

(1964) 11 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 53-D of 1963

Nihal Chand Munshi Ram

APPELLANT

Vs

Vishandas Menraj and Others

RESPONDENT

Date of Decision : 08-11-1964

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : AIR 1965 P&H 267

Hon'ble Judges : P.C. Pandit, J; Mehar Singh, J

Bench : Division Bench

Judgement

P.C. Pandit, J.

(1) Nihal Chand, appellant, was a tenant of the first floor of a house situate in Mori Gate, Delhi which had been declared a "slum area" under the Slum Area (Improvement and Clearance) Act, 1956 (hereinafter referred to as the Act). On 5-10-1956 Vishan Dass, Respondent No. 1 who was his landlord, brought a suit for his ejectment on the ground that he required this portion of the house as well for his personal need and for the use of the members of his family. The other ground for ejectment was that one of the walls of his house had cracked out without the house being vacated. This suit resulted in a consent decree, which was passed on 15-11-1956, under the terms of which the tenant agreed to vacate the premises after 2 1/2 years. In the meantime, the Act came into force and on 7-4-1959 an application was made u/s 19 for permission to execute the consent decree. Thereafter the appellant filed a suit that the said compromise decree was nullity. This suit was dismissed on 29-8-1960 and an appeal against the same was also rejected on 28-8-1961. On 23-8-1960, however, the Competent Authority under the Act respondent No. 3 dismissed the landlord's application u/s 19 on the ground that "the landlord's suit was misconceived, both on the grounds of bonafide necessity and the premises requiring repairs." An appeal against the same was also dismissed by the Administrator Union Territory, Delhi, respondent no. 2 on 21-11-1961, observing thus:--

"There is no doubt the fact that both the parties have large families and that both are living under extremely inconvenient conditions, but the fact that the respondent (tenant), who seems to be a respectable person has not been able to find any alternative accommodation shows how serious would be the predicament of his family if he is ejected from the premises. In my opinion, the Competent Authority did the only reasonable thing that was possible in the circumstances by refusing to grant permission to the appellant (landlord) to get this decree executed."

Since there was no other remedy for the landlord, he filed a writ petition in this Court against the order of the Administrator. The same was accepted by Mahajan J. on 12-11-1962, holding that a reading of the orders of the Administrator and the Competent Authority showed that the real ground for allowing or refusing the application u/s 19 of the Act had not been kept in view. It was also mentioned that the principles laid down by the Supreme Court in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, for determining all such matters, had been ignored by both these Authorities. The learned Judge quashed both these orders and directed that the matter be determined by the Competent Authority afresh in accordance with the rule laid down by the Supreme Court in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, . Against this order, the present appeal under Clause 10 of the Letters Patent has been filed by the tenant.

(2) Learned counsel for the appellant has raised two contentions before us--(1) that the learned Single Judge was in error in holding that the Authorities under the Act had ignored the criteria laid down by the Supreme Court in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, while refusing permission to the landlord to execute the ejectment decree u/s 19 of the Act and (2) that the landlord had not brought the Supreme Court ruling, mentioned above, to the notice of the Authorities under the Act and had not raised any objection on its basis. The learned Single Judge, therefore, in error in allowing him to raise this new point in writ proceedings.

(3) As regards the first contention, it will be clear from the order of respondent No. 2, mentioned above, that the ground on which he had confirmed the order of respondent No. 3 was that in his view though it was true that both the landlord and the tenant had large families and were living under very inconvenient conditions, but the tenant, who was a respectable person, had not been able to find any alternative accommodation and, consequently he and his family would be in a serious predicament if he was ejected from the premises. It is no doubt correct that it is very difficult to get accommodation in Delhi, but that alone, in my view, is no ground for refusing permission to the landlord to execute the eviction decree obtained by him from the Civil Courts. Undoubtedly, the Act has not laid down any criteria, which had to be borne in mind by the Authorities while granting or refusing permission to a landlord for executing the ejectment decrees passed under the Rent Control Act. The Supreme Court authority, referred to

above, however, mentioned the following principles in this respect:--

"Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go to, and who if they were compelled to go out, would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere.

* * * * *

The Act no doubt looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the profit open if an order for eviction were passed."

Bearing these principles in mind, it will be seen that both respondents 1 and 2 had not determined as to whether the appellant was so poor that in case he was ousted from the premises in dispute, he would have no alternative accommodation to go to and would be stranded in the open and necessarily create another slum in the process. The mere fact that the appellant had not been able to find any alternative accommodation and would be in a predicament if he was ejected from the premises is no ground for refusing permission to the landlord. Under these circumstances, the learned Single Judge was right in holding that the Authorities under the Act had ignored the principles laid down by the Supreme Court in the decision referred to above.

(4) So far as the second contention is concerned, that also, in my opinion, has no substance. The Supreme Court decision was announced on 21-4-1961, while the decision of respondent No. 3 was given on 23-8-1960 and that of respondent No. 2 on 21-11-1961. Learned counsel for the respondent submitted that the Supreme Court authority had been published towards the end of 1961, and therefore, the same was not brought to the notice of respondent No. 2. Moreover, in the ground of appeal before the Administrator the landlord had specifically mentioned in ground No. 12 that respondent No. 3 had failed to appreciate that the tenant and his son were both in service and could easily have another house on rent. As a matter of fact, according to the learned counsel, their salaries has also been mentioned in this ground. This apart, the learned Single Judge has stated that this objection was purely legal and went to the very root of the case of and thus could be taken in a petition under Article 226 of the Constitution. Under these circumstances, the learned Single Judge was right in allowing this point to be raised in writ proceedings.

(5) The result is that this appeal fails and is dismissed. There will, however, be no order as to costs.

Mehar Singh, J.

(6) I agree.

(7) Appeal dismissed.