

Devi Pershad Vs. Ghanshyam Dass

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Court : Delhi

Decided On : Dec-01-1986

Reported in : 31(1987)DLT62; 1987RLR82

Judge : Sunanda Bhandare, J.

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

Appeal No. : Civil Miscellaneous (Main) Appeal No. 131 of 1973

Appellant : Devi Pershad

Respondent : Ghanshyam Dass

Advocate for Pet/Ap. : B.I. Singh, Adv

Judgement :

Sunanda Bhandare, J.

(1) This petition is directed against the order of the Competent Authority under the Slum Areas (Improvement & Clearance) Act (hereinafter referred to as the Act) dated 16th April 1973 whereby the application filed by the positioner for the stay of the proceedings under Section 19 of the Act was dismissed.

(2) The respondent herein, filed an application under section 19(1) of the Act in respect of one room and varandah in front of the said room, on the first floor of

House No. 3664, Gali Jamadar, Pabari Dhiraj, Delhi. In these proceedings, the petitioner Lerein, moved an application for adjournment of the proceedings and for stay of the proceedings on the ground that another suit was filed by the respondent in the Court of Sub Judge, 1st Class, Delhi for possession of a tin shed and entire terrace over shops no. 3661-3(64 in the same premises in dispute.

(3) It was contended by the learned counsel for the petitioner that in the said suit the respondent has sought the dispossession of the petitioner on the ground that he is a trespasser. As regards the premises in question in the proceedings before the Competent Authority the respondent wanted to file a petition for eviction on the ground that he was a tenant in respect of these premises. It was, therefore submitted that since no suit for eviction of the petitioner could be filed in respect of only part of the premises in his occupation till the suit was disposed of the application could not be decided because the eviction petition itself would not be maintainable because partial eviction could not be granted. The Competent Authority dismissed the application by observing that for deciding an application under Section 19 of the Act, only status of the tenant and the capacity to acquire alternate accommodation was relevant and, therefore, even if some other suit is filed in respect of some other premises alleging the tenant to be a trespasser that would not entitle the tenant to get the proceedings under the Slum Areas (Improvement & Clearance) Act stayed.

(4) On perusal of the record and on bearing the learned counsel for the petitioner, I find that the two premises in respect of which two separate suits have been filed; one for eviction of the petitioner as a tenant and the other for dispossession of the petitioner as a trespasser are in respect of two distinct premises though in the same property. When a landlord seeks eviction of a tenant in the Walled City of Delhi it is first necessary to obtain permission from the Competent Authority under the Slum Areas (Improvement & Clearance) Act. For filing a suit for dispossession of a trespasser no such permission is required. For deciding an application under Section 19 of the Act the only thing which has to be seen is whether a tenant, if evicted is likely to create a slum. For this purpose, his capacity to acquire alternate accommodation has to be seen. If there is any other challenge to the eviction petition on merits regarding the extent of tenancy or relationship of

landlord and tenant it can be made in the eviction petition and not in the application under Section 19 of the Act.

(5) In my opinion, therefore, the Competent Authority was right in dismissing the application of the petitioner. The petition is dismissed. No costs.

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