

Punnu Ram

Vs

Chiranji Lal Gupta (Dead) by Lrs.

Civil Appeal No. 3298 of 1990

(M. Jagannadha Rao, M. B. Shah JJ)

09.03.1999

JUDGMENT

M.B. Shah, J

1. In these appeals, only question involved is whether factors laid down in Section 19(4) of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as "the Act") are to be read as cumulatively or alternatively. The full bench of the Delhi High Court has interpreted the aforesaid sub-section (4) and has arrived at the conclusion that the conditions mentioned in clauses (a) & (b) of Section 19(4) of Act were conditions in the alternative and did not have to be read cumulatively. The Court also, *inter alia*, held as under :-

"That the principal objective of the Act being clearance of slums and prevention and creation of slums, if in a given case the demolition or re-erection or re-construction of a building or a set of buildings was necessary in the interest of slum clearance or improvement, the poverty of the tenant even if established would not debar the competent authority from granting permission. The competent authority in considering the application for grant of permission moved by a landlord has to look at the matter from the point of view of the tenant and not from the point of view of the landlord, ever keeping in mind the objectives sought to be achieved by the Act."

The aforesaid order is under challenge before this Court.

For appreciating the contentions raised by the appellant, it would be necessary to refer to Section 19 of the Act which is as under :-

"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 sub-section (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."

At this stage, we would state that sub-section (4) of Section 19 was substituted by Act 43 of 1964 along with other amendments in the Act. Prior to that, sub-section (4) read as under :-

"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."

The validity of Section 19 of the Act was challenged and this Court in the case of *Jyoti Pershad v. Administrator for The Union Territory of Delhi, 1962(2) SCR 125* has upheld its constitutional validity. In that case, it was contended that Act has vested in the competent authority the power to withhold eviction in pursuance of the orders or decrees of courts without affording any guidance or laying down any principles for his guidance on the basis of which it could exercise his discretion and thereby vested in him an arbitrary and unguided power to pick and choose the decree-holders to whom he would permit execution and those to whom he would refuse such relief. Court negatived the said contention by observing that the Act was enacted for two purposes : (i) the improvement and clearance of slum areas in certain Union territories, and (ii) for the protection of tenants in such areas from eviction. While considering Chapter III which is headed 'slum improvement' and Chapter IV which is headed 'Slum Clearance and Re-Development', Court observed that in cases where the buildings and the entire area are to be ordered to be demolished, the dwellers would, of course, have to vacate but it is presumed that alternative accommodations would necessarily have to be provided before any such order is made. And the process would have to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled and the policy behind it, namely, the establishment of slum dwellers in healthier and more comfortable tenements so as to improve the health and morals of the community, is to be achieved. The Court observed "the policy of the enactment would seem to suggest that the slum dweller should not be evicted unless alternative accommodation could be obtained for him". Court further observed "We need only add that it was not, and could not be, disputed that the guidance which we have held could be derived from the enactment, and that it bears a reasonable and rational relationship to the object to be attained by the

Act and, in fact, would fulfil the purpose which the law seeks to achieve, viz., the orderly elimination of slums, *with interim protection for the slum dwellers until they were moved into better dwellings.*" (Emphasis added)

2. Keeping in mind the scheme of the Act and the interpretation of Section 19 as aforesaid, the contention of the learned counsel for the appellant is required to be appreciated. The learned counsel for the appellant submitted that the High Court erroneously had interpreted that factors mentioned in Sub-Section (4)(a), (b), & (c) are to be considered as alternative and not consecutive. It is his contention that both these factors, namely, whether alternative accommodation within the means of the tenant would be available to him if he is required to vacate and whether the eviction is in the interest of improvement and clearance of the slum area are to be decided by the competent authority before granting or refusing the permission under sub-section (3) to institute the suit or the proceedings for obtaining any decree or order for eviction of a tenant from any building or any land in slum area or the permission to execute decree or order obtained in any suit or proceedings before the commencement of the Act. It is contended that the legislature has taken caution in using the word that competent authority shall take into account following factors as mentioned in clauses (a), (b) & (c) of Sub-section 4 before granting or refusing to grant such permission, hence, all factors are required to be taken into consideration jointly.

