

(2004) 05 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 4786 of 2000

Lala Chhedi Lal Trust and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 3, 3(1), 4

Citation : (2004) 4 AWC 3578

Hon'ble Judges : V.M. Sahai, J; Krishna Murari, J

Bench : Division Bench

Advocate : R.K. Jain and Rahul Jain, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J.—By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 11.1.1996 passed ,by the District Magistrate, Kanpur Nagar requisitioning the property plot No. 22 block No. 96 Chunniganj, Kanpur Nagar and the construction standing thereon known as Bari Kothi (hereinafter referred to as the property in dispute) under the U. P. Accommodation (Temporary) Requisition Act, 1947 as amended by U. P. Act No. 38 of 1972 (hereinafter referred to as "the Act").

2. We have heard Sri R. K. Jain, learned senior Advocate assisted by Sri Rahul Jain appearing for the petitioner and the learned standing counsel appearing for the respondents.

3. The facts giving rise to the present dispute are that the property in dispute is owned by Lala Chhedi Lal Trust and was being used as Dharamshala. On 29.1.1996 the Additional District Magistrate, (City), Kanpur Nagar and the City Magistrate, Kanpur Nagar took forcible possession of the property with the help of police force. Feeling aggrieved the petitioner filed Writ Petition No, 38877 of 1996.

4. A counter-affidavit was filed in the said writ petition on behalf of the District Magistrate, Kanpur Nagar stating that the premises in dispute was requisitioned u/s 3 of the Act vide order dated 11.1.1996. A copy of the order was also filed along with the counter-affidavit. This Court vide order dated 12.1.2000 permitted the petitioner to withdraw the said writ petition with liberty to file a fresh writ petition challenging the order dated 11.1.1996. In the circumstances, the present writ petition has been filed.

5. Learned counsel for the petitioner has challenged the order dated 11.1.1996 on the following grounds :

(i) No show cause or opportunity was given to the petitioner before passing the impugned order as is required u/s 3 (1) (a) of the Act.

(ii) No objective satisfaction has been recorded by the respondent No. 2 for the necessity of requisitioning the property as is required by Section 3 (2) of the Act.

(iii) The property being used as Dharamshala which is a public purpose was exempt from being requisitioned under proviso (b) of Section 3 (2) of the Act.

6. Section 3 (1) (a) of the Act reads as under :

"3. Power of requisition,-(1) Where the District Magistrate is of opinion that any accommodation is needed or likely to be needed for any public purpose, not being a purpose of the union, and that the accommodation shall be requisitioned, the District Magistrate-

(a) shall call upon the owner as well as the occupier of the accommodation by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the accommodation should not be requisitioned,

(b)....."

7. The provisions of sub section (3) of Section 3 prescribe the manner in which the notice contemplated by Section 3 (1) (a) is required to be served. The said sub-section reads as under :

"(3) The provisions of Section 4 shall apply In relation to service of a notice under clause (a) of sub-section (1) as they apply in relation to service of an order under that clause (b) of that sub- section."

8. Section 4 of the Act reads as under

"4. Service of order.-The order of requisition shall be served on the owner as well as occupier, if any of the accommodation by delivering to such owner or occupier a copy of the order but where the owner or the occupier is not readily traceable and the order cannot be served without undue delay, where the ownership is in dispute or cannot be easily ascertained the order shall be served by publication in the Official Gazette and by affixing a copy thereof on any conspicuous part of the accommodation."

9. A perusal of the aforesaid provision makes it clear that It is incumbent upon the District Magistrate to issue a notice to the owner as well as the occupier informing them the purpose of requisition and to give them opportunity to file objection. Further the notice was required to be served in the manner prescribed by Section 3 (3) read with Section 4 of the Act.

10. It has been categorically stated in paragraphs 13, 14 and 16 of the writ petition that no notice or opportunity was ever given to the petitioner before passing the impugned order and the petitioner for the first time acquired knowledge of the impugned order on 5.4.1999 when the same was served along with the counter-affidavit of the District Magistrate, Kanpur Nagar in the earlier writ petition.

11. In the counter-affidavit filed by the Additional City Magistrate in the present petition, it has been stated that vide order dated 11.1.1996, fifteen days notice was given to the general public for filing objection and If no objection were filed within the prescribed time the property stood requisitioned.

12. There are no averments in the counter-affidavit regarding service of notice on the petitioner. In the absence of any actual service of notice on the petitioners or by publication in Official Gazette or, by affixation no knowledge about the order dated 11.1.1996 can be attributed to the petitioner. Further Section 3 (1) (a) of the Act categorically requires notice to the owner as well as the occupier of the accommodation. There is no requirement of any notice to the general public as has been done in the present case. Notice to general public does not fulfil the requirement of Section 3 (1) (a) of the Act.

13. It is thus clear that the impugned order dated 11.1.1996 has been passed by respondent No. 2 without any notice or opportunity to the petitioner who is the owner and occupier of the premises in dispute. The order is clearly In violation of Section 3 (1) (a) of the Act and cannot be sustained.

14. Further the requirement of giving notice to the owner/occupier to show cause why the property should not be requisitioned and to inform the purpose of requisition necessarily implies an inquiry into the matter by the District Magistrate and to consider the objection and then pass orders recording his satisfaction regarding necessity of requisition as is required by Section 3 (2) of the Act. Section 3 (2) of the Act reads as under :

"If after considering the cause, if any, shown by the owner or occupier of the accommodation, the District Magistrate, is satisfied that it is necessary or expedient, to do so, he may, by order in writing, requisition the accommodation and may make such further order as it appears to him necessary or expedient in connection with the requisitioning."

15. In the present case, the District Magistrate by the same stroke of pen gave fifteen days time to show cause and simultaneously passed order that failing show cause the property shall stand requisitioned. Such an order is not

envisaged by the provision of the Act. According to the procedure prescribed by Section 3 of the Act, the District Magistrate is required to give fifteen days notice to the owner or occupier to show cause why property should not be requisitioned and thereafter, considering the show cause pass orders of requisition recording his satisfaction regarding necessity for such requisition.

16. Since neither any notice was served upon the petitioner nor any satisfaction has been recorded by the District Magistrate in the impugned orders about the necessity for requisition, the order is clearly in violation of the provision of the Act and deserves to be quashed.

17. In so far third submission of the learned counsel for the petitioner is concerned, that the property was being used as Dharamshala which is a public purpose hence was exempt from being requisitioned, it is not necessary for us to go into the question since the impugned order is being quashed on the basis of the first two submissions.

18. In the result, the writ petition succeeds and is allowed. The impugned order of requisition dated 11.1.1996 (Annexure-6 to the writ petition) is quashed. Respondent No. 2 is directed to hand over the vacant possession of the premises in dispute to the petitioner within two months from the date a certified copy of this order is produced before him.

19. In the circumstances there shall be no order as to costs.