

Madan Gopal Agarwal

Vs

District Magistrate, Allahabad and Others

Civil Appeal No. 80 of 1972

(A. N. Ray, D. G. Palekar, M. H. Beg JJ)

10.10.1972

JUDGMENT

DWIVEDI, J. -

1. The appellant is the owner of 32, Balrampur House, Mumfordganj, Allahabad. After residing therein for some time, he started living in 33 Pan Dariba, Allahabad with his mother. His own house he let out on September 9, 1964 to the State Government for a period of five years on a monthly rent of Rs. 300/-. The State Government obtained the lease for the purposes of residence or office of the Directorate of Geology and Mining, U.P. The lease was signed by Shri P. N. Singh, Geologist, on behalf of the State Government. In 1967 the appellant had shifted from the house No. 33, Pan Dariba to house No. 398/5, Meerapur, Allahabad. In Meerapur he was living as a tenant.

2. The period of lease with respect to his own house expired on September 9, 1969. The District Magistrate, Allahabad passed an order under Section 3 of the U.P. (Temporary) Accommodation Requisition Act, 1947 (hereinafter referred to as the Act). The order was made on October 4, 1969. By the order the District Magistrate requisitioned the house to provide accommodation to Shri P. N. Singh, Geologist, Directorate of Geology and Mining, U.P. The appellant was directed to hand over possession of the house within 24 hours after the expiry of 15 days from the date of the service of the order on him.

3. The appellant filed a writ petition in the Allahabad High Court challenging the validity of the order. One of the grounds of challenge was that the order was made without issuing any notice to him and without giving him a hearing. The petition was dismissed summarily by a Division Bench of the High Court. The argument of want of notice and hearing was not accepted by the High Court. Feeling aggrieved with the decision of the High Court, the appellant has filed this appeal by special leave.

4. Counsel for the appellant has submitted before us that the requisitioning order is invalid for want of notice and hearing. Counsel for the District Magistrate says that we should not entertain the argument as it was not raised of the High Court. But we are satisfied on a reading of the judgment of the High Court that the point was raised by the appellant before the High Court. Rejecting the argument, the High Court said : "Where a person is being deprived of his property, it can be said that he should be given an opportunity before the land is acquired; but by requisition the property is taken away from his use for a temporary period and for such requisition such a detailed procedure is not necessary. We are of opinion that the order of requisition is not invalid, nor can Section 3 of the

Act be said to be ultra vires simply because it does not provide for a show-cause notice to be served on the owner before the order of requisition can be passed".

5. Coming to the argument, Section 3 of the act read :

"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; provided that the period so specified shall not be less than 15 days from the date of the service of the order :

Provided also that no building or part of a building exclusively used for religious worship shall be requisitioned under the section :

Provided further that no accommodation which is in the actual occupation of any person shall be requisitioned unless the District Magistrate is further of the opinion that suitable alternative accommodation exists for his needs or has been provided to him."

6. The section consists of three part : the main part and the two provisos. Evidently it does not contain an express provision for notice and hearing before the making of the requisitioning order. But it appears to us that such a provision is to be read there by necessary implication. The object of the provision is to requisition an immovable property. Requisitioning of the property deprives the owner of the property of the right to hold and enjoy the property as he likes. The right to hold and enjoy the property is a cherished right. It is true that the Act is a temporary measure, but it has remained on the statute book for 25 years. There is acute scarcity of accommodation in the State, and an accommodation once requisitioned is ordinarily not excepted to be restored early to the owner. We find it difficult to assume that the Legislature would have intended to deprive him to his cherished right without notice and hearing.

7. The District Magistrate may requisition an accommodation if he is of opinion that it is necessary to requisition it for any public purpose. He is accordingly to make up his mind on two matter : (1) there exists a public purpose to warrant the making of an order of acquisition; and (2) in view of that public purpose it is necessary to requisition a particular accommodation. On the second aspect he shall have to consider whether the particular accommodation is adequate for the public purpose for which the requisitioning order is sought to be made. For instance, if a particular accommodation is sought to be requisitioned for any public office, the District Magistrate has to satisfy himself whether it is sufficient for the needs of the public office and whether its location and structure are suitable for that office. He should also consider whether any other equally good or better accommodation may be requisitioned for that public office on payment of a lesser amount of compensation than the one which will be payable for the particular accommodation proposed to be requisitioned. These are objective factors, and there is no reason why the District Magistrate should not hear the owner of the accommodation proposed to be requisitioned on these matters. The owner may suggest to him equally good accommodation for the public office for which the Government will be required to pay a lesser amount of compensation than the one which will be payable for his accommodation.