3. At the time of hearing, it is admitted that no rules are framed or guidelines are laid down prescribing other factors as contemplated by clause (c) of Section 19(4). Therefore, at present, only two factors are required to be taken into consideration before granting or refusing to grant permission as contemplated by sub-section (3). Considering the provisions of Section 19, it is apparent that permission to file suit for evicting a tenant from any building or land in a slum area or to permit execution of such decree or order obtained prior to coming into force of the amendment Act, the competent authority is required to take into account factors mentioned in Clauses (a) & (b) of Sub-section (4). If the factor mentioned in Clause (a) is satisfied, that is to say, if the alternative accommodation within the means of the tenant is available, then there is no reason to hold that second factor is also required to be satisfied before granting permission under sub-section (3). In such a case, there could not be any justifiable reason for the competent authority to refuse to grant permission for filing the suit or proceedings for obtaining any decree or order for eviction of a tenant or for granting permission to execute decree or order, if obtained. Further, Clause (b) provides that before granting such permission, the competent authority should be satisfied whether the eviction is in the interest of improvement and clearance of the slum areas and if it is in the interest of improvement and clearance of the slum areas, then permission for eviction can be granted. In such cases also, a tenant would not be put to any hardship if he is evicted. The reason is, if there is a scheme of clearance of the slum area framed by the competent authority, then as observed by this Court in the case of 'Jyoti Pershad' (supra), the policy of the enactment suggests that slum dwellers should not be evicted unless alternative accommodation to be made could be obtained for him; that if the buildings or the entire area are to be ordered to be demolished, in that event, the dwellers would, of course, have to vacate, but it was presumed that alternative accommodation would necessarily have to be provided before any such order is made. It is true that for some time alternative accommodation may not be provided to the tenant but it is required to be provided within reasonable time. Eviction process and improvement or re-construction process is required to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled. Further, if the building is required by the owner for demolition or re-construction or improvement, then Section 20-A takes care of the tenants. It provides that if the tenant desires to be replaced in the occupation of the building after completion of the work of improvement or re-erection of the building, then he is required to file an application before the competent authority. On the basis of

this section, if the tenant is evicted on the ground of improvement or demolition of the building in the slum area, then tenant is required to be provided accommodation in the improved or re-constructed building. Relevant part of Section 20-A is as under :-

"20-A (1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted therefrom on the ground that it was required for the purpose of executing any work of improvement or for the purpose of re-erection of the building, *the tenant may, within such time as may be prescribed, file a declaration with the competent authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be.* (Emphasis added).

(2) On receipt of such declaration, the competent authority shall by order require the owner of the building to furnish to it, *within such time as may be prescribed, the plans of the work of improvement or re-erection of the building and estimates of the cost thereof and such other particulars as may be necessary* and shall, on the basis of such plans and estimates and particulars, if any, furnished and having regard to the provisions of sub-section (3) of Section 20B and after holding such inquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1). (Emphasis added)

(3)

(4)"

4. Hence, even if these two factors mentioned in clauses (a) and (b) of sub-section (4) are to be taken into account as alternative factors by the competent authority before granting permission to file a suit for eviction or to grant permission for execution of a decree against a tenant residing in a slum area, the tenant's rights are not in any manner prejudicially affected. He is fully protected by the scheme of the Act. Hence, the finding given by the High Court that in a given case, the tenant may not be provided with alternative accommodation is not only against the decision rendered by this Court in the case of Jyoti Prasad, but also against the scheme of the Act. However, the High Court was right in holding that the factors which are mentioned in clauses (a) and (b) of sub-section (4) of Section 19 are to be taken into account as alternative factors. In the result, the appeals are allowed to the aforesaid extent and stand disposed of accordingly.

Appeals allowed.