
(1971) 12 DEL CK 0034

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No's. 103 and 104 of 1971

Raj Rani

APPELLANT

Vs

Amar Nath etc.
 Raj Rani Vs Ram Lal

RESPONDENT

Date of Decision : 13-12-1971

Acts Referred:

Citation : (1972) RLR 47

Advocate : Vijay Kishan and R.P. Sagar, for the Appellant;

Judgement

(1) This judgment will dispose of civil Miscellaneous (Main) Nos and 104 of 1971 since similar questions of law have arisen for decision. The petitioner, who is common in both the petitions, has approached this Court under Article 227 of the Constitution of India for quashing the orders of the Financial Commissioner and the competent Authority (Slums), dated May, 17,1971, and March 18, 1971, respectively. She is the landlady of house No. Xi 1-5720, Street No. 3, Nai Chandhrawal Kolhapur Road, Subzi Mandi, Delhi, which is situated in a slum area.

(2) Civil Miscellaneous (Main) No. 103 of 1971 relates to Amar Nath, respondent who is a tenant in a part of the said premises. The rent was originally Rs. 6 per month, but later on the standard rent at the rate of Rs. 30.48 np. per month was fixed with effect from April 7, 1965. The petitioner instituted eviction proceedings and one of the grounds was non-payment of rent. She succeeded before the Rent Control Tribunal in getting an order for eviction of the respondent. When the tenant came up in appeal to this court, it was dismissed, but at the request of the tenant's counsel two month's time was granted to vacate the premises and deliver its vacant possession to her. The tenant failed to vacate it. The petitioner approached the Competent Authority (Slums) under the Slum Areas (Improvement and Clearance) Act, 1956, (hereinafter referred to as "the Act"), for permission to execute the eviction order. It was averred that the tenant was a person of means and could afford to obtain alternative accommodation if he were evicted. The tenant denied the same.

(3) The Competent Authority(Slums) found that the factum of nonpayment of

rent could not be made the basis for granting permission for eviction of the tenant. The total income of the tenant was found to be about Rs. 300.00 per month, and he was found to be in possession of a covered area of 280 square feet. He concluded that the tenant would not be in a position to secure alternative accommodation. The permission was, Therefore, refused. / On appeal, the Financial Commissioner upheld the order. In his opinion, 35 paise per square foot per month of the covered area was the rent at which alternative accommodation could be had and the person was not expected to spend more than 12% of his income on rent. He thus found that the tenant could not afford to pay Rs. 98 per month as rent for alternative accommodation.

(4) Civil Miscellaneous (Main) No. 104 of 1971 relates [to Ram Lal who is a tenant in a part of the said premises. The petitioner had succeeded in obtaining an order of eviction against him in the circumstances similar to that of Civil Miscellaneous (Main) No. 103 of 1971. The tenant's second appeal to the High Court was dismissed in the similar circumstances. When the petitioner approached the Competent Authority (Slums) for permission to evict the tenant, the total income of the tenant including that of his nephew was found to total up to Rs. 322.50 paise. He was found to be in possession of 250 square feet of covered area. Such an alternative accommodation was found to be not available to him for less than Rs. 125.00 per month and the tenant could not be expected to pay that much rent. The permission was, Therefore, refused. On appeal, the Financial Commissioner upheld the findings and applied the similar test. He found that the income of the tenant as well as of his nephew came to Rs. 607/95 paise and- applying the similar test found that the rent for alternative accommodation would come to Rs. 87.50 paise, which was more than 12% of the tenant's monthly income.

(5) Mr. Vijay Kishan, learned counsel for the petitioner, contends that since the tenants were in huge arrears of rent, they should not have been allowed to enjoy the property without making any payment and permission to evict them u/s 19 of the Act should have been granted. He further contends that grant of two months period at the request of the tenants by the High Court while dismissing their appeals under the Delhi Rent Control Act amounted to an admission on the part of the tenants that they were able to obtain alternative accommodation & after that they could not do so. It is lastly submitted that the Competent Authority (Slums) was not justified in applying the principle that similar area could only be available at the rate of 35 paise per square foot per month of the covered area, and that a person was not expected to pay more than 12% of his monthly income as rent for accommodation.

(6) Article 227 of the Constitution of India confers powers of superintendence on the High Courts. It empowers a High Court rather lays a duty on it to see that the Subordinate Courts and Tribunals act within the scope of their authority and do not exceed it. The exercise of this power is discretionary and should be used sparingly to correct flagrant violation of law or where grave dereliction of duty on

the part of the Tribunal can be shown. It has to be used for promoting the cause of substantial justice. A Bench decision of this Court in *C R. Abrol v. Administrator under the Slum Areas and others*. (1970) 2 R.C.R. 519, has held that the Competent Authority while exercising discretion given to it under the Act must take into account the factors stated in Section 19(4) of the Act and nothing more and that the grounds of eviction under the Delhi Rent Control Act are completely irrelevant. It has also held that section 19(4) is mandatory as well as exhaustive, and that the two considerations mentioned in section 19(4)(c) are in the alternative and not cumulative.

(7) The fact of non-payment of rent by the tenant over a long period is not the factor which the competent authority is required to take into consideration while exercising its discretion to grant the permission. Whether such a defaulting tenant, who is not entitled to protection under equity, should not be granted protection under the statute, is for the legislature to decide. What I find is that Section 19(4) is absolutely silent about it. The legislature could not have been unaware of the fact that many a tenant do not pay rents and are liable to be ejected on that ground alone. In fact, it is one of the grounds on which a land lord can get an order of eviction under the Delhi Rent Control Act. If in spite of it the legislature in its wisdom decided not to make it a ground for permission to evict the tenant from the Slum Areas, the conclusion clearly is that this factor should not be taken into consideration.

(8) The next question is whether the request for two months period by the tenants at the time of rejection of their second appeal under the Delhi Rent Control Act estops them from showing that they are not in a position to get alternative accommodation ? In my opinion, the answer clearly is "No". The request for this period does not mean that the tenant was in a position to get accommodation. He might have thought of seriously trying to find if it was possible for him to get alternative accommodation and thereafter he might have failed in his efforts. It was for the petitioner to show to the Competent Authority that alternative accommodation within his means would be available to him if he were evicted. The petitioner could not derive advantage from the request made by the tenant for two months period when his appeal was being decided under the Delhi Rent Control Act.

(9) The principle applied by the Competent Authority (Slums) that a person living in Slum Areas can get accommodation at not less than 35 Paise per square foot per month of the covered area and that he was not expected to pay more than 12% of his monthly income, cannot be said to be unreasonable. The paucity of accommodation and the high rents charged by the landlords in Delhi is well-known. Some of the Government servants are fortunate to be provided with official accommodation at the rate of 10% of their pay. Those who cannot get official accommodation are granted house rent allowance since it has been found that it is not possible for them to get accommodation at 10% of the pay. A person is not expected to spend a major part of his income on accommodation only in

the present day conditions.