

ALLAHABAD HIGH COURT

Raman Das

Vs.

State of U.P

Misc. Writ No. 373 of 1950

(Malik, C.J., Sapru and V. Bhargava, JJ.)

13.02.1952

JUDGMENT

Malik, C.J.

1. This is an application under Article 226 of the Constitution by one Raman Das. His father, Tribhuan Das, had built a house in Mathura in the year 1942. Tribhuan Das did not occupy the house that he built in 1942 and let it out to tenants. Tribhuan Das died in August, 1948, and in the affidavit in support of the application it is mentioned that the applicant is his only son. The applicant was a student in Banaras studying Ayurvedic system of medicine. He was married in Mathura in the year 1949. Gaudia Mission was a tenant in a portion of the house. The mission decided in March, 1950, to vacate the premises in their occupation and a number of applicants appeared who claimed that the house be allotted to them. One of them was the applicant who made an application to the authorities concerned for the allotment of the house in his favour on the ground that he was married and wanted to start his practice in Mathura and he had no other suitable accommodation available to him. The Mission vacated the premises on the 26th of March, 1950. The Rent Control Officer on the 24th March of 1950 allotted the premises to Opposite Party No. 3, Dr. A. P. Khullar. Dr. A. P. Khullar was a refugee from the Punjab who was a medical practitioner there and after the partition he had shifted to Mathura and was staying with his brother-in-law.

2. Soon after the allotment order the applicant filed a suit in the Court of the Munsif at Mathura claiming an injunction on the ground that the allotment order was illegal. On 10th April, 1950, while dealing with the question of issue of 'ad interim' injunction the learned Munsif held that the House Allotment Officer could not make the allotment order before the 26th of March, 1950, when the house fell vacant and the order was, therefore, null and void. The suit, however, remained pending and we understand is still pending in the Court of the Munsif. On the 20th of April, 1950, the allotment officer reallocated the house to Opposite Party No. 3. It is mentioned in

paragraph 6 of the affidavit filed by the applicant that the officer concerned consulted the Government Pleader and after the receipt of the opinion of the Government Pleader he decided to issue a fresh allotment order. It is against this order of the 20th of April, 1950, that the application was filed under Article 226 of the Constitution.

3. Learned counsel for the applicant formulated four points for the consideration of the Court and later in the course of his argument added a fifth point. It is necessary to set out these points in some detail as the line taken by learned counsel is not exactly the same as the line that was taken before the Bench that referred this case to us. The points are :

1. That section 7 of the U. P Temporary Control of Rent and Eviction Act (III (3) of 1947) is 'ultra vires' the Legislature as under lists II and III attached to the Government of India Act, 1935, the Legislature had no power to enact a provision like that.
2. That the allotment order not being for a public purpose was 'ultra vires' and that the officer concerned could only allot the premises to Opposite Party No. 3 if the allotment was for a public purpose and that the order itself should show that it was for such a purpose.
3. That the restriction imposed under Section 7 was not a reasonable restriction and was, therefore, void under Article 19(f) of the Constitution.
4. That the order dated the 20th of April, 1950, was passed 'mala fide' and was, therefore, not binding; and
5. That inasmuch as there was special consideration shown to those who constructed houses after July 1, 1946, in the proviso attached to Section 7 the equality clause under Article 14 of the Constitution was violated and the provision was bad.

4. As regards the first point learned counsel has drawn our attention to a decision of Bhagwati, J., in '*Tan Bug Taim V. Collector Of Bombay*', in which that learned Judge held that the Government of India Act did not give any power to the legislatures to pass an Act requisitioning property and pointed out the difference between 'acquisition' and 'requisition'. As a result of that decision a notification was issued on the 21st of October, 1947, under Section 104 of the Government of India Act, 1935, authorising legislation for requisitioning of property. It is not necessary for us to consider whether there was or was not any power to requisition property under the Government of India Act, 1935. If we may say so with respect we agree with the view taken by Bhagwati, J., that there is a fundamental difference between 'acquisition' and 'requisition' of property. Acquisition means acquiring of the ownership in the property, while in a case of requisition the ownership remains with the owner and it is only the possession that is taken. In our view the power of allotment given to the District Magistrate under Section 7 of the U. P. Temporary Control of Rent and Eviction Act does not amount to either acquisition or requisitioning of property by him. The section provides that the District Magistrate must be informed within the period mentioned that accommodation has fallen vacant and he has then to

