

(1970) 10 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Appeal No. 459 of 1967

Sarup Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 12-10-1970

Acts Referred:

Citation : (1970) ILR Delhi 464

Hon'ble Judges : Jagjit Singh, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : V.P. Chaudhary, S.K. Mahajan, B. Kishore, H.D. Triyogi and J.P. Gupta, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) This petition under Articles 226 and 227 of the Constitution is aimed against the order dated 4-3-1967, made by the Collector, Delhi, acting as Competent Authority under the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereafter referred to as the Act) whereby the senior floor of House No. 528, Katra Ishwar Bhawan, Delhi, was requisitioned for the purpose of accommodating a municipal school.

(2) The Petitioner is a tenant, who Along with his sub-tenants, has been in occupation of the aforesaid premises since several years past and has been paying nominal rent. The original owner of the property was one Shri Brij Krishna Chandiwalla who, it is alleged, is a person of some importance in the political field and has been wanting to bring about the eviction of the petitioner and his sub-tenants by various means and devices. According "to the petitioner, his attempts having been frustrated; by the adverse decisions of courts, he eventually succeeded in prevailing upon the authorities to requisition the property for the purpose of accommodating a municipal school. In the petition the action of the respondents. Union of India (respondent No. 1), Collector of Delhi (respondent No. 2), Delhi Administration (respondent No. 3) and Shri Banarsi Dass

Chandiwala Sewa Samarak Trust Society (respondent No. 4), has been assailed on various grounds including the ground of mala fides. The petitioner contends that the purpose for which the requisition has been made is mala fide and is neither a public purpose nor is it the purpose of the Union of India. The real object behind the order of requisition, it is alleged, is to help the landlord, Shri Brij Krishna Chandiwala so that after the property is once requisitioned and the petitioner and his sub-tenants are evicted there from, it will in due course, be de-requisitioned and sold by the landlord at a huge profit. He next contends that the premises consist of four tin sheds, two of which are only 7" x 7" each in area, while the other two are 8" x 10" each. There is no provision in the sheds for electricity, water-borne latrines or ventilation. The premises are therefore, according to the petitioner wholly unsuitable for accommodating a school. The premises are also said to be located in a Kutra which is a wholesale market in Kirana, chellies, tobacco and Chemicals etc. which emit obnoxious fumes and smell. The use of such premises as a school for children is bound to be a health hazard. The petitioner further contends that he was not afforded proper opportunity and hearing by the Collector before the impugned order was passed. The last contention of the petitioner is that he and his sub-tenants have not been given any alternative accommodation which the Collector was bound to give under the provision of the Act.

(3) In the counter-affidavit filed on behalf of the respondents by the Collector Shri B. N. Tandon who was competent authority under the Act, a preliminary objection to the maintainability of the petition has been raised on the ground that the petitioner's appeal against the order of requisition was still pending before the Lieutenant Governor and that the present petition had been filed with a view to by-pass the remedy provided under the Act. Another objection raised by the respondents is that the petitioner had deliberately suppressed from the petition the fact that the Lieut. Governor had rejected his application for stay of operation of the impugned order and his petition under Article 227 of the Constitution against that order had also been dismissed by this Court and that possession of the premises had already been taken from him on 28-4-1967. The petitioner had also suppressed the fact that the second and third floors of the adjacent building viz. 511, Kutra Ishwar Bhawan had already been requisitioned and a middle school for girls was being run in it by the Municipal Corporation of Delhi. It is contended that these being material facts, their deliberate suppression by the petitioner disentitled him from invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution.

