

(1997) 02 DEL CK 0088

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 32 of 1976

Lachchmi Devi

APPELLANT

Vs

Rukmani Devi

RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (1997) 2 AD 421 : (1997) 66 DLT 244 : (1997) 41 DRJ 124 : (1997) RLR 268

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Judgement

S.N. Kapoor, J.

(1) This petition under Article 227 of the Constitution has been filed against the order dated 27th October, 1975 granting permission u/s 19(1) of the Slum Areas (Improvement and Clearance Act) 1956 (hereinafter called "Act" for short).

(2) In this petition two short questions arise which are as under:-

(1) Whether interlocutory orders passed in connection with inquiry u/s 19(1) of the Act are appealable u/s 30?

(2) Whether the Competent Authority (slum) could order appointment of Local Commissioner for the purpose of inquiry u/s 19(1) of the Act?

(3) Before proceeding further it would be desirable to appreciate factual matrix. The landlady Rukmani Devi has sought permission to institute eviction proceedings against widows of Bansilal tenant the petitioner Lachchmi Devi and Gomati Devi from the premises House No. 2166, Gali Sudama Wali, Bazar Sita Ram comprising of one room portion of the top floor having covered area of 875 Sq. ft. The petition has been filed inter alia on the grounds that neither of the two widows paid rent. They are misusing the premises by representing themselves to be the owner/landlady and keeping some unauthorised

construction in the properly and caused substantial damage to the premises. They are ladies of means and status and they could easily acquire alternative accommodation. It is further claimed that the eviction of the two widows would be in the interest of Slum clearance for they would not create a slum in the premises in dispute.

(4) The case of the petitioner Lachchmi Devi and Kapoori Devi was that there was one Bansi Lal who took the entire house on contractual tenancy in the year 1941. Shri Bansi Lal expired 6 or 7 years before filing the written statement. His two widows Lachchmi Devi and Gomti Devi inherited tenancy rights.

(5) Gomati Devi expired in 1975 leaving behind Kapoori Devi during pendency of this matter. Lachchmi Devi also expired and her daughter Kalawati has been substituted vide order dated 24.5.1981.

(6) It appears that on 24.1.1974 landlady moved an application seeking permission to file affidavit of previous owner Purushotam Prakash as additional evidence. That application was allowed and that was filed on 26.3.74. On 12.4.74 case was ordered to proceed Ex parte. On 25.4.74 appellant filed three affidavits and seven documents. An application to set aside order to proceed ex parte was also moved. That application was allowed on 20.5.74. On the application of the tenant side dated 19.7.74, three affidavits and seven documents filed on 25.4.74 were ordered to be returned, vide order dated 9.8.74. The case was adjourned for final arguments on 21st August, 1974. On 21st August, 1974, the counsel for the landlady sought an adjournment on the ground of filing an appeal against the order dated 9th August, 1974 which was refused and the arguments were heard and the case was adjourned to 11th September, 1974 for pronouncement of order. Thus, it is evident that neither permission has been granted nor refused. On 31st January, 1975, on an appeal the Financial Commissioner, allowed Filing of these affidavits and documents tendered by the Respondent No. 1 with further directions that the petitioner be given a chance to file evidence in rebuttal thereof. Thereafter, the Competent Authority was also directed to proceed to decide the application u/s 19(1) in accordance with law. It was however made clear that after the rebuttal by the respondent as directed the evidence recorded would stand closed.

(7) It appears from the petition that the main grievance of the petitioner is that order dated 31st January, 1975 passed by the learned Appellate Authority has been violated by the Competent Authority (Slum) by appointing Local Commissioner to inspect the premises and to report as to how many families were residing in the premises and the amount of rent, if any, charged by the tenants, from the occupants.

(8) Firstly from the order of remand, it cannot be inferred that the Appellate Authority intended that facts could not be verified by issuing Local Commissioner. Secondly, the appeal itself could not be filed against any interlocutory order passed by Competent Authority, as it would be evident hereinafter. Thirdly

Competent Authority has implied by all necessary powers to arrive at a just decision of the case including appointment of Local Commissioner.

(9) One would appreciate that the scope of Section 20 of the Act is very limited for Section 20 reads as under:-

20.Appeal: - Any person aggrieved by an order of the competent authority refusing to grant the permission referred to in sub-section (1) of Section 6- A or referred to in sub-section (1) of Section 19 may, within such time as may be prescribed, prefer an appeal to the Administrator and the Administrator may, after hearing the appellant, decide such appeal and his decision shall be final."