allot the premises or not to allot the same to a person to whom he considers the allotment should be made. In case he passes no order of allotment within the time mentioned the owner is left free to let it out to any one of his choice. The reason for this restriction mentioned in the preamble of the Act is that by reason of serious shortage of accommodation in this State it was found expedient to control the letting out of accommodation, to prevent eviction of tenants and rack-renting. The fact that there was a serious shortage of accommodation is well-known and the Court can take judicial notice of the same. Just as other control orders had to be passed as a result of the conditions

¹47 Bom LR 1010

created after the Second World War, it also became necessary to control the power of the landlords to evict their tenants or let out premises to men of their choice at rents settled by them. The shortage of accommodation was such that if the Magistrates were not given any control in the matter, the landlords would have let out houses to tenants on terms which were grossly unreasonable.

5. Coming back to the Act itself and to the Government of India Act, 1935, though the Temporary Control of Rent and Eviction Act may not have been passed under Item No. 9 of List II relating to compulsory acquisition of land, we see no reason why it cannot come under Item No. 21 of List II which gives the Legislature power to enact laws regulating the relationship of landlords and tenants. It is true that the item begins with the word 'land', that is to say, rights in or over land and land tenures, but learned counsel has not contended that the word 'land' in this item is not wide enough to include house or house property. Besides this item, we have also in list III item No. 8 which allows legislation with respect to transfer of property. The Transfer of Property Act contains various sections like Section 106 onwards relating to leases of immovable property. We are, therefore, not satisfied that the Temporary Control of Rent and Eviction Act of 1947 was not within the legislative competence of the U.P. Legislature.

6. Coming to the second point learned counsel has urged that Article 31(2) of the Constitution requires that no movable or immovable property shall be taken possession of or acquired except for a public purpose and on certain terms. It is urged that there is no public purpose behind this Act and, at any rate, there is no public purpose behind the allotment order. The Act, as we have already said, does not provide for taking possession of the premises by the District Magistrate for which, at about the same time as this Act was passed, another Act known as the U. P. (Temporary) Accommodation Requisition Act (XXV (25) of 1947) was passed by the U. P. Legislature, with the assent of the Governor-General under Section 76 of the Government of India Act. Though, therefore, we do not think the Act comes under Article 31(2) of the Constitution, the public purpose behind the Act is so obvious that it is not necessary to dilate on it. The preamble to the Act clearly sets out the public purpose which we have already stated and, there is nothing in the affidavit to show that the preamble is not reliable. Learned counsel has drawn our attention to a decision of the Federal Court and has urged that it is not open to take the Preamble into consideration in deciding the question whether an Act is or is not for a public

purpose. The decision relied upon however, lays down a proposition exactly contrary to the proposition raised by learned counsel. In '*Rex V. Basudeva*²', Patanjali Sastri, J. (as he then was) delivering the judgment of the Court said :

"Whilst a statement in the preamble of a statute as to its ultimate objective may be useful as throwing light on the nature of the matter legislated upon and must undoubtedly be taken into consideration, it cannot be conclusive on a question of 'vires', where the Legislature concerned has powers to legislate on certain specified matters only."

7. As regards the suggestion that there is no public purpose behind the order, the scheme of the Act is that when accommodation has fallen vacant all those who require accommodation have to apply to the Magistrate and it is for the Magistrate to consider the

² AIR 1950 FC 67

respective claims of the various parties to decide to whom the house should be allotted. The applicant as well as opposite party No. 3 had applied to the Magistrate and we presume that in their applications they must have set out the reasons why they claimed that the allotment should be made to them. The District Magistrate had under Section 7 (1) (a) of the Act to decide whether the premises were to be let or they should not be let and if they were to be let to whom they should be let. In the rules framed under Section 17 of the Act R. 6 is to the following effect :

"When the District Magistrate is satisfied that an accommodation which has fallen vacant or likely to fall vacant is bona fide needed by the landlord for his own personal occupation the District Magistrate may permit the landlord to occupy it himself."

