

**(1989) 04 DEL CK 0042**

**Delhi High Court**

**Case No:** Second Appeal No. 240 of 1981

Kailash Chand

APPELLANT

Vs

Ganpat Rai

RESPONDENT

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**Date of Decision:** April 3, 1989

**Citation:** (1989) 39 DLT 120 : (1989) 17 DRJ 14 : (1989) RLR 274

**Hon'ble Judges:** M.K. Chawla, J

**Bench:** Single Bench

**Advocate:** G.N. Aggarwal, A. Salwan and L.P. Gupta, for the Appellant;

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### **Judgement**

M.K. Chawla, J.

(1) The present appeal is directed against the Judgment of the Rent Control Tribunal, Delhi dated 17th March, 1981, whereby the appellant sub-tenant, has been allowed to be proceeded against for an action for his eviction from the premises situated in the slum area, as defined in the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as the Slum Areas Act) without seeking prior permission of the competent authority u/s 19 of the Act.

(2) The facts are not in dispute. Lala Ganpat Rai, respondent was a thekedar (contractor) of the entire house no. 4530, Daiwara, Nai Sarak, Delhi with the right to let and sub-let the whole or a part thereof to a third person. Kailash Chand, the appellant, was in occupation of a portion of the first floor of the said house as a sub-tenant at the rate of Rs. 20.40 per mensem. Sometime back in the year 1972, Ganpat Rai filed an application u/s 19 of the Slum Areas Act, seeking permission from the Competent Authority to institute eviction proceedings against Kailash Chand. During the pendency of these proceedings, the original landlord filed a petition for eviction in the court of the Rent Controller, Delhi u/s 14(l)(a) and (h) against Kailash Chand on the allegations that the premises are bona fide required for his residence and that of his family members and that Kailash Chand has acquired an alternative accommodation. Kailash Chand contended before the

Competent Authority that since the eviction petition has already been initiated by the landlord against him. the present application u/s 19 of the Act has become infructuous and is not maintainable. The Competent Authority overruled this objection and held that Ganpat Rai's application u/s 19 of the Act is maintainable. Against this order Kailash Chand filed an appeal u/s 30 of the Act before the Financial Commissioner, Delhi. While allowing the appeal and quashing the proceedings u/s 19 of the Act, the learned Financial Commissioner observed :-

" MOREOVER, when the eviction proceedings are continuing in the court of the Rent Controller, there is no purpose of harassing the applicant in the court of the Competent Authority. Obviously, the present proceedings u/s 19 of the Act are infructuous and are not maintainable under law. The learned Competent Authority has erred in not considering the fact that the premises in dispute under the present proceedings are included in the eviction proceedings filed in the Court of the Rent Controller Delhi against the applicant and permission or refusal to file eviction proceedings under the Act will have no bearing on the eviction proceedings continuing in the court of the Rent Controller. I, Therefore, hold that the present petition before the Competent Authority u/s 19 of the Act is infructuous and is untenable."

Against the order of refusal, to grant permission, Ganpat Rai came to the High Court by way of filing a civil writ petition no. 45/78. While dismissing this petition in limini, the Bench observed thus ;-

"WE are not inclined to entertain this petition which is filed under Article 226 of the Constitution dismissing the application u/s 19 of the Slum Areas (Improvement and Clearance) Act, 1956 not by the owner but by a person claiming to be a tenant with a right to sub-lease the property to respondent no. 1. On the petitioner's own allegations, this would not fall within the ambit of Section 19 of the said Act. The petition is dismissed accordingly."

Armed with the said observations of High Court Ganpat Rai filed the petition u/s 14(l)(a)(h) and (j) of the Delhi Rent Control Act against the subtenant Kailash Chand alleging therein that he has acquired a vacant possession of a residential accommodation of his own bearing house no. C-2/41, BhimNagarHauzKhas, New Delhi; that the respondent is a regular defaulter in payment of rent and that he has not paid the arrears of rent amounting to Rs. 1032.00 to the petitioner in spite of service of the notice of demand. In the said petition, it was also stated that no permission of the competent authority u/s 19 of the Slum Areas Act is necessary to institute the present proceedings as held by the High Court in C.W. 45/78. The respondent Kailash Chand filed the written statement and raised the preliminary objection that without the permission of the competent authority under the Slum Areas Act, the petition is not maintainable. Shri G.P. Thareja, Additional Rent Controller agreed with the preliminary objection and held :-