Thus, appeal could be filed only against the order refusing to grant permission and against no other order. Consequently, any order passed by the Appellate Authority in any appeal not covered by the provisions of Section 20 would be beyond the jurisdiction of the Appellate Authority, i.e. Administrator.

(10) But, there is another general provision in Section 30 of the Act to file an appeal. Section 30 of the Act reads as under:-

30.Appeal (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 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.

(11) Apart from the above, there is no provision for any revision against any interlocutory order passed in connection with the inquiry. Moreover, if the Competent Authority is not supposed to give even reasons for granting permission and if the appeal could be filed only against an order of refusal to grant permission u/s 20 then it does not stand to reason that Section 30 could be used for the purpose of interfering in interlocutory order passed by the Competent Authority u/s 19. There is no doubt that language and phrase used in Section 30 are of very wide import in view of the phrase "any person aggrieved by any notice, order or direction issued or given by the Competent Authority" may appeal to the Administrator. But, it is also apparent that the Chapter Vi of

the Act "protection of tenants in slum areas from eviction" is a self-contained Code otherwise there was no reason to provide for an appeal u/s 20 in this Chapter separately and independently from Section 30 of the Act.

(12) There is yet another notable factor. When the Legislature is not allowing any appeal u/s 20 against an order of grant of permission u/s 19 to avoid any unnecessary delay in grant of sanction it would not stand to reason that the Legislature would whittle down its intentions expressed in Section 19(5) and section 20 by providing for appeals against interlocutory orders, u/s 30.

(13) This aspect was considered by Hon^{ble} Mr. Justice Ranganathan in 1980 R.L.R.84(99) Usha Bhasin V. Competent Authority. Following observations are noteworthy: The second contention of the learned counsel for the respondents was that the petitioner had a right of appeal to the Administrator from the order of the Competent Authority u/s 30 of the Act and that Therefore this Court should not interfere with the order by invoking the powers under Article 227. This objection also is not sustainable. Section 30 provides for an appeal to any person aggrieved by a notice, order or direction issued or given by the Competent Authority but this is subject to an important qualification because of the opening words of Section 30(1):- except as otherwise expressly provided in this Act" Section 20 of the Act specifically deals with subject-matter of appeals from orders passed u/s 19. It lays down that any person aggrieved by an order of the Competent Authority refusing to grant permission referred to in Section 19(1) could prefer an appeal to the Administrator. In other words it is only the landlord who is likely to be aggrieved by the order refusing permission that can appeal to the Administrator, and Section 20 does not provide for an appeal by the tenant against an order granting permission to the landlord. Section 20 has provided for an appeal to the landlord from an order u/s 19(1) adverse to him but that the tenant may appeal u/s 30(1). Such an interpretation would be contrary to the opening words of Section 30. It would also be a very farfetched construction because if the Act had intended to confer on the tenant also a right of appeal from an order granting permission to the landlord that would have been incorporated in Section 20 itself. It would not be correct to interpret the statute in the manner suggested by the learned counsel for the respondents. The more reasonable construction appears to be that Section 20 impliedly prohibited an appeal by the tenant where the order of the Competent Authority u/s 19 is adverse to him and that Section 30 only covers either notice, order or directions that may be issued or given by the Competent Authority. This objection also is Therefore overruled.

(14) For the forgoing reasons in the instant case the order passed by the learned Appellate Authority u/s 30 appears to be without jurisdiction.

(15) Now coming to the question of scope of inquiry with special reference to the authority of the Competent Authority to issue commission. Sub-section (3) and (4) of Section 19 of the Act is reads as under:-

19.Proceeding's for eviction of tenants not to be taken without permission of the Competent Authority.

(1)XXXXXX

(2)XXXXXX

(3)On receipt of such application, the competent authority, after giving an opportunity to the parties 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 or refuse to grant such permission.

(4)In granting or refusing to grant the permission under sub-section (3), the competent authority shall taken into account the following factors, namely:-

(A)Whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(B)whether the eviction is in the interest of improvement and clearance of the slum areas;

(C)such other factors, if any, as may be prescribed.

(5)Where 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.