(4) On merits, the affidavit denies the petitioner's allegations that the notice for requisitioning the premises was issued at the instance of Shri Brij Krishna Chandiwala and it is averred that the notice was issued at the instance of the Education Officer, Municipal Corporation of Delhi. for the extension of existing school for girls which is being run by the Corporation in the adjoining building of respondent No. 4. As regards the alleged un-suitability of the premises for accommodating a school. it is stated that a school is already being housed in

property No. 511. Katra Ishwar Bhawan. the third floor of which adjoins the second floor of the requisitioned premises and that the two premises can be joined together by the removal of the intervening wall to which the owners have already agreed, because the present accommodation with the school is wholly inadequate for its requirements. The petitioner's allegation that no proper opportunity for showing cause and hearing was afforded to him, is also denied. The deponent maintains that the purpose of accommodating a municipal school is a public purpose of Union of India. The petitioner's objection about non-allotment of any alternative accommodation is sought to be met by the affidavits filed by the Inspector of Schools and Superintendent Land & Estate Department, Municipal Corporation of Delhi, wherein it is stated that alternative accommodation consisting of two rooms, kitchen, bath, latrine and a verandah, was offered to the petitioner at Neemri, a Municipal colony near Bharat Nagar, which he declined to accept.

(5) Section 10 of the Act no doubt provides for an appeal to the Central Government against the order of requisition made by the competent authority and the present petition was filed by the petitioner while his appeal was still pending before the Lieut. Governor. Ordinarily, this Court is averse to entertain a petition under Article 226 of the Constitution without the remedies of appeal etc. provided by the Act having been exhausted by the aggrieved party. We are also averse to the suggestion that merely because the appellate authority under the Act had refused to stay the operation of the order of requisition, the petitioner was entitled to move this Court without waiting for the result of the appeal. The argument that the petitioner's application for stay having been dismissed by the appellate authority, his petition in this Court would have become infructuous if he had to wait till the disposal of the appeal, is not of much help. But we are equally concerned to point out that the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction by this Court. We normally expect that the appellate authority under the Act would apply its mind to the appellant's grievance with promptness and in a suitable case, grant him the necessary interlocutory relief. While this Court Therefore generally does not interfere in exercise of its jurisdiction under Article 227 of the Constitution with an order refusing stay made by the appellate authority, it will not hesitate to entertain a petition for a writ of certiorari under Article 226 of the Constitution when prima facie the conditions necessary for issuing that writ are made out. In such a case if the appellate authority not only declines interim relief to the appellant but also sits over the appeal for an inordinately long period, for this Court to decline to entertain a petition under Article 226 of the Constitution would in our view. amount to denial of justice to the aggrieved party.

(6) The present case is a glaring example of how inaction on the part of the appellate authority can render the alternative remedy of appeal provided by the Act wholly in-efficacious. Although the petitioner's appeal was filed as far back as March 1967 it has remained -indisposed of till today. On September 24. 1969 when the case came up before us, Mr. B. Kishore, counsel for respondents I to 3

gave an undertaking that the appeal would be disposed of within two months from that day and on that assurance obtained an adjournment from us till December 29, 1969. On 9-1-1970 when the case came on for hearing again. Mr. Kishore expressed his inability to abide by his undertaking on the ground that there was some difficulty in the matter of delegation of power by the Lieut. Governor to an appropriate officer who should dispose of the appeal. It is astonishing that the Central Government should not have been able to determine during the last three years as to who should be the officer by whom its powers u/s 10 of the Act are to be exercised and whether the Lieut. Governor who was formerly supposed to bear such appeals, was empowered to delegate his powers.

(7) The first objection raised by the respondents Therefore fails and is rejected. In fact, Mr. Kishore felt constrained to state that he could not press his objection on the score of alternative remedy.

(8) The second objection is equally devoid of merit. None of the facts which the petitioner is alleged to have omitted from the petition are necessary or material for the decision of the case. The refusal of stay by the Lieut. Governor and the dismissal of the petitioner's application under Article 227 of the Constitution by this Court, have nothing to do with the merits of the petitioner's claim in the present petition. Those facts were relevant only for deciding whether any interlocutory order staying operation of the impugned order should be made by this Court when issuing rule nisi in the petition. The only order that this Court made while issuing the rule, was that status quo should be maintained. This was an order which should in fact, have been made by the Appellate authority, had the petitioner's appeal under the Act received the attention it merited. Like-wise the omission to mention that the adjacent building had already been requisitioned and a school was being run in it by the Municipal Corporation, is a matter which constituted the respondents' defense to the petition. The petitioner was in no way bound to put forth the respondents' defense in the fore-front of his petition. This objection also fails and is accordingly rejected.

