
(1958) 10 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1120 of 1957

Jagdish Narain Bhargava

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : AIR 1959 All 380 : (1959) 29 AWR 77

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : S.N. Kacker and B.D. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Tandon, J.—The facts giving rise to this petition are briefly these:

2. The dispute is with respect to house No. 1213 situate at Bagh Muzaffar Khan, Agra, which belonged formerly to one Shri Shadi Ram Loomba, who was an engineer but retired from service sometime prior to 23-7-1953. In July 1953 he went to Bombay, where his son was in service after locking this house. His luggage nevertheless remained in the house. On 23-7-1953 the District Magistrate of Agra, who then was Shri J.M. Raina, requisitioned the said house purporting to act u/s 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947. This section provides that:

"If, in the opinion, of the District Magistrate it is necessary to requisition any accommodation for any public purpose he may, by order in writing, requisition such accommodation and may direct that the possession thereof shall be delivered to him within such period as may be specified in the order."

One of the provisions in the section further provides that:

"No accommodation which is in the actual occupation of any person shall be

requisitioned unless the District Magistrate is further of opinion that suitable alternative accommodation exists for his needs or has been provided to him."

In the present case, admittedly, Shri Loomba was not provided with any alternative accommodation. The order passed by the District Magistrate was as follows:

"In exercise of the powers conferred by Section 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947 (Act No. XXV of 1947) as amended from time to time and extended upto 30-9-1954, I.J.M. Raina, IAS, District Magistrate, Agra, requisition house No. 1213 situate at Bagh Muzaffar Khan, Agra, for public purposes and order that within 16 days of the date of service of this order on the occupants of the premises all moveable property of the occupants be removed and the premises handed over to Shri Randhir Singh Magistrate 1st Class.

It is further ordered that the owner Shri Shadi Ram Loomba, Retired Engineer, in view of his letter dated 16-6-53 to Shri J.D. Sharma agreeing to let it out on rent does not actually need the accommodation for his own use, also does not need an alternative accommodation in lieu of this house..... .."

3. It does not appear that any notice was sent to Shri Loomba prior to the requisition of the house. After the requisition order had been made the possession of the house was handed over to Shri Randhir Singh, Magistrate 1st Class, who then occupied it for his own residence. When Shri Loomba came to know of these developments, he applied to the Rent Control and Eviction Officer complaining against the said requisition.

The matter was referred to the District Magistrate also and ultimately an understanding appeared to have been reached between Shri Loomba, on the one hand, and the District Magistrate on the other, wherefore Shri Loomba did not press his application and the District Magistrate in his turn approved that the house would be released from requisition upon Shri Randhir Singh's transfer from Agra. Shri Loomba sold the house to the petitioner and according to the latter he also authorised him to act on his behalf in all matters ancillary to de-requisition of the house.

4. The trouble arose once again after the transfer of Shri Randhir Singh when, contrary to the understanding given by the District Magistrate on 13-5-1954 for the release of the house on Shri Randhir Singh's transfer, it was occupied by one Shri D.D. Mahey, a Judicial Officer. On 30-5-1956 the present petitioner again applied to the District Magistrate asking for the de-requisitioning of the house but at the same time giving his consent to Shri Mahey to continue in the house so long as he remained in Agra. This application was recommended by the Rent Control and Eviction Officer to the District Magistrate to effect the de-requisition of the house but the District Magistrate did not approve it on 2-9-1956 by the following short order:

"Seen. I am not in favour of de-requisitioning the house as successors of Shri

Mahey may feel some difficulty in getting the house."

5. The petitioner next represented to the Government in the matter of de-requisitioning the house. He also suggested that after de-requisitioning the District Magistrate will be free to deal with it under the U. P. (Temporary) Control of Rent and Eviction Act, 1947 but the Government declined to de-requisition.

6. The petitioner's contention in this petition, therefore, is that no public purpose existed to justify the requisition of the house which consequently is illegal. Alternatively, it is contended that the requisition came to an end in May 1956 when the District Magistrate had agreed to de-requisition the house; its continued requisitioning under the circumstances is illegal.

The validity of the requisition is further attacked on the ground that suitable alternative accommodation was not provided to Shri Loomba as, however, was necessary in view of the before mentioned proviso in Section 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947, and again on the ground that the delivery of possession was directed in favour of a person other than the District Magistrate, which was not contemplated by Section 3.

The requisition is also attacked on the ground of being discriminatory therefore contravened Article 14, also, that it was in contravention of the petitioner's right to hold property guaranteed under Article 19(1)(f) of the Constitution. The relief asked is for the quashing of the requisition order dated 23-7-1953 as also the subsequent orders by the District Magistrate dated 2-9-1956 and 15-2-1957.

