

Sumitra Devi Vs. Swaran Singh

Sumitra Devi Vs. Swaran Singh

SooperKanoon Citation : sooperkanoon.com/685774

Court : Delhi

Decided On : Mar-11-1977

Reported in : 1977RLR467

Judge : H.L. Anand, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47

Appeal No. : Civil Miscellaneous (Main) Appeal No. 141 of 1976

Appellant : Sumitra Devi

Respondent : Swaran Singh

Advocate for Pet/Ap. : R.S. Oberoi and; A.K. Tandon, Advs

Judgement :

H.L. Anand, J.

(1) H.L. Anand, J.-On July 14, 1975 a conditional order for the evidence of the petitioner was passed by the Rent Controller, The petitioner failed to satisfy the condition and the order became absolute. At the stage of execution of the order petitioner filed an objection under section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (for short the Slum Act) read with Sections 47 and 151 of the Code of Civil Procedure on the allegations that the premises in dispute was situated in a slum area and the eviction order was, therefore, a nullity in that in

terms of Section 19(1)(a) of the Slum Act the proceedings for the eviction of the petitioner could not be filed, and were, therefore, not maintainable, except with the previous permission in writing of the Competent Authority under that Act. The objection is pending. Meanwhile by an order of April 23, 1976 the Rent Controller turned down the plea of the petitioner for stay of dispossession pending investigation into the objection on the ground that the petitioner was unable to show that she had a prima facie case in that the petitioner was unable to place on record any material which may indicate that the property in dispute was situated in a slum area even while holding that the question whether or not the premises was situated in such an area 'Calls for evidence right of which shall not be denied to respondent'. The Controller, however, sought to protect the interest of the petitioner by a direction that if the petitioner is dispossessed the landlord will retain possession of the property in dispute and shall not part with it until the objection had been disposed of. The order was upheld by the Rent Control Tribunal in appeal, both on the merits as also on the ground that the appeal, being against an interlocutory order, was not maintainable. It is these orders that the petitioner assails in the present proceedings under Article 227 of the Constitution of India.

(2) It was not disputed that in terms of the provisions of Section 19(1)(a) of the Slum Act proceedings for eviction of a tenant from any property situated in a slum area could not be filed, after the commencement of the Slum Areas (Improvement and Clearance, Amendment Act, 1964, except with the prior permission in writing of the Competent Authority under that Act and that if such proceedings were initiated without the requisite permission and an order of eviction was made in such proceedings, the proceedings would be without jurisdiction and the order of eviction would be void. It is also not in dispute that the Rent Controller, as indeed the Rent Control Tribunal, felt that the question whether the premises in dispute was part of a slum area or not required investigation and could not be decided on the basis of the material available either in the original proceedings or with the objections filed by the petitioner. Ordinarily, therefore, where objections were admitted to a hearing and the Controller is still to decide if the proceedings which led to the order, were competent and, if not, whether the eviction order would be void, it is but proper that, pending such an investigation, the immovable property should be maintained in status quo, so that unnecessary hardship is not caused to

the tenant in occupation. In such a situation' the mere prospect of the tenant being put back into possession if his objections were sustained would hardly provide any consolation. It was therefore, perhaps unfair for the Controller and the Rent Control Tribunal to have brushed aside the plea for stay on the ground that there was no prima facie case. Learned counsel for the respondent however, sought to justify the impugned orders on the further ground that the objections filed by the petitioner prima facie suffered from a fatal infirmity and, therefore, the petitioner would not qualify, in such circumstances, for the interim protection that has been refused to her. According to the counsel the petitioner could assail the impugned order of eviction and validity of the proceedings if same were incompetent and the order a nullity on the face of it but where, proceeds the arguments, the impugned order was not ex facie a nullity but may turn out to be void after investigation, as in the present case, if it was found on investigation that the property was situated in a slum area, such an objection could not be raised in execution. In the case of Vasudev AIR. 1970 S.C. 475 it was held by the Supreme Court that where the decree was made by a Court which had no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceedings if the objection appears on the face of the record. But where the objection as to jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. This was a case in which a decree for ejection of a lessee had been passed by a court of Small Causes without any objection to its jurisdiction and the question of that Court to entertain the suit depended upon 'interpretation of the terms of an agreement of lease and the user to which the land was put on the date of the grant. It was held that these questions could not be 'permitted to be raised in an execution proceeding so as to displace the jurisdiction of the court which passed it.

(3) The Rent Controller is still seized of the objections and it would not, therefore,,be. proper for me to rule on the right of the petitioner to assail the impugned order of eviction in execution proceedings on the ground that the property was situated in a slum area Prima facie, however, it appears that the

objection suffers from a serious , infirmity and there; is a likhood of the objection being turned. down on the basis of the law laid down by the Supreme Court. That being so it is difficult to uphold the claim of the petitioner to the interim protection of stay of dispossession. There would, therefore, be no ground to interfere with the impugned orders.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com