"HERE is a petition before me by a landlord against a tenant. Such a petition cannot be brought without the permission of the Competent Authority u/s 19 of the Slum Areas (Improvement and Clearance) Act. The petition, Therefore, is not maintainable and is liable to be dismissed,"

(3) In appeal, the Rent Control Tribunal held otherwise. His conclusion was:- s

"SINCE there is a clear observation which is quoted above that a person claiming to be a tenant with a right to sub-let, cannot seek permission u/s 19 of the Act, I am afraid, in the present case, situation in which the appeal has arisen, I have no option but to follow the dicta of the Division Bench and hold that inter se between the parties at least in view of the observations of the High Court, provisions of Section 19 of the Act are not attracted. Learned trial court was in the wrong in observing that the appellant went to the Competent Authority (Slum) claiming himself to be a tenant and respondent as a subtenant, and Therefore, the same was not permissible. After all between the tenant and the sub-tenant, there is also a relationship of landlord and tenant."

(4) As stated earlier, it is against this order Kailash Chand has filed the present appeal.

(5) The foremost contention of learned counsel for the appellant revolves round one aspect, that once the respondent admits the relationship of landlord and tenant, and on that basis moved the Competent Authority for seeking permission to initiate the eviction proceedings, there is no reason for him now to by pass the mandatory provisions of Section 19 of the Slum Areas Act and to move the court of the Rent Controller, Delhi, without the order granting permission. The respondent cannot be allowed to take refuge of an erroneous observation of the High Court on a question of law, while dismissing the writ petition in limini, particularly when the appellant was not given the opportunity of being heard. Such an observation would not operate as res judicata between the parties. Reliance is placed on the Judgment [Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy](#), holding :-

"A question relating to jurisdiction of a court cannot be deemed to have been finally determined by an erroneous decision of that Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not in our judgment operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise"

"If the decision in the previous proceeding be regarded as conclusive it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the legislature."

(6) As a counter, the submission of the learned counsel for the respondent is that the observations of the High Court cannot be said to be erroneous, inasmuch as, it

was in consonance with the law laid down by this court that a sub tenant has no status and is not protected under the Slum Areas Act. According to the learned counsel even if it is assumed for the sake of arguments that the decision of this Court was erroneous in law, it will still operate as res judicata and the petition of eviction pending before the Rent Controller, cannot be said to be not maintainable.

(7) In order to appreciate the contention, it is relevant to quote the provisions of Section 19 of the Slum Areas Act, which reads as under

"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 proceedings 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 Competent Authority refuses to grant the permission, it shall record a brief statements of the reasons for such refusal and furnish a copy thereof to the applicant."

This Section prescribes that no eviction proceedings from any building or land in a slum area can be instituted without the previous permission in writing of the Competent Authority, and no decree or order obtained in any Suit instituted before such commencement for the eviction of a tenant, executed unless alternative accommodation within the means of a tenant is available to him or the eviction is in the interest of improvement and clearance of the slum areas. The constitutionality of this provision was challenged before the Supreme Court on the ground that it vested an unguided, unfettered and uncontrolled power in an Executive Officer to withhold permission and that it was an excessive delegation of legislative power. This contention was repelled by their Lordships of the Supreme Court by holding that there was enough guidance to the Competent Authority in the use of his discretion u/s 19(1) of the Act, and that it would fulfill the purpose which the law

seeks to achieve viz. the orderly elimination of slums with interim protection for the slum dwellers until they are moved into better dwelling.

(8) It is worthwhile noting that in the whole of the Act, the word "sub tenant" has not been defined. The definition of tenant under the Rent Control Act includes a sub tenant, but it is not so in the Slum Areas Act. Here the words used are "occupier" in Section 2(F) and the "owner" in Section 2(G) of the Slum Areas Act.

(9) It is no doubt true that if by any erroneous interpretation of the statute, the court holds that it has no jurisdiction, the decision would not operate as res judicata. Similarly, if by an erroneous decision the Court assumes jurisdiction which it does not possess under the Statute, the question cannot operate as res judicata between the same Parties, whether the cause of action in the subsequent litigation is the same or otherwise.

