

Ram Lal Vs. the Competent Authority (Slums) and anr.

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Court : Delhi

Decided On : Aug-10-1973

Reported in : ILR1974Delhi530

Judge : S. Rangarajan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Appeal No. 875 of 1970

Appellant : Ram Lal

Respondent : The Competent Authority (Slums) and anr.

Advocate for Pet/Ap. : Keshav Dayal and; A.N. Arora, Advs

Judgement :

S. Rangarajan, J.

(1) This is a petition by the tenant (Ram Lal) under Articles 226 and 227 of the Constitution for quashing the order of the Competent Authority (Shri P. R. Varshaneya) dated 3-6-1970, granting permission to the landlord (respondent) under section 19(4) of the Slum Areas (Improvement and Clearance) Act, 1956 to institute eviction proceedings under the Delhi Rent Control Act, 1958 against the tenant (petitioner). The petitioner paid during the hearing the arrears of rent and the same was accepted by the landlord in order to remove the impediment which

otherwise existed in the matter of this petition being heard. A separate note concerning this has been made in the record and this was done without prejudice to the rights of either side.

(2) The Competent Authority has rested his order on the ground that the tenant is possessed of a license for the sale of foodgrains and vegetable oils etc. and 'howsoever petty business in respect of the licensed articles that may be, his income there from cannot be less than Rs. 10.00 per day-meaning thereby that the respondent is not earning less than Rs. 300.00 p.m.' Since his family consists of only himself and his wife, the Competent Authority thought, that the 'respondent can very well afford to secure an alternative accommodation within his means (i.e. income of Rs. 300.00 p.m.) without creating further slum'. The petitioner complains that the said finding regarding the means and earning capacity is not supported by any legal evidence and for that reason should be quashed. This is not disputed that the burden of proving lack of sufficient means to find suitable alternative accommodation is on the tenant,

(3) It is necessary in the first instance to notice the grounds on which the landlord sought permission to evict the petitioner and how the Competent Authority has dealt with them. The alleged bonafide requirement of the landlord of the premises in question for his own use was not one which had to be decided by the Competent Authority; it has to be decided only by the Rent Controller. It had been also alleged by the landlord that the petitioner had built or acquired vacant possession of residential accommodation in premises No. C-185. J. J. Colony situate in the area of village Wazirpur, Delhi benami in the name of his wife Smt. Ram Rakhi and that he also obtained vacant possession of two flats D. 61 and D. 62 in the same colony which stood allotted in the name of his son Kuldeep Lal and his brother-in-law Krishan Lal, respectively. It was still further alleged by the landlord that the petitioner had retired 'recently' from Government service as a teacher and that he had got about Rs. 25,000.00 as his Provident Fund, Gratuity etc.; he was also teaching in a private school where he was getting about Rs. 300.00 per month and he was in addition coaching students privately after school hours and earning about Rs. 400.00. His wife was said to be earning Rs. 200.00 per month by darning clothes. Two of his sons were serving in the Air Force and

earning about Rs, 450.00 per month each. Yet another son was getting about Rs. 500.00 per month as a driver in addition to his earning some overtime allowance. Regarding the sons of the petitioner the Competent Authority set out what had been mentioned by the petitioner in his affidavit concerning them and seemed to accept the case of the .tenant that they were posted at different places; affidavits were filed from two of them in support of their being separate from their father.

(4) Shri A. N. Arora, learned counsel for the landlord, contends that the purchases in the name of his wife and his children are benami transaction. The burden of proving that they were benami was on him; the same has not been discharged. The income of the sons of the respondent could not be taken into consideration because the. tenancy was only in the name of the father.

(5) According to the petitioner, however, his only source of income was the business which he carried on in shop No. C-185 in the same colony on which he had invested Rs. 400.00 and was earning hardly Rs. 75.00 per month. He had a license for sale of foodgrains and vegetable oil etc. The sons of petitioner were posted at different places.

