

(2017) 11 DEL CK 0180

In the Delhi High Court

Case No : Civil Writ Petition No. 9850 Of 2016, Civil Miscellaneous No. 39212 Of 2016

Naresh Jain & Anr

APPELLANT

Vs

Competent Authority, Delhi Urban Shelter Improvement Board & Anr

RESPONDENT

Date of Decision : 27-11-2017

Acts Referred:

Slum Areas (Improvement And Clearance) Act, 1956 — Section 19, 19(4)
Delhi Rent Control Act, 1958 — Section 14(1)(a), 14(1)(e)

Citation : (2017) 11 DEL CK 0180

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rajiv K. Garg, Ashish Garg, Satya Narayan Padhi, Mini Pushkarna, Anushruti, Vasundhara Nayyar

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioners have filed the present petition impugning an order dated 25.01.2016 passed by respondent no.1 (the Competent Authority, Delhi

Urban Shelter Improvement Board and hereafter "the Competent Authority") under Section 19 of the Slum Areas (Improvement and Clearance)

Act, 1956 (hereafter "the Slum Act"). By the impugned order, the Competent Authority has granted permission to respondent no.2 to initiate

proceedings to evict the petitioners from the property occupied by them "bearing No. 4282, Gali Bahuji Bahadur Road, Azad Market, Delhi

(hereafter "the property").

2. Mr Rajiv Garg, the learned counsel appearing for the petitioners contended that the impugned order was not sustainable, as the Competent

Authority had failed to appreciate that respondent no.2 (who was the applicant before the Competent Authority) was not the owner of the property.

He contended that respondent no.2 was claiming to be the owner of the property by virtue of a Will of One Smt Pushpa Devi, who was still alive, and therefore his claim of ownership was untenable.

3. Briefly stated, the relevant facts necessary to address the present controversy are that respondent no.2 had filed an application before the

Competent Authority, DUSIB, seeking permission to institute a suit/proceedings for eviction of the petitioners on the ground of bona fide requirement

and on account of non-payment of rent (Under section 14(1)(e) and 14(1)(a) of the Delhi Rent Control Act, 1958, respectively). The petitioners

contested the respondent No.2's claim of being owner of the property in question.

4. The Competent Authority considered the same and held that the disputes regarding the ownership of the property in question were not relevant and

the Competent Authority was only required to see whether there was a prima facie relationship of landlord and tenant between the parties.

5. The Competent Authority also proceeded to examine whether the petitioners had sufficient income and means to acquire an alternate

accommodation in a non-slum area and whether their eviction from the tenanted premises would be in the interest of improvement and clearance of

the slum in question. Respondent no.2 had claimed that the petitioners were well off and owned many transport buses. These assertions were not

countered and the petitioners had not produced any material to indicate that they were not persons of means or would be unable to afford alternate

accommodation if they were evicted.

6. Considering the above, the Competent Authority concluded that the petitioners had the means to find alternate accommodation if they were evicted

from the premises and, accordingly, passed the impugned order granting respondent no.2 permission to institute the eviction proceedings.

7. Mr Garg did not dispute that the petitioners own buses. He, however, contended that the same was irrelevant as the petitioners could not use buses

for the purposes of their residence. This contention is plainly, unmerited. The fact that the petitioners owned transport buses established that they had

considerable assets and would, obviously, have the necessary means to hire alternate accommodation. The buses were only indicative of the

petitioners' wealth. Admittedly, the petitioners had not produced any material to indicate their income or wealth, which - as the Competent Authority rightly observed - was within their special knowledge.

8. It is also relevant to mention that the petitioners had asserted that they had tendered rent for the property in question by way of a money order that was not accepted, and thus it was implicit that they were tenants in the property.

9. The Competent Authority was not required to finally adjudicate the dispute whether respondent no.2 was the owner of the property and whether

respondent no.2 could maintain proceedings for eviction of the petitioners from the property. These disputes are plainly extraneous to the legislative

objective of requiring permission of the Competent Authority before initiation of eviction proceedings in relation to properties in Slum Areas.

10. At this stage, it would be relevant to refer to Section 19 of the Slum Act which expressly proscribes any person from initiating proceedings for

eviction of the tenants without the permission of the Competent Authority. Section 19 of the Slum Act is set out below:-

19. Proceedings for eviction of tenants not to be taken without permission of the competent authority.-(1) Notwithstanding anything

contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,-

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance), Amendment Act, 1964 (43 of 1964) any suit or proceeding

for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any

building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such

form and containing such particulars as may be prescribed.

(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 take 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 area;

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

(5) Where the 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.â??

11. Section 19 (4) of the Act sets out the factors required to be considered by the Competent Authority while considering a request for permission to

initiate eviction proceedings. The principal factors to be considered are: (i) whether alternate accommodation would be within the means of the tenants

if they were evicted, and (ii) whether the eviction would be in the interest of improvement and clearance of the slum area. As stated above, the fact

that the petitioners own buses does indicate that they are persons of means and would be able to afford alternate accommodation if evicted.

Concededly, the petitioners have not produced any material which would reflect that they do not have the wherewithal to seek alternate

accommodation. Thus, on the anvil of the factors as specified under section 19(4) of the Slum Act, the decision of the Competent Authority to grant

permission to respondent no. 2 to initiate eviction proceedings cannot be faulted.

12. The petition and pending application are, accordingly, dismissed.