8. The first proviso to Section 3 provides that no building or part of a building "specially used for religious worship" shall be requisitioned by the District Magistrate. Whether a building or part of a

building is being exclusively used for religious worship, is a question of fact. In some cases it may become a hotly disputed question. The District Magistrate may be informed by his subordinates that the building is not being used at all or is being used partially for religious worship; the owner, on the other hand, may assert that the building is being used exclusively for religious worship. Fairness demands that the District Magistrate should hear the owner of the accommodation sought to be requisitioned by him, so that the owner may be able to satisfy him in any particular case that the building is being exclusively used for religious worship. It seems to us that the first proviso strongly suggests the implication of notice and hearing in the main part of Section 3.

9. The second proviso also seems to support that inference. It provides that no accommodation "which is in the actual possession of any person" shall be requisitioned unless the District Magistrate is of opinion that suitable alternative accommodation exists for his needs or has been provided to him. Here the District Magistrate has to consider two things : (1) the accommodation sought to be requisitioned is in the actual possession of any person; and (2) a suitable alternative accommodation exists for his needs and has been provided to him. If the accommodation sought to be requisitioned is actually not occupied by any person, it is not necessary to consider the second matter. But whether the accommodation proposed to be requisitioned is in the actual occupation of any person or not is a question of fact and cannot satisfactorily be determined unless the person claiming to be occupying it is given a hearing by the District Magistrate. So in every case where the District Magistrate proposes to requisition any accommodation for he may set up a claim that he is actually occupying it.

10. It is necessary to bear in mind that the Act does not provide for any appeal or revision from the order of the District Magistrate under Section 3. The District Magistrate is constituted the plenary authority. It seems reasonable to think that the legislation intended that an order under section 3 should be made after notice and hearing, so that no unfairness is done to anyone.

11. The High Court rejected the argument of the appellant simply on the ground that the order of requisition deprives the owner of the property of the use thereof for a temporary period. It is not easy to follow what the high Court meant when it said that it was not necessary to follow "a detailed procedure". An elaborate procedure like the one provided for in the Code of Civil Procedure should undoubtedly be not followed. The dimension of hearing will vary according to the circumstances of each case. The barest minimum, however, is a fair hearing. Notice should be given to the person who will be affected by the order of requisitioning asking him to show why his accommodation should not be requisitioned. He should be given reasonable time to file his reply to the notice. In some cases it may be necessary to give him an opportunity of producing his oral and documentary evidence. As for instance, where he pleads that he needs the accommodation for his own residence. The High Court disposed of the point without examining the scheme and setting of Section 3. In our view the scheme and setting of Section 3 imply a notice and hearing to the person who will be affected by the proposed requisitioning order.

12. Counsel for the District Magistrate has submitted that the District Magistrate acts in an administrative capacity under Section 3. According to him it is not necessary to hear the affected party in an administrative proceeding. He has relied on *Province of Bombay v. Kusaldas S. Advani and Others*, ((1950) SCR 621 : AIR 1950 SC 222 : 1950 SCJ 451 : 1951 SCA 1) *Ram Chandra v. The District Magistrate of Aligarh and Others*, (AIR 1952 ALL 520 : 1952 ALJ 114 : 1952 AWR (HC) 576) *The State of Bombay v. Bhanji Munji and Another*, ((1955) 1 SCR 777 : AIR 1955 SC 41 : 1955 SCJ 10 : 1954 SCR 1286) and *Collector of Akola and Others v. Ramchandra and Others*. ((1968) 1 SCR 401 : AIR 1968 SC 244 : (1968) 1 SCJ 525) In none of these cases the issue of

notice and hearing directly arose for consideration.