7. It being the case of the respondents also that they are in possession of the house by virtue of the requisition u/s 3 of the U. P. (Temporary) Accommodation Requisition Act 1947, the principal question to be decided in this case is whether the said requisition was validly made by the District Magistrate. Neither the fact that on 13-5-1954 an understanding had been reached between the District Magistrate and Shri Loomba postponing de-requisition of the premises until the transfer of Shri Randhir Singh from Agra, nor the subsequent application by the petitioner agreeing to the continued occupation by Shri Mahey during his stay at Agra, will make any difference in the above position because on either occasion the grievance of Shri Loomba and later of Shri Bhargava was and continued to be against the validity of the requisition. They all along continued to agitate against the legality of the order dated 23-7-1953 though they were willing to concede that Shri Randhir Singh and Shri Mahey might not be immediately dispossessed.

8. Reverting therefore to the order of requisition, Section 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947, under which the requisition was made, required two conditions to be fulfilled for the validity of that order. Under this section the District Magistrate has power to requisition any accommodation for a public purpose if it is so necessary in his opinion. The two conditions, therefore, are firstly, that it is necessary in his opinion to requisition an accommodation and, secondly, that it is necessary to do so for a public purpose.

It does not appear from the order dated 23-7-1953 that Shri Raina, under whose signature it was made, was of the opinion that it was necessary to requisition the accommodation for a public purpose. The order simply stated that the District Magistrate had in exercise of his powers u/s 3 of the Act requisitioned it for a public purpose.

The fact of requisition for a public purpose alone is borne out by the order, but the other condition for the exercise of the jurisdiction u/s 3 namely, the opinion, of the District Magistrate that it is necessary to requisition any accommodation for a public purpose is nowhere stated in it. From the order, as it is, one is unable to deduce that Shri Raina was, in fact, of the opinion that the requisition of the house was necessary for a public purpose.

The fact that the requisition itself was stated to be for a public purpose will not help to fill the gap; because Section 3 contemplates not only that the requisition is made for a public purpose but further that it is so necessary in the opinion of the District Magistrate. The element of necessity or the fulfilment of that condition is as necessary as the fact of requisition itself for a public purpose in order to be fortified by Section 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947.

9. It was also contended by the learned Standing Counsel that the fulfilment of this condition should necessarily follow from the fact that the house had been requisitioned for a public purpose. In this connection he also referred to the allegations, according to which there was shortage of house accommodation at Agra and provision for suitable residential accommodation for public purpose was necessary.

While shortage of accommodation may be a reason for holding that a particular accommodation is necessary to be requisitioned for the purpose of residence of public officers it cannot be itself be proof of the existence of the requisite opinion held by the District Magistrate. The affidavit by R.D. Saxena, Chief Inspector Kent Control, Agra, too, has not claimed in so many words that Shri Raina was in fact of the opinion that it was necessary to requisition the accommodation.

Even the fact that Shri Raina declined to give up possession of the house forthwith on the representation of Shri Loomba against the derequisition is of no help to the respondents. It cannot serve to show that Shri Raina was actually of the opinion that it was necessary to requisition the house for a public purpose. In fact Shri Raina's agreeing to derequisition the house on the transfer of Shri Randhir Singh from Agra tended to suggest in the opposite direction.

10. In my opinion, therefore, it is not possible to read in the requisition order dated 23-7-1953 that Shri Raina was really of the opinion that it was necessary to requisition the house for a public purpose. It being so the requisition failed to comply with one of the essential pre-requisites of Section 3 of the U. P. (Temporary) Accommodation Requisition Act, 1947. The requisition order under the circumstances is illegal and defective,

11. The question that next arises is whether this Court will in spite of the delay with which this petition was moved be willing to exercise its powers under Article 226, Ordinarily delay in coming to the Court may be a good ground for refusing to interfere, but where the fundamental right of a subject is concerned the Court will not permit the above consideration to intervene. More so where, as in the present case, the evidence is that Shri Loomba and, after the sale, the petitioner have been continuously agitating against the validity of the impugned order and they had actually been assured at one time that the property will be released.

12. In view of the fact that the requisition itself has been held to be illegal and as a result of that finding the continued possession of the respondents over the house in question is continuing infringement of the fundamental right of property of the petitioner, he is entitled to a direction for the quashing the order. Again in the view of the matter, it is unnecessary for deciding this petition to enter into other grounds urged on behalf of the petitioner.

13. In the result the petition succeeds. The order of requisition dated 23-7-1953 and of the District Magistrate dated 2-9-1956 and of the State Government dated 15-2-1957 are quashed. The respondents are further directed to restore back the possession of the house to the petitioner within two months. The petitioner will get his costs from the respondents. This order, however, will not prejudice the right, if any, of the District Magistrate to deal with the accommodation under the provisions of the U. P. (Temporary) Control of Rent and Eviction Act, 1947.