(16) It is apparent that Section 19 contains a very meaningful phrase. "After giving an opportunity to the parties of being heard and after making such inquiry in the circumstances of the case as it thinks fit." This phrase would just mean that procedure laid down in CPC is not applicable. The learned Competent Authority is supposed to devise his own procedure making summary inquiry as it thinks fit. The only requirement is that parties shall get an opportunity of being heard. And in this way, the principles of natural justice have been made applicable without insisting on the procedural niceties and the rigidity thereof. Thus, the procedure adopted by the learned Competent Authority could be flexible. A conjoint reading of all the provisions of Section 19 makes it apparent and clear that procedure adopted by the Competent Authority must satisfy following conditions -

(A)Both the parties shall be given an opportunity of being heard meaning thereby that rule of fair hearing (*audi alter-am partem*) shall be followed;

(B)Inquiry shall be summary inquiry;

(C)It should satisfy his conscience that summary inquiry is just fair and fit and satisfactory according to the needs of the situation.

(D)He shall enquire into questions/points covered by clause (a), (b) and/or (c) of Sub-Section (4).

(E) Though he is not required to give reasons, statutorily in express words in case of grant of permission to file eviction petition, yet it is always better to give reasons for every order u/s 19 of the Act.

(17) Despite the above said flexibility to be on safe side one has to take note of certain other provisions of the Act which specifically authorise the Competent Authority(Slum) to get the premises locally inspected. In this regard following provisions are reproduced for ready reference:- Section 23(1) Powers of Inspection

(1) The Competent Authority may, by general or special order, authorise any person-

(A) to inspect any drain, latrine, urinal, cesspool, pipe, sewer or channel in or on any building or land in a slum area, and in his discretion to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, latrine, urinal cesspool, pipe, sewer or channel, as the case may be;

(B) to examine works under construction in the slum area to take legal or to remove, test, examine, replace or read any meter." 18. Powers of Competent Authority in relation to determination of compensation, etc.

(1)XXXXX

(2). The Competent Authority shall while holding inquiry u/s 15, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(A) summoning and enforcing the attendance of any person and examining him on oath;

(B) requiring the discovery and production of any document;

(C) reception of evidence on affidavits;

(D) requisitioning any public record from any court or office;

(E) issuing commissions for examination of witnesses.

(18) It may be mentioned here that the Competent Authority(Slum) while holding inquiry u/s 15 have all the powers of Civil Court in respect of issuing commissions for examination of witnesses. Section 19 does not provide for any such power specifically and expressly as has been done u/s 18(2) of Chapter V and Section 23 in Chapter Vii of the Act.

(19) Should it mean, Therefore, that the Competent authority has no jurisdiction and no powers to issue a local commission for inspecting the site for just decision of the case, in view of absence of specific and express provision in this regard? In view of the wide latitude and discretion given to the Competent Authority to devise its own ways of procedure for the purpose of disposing of the application u/s 19(1), the Competent Authority could choose his own procedure. In absence

of any Legislative limitation, his powers to arrive at just decision could not be fettered by holding that the learned Competent authority (Slum) did not and would not have powers to appoint Local Commissioner for inspecting the site and thereby whittle down intention of the legislature to give wide latitude to the competent Authority(Slum) to devise its own procedure.

(20) (I) In view of the foregoing it appears that though the Competent Authority has not been specifically empowered to issue local commission either for examining witnesses or for local inspection, yet by allowing him to devise his own procedure of inquiry it could not be said that his powers are fettered in appointing a Local Commissioner for the purpose of vending to facts alleged for determination of factors enumerated in Clauses (a), (b) and (c) Section 19(3) to arrive at just decision to grant or refuse permission prayed for.

(21) Moreover, after receipt of report of the Local Commissioner it was not accepted or rejected blindly without hearing both the parties. They filed objections and replies to each others objections also. As such it could not be said that they did not get any opportunity of being heard. Accordingly, there does not appear any force in this objection.

(22) It is evident that finality has been sought to be attached to an order passed by the Competent Authority(Slum) u/s 19(1) firstly by not requiring him to give any reason for the grant of permission to evict the tenant and secondly by not providing for an appeal against grant of permission. As such this is not a matter fit to be interfered with by this court. In this regard following observations in L.R. Bhojwani Vs. Pratapsing M. Pardeshi (1995) Scc 6 579 reads as under:

"Before parting with this judgment we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in the present case. The Act is a special legislation governing landlord-tenant relationship and disputes. The Legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the Appellate Authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

(23) In view of the foregoing. I do not find that this petition has got any force and it is dismissed accordingly.

(24) A copy of this order be sent to the Appellate Authority u/s 20 of the Act as well as to the Competent Authority (Slum) for information.