# Mrs. Kather Dutt vs District Magistrate, Lucknow And Anr. on 11 October, 1955

## Equivalent citations: AIR1956ALL232, AIR 1956 ALLAHABAD 232

ORDER

V.D. Bhargava, J.

1. This is an application by one Mrs. Kather Dutt under Section 115, Civil P. C. arising under the following circumstances:

There is a Bungalow No. 13, Ashoka Marg, Lucknow of which at one time Mr. and Mrs. Hanson were the tenants. They were treated as tenants but it appears that they did not get this accommodation by allotment and therefore in the year 1951 proceedings under Section 7A, U. P. Rent Control and Eviction Act, were taken against them. It then transpired that Mrs. Kather Dutt, the present applicant, was the occupier of the building within the definition of word 'occupier' in the U. P. Rent Control and Eviction Act and. therefore the proceedings were dropped.

On 28-10-1952, a notice was served on the applicant under the U. P. (Temporary) Accommodation Requisition Act, (25 of 1947), under Section 3 requiring the applicant to deliver possession to the District Magistrate within a period of 16 days. In that notice the District Magistrate fail-ed to provide any 'suitable accommodation' to the applicant as required by the mandatory provision of Section 3, Proviso 2.

Thereupon a writ application in this Court was filed and it was conceded that since the provisions of the Act were not complied with, the notice was bad. The writ was decided, in January 1954. After the decision of this application another notice dated 9-3-1954 was served in March 1954 under 8. 3 of the aforesaid Act and in that notice it was mentioned that she was being pro-vided with an accommodation at 5, Rutledge Road, Lucknow.

The applicant did not avail this accommodation nor did she, as required under the notice, vacate the premises, 13 Ashoka Marg, Lucknow, on the 16th day as required therein. The District Magistrate took proceedings for ejectment as required under Section 11 of the said Act. To that execution objection was taken under Section 47, Civil P. C. and the applicant, 'inter alia', pleaded that the order of the District Magistrate was mala fide; that the order of the District Magistrate was not capable of execution; that the suitable accommodation offered was not vacant.

> (2) The learned Munsif came to the conclusion that the opinion of the District .Magistrate would alone decide whether an alternative accommodation exists or not. He was the sole Judge to consider the suitability of the accommodation and the Civil Court could not go into the question of the suitability of the accommodation. He further held that though the alternative accommodation provided was not as good as the one in which the applicant Was residing yet it was not an unsuitable accommodation.

He also held that the order of the District Magistrate was not mala fide; that the accommodation at the time when it was offered was vacant and on these findings he 'dismissed the objections of the applicant.

3. Aggrieved with this decision the applicant has come up to this Court in revision. It has been argued that the learned Munsif acted illegaily and with material irregularity in holding that the Civil Court had no jurisdiction to go into the question of the suitability of accommodation and it was further argued that the finding arrived at by the learned Munsif on the question whether the accommodation was suitable or not was in utter disregard to the evidence on the record.

It was further argued that the applicant had applied on 19-2-1955 and an application war made on her behalf to be examined on commission and the learned Munsif acted again illegally and with material irregularity in not allowing that application. The constitutionality of the Act was challenged on the ground that it infringed Article 31 of the Constitution and it was further argued that since Section 3 has given an unfettered discretion to the District Magistrate about the decision of the suitability of the accommodation the Act would be ultra vires the legislature. It was further contended that the order was a mala fide one.

4. As to the suitability of the accommodation and the orders passed under the above Act it has to be noticed that they are not of a quasi-judicial nature. In -- 'Province of Bombay v. Khushaldas S. Advani', AIR 1950 SC 222 (A) their Lordships of the Supreme Court have held under very similar circumstances where the requisition of a property was made in the Province of Bombay for the purpose of refugee accommodation as follows :

> "the decision of the Government about a public purpose is a fact which it has to ascertain or decide, and thereafter the order of requisition has to follow. The decision of the Provincial Government as to the public purpose contains no judicial element in it. The inquiries mentioned in Sections 10 and 12 of that Act are only permissive and the Government is not obliged to make them.
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> Moreover, they do not relate to the purpose for which the land may be required. The words of Section 3 read with proviso and the words of Section 4 taken along with the scheme of the whole ordinance, do not import into the decision of the public purpose the judicial element required to make the decision judicial or quasi-judicial.