(9) We now come to the petitioner's case on merits. In our opinion, the only contentions of the petitioner which require serious consideration are : (i) whether the purpose for which the order of requisition was made. is a public purpose of Union of India and (ii) whether the said order satisfies the requirements of the second proviso to sub-section (2) of Section 3 of the Act and if not, what is its effect ?

(10) However since arguments were addressed by the petitioner's counsel on other contentions as well, we should like to deal with them before we take up the above contentions. It is true that Shri Brij Krishna Chandiwalla the founder of the Trust, which is the present owner of the building of which the requisitioned premises form a small portion, was the original owner of the property. There can be also no doubt, though the fact is denied in the written statement filed on behalf of respondent No, 4, that Shri Brij Krishna Chandiwalla is a political personage wielding influence in local official and non-official circles nor can it be

doubted that he has been making attempts to obtain vacant possession of the property. But there is no sufficient material on record to warrant the conclusion that the impugned order of requisition is tainted with mala fides. The petitioner's allegation that the real object of requisition is to bring about the eviction of the petitioner and his sub-tenants with the ultimate aim of de-requisitioning the property and enabling the owner to sell the same at a huge profit. is a pure surmise for which there is very little foundation on facts as stated in the petition. The un-disputed facts are that the Trust was created by Shri Brij Krishna Chandiwalla as far back as 1952 although it may have been registered after some time. The establishment of an educational institution and a Health Centre for the children was among the main objectives of the Trust. With that end in view, the Trust even passed a resolution to start an educational institution independently but in the meantime Delhi Administration is claimed to have started a Middle School in the adjoining building which too belongs to the Trust. The impugned requisition is to meet the growing needs of that institution due to increase in the number of students.

(11) In the affidavit of the Collector it is stated that action for requisition was initiated at the instance of the Education Officer, Municipal Corporation of Delhi. We have no reason to doubt the correctness of that statement. It may be that Shri Brij Krishna Chandiwalla was only too willing or may be. he was even eager to make the premises occupied by the petitioner and his sub-tenants available for the school; but since it is found that the object which impelled the Government to requisition the property was to accommodate the school, the alleged hidden motives of the owner of the property, have no relevance at all. Even the intention of the owner to rid the property of its tenants by recourse to the device of requisition, if true, will be of no consequence unless there is some evidence to show that the authorities will release the property from requisition as soon as the tenants are thrown out.

(12) The other ground in support of the petitioner's allegation of malafides is also without substance. It is for the authorities who have to run the school to determine whether a particular property will answer their requirements. If the school which is already being run in the adjoining building in the same locality and we are told that it has now been there for several years, has not proved to be a health hazard, we fail to see how its expansion by the addition of the requisitioned premises, will suddenly have a deleterious effect on the health of the children studying in that school. The argument has Therefore to be rejected.

(13) The petitioner's allegation about his not having been afforded proper opportunity and hearing by the Collector before he made the impugned order, also does not appear to be well-founded. The impugned order itself shows that after the second notice u/s 3(1) of the Act was issued to the parties concerned on 25-8-1966. the petitioner and his sub-tenants not only filed objections but they were also given a personal hearing. The affidavit of the competent authority. Shri B. N. Tandon, also states that even a counsel appeared on behalf

of the petitioner before him and arguments were advanced by him raising certain legal objections to the proposed requisition. This contention of the petitioner must also Therefore fail.

