Madan Gopal Agarwal vs District Magistrate, Allahabad And ... on 10 October, 1972

Equivalent citations: 1972 AIR 2656, 1973 SCR (2) 610, AIR 1972 SUPREME COURT 2656, 1974 2 SCJ 76, 1973 RENCJ 211, 1973 2 SCR 610, ILR 1974 1 ALL 186

Author: S.N. Dwivedi

Bench: S.N. Dwivedi, A.N. Ray, D.G. Palekar, M. Hameedullah Beg

PETITIONER:
MADAN GOPAL AGARWAL

Vs.

RESPONDENT:
DISTRICT MAGISTRATE, ALLAHABAD AND OTHERS

DATE OF JUDGMENT10/10/1972

BENCH:
DWIVEDI, S.N.
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DWIVEDI, S.N.
RAY, A.N.
PALEKAR, D.G.
BEG, M. HAMEEDULLAH

CITATION:
1972 AIR 2656 1973 SCR (2) 610
CITATOR INFO :
R 1974 SC 87 (11)

ACT:
U.P. (Temporary) Accommodation Requisition Act, 1947, S.3- Order of requisition made without hearing to owner occupant whether valid.

HEADNOTE:
The appellant's house in Allahabad was let out to the State Government for a period of five years. Soon after the expiry of the period of lease in September 1969 the District Magistrate passed an order under s.3 of the U.P. (Temporary) Accommodation Requisition Act 1947 requisitioning the house to provide accommodation to a public servant. The appellant

was asked 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. He challenged the order in a petition under Art. 226 of the Constitution on the ground that the order was issued without issuing any notice to him and without giving him a hearing. The High Court dismissed the petition taking the view that since the house was taken away from the appellant's use for a temporary period only he did not stand deprived of his property, and, therefore a detailed procedure was not necessary. The appellant filed an appeal in this Court by special leave.

Allowing the appeal,

HELD : Although s.3.of the Act does not contain an express provision for notice and hearing before the making of the requisitioning order. 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 lie likes. The right to hold and enjoy the property is a cherished right. It is difficult to assume that the legislature would have intended to deprive him of his cherished right without notice and hearing. [613C]

Under the main part of s.3, the District Magistrate, after making up his mind as to the existence of a public purpose to warrant the making of an order of requisition,, has to decide whether, in view of that public purpose, he has to requisition a particular accommodation. He has to consider the suitability of the accommodation in the light of its location, size and compensation payable. 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. Under the first proviso to the section, the District Magistrate has to consider whether the building or part of a building is used for religious worship. Under the second proviso the District Magistrate is to see whether suitable alternative accommodation is available for the person in actual possession of the property. These matters cannot be fairly and satisfactorily determined without giving a hearing to the owner or the person in occupation of the property. [613 H-614 G]

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 s.3. The District Magistrate is constituted the plenary authority. It seems reason-

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able to think that the legislature intended that an order under s-3 should be made after notice and hearing, so that no unfairness is done to anyone.

An elaborate procedure is not necessary. The barest minimum, however is a fair hearing. Notice should be given to the person who will be affected by the order of

requisition asking him to show cause 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. [615B]
The contention that since an order under s.3 is administrative it is not necessary to hear the affected party could not be accepted. This Court, in Kraipak held that rules of ,natural justice will apply to administrative enquiries. The decisions in Daud Ahmad and K. R. Err v hold that in an enactment which deprives a person of his property, there 'is necessarily implied the pre-requisite of a hearing. [617F]
The order of requisition in the present case having been made without
a heating must be held to be illegal.
A. K. Kraipak and others v. Union of India, [1970] 1 S.C.R. 457,
Daud Ahmad v. The District Magistrate, Allahabad and others, A.I.R. 1972 S.C. 896 State of Punjab v. K. R. Erry and Sobhag Rai Mehta, [1973] 2S.C.R. 405, applied.
Province of Bombay v. Kusaldas S. Advani and others, [1950] S.C.R. 621, Ram Chandra v. The District Magistrate of Aligarh and Others, A.I.R. 1953 Allahabad 520, The State of Bombay v. Bhanji Munji and another, [1955]) 1 S.C.R., 777 and Collector of Akola and others v. Ramchandra and others, [1968] 1 S.C.R. 401 distinguished.