(10) However, in this case, the High Court while disposing of the Civil Writ petition of the respondent was not deciding the issue against the well settled proposition of law, that a sub tenant is not protected by the provisions of Section 19 of the Slum Areas Act. It was an erroneous decision on a question of jurisdiction or erroneous interpretation of Section 19 of the Slum Areas Act. The law on this aspect was already well settled and has been clarified in a case reported as [Siri Kishan and Another Vs. Mahabir Sing and Others](#), . During the course of the Judgment, Rangarajan, J. observed as under:

"THE scheme of the Act even judging from its preamble, is to protect "tenants in areas declared to be slum from eviction." The benefit or protection u/s 19(4) has been conferred only upon a "tenant" and not upon any "occupier" regardless of whether he is a tenant or not. In the different contexts the Act makes distinction between an "occupier" and a "tenant". No where does the Act expressly or by necessary intendment refer to a sub-tenant as being entitled to the protection u/s 19(4). There is no warrant for reading the expression "tenant" in Section 19(4) as including a sub-tenant. In the absence of any such definition in the said Act it is not permissible to add words to a statute which are not there ; to do so would be to legislate."

(11) This very view has been affirmed in appeal by the Division Bench in Lpa 161/71. Clarifying the position, it was observed that Section 19(1) of the Slum Areas Act deals with protection of a tenant from eviction from any building or land in a slum area, while the Delhi Rent Control Act deals with only "premises" which has been defined in that Act as any building, including inter alia, garden, grounds and outhouses pertaining to such buildings. Thus, the object, the scheme and the provisions of the Act show that the statute purports to grant protection from eviction only to tenants and an "occupier" as such does not get any protection under the Act. That being so, a sub tenant whether lawful or unlawful does not appear to have intended to be given any protection from eviction under the Act. The mere fact that a sub tenant is

a lawful sub tenant does not make any difference since a person becoming sub tenant of a tenant with written consent of the landlord cannot be deemed to be a tenant under the landlord.

(12) In this view of the matter, the respondent had no other option but to straightway file a petition for eviction against the present appellant. As observed earlier, this being a pure question of law, will operate as *res judicata*, against the appellant even if he was not present or given an opportunity of being heard in the writ petition.

(13) Even otherwise, there has been a change in the circumstances and this court can take note of the subsequent events. In the case reported as [Laxmi and Co. Vs. Dr. Anant R. Deshpande and Another](#), the circumstances under which the subsequent events can be looked into were enumerated in these words :-

"IT is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court tends that the matter is no longer in controversy, the court also takes notice of such events. If the property which is the subject-matter of suit is no longer available the court will take notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice. Judged by these principles it is manifest that in the present case suits are pending."

(14) Kailash Chand appellant had died on 16th March, 1983. The effect of his death is that his tenancy rights could only be inherited by the persons living with him financially dependent upon him at the time of his death. After his death the L.Rs. filed an application for being impleaded as parties. In this application, none of the L.Rs. claimed the right to the tenancy. In reply to the said application, the respondent's plea is that none of the L.Rs. mentioned in the application has any right to occupy the premises inasmuch as nobody was living with appellant at the time of his death nor anyone of them was financially dependent upon him. The effect of the death of Kailash Chand at the most would be that the rights of the tenant if at all had devolved on any of the L.Rs. Would come to an end after the expiry of a period of one year. Even this period has expired. At this stage, it is relevant to note that in the original petition, eviction was sought on the ground of acquisition of another suitable accommodation. This plea has not been controverted by the legal representatives. In fact, the L.Rs. have no right to prosecute the appeal. As none of the L.Rs. was dependent on the tenant, so, the slum permission if previously was required to be obtained is no longer required as the present L.Rs. have not attained the status of tenant.

(15) Ganpat Rai, respondent has also died in Delhi on 20th April, 1986. His legal representatives have already been brought on record. The proceedings in the case started as far back as 1972 and are yet at a preliminary stage. Now we are in 1989. God knows when this litigation will come to an end. The learned Rent Control Tribunal in my opinion was justified in allowing the respondent to continue with his petition for eviction of Kailash Chand, now deceased, in the Court of the Rent Controller Delhi.

(16) In the result, I do not see any force in the petition and the same is hereby dismissed.