of Rs. 1000/- from the Insolvency Court, and that he would pay the amount as soon as he gets the same. The Competent Authority granted time to the petitioner for that purpose on 7.5.1964. But, the petitioner does not appear to have taken any steps before the Court of Insolvency regarding the payment of the arrears of rent as directed by the Competent Authority. There is thus no force in the argument of Shri Makhija.

18. For the above reasons, there is no valid ground for interference under Article 226 of the Constitution with either of the impugned orders of the Competent Authority (Annexures "C" and "E"), dated 31.7.1964 and 26.8.1964. The writ petition, fails and is dismissed but in the circumstances without costs.

19. Petition dismissed.