(6) The discussion of the evidence which was adduced by way of affidavits and the grounds on which the landlord sought permission has not been adequate. Regarding the shop C-185 the Competent Authority found that it was being used as commercial and not residential premises and for that reason would not be available for the residential use of the petitioner. It is in this premises that the petitioner was admittedly carrying on the business of selling foodgrains and vegetable oil etc. The Competent Authority found it difficult to accept the contention of the petitioner that he invested only Rs. 400.00 in the shop. The Competent Authority has not stated that the petitioner was maintaining accounts and that by reason of his not having produced the same he was drawing any adverse inference against him. He chose to rest his finding concerning the petitioner earning Rs. 300.00 per month, on his own experience, that no shopkeeper, however petty, was earning less than Rs. 300.00:per month. This is certainly not based on evidence but on the experience, as an individual, of the Competent Authority. On this aspect the following statement in Principles of

Administrative Law by Griffith and Street (Fourth Edition, p. 197) seems appropriate :

'INshort, judicial notice should be extended to official notice of information acquired in the ordinary course of the business of the tribunal. There must, however, be one safeguard; the tribunal must write these facts into the record, and if they are contained in files or reports these should be accessible to parties and subject to cross-examination and rebuttal. The dividing line between the use of such knowledge as a substitute for evidence and the use of the expert knowledge and experience of the tribunal in evaluating and drawing conclusions from the evidence in the record is fine. and there can be no restrictions on the latter process'.

(7) Our expertise which the Competent Authority had while functioning as the Tribunal is totally different from the experience gained as a private person. The latter can hardly be adequate for supporting a finding given by a quasi judicial authority which requires in law to be based on evidence.

(8) In the present petition the question for consideration is whether the impugned order granting permission to the landlord for applying for eviction of the tenant was properly granted. The order granting permission, it is worth recalling, is based only on the finding that the petitioner and his wife could find alternative accommodation without creating a further slum because the petitioner was earning not less than Rs. 300.00 per month. In the affidavit filed by the petitioner before the Competent Authority he had asserted that he was hardly earning Rs. 75.00 per month, that he had been allotted a petty quota of Maida, Suji etc. which was not available due to the Government having declared these as non-rationed articles. He was not paying any sales tax. A number of affidavits filed on behalf of the tenant (true copies of which are annexed to this petition as Annexure H to N) have not even been considered by the Competent Authority; there has equally been no reference to a few affidavits filed on behalf of the landlord either.

(9) Shri A., N. Arora relied upon a decision of V. S. Deshpande, J. in Sat Pal v. Sudershan Lal : AIR1972 Delhi295 and urged that where the tenant had tried 'to hoodwink' the Competent Authority by suppressing his income the High Court would be unwilling to help him under Article 226 since he had not gone to the High

Court with clean hands. In the present case the Competent Authority has not drawn any inference adverse to the petitioner on the basis of his not filing accounts: before such an adverse inference is drawn it must be possible to find that the tenant maintained accounts and still did not produce them. In such a case it would be obvious that the tenant came to Court with unclean hands. There is, however, an observation of the Competent Authority that the petitioner came to Court 'with unclean hands', but this observation does not appear to be ex facie supported by any concrete material; on the other hand, the Competent Authority contented himself with the following observation :

'His contention that he has invested only Rs. 400.00 in the shop and earns only Rs. 75.00 p.m. is not convincing and only goes to indicate that the respondent has not come with clean hands in his depositions' (sic).

(10) The very point at issue being the monthly income of the petitioner no assumption can be made regarding it. It is open to disbelieve the petitioner's version for cogent and proper reasons. But such disbelief cannot be on the basis of a mere hunch on the part of a quasi judicial tribunal, as in this case. based upon the experience. personal at best, of the officer presiding over the said Tribunal-an experience which cannot even be said to have been due to expertise in the matter of functioning as such Tribunal. A finding of fact based on no evidence cannot be supported and will be interfered with under Article 226 of the Constitution. It seems to me that the case on hand is one of such description.

(11) At the same time it does not seem proper to rest content with merely quashing the impugned order for that would have the effect of dismissing the application for permission to evict. The evidence on both sides has not even been fully considered. Not taking into account or omitting to consider material evidence on record would also be a ground for interference under Article 226 of the Constitution. In the circumstances while the impugned order is quashed, I consider it fit and proper to direct that the case should go back to the Competent Authority for disposal on the material on record and after fully and properly considering all the materials on record before deciding the petition. The Writ Petition is accepted in the above terms. There will be no order as to costs. parties to appear before the

Competent Authority on 5-9-1973.

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