JUDGMENT:

CIVIL, APPELLATE JURISDICTION : Civil Appeal No. 80 of 1972.

Appeal by certificate from the judgment and order dated January 23, 1970 of the Allahabad High Court in Civil Misc. Writ No. 392 of 1970.

V. M. Tarkunde J. B. Goyal and R. A. Gupta, for the appel- lant.

G. N. Dikshit and M. V. Goswami, for the respondent. The Judgment of the Court was delivered by. DWIVEDI, J.-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 5 years- on a I 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. 39,8/5, Meerapur, Allahabad. In Meerapur he was living as a tenant.

The period of lease with respect to Ms own house expired on September 9, 1969. The District

Magistrate, Allahabad passed an order under S. 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.

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.

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 before 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 s. 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."

Coming to the argument, s. 3 of the Act reads "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 this 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."

The section consists, of three parts : the main part and the Iwo 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 thereby 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 cherish 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 expected to be restored early to the owner. We find it difficult to assume that the legislature would have intended to deprive him of his cherished right without notice and hearing.

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 matters : (1) there exists a public purpose to warrant the making of an order of requisition; 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 that 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.

The first proviso to s. 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 s. 3. The second proviso also seems to support that inference. It provides that no accommodation "which is in the actual posses,,,ion 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 can-not 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, it will be just and fair to hear at least the owner of the accommodation for he may set up a claim that he is actually occupying it.

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 s. 3. The District Magistrate is constituted the plenary authority' It seems reasonable to think that the legislature intended that an order under s. 3 should be made after notice and hearing, so that no unfairness is done to anyone.

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 could 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 s. 3. In our view the scheme and setting of s. 3 imply a notice and hearing to the person who will be affected by the proposed requisitioning order. Counsel for the District Magistrate has submitted that the District Magistrate acts in an administrative capacity under s. 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. Bhanji Munji and another(3) and Collector of Akola The District Magistrate of Aligarh and others (2) , The State of Bombay v. Bhanji Munji and another(3) and Collector-of Akola and others v. Ramchandra and others (4). In none of these cases the issue of notice ind hearing directly arose for consideration. In the first case, certain property was requisitioned under s. 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 negatived. 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 (1) [1950] S. C. R. 621.

(3) [1955] 1 S. C. R. 777.

(2) A. 1. R. 1952 Allahabad 520.

(4) [1968] 1 S. C. R. 401.

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 a 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. Counsel for the appellant has relied on A, K. Kraipak and others v. Union of India(1), Daud Ahmad v. The District Magistrate, Allahabad and others(2) and State of Punjab v. K. R. Erry and Sobhag Rai Mehta(3). In A. K. Kraipak, 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 officers. Their suitability was not decided by oral or written examination, nor were they interviewed. A. K. Kraipak 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 gra- dually 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. (1) (1970) 1 S. C. R. 457.

(3) [1973] 2 S.C.R. 405.

(2) A. I. R. 1972 S. C. 896 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."

In K. R. Erry, this Court held that the pensionary right of a superannuated Government Servant is 'property' and that his pension cannot be reduced without giving him a hearing even though the relevant service rules do not expressly provide for a hearing. Daud Ahmad is a direct authority for the point before us. There the Court was concerned with an order under S. 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 occa- sion 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."

Counsel for the District Magistrate has submitted that Daud, Ahmad is distinguishable from the present case, for there the Court was concerned with interpreting the second proviso to s. 3. Daud Ahmad and K. R. Erry hold that in an enactment which deprives a person of his property, there is necessarily implied the prerequisite of hearing. These cases support our construction that notice and hearing to the affected party is necessarily implied in s. 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 appellant. So we hold that his order is illegal.

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

G.C Appeal allowed.