> The decision of the Provincial Government about the public purpose is, therefore an 'administrative act' and there is no scope for an application for a writ of certiorari."

5. This is what the Supreme Court had said in a matter which was before them in an application under Article 226 of the Constitution. The powers of the High Court and of the Supreme Court under Articles 32 and 226 are wider than the powers of a Civil Court and even then it was held by the Supreme Court that they could not interfere with the administrative order of requisition.

It is much less open to a Munsif or any Civil Court to challenge that administrative order. In the case of -- 'Sm. Prabhabati Devi v. District Magistrate, Allahabad', AIR 1953 All 836 (B), a Bench of this Court had occasion to consider the nature of the proceedings under this Act. It was held as under:

> "When the law under which the authority is making decision, itself requires a judicial approach, the decision will be quasi-judicial. A perusal of the provisions of the U. P. (Temporary) Accommodation Requisition Act, 1947, will show that it does not require the District Magistrate to make a judicial approach when he has to requisition an accommodation under Section 3.
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> He is under no obligation to call for objections, to take evidence and to give a hearing. It is doubtful whether the order passed by the District Magistrate in such a case is quasi-judicial in its nature. In such a case a writ of certiorari is not permissible."

6. Thus it is quite clear that any order passed under U. P. (Temporary) Accommodation Requisition Act is an order which is of an administrative nature and cannot be questioned in this Court except possibly on the ground that the provision of the Act itself has not been observed and I think the learned Munsif was right in holding that a civil Court cannot go into the question of suitability of the accommodation.

7. The contention of the learned counsel for the applicant that the learned Munsif had arrived at the finding about the suitability without considering the evidence on record is not substantiated by the judgment of the learned Munsif. The learned Munsif in his judgment has said that he has considered the report of the Engineer filed by the applicant carefully and then he had arrived at that finding.

That finding may be right or wrong but if the learned Munsif has considered the evidence and come to a conclusion, that finding is binding upon me sitting as a Revisional Court.

8. The complaint of the learned counsel for the applicant about the examination of the witness on commission cannot also be questioned in revision. After all the question whether a witness should be examined on commission or not is a matter of discretion of the Court and the question of discretion "cannot be made the subject matter of a revision.

Apart from that, the case had been pending for a long time and there had been many adjournments. 19th of February, was fixed for hearing. On that date the applicant was supposed to be examined and on the other side an application was made that the case should be expedited as there had been many

hearings and the application for examination on commission was opposed by the opposite party. The learned Munsif passed the order that "In the interest of Justice the objector is allowed ten days' time to examine herself. No more time shall be granted. This is the last adjournment"

and on payment of Rs. 20/- as costs the case was adjourned.

9. I cannot say, that under the circumstances, the learned Munsif acted illegally or with material irregularity in not permitting the, examination of witness on commission. Ordinarily, the parties are not permitted to be examined on commission.

10. As to the applicability of Article 31 of the Constitution, I am unable to follow as to how it applies in the case of requisition of the property. Requisition of property is quite different from the acquisition. It does not deprive the owner of his proprietary right. The proprietorship vests in the real owner, while in case of acquisition he is deprived of that right. Requisition only temporarily deprives a party to exercise his ownership over it and therefore Article 31 will not apply to the circumstances of the present case.

11. Nothing Has been shown as to how this order was mala fide. It is only in the case of judicial orders that the question of unfettered discretion arises. In the case of administrative ciders the discretion has to be vested in a particular authority. Further the discretion to requisition a property is not absolute here. It has been made subject to a condition.

A requisition can only be made when a suitable accommodation is provided. It would be very difficult for the legislature to provide the definition of suitable accommodation, that had to be left to the discretion of the executive.

12. Under the circumstances, I consider the decision of the learned Munsif as correct and this Court in revisional jurisdiction cannot interfere with that decision. I, therefore, dismiss this application in revision with costs. The stay order is discharged.