13. In the first case, certain property was requisitioned under Section 3 of the Bombay Land Requisition Ordinance, 1947, by an order of the Government, dated February 6, 1948. The order was made before the commencement of the Constitution. It was challenged by a petition in the High Court of Bombay. The petitioner prayed for the issue of a writ of certiorari to quash the order. The Bombay High Court issued the writ of certiorari. The argument on behalf of the Government in this Court was that as the Government was acting in an administrative capacity and not in a judicial or quasi-judicial capacity, the writ of certiorari could not be issued. This Court held that the act of requisitioning was administrative in nature and not quasi-judicial. The argument that the existence of a public purpose required judicial consideration was negated. In the second case, the High Court held that the decision of the District Magistrate that there existed a public purpose and a particular accommodation was needed for that purpose was final and could not be questioned in a court of law. In the third case, an accommodation was requisitioned under the Bombay Land Requisition Act, 1948. It was held that it was for the Government to decide whether there existed a public purpose to justify the requisitioning of accommodation. In the last case, this Court held that the expression "public purpose" was wide enough to include temporary as well as a durable purpose. Section 5 of the Bombay Land Requisition Act, 1948 placed no limitation on the competent authority as to what kind of purpose would justify the exercise of power.

14. Counsel for the appellant has relied on *A. K. Kraipak and Others v. Union of India*, ((1970) 1 SCR 457 : (1969) 2 SCC 262 : (1970) 1 SCR 475) *Daud Ahmad v. The District Magistrate, Allahabad and Others*, (AIR 1972 SC 896 : (1972) 1 SCC 655) and *State of Punjab v. K. R. Erry and Sobhag Rai Mehta*. (C. As. Nos. 1893-1894 of 1967, decided on 21-9-1972 : 1973 SCC (Lab) 63) *Kraipak (supra)*, certain Government employees of the State of Jammu and Kashmir felt aggrieved with the selection of persons for appointment to the Indian Forest Service. The selections were made solely on the basis of the record of officer. Their suitability was not decided by oral or written examination, nor were they interviewed. *A. K. Kraipak (supra)*, contended before this Court that the selections were bad as they were made without following the principles of natural justice. The contrary argument was that the principles of natural justice would not apply to the administrative act of selection of officers for appointment to the Indian Forest Service. Hegde, J., said that "the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated". At Pages 465 and 466 of the report, the learned Judge added : "With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions". Assuming that the committee making selection of officers for appointment to the Indian Forest Service was exercising administrative power, the learned Judge said : "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it If the purpose of the rules of natural justice is to prevent miscarriage, one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry".

15. In K. R. Erry case (supra), this Court held that the pensionary right of a superannuated Government Servant is 'property' and that this pension cannot be reduce without giving him a hearing even though the relevant service rules do not expressly provide for a hearing. Daud Ahmad case (supra) is a direct authority for the point before us. There the Court was concerned with an order under Section 3 of the Act. Daud Ahmad was occupying a certain accommodation of which he was the owner. The accommodation was requisitioned by the District Magistrate without notice and hearing. This Court quashed the order of requisition for want of notice and hearing. One of us (A. N. Ray, J.) said : "The principle of natural justice has been applicable to administrative enquiries or quasi-judicial enquiries. It is the nature of the power and circumstances and conditions under which it is exercised that will occasion the invocation of the principle of natural justice. Deprivation of property affects rights of a person. If under the Requisition Act the petitioner was to be deprived of the occupation of the premises the District Magistrate had to hold an enquiry in order to arrive at an opinion that there existed alternative accommodation for the petitioner or the District Magistrate was to provide alternative accommodation".

16. Counsel for the District Magistrate has submitted that Daud Ahmad case (supra), is distinguishable from the present case, for there the Court was concerned with interpreting the second proviso to Section 3. Daud Ahmad and K. R. Erry case (supra), hold that in an enactment which deprives a person of his property, there is necessarily implied the pre-requisite of hearing. These cases support our construction that notice and hearing to the affected party is necessarily implied in Section 3. It is not disputed on behalf of the District Magistrate that the requisitioning order was made by him without giving notice and hearing to the appellatant. So we hold that his order is illegal.

17. The appeal is allowed with costs. The order of the District Magistrate, dated October 4, 1969 requisitioning the accommodation is quashed.

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