(14) We may here notice one other contention of the petitioner which though it was not raised in the petition, was put forward by the petitioner's counsel. Mr. V. P. Chaudhry in the course of his arguments. It was said that in the first affidavit filed by Shri B. N. Tandon on 9th May, 1967, no reference was made to his order dated 3-3-1967 and that the only order mentioned therein was the one dated 4-3-1967. It was only in the affidavit of 18th May, 1967, that the order of 3-3-1967 (Annexure R/1 to the affidavit) was set up. It was argued that the order of 3-3-1967 was prepared subsequently in order to meet the petitioner's objection that the order dated 4-3-1967 was bad in law because it did not contain the grounds on which the Collector's satisfaction about the necessity or expediency of requisitioning the premises, was based. The argument is wholly devoid of substance. The affidavit of 9th May, 1967 was filed in reply to the petitioner's application for stay of dispossession. It cannot be disputed that the operative order in this case is the order dated 4-3-1967 which according to Section 3(2) of the Act is the actual order of requisition. The order dated 3-3-1967 is merely a detailed order giving reasons for the decision. At the stage of opposition to the petitioner's application, for stay of dispossession, it was not at all necessary to refer to any other order except the actual order of requisition which alone was being impugned by the petitioner in his petition. This contention of the counsel also fails.

(15) We will now turn to what we have said, are the only substantial contentions raised by the petitioner. The argument of the petitioner is that u/s 3 of the Act a property can be requisitioned only if the competent authority is of the opinion that it is needed or is likely to be needed for any public purpose and the purpose is of the Union. If either of these two conditions is not satisfied, the order of requisition will be bad. In the present case, the avowed purpose of requisition is to accommodate a Municipal school. That purpose, it is urged, cannot be regarded as a public purpose nor is it a purpose of the Union. In this connection, we were referred to sections 42 and 43 of the Delhi Municipal Corporation Act 66 of 1957 which lay down the functions of the Corporation. Clause (2) of section 42 which relates to the establishment, maintenance of, and aid to, schools for primary education, is one of the various clauses dealing with what have been termed as obligatory functions of the Corporation. The clause reads:-

"42. It shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take, for each of the following matters, namely:-

(R)the establishment, maintenance of, and aid to, schools" for primary education subject to such grants as may be determined by the Central Government from time to time;"

SECTION 43 relates to the discretionary functions of the Corporation and its clause (a) reads :-

"43.The Corporation may in its discretion provide either wholly or in part for all or any of the following matters, namely:-

(A)the furtherance of education including cultural and physical education, by measures other than the establishment and maintenance of, and aid to schools for primary education;"

(16) It was argued that on a plain reading of these two sections, the establishment, maintenance of and aid to a middle school for girls, is neither an obligatory nor a discretionary function of the Municipal Corporation of Delhi. If the Municipal Corporation which is a statutory body created under the Delhi Municipal Corporation Act, went out of its way and in violation of the provisions of the Act, embarked on a venture which was outside the scope of its activities, then the requisitioning of private property in aid of such a venture, cannot be treated as having been made for a public purpose. We are unable to agree with the learned counsel for the petitioner that establishment and maintenance of and/or aid to a middle school was not even a discretionary function of the Delhi Municipal Corporation. Clause (a) of section 43 of the Delhi Municipal Corporation Act, 1957 provides that the furtherance of education including cultural and physical education "by measures other than the establishment and maintenance of, and aid to, schools for primary education" is a discretionary function of the Corporation. It follows that establishment and maintenance of a middle school would be a discretionary function covered by clause (a) of section 43. If, Therefore, the school is being maintained and run by the Municipal Corporation out of its own funds, then too the purpose will still be a public purpose and requisition of land for it may well be regarded as a public purpose Mr. V. P. Chaudhry, counsel for the petitioner, however, contended that even if it is held that the maintenance of the school is a public purpose it would still not be the purpose of the Union. According to the learned counsel the Municipal Corporation of Delhi is a body corporate having a perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and capable of suing and being sued in its own name (sub-section (2) of section 3). The Act provides for the establishment of a Municipal Fund (section 99), as distinct from the Consolidated Fund of the Union, acquisition and disposal of property (sections 198 to 200), levy of taxes etc. (sections 113 to 184), borrowing of money (sections 185 to 196) and entering into contracts etc. (sections 201 to 203). In all such matters, it was argued, the Corporation acts as an autonomous body.

