

Bal Kishan Vs. P.R. Varshneya, Competent Authority (Slum Areas)

Bal Kishan Vs. P.R. Varshneya, Competent Authority (Slum Areas)

SooperKanoon Citation : sooperkanoon.com/689653

Court : Delhi

Decided On : Jan-20-1972

Reported in : 8(1972)DLT390

Judge : T.V.R. Tatachari, J.

Acts : Slum Area (Improvement and Clearance) Act, 1956 - Sections 19(4)

Appeal No. : Civil Miscellaneous (Main) Appeal No. 167 of 1971

Appellant : Bal Kishan

Respondent : P.R. Varshneya, Competent Authority (Slum Areas)

Advocate for Pet/Ap. : I.D. Garg and; V.B. Andley, Advs

Judgement :

T.V.R. Tatachari, J.

(1) This is a petition under Article 227 of the Constitution of India filed by a tenant, Bal Kishan, against an order, dated 10th August, 1971, of Shri P. R. Vershneya. Competent Authrity, Slum Areas Delhi, in case No. C-A-1(11790) of 1970, granting permission to the landlord, Mst. Bismilla Jan (respondent No. 2) under section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as the Slum Areas Act), to institute eviction proceedings against the petitioner. Respondent No. 1 is the Competent Authority.

(2) Respondent No. 2 claims to be the owner and landlady of a Kothri with two doors bearing Municipal No. 1458 (new)/733(old). Ward No. Iii, Lambi Gali, Chhatta Abdul Razak, Phatak Habush Khan, Delhi. The petitioner is her tenant in respect of the said Kothri on a rent of Rs. 5.00 per mensem. She filed an application before respondent No. 1 under section 19 of the Slum Areas Act alleging that the petitioner-tenant was in arrears of rent amounting to Rs. 85.00 up to 30th November, 1970, and that he did not pay the same in spite of repeated demands. She stated in the application that the premises in dispute was originally allotted by the Custodian of Evacuee Property in favor of late Shri Jagan Nath, father of the petitioner-tenant, as a displaced person for use as residence ; that after the death of Jagan Nath, the petitioner became the tenant in respect of the said premises ; that the petitioner tenant had not been residing in the suit premises for more than six months before the date of the application, but acquired another premises, No. 1207, Bara Dari Nawab Wazir, Ward No. Iii, Phatak Habush Khan, Delhi, and had been residing therein ; that the petitioner-tenant had also sublet or parted with possession of the suit premises ; and that the premises was required bona fide by the landlady for the purpose of building or re-building or making substantial additions or alterations, and such additions or alterations could not be carried out without premises being vacated. She also alleged that the petitioner-tenant was a man of means and would not create another slum if he were evicted.

(3) The petitioner-tenant filed a written statement admitting the relationship of landlord and tenant between the parties; but denying the grounds mentioned by the landlady in her application. He stated that he had been using the suit premises for residence as well as for non-residential, purposes and had made a bhatti for baking bananas, that premises No.1207 in Bara Dari Nawab Wazir, Delhi, was allotted by the Custodian of Evacuee Property, New Delhi, to his father Jagan Nath in 1955, that the said house consisted of only one room measuring 12' x 6' and a small court-yard., and that his mother, younger brother, and two unmarried sisters have-been residing in the same. He further submitted that he is a very poor man and sells ice during the summer season and bananas during winter season, that he was hardly able to earn Rs. 4.00 to Rs. 5.00 per day which was hardly sufficient to feed himself, his wife and two children, and that he had also to give some help to his aged and widowed mother, younger brother, and two unmarried

sisters. He pleaded that even if the house. No. 1207, was taken as being in his occupation as one of the legal representatives of his father, he had only a 1/6th share in that house which was valued at Rs. 3269.00 at the time of the allotment to his father, that the said share was negligible and he could neither sell the same nor occupy any distinct portion in the said house, and that he had thus per force to reside and work in the suit premises.

(4) The landlady filed a replication reiterating the allegations and contentions in her application, and further alleging that the house No. 1207 was a double-storied house, and that the petitioner-tenant was a wholesale dealer of ice and bananas.

(5) In support other case, the landlady filed the affidavits of her general attorney Sheikh Mohd. Younus and of her Rent Collector Abdul Rehman, and some documents. The petitioner-tenant filed in rebuttal the affidavits of Puran Lal, Nand Ram, Roshan Lal, Diwan Chand, his mother Vidhya Wati and his own affidavit, and three documents. By his order, dated 10th August, 1971, the Competent Authority, respondent No. 1, held that the grounds of subletting and requirement for making additions and alterations were matters for consideration by the Controller in the proceedings for eviction, and that the ground of non-payment of rent was not available to the landlady as the same had since been admittedly paid. As regards the question whether the suit premises was let for residential-cum-commercial purposes, he held that the only document relied upon by the petitioner-tenant was an entry pass for Hamilton Road Siding, Delhi, but the document showed that the suit premises was being used for residential purpose, that mere averments in the affidavits filed on behalf of the tenant to the effect that the suit premises was residential cum-commercial could carry no, weight in the absence of any documentary evidence to that effect, and that the suit premises was let only for residential purpose. As regards the question whether the petitioner-tenant had alternative accommodation in house No. 1207, the competent Authority observed that the petitioner-tenant had admitted the existence of the said accomodation, but that his only contention was that his share in the property was only 1/6th and the accommodation in that house was very small, that the mother of the tenant had admitted in paragraph 10 of her affidavit that her mess and that of the petitioner-tenant and his children was joint, that the