Learned counsel has urged that this rule is 'ultra vires' and the District Magistrate cannot let the landlord occupy the premises. He must let it out to a tenant. This argument, we are afraid, does not take account of the last few words of Section 7 (1) (a) which provide that the District Magistrate shall decide whether the accommodation is to be let or not to be let. If the District Magistrate had decided in favour of the applicant he would have then allowed him to occupy it himself and it was not necessary for him to let out the premises to any one. The fact that the rival claimants had set out their claims to priority of allotment is made out in the two affidavits. While according to the applicant Opposite Party No. 3 was living with his brother-in-law with whom he had been living for two years and was quite happy and did not need any separate accommodation, or, at any rate, his need was not as great as that of the applicant, on behalf of Opposite Party No. 3 in the affidavit it is mentioned that the applicant had another house in Gwalpara where he had been living and his need for a separate accommodation was not as great as that of the opposite party, who was a refugee and who had become after two years an unwelcome guest at the house of his brother-in-law. These matters the Magistrate must have taken into account in deciding to whom the allotment should be made and we cannot, therefore, say that the allotment order was made without taking into consideration the respective claims of the parties and was not a reasonable order.

8. Thirdly, it is urged that the provision is contrary to Article 19 (f) of the Constitution. Article 19(1) of the Constitution, as we have pointed out in several cases, deals with the rights of the citizens, and Article 19 (1) (f) provides that a citizen shall have the right to acquire, hold and dispose of property. Learned counsel was not able to explain how his rights to acquire, hold and dispose of property were being interfered with by the order of the allotment officer. In any case, as we have already said, we cannot say that it imposes any restriction on the rights of the landlords which is not reasonable.

9. As regards the order of the 20th of April, 1950, or even the previous order dated the 24th of March 1950, being 'mala fide', the only ground on which the point is urged is that the previous order was clearly wrong and the second order was passed letting the house to the same person after the Munsif had held that the first order was 'ultra vires' by reason of a technical error. The mere fact that the first order was held to be invalid does not make that a 'mala fide' order. From the affidavit it is clear that the applicant had himself applied to the allotment officer for the house to be allotted to him. The allotment officer passed the order on the 24th of March, 1950, without waiting till the house was vacated by the Gaudia Mission on the 26th of March, 1950. As regards the second order the affidavit sets out the circumstances in which the second order was passed. The allotment officer sent the papers to the Government Pleader and after his opinion he made the order. His previous order having been held to be invalid by reason of a technical error and that technical error having been removed there is no reason why he should not have passed the second order. There is, therefore, no substance in this argument.

10. The last point urged is that there is discrimination between the owners of houses built after July 1, 1946, and the owners of houses constructed before that date. The history behind this Act explains the reason for this difference. The Act was passed early in 1947 at a time when there was acute shortage of accommodation. It was thought that an Act of this kind controlling the activities of landlords might discourage persons from building houses and as it was necessary in the public interest that as many houses should be built as possible an incentive was given to those who had land and were willing to spend money that any houses built by them would be at their complete disposal and no restrictions would be imposed on the same. The Act, as originally drafted, therefore did not apply to houses built after July 1, 1946. In 1948, however, it was found that this privilege was being abused and fancy rents were being asked for such premises and by an amendment a proviso was added giving the owners a right of occupation of premises built by them after July 1, 1946, but otherwise allowing the District Magistrate to have control over allotment of these premises. We do not think that there was no just basis, therefore, for this discrimination between houses built before July 1, 1946, and those built after July 1, 1946. We do not think, therefore, that the proviso in any way affects the validity of the Act.

11. The result, therefore, is that this application has no force and is dismissed with costs. The State is represented by the Standing Counsel and the costs payable to the State is fixed at Rs. 240/-. We allow Opposite Party No. 3 Rs. 100/- as costs.

Petition dismissed.