

Sat Pal and anr. Vs. Sudershan Lal and ors.

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Court : Delhi

Decided On : Mar-17-1972

Reported in : AIR1972Delhi295; 9(1973)DLT1

Judge : V.S. Deshpande, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11; Slum Area (Improvement and Clearance) Act, 1956-Sections 19(3) and 19(4)

Appeal No. : Civ. Writ No. 584 of 1968

Appellant : Sat Pal and anr.

Respondent : Sudershan Lal and ors.

Advocate for Pet/Ap. : N.D. Bali and; B. Kirpal, Advs

Judgement :

V.S. Deshpande, J.

(1) The petitioners are tenants of premises situated in a slum area belonging to the respondents landlords. An order for eviction against the tenants was obtained by the landlords on 29th August, 1967. This order is not executable unless the permission of the Competent Authority for its execution is obtained under section 19(1)(b) of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter called the Act). In granting or refusing such permission, the Competent Authority

has to take into account under section 19(4)(a) of the Act whether alternative accommodation within the means of the tenant would be available to him if he were evicted.

(2) In the first application to obtain permission under section 19(1)(b) the landlords, inter alia, stated that the tenant Sat Pal (appellant No. 1) was doing the work of a contract along with one Shri Vidya Parkash and was earning Rs. 1800.00 per month. But the defense of Sat Pal was that he was only an employee of M/s. Bharat Agencies on Rs. 125.00 per month. This defense was believed by the Competent Authority Shri D. K. Podder who found that the total income of all the persons living in the premises along with the tenants was Rs. 722.00 while the number of persons to be maintained on that income was 19. The tenants were not, therefore, in a position to find alternative accommodation within their means if they were evicted. He, therefore, dismissed the application of the landlords on 5th September, 1970 as per Annexure A. In the appeal against this order under section 30 of the Act it was urged before the Financial Commissioner that in addition to the basic salary, the tenant Sat Pal must be receiving some allowances and his income was, therefore, held by the appellate authority to be Rs. 200.00 per month. The appellate authority was of the view that the total earnings of the people living in the premises were Rs. 1000.00. The tenants could not, therefore, be held to be able to find alternative accommodation within their means as such alternative accommodation would require payment of rent of Rs, 250.00 or so which would be 25 per cent of their income. The appeal was, therefore, dismissed on 21st October, 1970.

(3) The landlords filed a second application for permission under section 19(1)(b) on 22nd December, 1970. The tenants contended that the second application was barred by rest judicata in view of the dismissal of the first one. The landlords replied that the bar of rest judicata did not apply in view of changed circumstances. The Competent Authority Shri P.R. Vershneya appointed a commissioner for local investigation who reported that the premises of Bharat Agencies, the alleged employers of Sat Pal, had been closed down for a long time and that one Chanan Shah told him that Sat Pal was carrying business in partnership with Chanan Shah. Sat Pal filed an affidavit that he was not a partner of Chanan Shah but was

serving Bharat Valve Manufacturing Company at a new address. But one Jagmohan Mehra, partner of Messrs. Ram Nath Mehra & Sons, filed an affidavit that he gave earth excavation and cartage work to Chanan Shah on the condition that the tenant Sat Pal also undertook the responsibility of proper fulfillment of the work allotted to Chanan Shah. Shri Varshneya, therefore, inferred that Sat Pal was carrying on business in partnership with Chanan Shah and had tried to conceal his income from the partnership. He, therefore, discarded his defense and believed the allegations of the landlords and held that the tenant Sat Pal was earning more than Rs. 1000.00 from his contract business. The total income of the occupants of the premises thus came to more than Rs. 1900.00. The tenants were, therefore, in a position to find alternative accommodation within their means if evicted. He, therefore, granted the permission to the landlords to execute the order for eviction on 11th June, 1971. This order is impugned in the present writ petition on various grounds. But Shri N.D. Bali, learned counsel of the petitioners, concentrated on the following two grounds of attack, namely:-

(1) The dismissal of the first application barred the second one by resjudicata, and
(2) The impugned order was based on no evidence. The respondents (landlords) defended the writ petition, inter alia, on the ground that the conduct of the tenant Sat Pal in concealing his income was such that the discretionary relief under Article 226 should be denied to him. The points for decision, therefore, are :- (1) Whether the second application resulting in the impugned order was barred by resjudicata (2) Whether the impugned order was void as being not based on any evidence and (3) Whether the conduct of the petitioner is such as to disentitle him to any relief in this petition Points 1 and 2 :- It is well established that the general principle of resjudicata, though not the express terms of section 11 Civil Procedure Code, applies to quasi-judicial decisions of tribunals other than civil courts. Madan Lal v. Competent Authority, Yoginder Pal v. Competent Authority and Ladli Prasad v. The Financial Commissioner.

