

## CIVIL MISCELLANEOUS

*Before Mehar Singh, J.*SHANTI PERSHAD AND ANOTHER,—*Petitioners**versus*THAKAR DASS AND OTHERS,—*Respondents*

Civil Writ No. 671-D of 1962.

1964

December, 11th

*Slum Areas (Improvement and Clearance) Act (LXXXVI of 1956)—S. 19(4)—Slum Areas (Improvement and Clearance) Rules (1957)—Rule 8—Date from which the period of limitation for appeal under S. 20 starts.*

*Held*, that in view of sub-section (4) of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, and rule 8 of the Rules framed thereunder, it is only when the Competent Authority, on refusal of an application under section 19, furnishes a copy of the order to the applicant that there is communication of its order to the applicant, and it is from the date of such communication of the order of the Competent Authority that 30 days must be reckoned under rule 8. The announcement of the order in the presence of the applicant is not enough to start the period of limitation for an appeal under section 20 of the Act.

*Petition under Articles 226 and 227 of the Constitution of India praying that this petition may be accepted with costs, the judgment and orders of Respondents No. 1 and 2 (annexures 'H' and 'I') may be quashed and set aside and Respondents No. 1 and 2 may be directed to pass an order within the scope of Section 19 of the Act and to grant the petitioners herein the permission to evict Respondent No. 3 from the premises in dispute. Such other or further relief may be granted in this respect to the petitioners, as may appear to this Hon'ble Court to be fit and proper in the circumstances of the case.*

YOGESHWAR DAYAL, ADVOCATE, for the Petitioner.

SHIVCHARAN SINGH, ADVOCATE, for the Respondent.

## ORDER

Mehar Singh, J. MEHAR SINGH, J.—The facts of this petition under Articles 226 and 227 of the Constitution, so far as relevant, are these. The petitioners have a decree in their favour for eviction of Khazano Devi, respondent 3, the decree

having been ultimately passed by this Court in proceedings under the Delhi and Ajmer Rent Control Act, 1952. The premises are situate in a slum area and thus attract the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 (Act 96 of 1956), and hence under Section 19 of this last mentioned Act the petitioners applied to the Competent Authority for permission to execute the decree.

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The Competent Authority dismissed that application on May 21, 1962. On that date petitioner 1, Shanti Pershad, was present before the Competent Authority. He, therefore, had knowledge of the dismissal of their application by the Competent Authority.

An appeal against the order of the Competent Authority to the Administrator was filed on July 21, 1962. Rule 8 of the Slum Areas (Improvement and Clearance) Rules, 1957, provides—"Every appeal under section 20 of the Act shall be filed within a period of 30 days of the date of communication of the order of the Competent Authority. Any appeal preferred after the said period shall be dismissed." The petitioners' appeal was filed some 60 days after the order of the Competent Authority. On July 23, 1962, the Administrator, as the appellate authority, proceeded to dismiss the appeal of the petitioners as barred by time, obviously that was in the wake of rule 8.

The petitioners have averred in paragraph 7 of their petition that while the Competent Authority announced its order on May 21, 1962, it had not communicated its order to the petitioners even up to the date of this petition, which is October 3, 1962. In paragraph 9, it is further explained that while petitioner 1 was present when the order was announced but the Competent Authority also said that as the order had not been written on that date, it would be communicated to the petitioners in due time. The position of the petitioners is that there has been no formal communication of the order by the Competent Authority to them even to this day. No return has been filed by or on behalf of respondents 1 and 2, the Competent Authority and the Administrator. In the return on behalf of respondent 3, the fact that the order was not communicated to the petitioners on May 21, 1962, is accepted as correct, but in so far as the averments in paragraph 9 of the petition are concerned, lack of knowledge is pleaded on behalf of respondent 3.

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The learned counsel for respondent 3 contends that communication of the order of the competent authority under rule 8 was complete as soon as the order was announced to petitioner 1, and this is the meaning of the word 'communication' as it is used in that rule. It is a possible approach, but the difficulty is created by sub-section (4) of section 19 of the Act. That sub-section reads—"Where the competent authority refused to grant the permission it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant." Now, the requirement of this sub-section that the Competent Authority has to 'furnish a copy thereof to the applicant', apparently means that a copy of the order of the Competent Authority is to be furnished by that authority without even an application on the part of the applicant when the application has been refused. In the present case although it is stated in the petition that the petitioners obtained copy of the order of the Administrator in August, 1962, but there is no statement when the application for the copy of the order of the Competent Authority was made and when that copy was ready for deliver. For a moment I thought that even in a case like the present when an applicant whose application has been refused under section 19 of the Act obtains a copy on his own application of the order of the Competent Authority, the date on which he obtains such a copy may be considered as the date of the communication of the order of the Competent Authority to such an applicant within the scope of rule 8, but in the face, of the clear words of sub-section (4) of section 19, that when an application under section 19 has been refused, it is the Competent Authority who has to furnish a copy of the order of refusal to the applicant, such an approach is not admissible, and for this very reason the argument of the learned counsel for respondent 3 cannot prevail that the meaning of the word 'communication' in rule 8 should be read as conveyance of the nature of the order made by the Competent Authority, no matter whether it is conveyed orally or in writing.

In my opinion, in view of sub-section (4) of section 19, and rule 8, it is only when the Competent Authority, on refusal of an application under section 19, furnishes a copy of the order to the applicant that there is communication of its order to the applicant, and it is from the date of such communication of the order of the Competent

Authority that 30 days must be reckoned under rule 8. The result then is that patently the order of the Administrator that the appeal of the petitioners is barred by time is contrary to rule 8 and cannot be maintained. So, that order is quashed.

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There has even up to today been no communication of the order of the Competent Authority to the petitioners within the scope of rule 8, and the learned counsel for respondent 3 then says that not until there is such communication of the order of the Competent Authority to the petitioners, in the shape of furnishing a copy of the order to them by the Competent Authority, can there be a competent appeal by them. But in the Rules there is no prohibition against the petitioners from filing an appeal even when the Competent Authority has not complied with sub-section (4) of Section 19 and rule 8. The directions under Article 227 of the Constitution now are (a) that the Competent Authority, respondent 1, will now proceed to furnish a copy of its order to the petitioners in the terms of sub-section (4) of section 19 of the Act, which the petitioners will file with their appeal, and (b) the Administrator, respondent 2, as the appellate authority, will then proceed to the disposal of the appeal of the petitioners according to law. The petition of the petitioners succeeds. but in the circumstances of the case there is no order in regard to costs.