

## **Durga Prasad vs State Of Uttar Pradesh Through The Chief ... on 29 July, 1952**

**Equivalent citations: AIR1952ALL959, AIR 1952 ALLAHABAD 959**

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution directed against the State of Uttar Pradesh and Sri M. M. Ansari, District Judge of Unnao, who has been appointed also as an arbitrator under Section 6, Requisitioned Land (Continuance of Powers) Act, 1947 (Act 17 of 1947). The contention is that the appointment of Sri M. M. Ansari as an arbitrator in the dispute for compensation which has arisen between the applicant and the State of Uttar Pradesh is illegal and ultra vires. The prayer, therefore, is for the issue of a writ of prohibition against the opposite parties restraining them from proceeding further with the proceedings for the determination of the amount of compensation payable to the applicant.

The relevant facts are as follows :

2. The applicant is the owner of the premises known as "Gopal Niwas" situated in the Civil Lines of the city of Unnao. It was requisitioned by the District Magistrate of Unnao on 13-8-1943, under E. 75A, Defence of India Rules. The order of requisition is as follows :

"Whereas it is necessary for public safety and to maintain the medical services essential for the life of the community that Civil Surgeon, Unnao, should have suitable residence, I. T. N. Kaul, District Magistrate, Unnao, hereby requisition under Rule 75A, Defence of India Rules power which have been delegated to me by Notification No. 3862-G.C.C.D. dated 7-5-1942, the building in the Civil Lines belonging to Rai Bahadur Lala Durga Prasad and at present occupied by Major S. S. Gupta, Civil Surgeon, for the residence of Dr. B. S. Gupta, the new Civil Surgeon, Unnao, on the same rent as paid by Major S. S. Gupta hereto.

Any contravention of this order shall be punishable with imprisonment for a term which may extend to 3 years or with fine or with both."

On 11-11-1943, another order was passed by the District Magistrate in the following terms:

"In furtherance of my order dated 13-8-1943, under Rule 75A, Defence of India Rules

which did not specify the period for which the Civil Surgeon's house was requisitioned I hereby order that the said house is requisitioned for the use of the Civil Surgeon, Unnao, whoever he may happen to be until such time as this order is not cancelled."

The applicant's contention is that the premises consist of "a large spacious bungalow and a beautiful garden." A fruit orchard situated close to the house and owned by the applicant is also said to have been taken possession of with the said premises. The total area of the land thus taken over was 60,-165 square ft. It is said that the property was very well maintained and was in good condition at the time of the requisition. A wire fencing valued at Rs. 2,400 is said to have been added to the property under the orders of the authorities. The property is said to have been of the value of 1,08,434. It is also alleged that the movables worth four to five hundred rupees were also seized along with this property. The property admittedly remained under requisition upto 4-5-1946 when the applicant received the following communication from the Commissioner of Lucknow:

"You are informed that Government has ordered that your house should be restored to you and the Civil Surgeon should shift to some other house. The Deputy Commissioner, Unnao, has been advised accordingly."

On 8-5-1946, the applicant approached the Deputy Commissioner of Unnao for the restoration of the property to him. It is alleged that the Deputy Commissioner ordered that the necessary steps were being taken for the restoration of possession. On 7-10-1946, the applicant served a notice on the Chief Secretary and Dr. Yar Muhammad Siddiqi, the then Civil Surgeon of Unnao, who was then occupying this building. In November 1946 he brought a suit for the ejectment<sup>^</sup>, of Dr. Siddiqi. It is said that he obtained permission of the trial Court to sue subsequently for arrears of rent and for damages. The suit for ejectment was decreed on 14-4-1947. There was an appeal against that decree by Dr. Siddiqi to the District Judge of Unnao who reversed the decree of the Civil Judge and held that the order of the Government did not amount to de-requisition. The applicant filed a second appeal in 1948 which is still pending before the Lucknow Bench of this Court. This closes one chapter of the dispute.