The effect of res judicata is, however, confined to the matter which was 'directly and substantially in issue in the former litigation inter partes. What was directly and substantially in issue in the first application made by the landlords The question has to be decided on the pleadings, the issues and the findings given in that case.

Isher Singh v. Sarwan Singh. The allegation of the landlords was that the tenant Sat Pal was a contractor but Sat Pal's defense was that he was a wage earner only. His defense was accepted by the Competent Authority. The effect of rest judicata in that litigation was therefore, confined to the fact that the tenant Sat Pal was only a wage earner and not a contractor and his income was Rs. 200.00 per month only as ultimately held by the Financial Commissioner in the appeal. On the contrary, the matter directly and substantially in issue in the second application was that the plea of the landlords that the tenant Sat Pal was a contractor was upheld by the Competent Authority In- spite of the denial by Sat Pal on two grounds, namely :-

(1) That the commissioner for local investigation had found that the business premises of the alleged employers of Sat Pal had been closed for a long time and that one Chanan Shah had told him that Sat Pal was a partner, and (2) That affidavit of Jagmohan Mehra that he had given the contract work to Chanan Shah only because Sat Pal undertook the responsibility to do the same.

Shri N. D. Bali referred to the Supreme Court decision in Bareilly Electricity Supply Co. Ltd. v. Workmen, paragraph 14, that the information obtained by the commissioner for local investigation was not evidence which could be accepted by the Competent Authority. According to section 19(3) of the Act, the application of the landlord has to be decided by the Competent Authority 'after making such enquiry into the circumstances of the case as it thinks fit'. The manner of this enquiry is deliberately left flexible by the legislature. It is of course subject to the basic principle of natural justice that both the parties must be given the opportunity of rebutting whatever material is placed before the Competent Authority against either of the parties. The evidence obtained by the commissioner for local investigation may not, therefore, be admissible as such against the tenant Sat Pal since he had perhaps had no opportunity of rebutting it when the commissioner obtained it. The report of the commissioner may not also be regarded as evidence as such. The fact, however, remains that the tenant Sat Pal was made aware of the report of the commissioner in which reference was made to the information given by Chanan Shah to the commissioner about the alleged partnership between Chanan Shah and Sat Pal. This led Sat Pal to file an affidavit

that the partnership was between one Chanan Shah and one Karnail Singh. Sat Pal still maintained that he was not a partner of this firm at all. Karnail Singh also filed an affidavit that he was a partner of Chanan Shah. The Competent Authority, however, did not believe the affidavit of Karnail Singh inasmuch as the deed of partnership was not tiled to show that he was a partner of Chanan Shah. On the other hand, it gave importance to the statement on affidavit of Jagmohan Mehra that he had given the work to Chanan Shah because Sat Pal undertook to be responsible for it. The Competent Authority, therefore, inferred that Sat Pal was a partner of Chanan Shah. Another reason for disbelieving Sat Pal was that Sat Pal had originally stated that he was an employee of Bharat Agencies but when the commissioner found that the Bharat Agencies had closed down long time back, Sat Pal came up with a new case that he was an employee of Bharat Valve , payable to Sat Pal Chanan Shah. These cheques were actually cashed by Sat Pal the tenant. He has now for first time given the Explanationn that another Sat Pal son of Ram Saran Das was the partner of Chanan Shah and it was on behalf of the partners that he cashed the cheques. This Explanationn was not given by Sat Pal before the Competent Authority who passed the impugned order. It is thus clearly an afterthought. These cheques are for substantial amounts such as Rs. 2450, Rs. 2300 and Rs. 2300.00. Chanan Shah has also filed an affidavit that a total sum of Rs. 27,000.00 was paid for the earth work by Ram Nath Mehra & Sons and was equally divided between him and Sat Pal. The conduct of Sat Pal was thus reprehensible. He has totally suppressed his partnership with Chanan Shah even though he had received substantial payments from Ram Nath Mehra & Sons.; His Explanationn for receiving those sums is also unbelievable. It is obvious, therefore, that he has tried to hoodwink the Competent Authority by suppreassing his income. In its writ jurisdiction, this Court would be unwilling to help such a person on the principle that a petitioner who comes to obtain a discretionary relief must come with clean hands (C.R. Abrol v. Administrator under the Slum Areas', at 781 and Digambar Prashad v. S I. Dhani etc.

(3) The writ petition is, therefore, dismissed with costs.

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