

Krishan Lal Vs. Ramo Devi and anr.

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Court : Delhi

Decided On : Apr-21-1972

Reported in : AIR1973Delhi21; 8(1972)DLT509

Judge : Pritam Singh Safeer, J.

Acts : Slum Area (Improvement and Clearance) Act, 1956 - Sections 19(4);
[Constitution of India](#) - Article 227(1)

Appeal No. : Civil Miscellaneous (Main) Appeal No. 16 of 1972

Appellant : Krishan Lal

Respondent : Ramo Devi and anr.

Advocate for Pet/Ap. : D.P. Gupta and; Maharaj Kishan, Advs

Judgement :

P.S. Safeer, J.

(1) This petition preferred under Article 227 of the [Constitution of India](#) is directed against an order dated the 6th of November, 1971, made by the Competent Authority under Act 96 of 1956, Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter called 'the Act') whereby permission was granted to the respondent to initiate eviction proceedings against the petitioner.

(2) The application preferred under section 19 of the Act sought permission to initiate proceedings for the petitioner's eviction from shop No. 5273, Ram Bhawan, Kohlapur Road, Subzimandi, Delhi, on the ground that the petitioner had caused substantial damage by raising unauthorised construction and that he had misused the tenanted premises. The petitioner contested the application and urged that he was a poor man and will create another slum if he were to be evicted. Section 19 of the Act is:-

19.(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority.- (a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or (b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section

(1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under subsection (3), the competent authority shall take into account the following factors, namely: (a) Whether alternative accommodation within the means of the tenant would be available to him if he were evicted: (b) whether the eviction is in the interest of improvement and clearance of the slum areas; (c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant. Dealing with an application under section 19(1)(a) preferred against the petitioner, the competent authority was under an obligation to take into consideration the requirements of sub-section C4), reproduced. above. It was to find whether alternative accommodation within the means of the tenant would be available to him if he were to be evicted. The competent authority was to consider whether the eviction sought was to be in the interest of improvement and clearance of the slum areas. The parties filed their affidavits before the competent authority. No witnesses were produced and the determination in the impugned order could only be on the basis of the appreciation of evidence furnished by the affidavits.

(3) I have come across several orders passed by the competent authority which show a disregard of rule 7 framed under section 40 of the Act That rule is :-

'7.Applications under section 19.-The following procedure shall be adopted in dealing with applications made under 19 (2) of the Act. (1) Every application for permission, under section 19 shall be made in Form G. 511 (2) There shall be fee of Rs. 10.00 in respect of every application referred to in sub-rule (1). (3) Every such application shall be accompanied by a copy of the order and judgment (if any). (4) On receipt of such application, the competent authority shall cause a notice fixing a date of hearing to be issued to the tenant giving him an opportunity of making his objections to such application. On such date, or such other date to which the hearing may be adjourned the competent authority shall hear the parties and their witnesses (if any) and make such enquiry into the circumstances of the case as it thinks fit. (5) If either of the parties is absent on any date of hearing, the competent authority may proceed in his absence and after hearing the party present pass such order as it thinks fit. When an application is filed under section 19 of the Act the competent authority is to issue notice to the respondent/respondents. The respondent/ respondents can file objections while dealing with the objections in terms of rule (7) the competent authority can hear witness. The scope of sub-section (3) of section 19 should be measured in terms of rule (7). In order to obtain enough material for coming to a just conclusion the

competent authority should ordinarily hear the witnesses which the parties may produce. In this case several affidavits were filed on behalf of the petitioner including that of his father. The respondent Smt. Ramo Devi also filed her affidavit.

In the opening part of the impugned order the depositions contained in the affidavits of the parties were noticed. While dealing with those depositions the competent authority firstly dealt with those contained in the affidavits filed on behalf of the present petitioner. It was found that while the application had been preferred under section 19(1)(a) of the Act in respect of shop No. 5273, the petitioner was working along with his father Shri Kahan Chand in Shop No. 5229. The business which was being carried on there was of a different kind. The competent authority took into consideration the means of the father while determining the means of the petitioner to find alternative accommodation with the requirements of sub-Section (4) of section 19 of the Act. It is nobody's case that the father Shri Kahan Chand was a co-tenant with Krishan Lal petitioner in shop No. 5273 in respect whereof the eviction proceedings were to be initiated. On consideration of the terms employed in section 19 I am of the view that in this case the means of the father, in respect of shop No. 5273, for the tenant's competence to find alternative accommodation could not be taken into consideration. The means of all members of a joint Hindu family where they may be carrying on separate businesses and as such may be tenants in their own individual rights in respect of separate premises cannot be taken into consideration within the meaning of section 19 of the Act. The tenant, the petitioner, had installed a gram grinding machine in shop No. 5273. It is the common case that he had not received an electric connection and for 8 to 9 months no business had been done in the shop. The machinery for grinding grain had been installed therein. Alternative accommodation within the meaning therein, (a) of Sub-section (4) of section 19 of the Act 'would be an accommodation which it may be open to the tenant to utilise as an alternative to the one from which he may be sought to be evicted.