(17) Learned counsel also laid special stress on sections 197 and 199 of the Act and submitting that while the Act contains a specific provision for acquisition of property by the Corporation and enables it to avail itself of the powers of the Central Government in that behalf, there is no provision in it for requisitioning of property. According to Mr. Chaudhry, the specific mention of acquisition is an

indication of legislative intent that private property should not be requisitioned for the Corporation even with the help of the Central Government.

(18) In support of his argument Mr. Chaudhry referred to a decision of the Supreme Court in the *The State of Bombay Vs. Ali Gulshan*, where it was held that on a combined reading of entry 33 in List I, entry 36 in List II and entry 42 of List III in Schedule VII of the Constitution, "the categories contemplated are three in number, namely. Union purpose. State purpose and any other public purpose". Though every State purpose or Union purpose must be a public purpose, it is easy to think of cases where the purpose of the acquisition or requisition is neither the one nor the other but a public purpose. Acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not strictly be a State or Union purpose",

(19) In that case requisitioning of certain premises for housing a member of the staff of a foreign consulate was held to be a purpose of the State and not of the Union.

(20) Reliance was also placed on a decision of this Court in *Seth Munna Lal v. Union of India* Delhi Section 61 (a) to which one of us was a party.

(21) We are unable to accept the argument of the learned counsel that the purpose of maintaining and running a Municipal School by the Municipal Corporation of Delhi is not a public purpose of the Union. The Supreme Court's judgment in the case of *State of Bombay v. Ali Gulshan* relates to the period before the Constitution (Seventh Amendment) Act, 1956 was passed on October 19, 1956. By Section 26 of the said Act entry 33 of the Union List and entry 36 of the State List were omitted from the Seventh Schedule and for entry 42 of the Concurrent List in the said Schedule, the following entry was substituted, namely:-

"42.Acquisition and requisitioning of. property".

(22) The original entry 42 read as under :-

" PRINCIPLES on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

(23) It will thus be seen that "any other public purpose" mentioned in entry 42 was a distinct category for which only the State could legislate under entry 36 of the State List which before it was omitted ran as under :-

" ACQUISITION or requisitioning of property, except for the purposes of the Union, subject to the provisions of Entry 42 of List III".

(24) The decision in *Ali Gulshan*'s case made this clear and was largely responsible for the. amendment of the Constitution with a view to avoid

unnecessary technical difficulties in legislation arising out of the existence of three separate entries in three legislative lists relating to what is essentially a single object of acquisition and requisitioning of property by the Government. The result of the amendment is that it is now open to the Union as well as the State to legislate for the purpose of acquisition or requisitioning of property for a public purpose.

(25) The third separate category of any "other public purpose" with respect to which under original entry 36 the State alone could legislate, not being there any longer, even the Union can now legislate for that purpose under the amended entry 42.

(26) The requirement of section 3 of the Act with which we are concerned, however, is that the public purpose must be the purpose of the Union. Article 73(1) of the Constitution provides that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. Under entry 5 of List II the power to legislate in respect of local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self government or village administration, resides in the State. The position vis-a-vis the Union Territory of Delhi is, however, entirely different.

(27) This again is the result of the Constitution (Seventh Amendment) Act, 1956 which altered the scheme of division of India into A. B, and States and the territories mentioned in Part D of First Schedule. By that Act, Article 1 and the First Schedule to the Constitution, were amended so that the territory of India was henceforth to comprise the territories of the States" the Union territories specified in the First Schedule and such other territories as may be acquired. By clause 30, which was added to Article 336, "Union territory" was defined to "mean any Union territory specified in the First Schedule and to include any other territory comprised within the territory of India but not specified in the Schedule." The Act also made certain other changes of a consequential nature in Parts VI to IX of the Constitution. The result of those changes is that Parliament has now plenary powers of legislation for the Union territories with regard to any subject, including Education and Local Government. Article 246(4) in terms provides that "Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State list notwithstanding that such matter is a matter enumerated in the State List".