said admission clearly showed that the petitioner-tenant and his family members were in possession of alternative accommodation in the aforesaid premises No 1207, that suitability of the house for his requirement was irrelevant for purposes of disposing of the present application for permission, and that since the petitioner-tenant was in possession of alternative accommodation in premises No. 1207, the question of creation of another slum by him if he were evicted did not arise. In view of the said finding, the Competent Authority concluded that any enquiry about the status of the tenant was not relevant, and he accordingly granted the permission sought for by the landlady. It is against that order that the present petition under Article 227 of the Constitution has been filed by the tenant Balkishan

(6) Shri Ishwar Dass Garg, learned counsel for the petitioner-tenant, contended firstly that the Competent Authority was not justified in considering that the averments in the affidavits filed on behalf of the tenant to the effect that the suit premises was residential-cum-commercial carried no weight, and that his approach was erroneous. There is no force in this contention. The Competent Authority pointed out that the only document relied upon by the tenant was an entry pass, and that it showed that the premises was a residential one. He then referred to the averments in the affidavits and observed that mere averments in the affidavits could not carry any weight in the absence of any documentary evidence to that effect. In the circumstances, it cannot be said that the approach of the Competent Authority was erroneous.

(7) The learned counsel next contended that the Competent Authority was not justified in holding that merely because the petitioner-tenant and his family was having joint mess with his mother, younger brother and two unmarried sisters, he and his family members were in possession of alternative accommodation in premises No. 1207, and that even otherwise the Competent Authority erred in law in observing that suitability of that alternative accommodation for his requirement was irrelevant for the purpose of deciding the application under section 19 of the Slum Areas Act. There is considerable force in the second part of the contention of the learned counsel. Section 19(4) of the Slum Areas Act requires that in granting or refusing to grant the permission under sub-section (3) of section 19, the Competent Authority should take into account, inter alia, the factor whether

alternative accommodation within the means of the tenant would be available to him if he were evicted. The purpose of the said provision is obviously to see that the tenant would not create another slum if he were evicted. If the alternative accommodation is such that it cannot accommodate the tenant and the members of his family who are dependent upon him and who are living with him in the premises from which he is sought to be evicted, he would not be able naturally to live in that alternative accommodation, and would, therefore, create another slum. This shows that an element of suitability is implicit in the words 'alternative accommodation' used in sub-section (4) (a). In other words, the alternative accommodation has to be one which is reasonably suitable for the residence of the tenant and the members of his family who are dependent upon him and are living with him in the premises from which he is sought to be evicted. It does not, of course, mean that the alternative accommodation should be exactly similar to and should have all the amenities, facilities and conveniences which he may be having in the premises from which he is sought to be evicted. But, it has to be reasonably suitable for the residence of himself and the members of his family who are dependent upon him and who are living with him in the premises from which he is sought to be evicted, before it can be said that an alternative accommodation is or would be available to him within the meaning of section 19(4) of the Slum Areas Act. The Competent Authority was, therefore, in error in not considering the suitability of the alleged alternative accommodation, i. e., house No. 1207 in Phatak Habush Khan, on the ground that suitability of that house was irrelevant for the purposes of deciding the application under section 19 of the Slum Areas Act, and that order of the Competent Authority was vitiated by the aforesaid error. The question whether the circumstances that the tenant has a 1/6th share in house No 1207. and that he and his family have a joint mess with his mother, brother, and two sisters show that he has alternative accommodation in house No. 1207, and the question whether in view of the size of the house and the fact that his mother, brother and two unmarried sisters are also to live in house No. 1207, it can be said to be a reasonably suitable alternative accommodation for him and his family, are all matters for consideration by the Competent Authority and not by this court under Article 227 of the Constitution.

(8) The competent Authority did not go into the question of the means of the tenant in the view taken by him that the tenant had alternative accommodation. The Competent Authority will have to consider the means of the tenant only in case he comes to the conclusion that the tenant has no alternative accommodation. Shri V. B. Andley, learned counsel for the landlady (respondent No. 2) pointed out that it was the case of the landlady that the petitioner-tenant has been residing in house No. 1207, and that affidavits, Exhibits R-2 and R-3, and copies of entries in electoral rolls of the years 1956, 1961, 1966 and 1970, Exhibits R-4 to R-8, were filed in support of the said case of the landlady. The Competent Authority did not consider and discuss any of the said documents. He should consider the said document in dealing with the question whether the tenant has alternative accommodation in house No. 1207 or not.

(9) For the above reasons, the petition, C.M. (Main) No. 167 of 1971 is allowed, the order of the competent Authority, dated 10th August, 1971, is set aside, and the case is remanded to the Competent Authority who should restore to his file the application, C.A. 1(11790) 70, filed by the landlady (respondent No. 2) before him under section 19 of the Slum Areas Act, and dispose it of afresh in accordance with law and in the light of this judgment. In the circumstances, the parties are directed to bear their own costs in the application before the Competent Authority before this remand, and in the petition, C.M. (Main) 167 of 1971, in this court.

(10) The parties are further directed' to appear before the Competent Authority on 10th February, 1972.