(4) The competent authority observed that the petitioner was admittedly in possession of alternative business premises and shop No. 5229, Kohlapur Road, Subzimandi, Delhi, in which he was allegedly carrying on joint business with his

father, was mentioned as that alternative business, premises. There was no basis for the competent authority to come to that conclusion. Karyana business was being carried on in shop No. 5229 not along by the petitioner but his father was also participating in that business. There was no warrant for coming to the finding that shop No. 5229 constituted the alternative accommodation within the meaning of sub-section (4) (a) of section 19 of the Act therefore, the permission for initiating eviction proceedings from shop No 5273 deserved to be given.

(5) The competent authority did not accept the contention raised on behalf of the petitioner that he had separated from his father. The view taken was that the best evidence in possession of the father and the son had not been produced. The competent authority for the reasons recorded in the impugned order decided to discard the version furnished by the affidavits on behalf of the petitioner but did not discuss the case pleaded by Smt. Ramo Devi through her affidavit. If the petitioner was working admittedly in a partnership business with his father in shop No 5229 that did not mean that he could oust his father, threw out the goods in the shop and remove the machinery from shop No. 5273 and install it in shop No. 5229. The way the competent authority came to the ultimate finding is visible from the following observations at end of the impuened order : -

'I.therefore, discard his version and believing that of the petitioner hold that the respondent's total family income exceeds to Rs. 100.00 per month. He is, thus a man of means and already possessed of an alternative accommodation.'

The least which was required of the competent authority was a discussion of the depositions contained in the affidavit of Smt. Ramo Devi before concluding as to how those depositions could be accepted and it could be held that the petitioner's total family income exceeded Rs 1000.00 per month. I am in disagreement with the view taken by the competent authority that the Income of the family to which the tenant belonged could be taken Into consideration for purposes of sub-section (4) of section 19 of the Act. I find that the competent authority has not exercised the jurisdiction in accordance with the requirements of sections 19 of the Act.

(6) The learned counsel for the respondent has cited Chautala Workers Co-operative Transport Society Ltd. v. State of Punjab, wherein the scope of Article

227 of the [Constitution of India](#) was discussed. The scope of the appellate power and the power of superintendence conferred by sub-article (1) of Article 227 was looked into. It was observed :-

'The latter power, therefore, can always be exercised suo motu in order to see that the subordinate tribunals do not transgress the limits of law and keep themselves within the power conferred on them. In order to perform this function in the interests of administration of law, it must be held to be implicit that the supervisory tribunal must also act within the legal limits of the statutory provisions. for the proper administration of which it has been vested with the supervisory power.'

'The power under Article 227 is extraordinary and must therefore be used only in exceptional cases of flagrant abuse of elementary principles of justice or manifest and patent error of law.'

(7) The Supreme Court had the occasion to consider the scope of Article 227(1) of the [Constitution of India](#) in Jijabai Vithalrao Gajre v. Pothankhan. The observations contained in paragraph 9 were to the effect that the power under Article 221 was limited to seeing that the subordinate tribunals function within the limits of their authority and that the High Courts cannot sit in appeal against the orders of such tribunals in petitions under Article 227 of the [Constitution of India](#). In the case before the Supreme Court it was found that the right Court could not be considered to have exceeded its jurisdiction under Article 227 of the [Constitution of India](#). It was found by the Supreme Court that High Court had dealt with the jurisdiction of the revenue tribunals to grant the necessary relief under particular Act. The High Court under Article 227 was noticed to have dealt with :-

'(i) The power of the mother on the facts found by the tribunals to grant the lease on behalf of her minor daughter and its legal effect; and ' (ii) the maintainability of the application of the appellant under section 39 of the Act, '

It was contended before the Supreme Court that the High Court could not have done that. Disagreeing with the argument the Supreme Court observed :-

'Therefore, we cannot accept the contention of Mr. Sanghi that any error has been committed by the High Court in considering these aspects in proceedings under Article 227.'

After considering the law laid down in respect of the scope of Article 227(1) of the [Constitution of India](#) and after scrutinising the terms employed therein I am of the view that where the High Court finds that a subordinate court or tribunal functioning within its territorial jurisdiction has acted in disregard of the requirements of a statutory provision and the determination is opposed to law then the High Court in interfering with it will be acting within the Supervisory jurisdiction and not as a court of appeal. It would be interfering with the impugned order on the basis that the Court below or the tribunal subordinate to the High Court had not acted within the scope of its jurisdiction. Such an interference would be permissible under Article 227 of the [Constitution of India](#).

(8) In this case the competent authority disregarded the requirements of section 19 of the Act. Taking that view the impugned order is quashed without there being any order as to costs.

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