(28) It is true that with respect to certain other territories which are also "Union territories "as defined in clause 30 of Article 366, limited legislative powers have been conferred on their Legislative Assemblies, but Delhi has no such Legislative Assembly and is, Therefore, devoid of even this feature of a legal personality. This view is fully in consonance with the constitutional status of Union territories as explained in the Supreme Court's judgment in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and with

what was said in another decision of this Court in *H.L. Rodhey and Others Vs. Delhi Administration and Others*, to which again one of us was a party. In that case, the Division Bench had occasion to consider the special status of Delhi in the light of the Constitution and the Government of Union Territories Act, 1963.

(29) As was said by this Court in *Seth Munna Lal's* case relied upon by the petitioner's counsel, whatever may be the precise scope of the expression "purpose of the Union", it cannot extend to a purpose with which the Union is not at all concerned. The purpose of the Union may be co-extensive with its executive or legislative functions. It may also extend to matters with which the Union is either administratively or financially concerned. It cannot, however, be extended, for instance, to a purpose with which only a private body or individual or a State as distinct from the Union may be concerned.

(30) In the present case, the constitution and, powers of the Municipal Corporation of Delhi are within the legislative and executive functions of the Union. The Union of India is also administratively in control of its affairs (Sections 485 to 490). Section 485 empowers the Central Government to require production of any documents and to call upon the Commissioner who himself is appointed by the Central Government (section 54) to furnish or obtain and furnish any report. Section 486 provides for inspection and examination by an officer appointed by the Central Government of any department or office or service or work undertaken by the Corporation while sections 487 and 488 provide for issuance and enforcement of any directions by the Central Government. Section 490 deals with the power of the Central Government to supersede the Corporation in the circumstances and in the manner laid down therein.

(31) In fact the very object of establishing the Corporation is u/s 3 of the Act. to create an agency charged with the municipal government of Delhi which in essence is the sovereign power of the State, in this case, the Union of India. The purpose of maintaining and running a Municipal Middle School is thus a purpose within the purview of Municipal Government of Delhi which in turn is the purpose of the Union. The Constitution does not recognize any such thing as a purpose of the Municipal Corporation of Delhi distinct and separate from the purpose of the Union.

(32) The argument based on the lack of power in the Corporation to requisition property for its use under sections 197 to 199 of the Delhi Municipal Corporation Act, is wholly misconceived. Section 197 is merely an enabling provision, which authorizes the Corporation to acquire property and act on its own for that purpose whereas section 199 extends to the corporation the aid of the Central Government when it finds that such help is necessary for acquiring property. These sections have nothing to do with the powers of the Central Government to requisition property which are not derived under the provisions of the Delhi Municipal Corporation Act and flow from section 3 of the Requisitioning Act, 1952. There is thus nothing about want of any legislative intent as the learned counsel

wishes to suggest. We may now notice the second contention of the petitioner's counsel. We have already said that it is based on the mandate contained in the second proviso to sub-section (2) of Section 3 of the Act. It was argued that since the petitioner and his sub-tenants were in occupation of the disputed premises for the past several years for their residence, it was incumbent on the competent authority to provide them with alternative accommodation which in its opinion was suitable. The competent authority in this case had not done so. Instead, what it has said in the order is that "alternative accommodation is to be provided to the tenants and sub-tenants by the Municipal Corporation".

(33) The relevant facts to which our attention was invited by the parties counsel are these. The petitioner is a teacher under the Municipal Corporation of Delhi. Pursuant to the order of the Competent Authority alternative accommodation was offered to him by the Municipal Corporation of Delhi in a Municipal colony at Neemri. According to the affidavit dated 18-5-1967 filed by Shri Sultan Ahmed Azmi, Senior School Inspector, City North Zone, Municipal Corporation of Delhi, the petitioner as an Assistant Teacher, is in receipt of Rs. 311.40 inclusive of Rs. 27.00 as house rent and Rs. 14.40 as Compensatory City Allowance. In case he is allotted a municipal quarter, he will have to forego Rs. 27.00 on account of house rent admissible to him and ten per cent of salary and city allowance i.e. about Rs. 20.00 per month. Thus a total deduction of about Rs. 47.00 will be made from his emoluments. The respondents also say that so far as the sub-tenants are concerned, they have already made their own arrangements and none of them has come forward to assail the decision.

