
(1972) 05 AHC CK 0026
In the Allahabad High Court
Case No : Misc. Writ Petition No. 6241 of 1971

Bhagwati Prasad Birla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-05-1972

Acts Referred:

Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 3
Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 3
Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 3

Citation : (1972) 42 AWR 594

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : N.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Hari Swarup, J.—This petition is directed against the order of the District Magistrate, Kanpur dated 5-10-71 passed u/s 3 of the U.P. (Temp.) Accommodation Requisition Act, 1947 by which the west wing of the accommodation 49/27F, situate at General Ganj, Kanpur, has been requisitioned for providing office accommodation to the District Home Guards. According to the order, the ground floor is occupied by Messrs New Paper Agency, Kanpur through Bhagwati Prasad Birla and the first floor is in occupation of Sri Vishal Srivastava. The District Magistrate has recorded a finding that Bhagwati Prasad Birla had got sufficient suitable accommodation in premises No. 7/194 Swamp Nagar and Vishal Srivastava did not need alternative accommodation as he was residing at 1054, Katra, Allahabad. According to the Petitioners, the alternative accommodation which has been deemed to be sufficient and suitable for them is neither sufficient nor suitable for their needs. The petition is confined to the ground floor of the requisitioned building.

2. It has been asserted in the petition that no notice of the requisition proceedings was given to the Petitioners nor were they afforded any opportunity

to show cause why the accommodation should not be requisitioned or to show that the alternative accommodation contemplated by the District Magistrate was not sufficient or suitable for the needs of the occupants. This allegation is not denied in the counter affidavit. The Supreme Court in the case of Daud Ahmad v. District Magistrate Allahabad AIR 1973 SC 896 has held that the formation of opinion about the existence of alternative accommodation is not an impersonal obligation cast on the District Magistrate. The relevant observations are:

The existence of alternative accommodation is something the having of which can be ascertained. It will not be correct to say that without holding an enquiry and giving an opportunity to the Petitioner in that behalf the District Magistrate will be in a position to ascertain as to whether alternative accommodation for the Petitioner exists. The existence of an alternative accommodation is a controversy which has to be determined by the District Magistrate. The determination is necessary for correcting or contradicting any relevant statement prejudicial to the view expressed either by the District Magistrate or the Petitioner. That is why the principle of audi alteram partem is attracted.

3. Learned Chief Standing Counsel contends that the case of Daud Ahmad (supra) is distinguishable as it was a case in which an owner of the premises was in occupation while in the present case the occupant is not an owner but a trespasser. The Petitioners deny that they are trespassers. The status of the occupants however, is not material and will make no difference as to the applicability of the principle of law laid down in the case of Daud Ahmad. The U.P. (Temp.) Accommodation Requisition Act concerns itself not with the ownership but with possession of the occupant. When requisition is made, the law requires that an alternative accommodation should either be available or be provided to the occupant. As admittedly no opportunity of hearing was provided in the present case to the Petitioners who are admittedly in occupation of the ground floor, the order of the District Magistrate cannot be sustained.

4. In the result, the petition is allowed, the impugned order of requisition dated 5-10-71 in so far as it relates to the ground floor in west wing of premises No. 49/27F General Ganj, Kanpur, is quashed. It would, however, be open to the District Magistrate to continue the proceedings and pass necessary orders after affording the Petitioners an opportunity of being heard and showing cause against the action proposed. In the circumstances of the case the parties shall bear their own costs.