

(2013) 04 DEL CK 0143

In the Delhi High Court

Case No : LPA 67/2013

Ramzani

APPELLANT

Vs

Anjuman Wakil E. Quam Punjabi

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0143

Hon'ble Judges : D. Murugesan, C.J; V.K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

LPA 67/2013 and CM 1713/2013 (filing additional documents)

1. The respondent Society filed an application u/s 19 of the Slum Areas (Improvement and Clearance) Act, 1956 seeking permission to initiate eviction of the appellant from the premises comprising one room, common open courtyard and a lavatory on the first floor of the property bearing number 928, Mohalla Kishen Ganj, Teliwara, Delhi, which falls in a slum area. Notice of the aforesaid application was issued to the appellant and served upon him. According to the learned counsel for the appellant, notice was received by the son of the appellant. Since neither no one appeared nor any reply on behalf of the appellant was filed before the Competent Authority, he was proceeded ex parte vide order dated 13.10.2009. Vide an ex parte final order dated 21.5.2010, the application filed by the respondent u/s 19 of the aforesaid Act was allowed thereby granting permission to the respondent to initiate eviction proceedings against the appellant. The appellant filed W.P. (C) No. 791/2012 challenging the order dated 21.5.2010 passed by the Competent Authority. The aforesaid writ petition, however, was withdrawn by the appellant on 8.2.2012 since he wanted to pursue such other remedy as would be available to him. After withdrawing the aforesaid writ petition, the appellant filed an application seeking setting aside of the ex parte order dated 13.10.2009 and ex parte order dated 21.5.2010. The Competent Authority vide order dated 25.10.2012 dismissed the aforesaid

application. The order passed by the Competent Authority was challenged by the appellant by way of W.P. (C) No. 15/2013. The learned Single Judge vide the impugned order dated 4.1.2013 dismissed the writ petition. Being aggrieved, the appellant/writ petitioner is before us by way of this appeal.

2. A perusal of the order passed by the Competent Authority on 25.10.2012 would show that the appellant had actually appeared before the Competent Authority on 6.3.2009 and had taken time to file written statement. Thereafter, neither did he appear nor was any written statement filed by him. The learned counsel for the appellant, however, states that the appellant had noted the date before the Competent Authority to be 30.5.2009 and when he came to the Court of the Competent Authority on that date, he came to know that the actual date of hearing in the matter was 13.5.2009 and not 30.5.2009. Be that as it may, the fact remains that neither did the appellant appear before the Competent Authority nor did he file any written statement at any time prior to 13.9.2009, when he was proceeded ex parte. Even if he had noted the date as 30.5.2009, he ought to have filed his written statement and appeared before the Competent Authority on the very next date of hearing. There is absolutely no explanation from the appellant for not appearing before the Competent Authority and not filing any reply/written statement. We have questioned the appellant who is present in person in the Court in this regard, but he is unable to explain the default except saying that he is a poor man who is now aged about 81 years. The learned counsel for the respondent submits that it is not as if the appellant was stranger to the Court proceedings and the need to engage a counsel and file a reply, when he received notice from the Competent Authority and appeared in response to the said notice. According to the learned counsel for the respondent, there were litigations between the parties even before the notice in the application u/s 19 of the Slum Area Act was issued to the appellant. This statement made by the learned counsel for the respondent is not disputed by the appellant. In these circumstances, we find absolutely no justification for the appellant not appearing before the Competent Authority and not filing the written statement/reply on or before 13.9.2009.

3. Though the appellant was proceeded ex parte on 13.9.2009, the Competent Authority granted requisite permission only vide judgment/order 21.5.2010 i.e. after more than 8 months of the appellant being proceeded ex parte. There is no explanation from the appellant as to why he did not seek setting aside of the ex parte order dated 13.9.2009 at any time till the final order came to be passed by the Competent Authority on 21.5.2010. This is yet another circumstance which goes against the appellant.

4. The order passed by the Competent Authority on 21.5.2012 came to be challenged only by way of a writ petition filed in the year 2012. The learned counsel for the appellant submits that the appellant was not aware of the permission granted by the Competent Authority till he received a copy of the eviction petition filed by the respondent against him. When we asked the learned

counsel for the appellant as to when he had received the copy of the eviction petition, he stated that it was received towards end of the year 2010. There is no worthwhile explanation from the appellant as to why even on receipt of notice of the eviction petition he did not question the order of the Competent Authority by way of a writ petition. The writ petition having been filed in the year 2012, there was a time lag of more than a year between receipt of the notice of the eviction petition and the filing of the writ petition. In these circumstances, when there is no explanation from the appellant for not filing any written statement/reply despite receipt of notice from the Competent Authority, not appearing before the Competent Authority at any time prior to 13.9.2009 when he was proceeded ex parte, for not seeking setting aside of the ex parte order dated 13.9.2009 before the final order came to be passed by the Competent Authority on 21.5.2010, and for not filing the writ petition immediately after receipt of notice of the eviction petition, it appear to us that the appellant was deliberately delaying the matter so as to prolong the litigation initiated by the respondent and his absence before the Competent Authority was not bonafide. We, therefore, find no reason to interfere with the view taken by the learned Single Judge. The appeal is devoid of any merit and is hereby dismissed.