(34) The petitioner contended that for the rented accommodation in the disputed premises he was hardly paying Rs. 5.00 per mensem as rent. The said accommodation though lacking in amenities like electricity and water-borne latrine and proper ventilation, was in the heart of the city while the alternative accommodation offered to him was several miles away from his place of work. Even if it was held that the petitioner was not entitled to alternative accommodation similar to the one he was asked to surrender, he could not reasonably be expected to pay ten times the rent he was paying now and yet live several miles away from the city which would entail additional expense on transport to and from his place of work. Eventually, during the course of arguments when it was pointed out that in accordance with the policy of the Corporation if the petitioner was shifted to an outlying colony, he would also be transferred to a school near the place of his residence, the petitioner waived all other objections and showed his willingness to accept the alternative accommodation in the Municipal Colony provided he was not made to pay more than Rs. 30.00 per mensem as rent and no other deduction was made from his emoluments. He, however, contended that the accommodation which the Corporation was offering, could not be equated with the alternative accommodation to which he was entitled under the proviso to sub-section (2) of Section 3 because in the former case he would be entitled to retain that accommodation only so long as he remained in the service of the Corporation

while the alternative accommodation under that Act could not be subject to any such restriction. We were impressed by this argument and, Therefore, asked Mr. Kishore to ascertain from the authorities if they were prepared to have the alternative accommodation allotted to the petitioner on purely rent basis, irrespective of whether he continued to remain in the service of the Corporation or not and the monthly rent would also not exceed Rs. 30.00.

(35) Mr. Kishore took several adjournments for the purpose, but in the end reported that he had failed to persuade the authorities to accept the suggestion made by us, on account of certain technical difficulties in their way. He, Therefore, invited a decision from us on merits. He argued that it was not for the petitioner to decide what alternative accommodation he should have. The decision as to the suitability of the alternative accommodation rested with the competent authority and its opinion on that point was final. It cannot be said that the alternative accommodation offered to the tenant must be similar to the one he had been asked to surrender. That would make the provisions of the Act almost un-workable. The proviso also does not lay down that the allotment of alternative accommodation should be on the same or similar terms as those on which the previous accommodation was held by him.

(36) Mr. Kishore also argued that the provision in the Act relating to alternative accommodation is merely directory and its non-compliance cannot vitiate the order of requisition.

(37) In our opinion the question is not so much about the mandatory or directory nature of the proviso. What has to be seen is whether the Competent Authority has properly discharged his functions under the Act. The proviso is an integral part of the scheme of the Act. When the Act, Therefore, lays down that a tenant who was using the property for his residence should be given alternative accommodation the intention obviously is to compensate the tenant for the loss he would suffer when he is deprived of his lease-hold rights. Such a provision must be treated as forming an essential part of the process of requisition. It was, Therefore, incumbent upon the competent authority to have provided in its order the alternative accommodation which in its opinion was suitable for the petitioner and his subtenants and not to have left it to the Municipal Corporation to decide that matter. The opinion regarding suitability of alternative accommodation has to be formed by the competent authority and not by any one else. In the present case, the competent authority has not formed any such opinion and inasmuch as it has not been possible to bring about a consensus between the Municipal Corporation and the petitioner, directions have to be issued by this Court. While we are inclined Therefore to up-hold the order of requisition as having been made for public purpose which in our opinion is also a purpose of the Union. we are also of the view that it was the duty of the competent authority to have itself provided alternative accommodation to the petitioner and his sub-tenants which having regard to all the circumstances of the case should be suitable,

(38) We, Therefore, direct the competent authority (respondent No. 2) to re-

consider the question of providing suitable alternative accommodation to the petitioner and his sub-tenants and to take a decision on that point within two months from today. Till the decision regarding alternative accommodation is made, the status quo ordered on 11th May 1967 and confirmed on 19th May 1967 shall remain un-disturbed.

(39) The result is that the petition is only partially allowed. The parties are, however, left to bear their own costs.