3. As regards the compensation payable to the applicant the State Government acting under Section 6, Requisitioned Land (Continuance of Powers) Act, 1947, first appointed Sri Babu Ram Verma, the then District Judge of Unnao, as an arbitrator on 17-3-1950. Sri Babu Ram Verma was transferred from Unnao and by the order dated 10-9-1951, Sri M. M. Ansari, the present District Judge of Unnao, has been appointed as the arbitrator. The order runs as follows:

"In supersession of Notification No. A-456-XXV/CX dated 17-3-1950 and in exercise of the powers conferred by Section 6, Requisitioned Land (Continuance of Powers) Act, 1947 (Act XVII [17] of 1947) the Governor of Uttar Pradesh is pleased to appoint Sri. M. M. Ansari, District Judge, Unnao, vice Sri Babu Ram Verma transferred, as arbitrator under Section 19 (1) (b), Defence of India Act, 1939 (Act XXXV [35] of 1939), for determining the amount of compensation, if any, payable to the owner of the building known as 'Gopal Niwas,' Civil Lines, Unnao."

A copy of this order was forwarded to the applicant as the owner of the house.

4. The contention by the applicant is that this order is illegal. He has based this contention on various grounds, but it is sufficient to consider only one of them as it is enough to dispose of the matter. The preamble to the Requisitioned Land (Continuance of Powers) Act, 1947 provides as follows:

"Whereas it is expedient to provide, in relation to land which, when the Defence of India Act, 1939 expired, was subject to any requisition effected under rules made under that Act, for the continuance of certain powers theretofore exercisable under the said Act or the said rules."

It is clear that the object was the continuance of the powers of requisition for a certain period. This Act according to Sub-section (3) of Section 1 was to cease to have effect on the expiration of the period mentioned in Section 4, India (Central Government and Legislature) Act, 1946, except as respects things done or omitted to be done before the expiration thereof. By the Adaptation of Laws Order, 1950, it was provided that the last mentioned Act shall have effect only up to 1-4-1951. The scope of the Act will be apparent from the definition of the expression "requisitioned land" given in Sub-section (4) of Section 2. The definition provides:

" 'Requisitioned land' means immovable property which at the commencement of this Act is subject to any requisition effected under the rules made under the Defence of India Act, 1939."

The applicant's contention is that when the order of the State Government dated 4-5-1946 was communicated to him by the Commissioner of Lucknow it amounted to de-requisition and as such on the date of the commencement of the Requisitioned Land (Continuance of Powers) Act, 1947 this building was not subject to requisition effected under the rules made under the Defence of India Act, 1939 and that being so the first mentioned Act is not applicable to this building.

5. Learned Standing Counsel contends that the order, dated 4-5-1946, does not amount to derequisition. He argues that there was no provision in the Defence of India Rules for derequisitioning of property and it is only in the Requisitioned Land (Continuance of Powers) Act, 1947 that there are provisions for the release from requisition. He invites our attention to the proviso to Section 3 and to the provisions of Section 4. He contends further that the order which was communicated to the applicant was defective in form and had not the effect of cancelling the requisition made under the Defence of India Rules. He points out also that in fact the applicant was able to get possession of this building on 17-9-1947, that is to say, after the commencement of the Requisitioned Land (Continuance of Powers) Act, 1947.

6. It is true that the Defence of India Rules 75-A does not expressly provide for the release of property from requisition, but there is no prohibition also in that rule to that effect. We are of opinion that, having regard to the provisions of Section 21, General Clauses Act, 1897, the power to rescind the order of requisition existed. That section provides that where by any Central. Act a

power to issue orders is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to rescind that order. On general principles also where an authority has got power to requisition a property, by implication it possesses the power to cancel the requisition and release the property. The express provisions in Sections 3 and 4, Requisitioned Land (Continuance of Powers) Act, 1947, for release from requisition are in our view for abundance of caution and it cannot be inferred from these provisions that their absence in the Defence of India Rule 75-A means that such a power did not exist.

Where a law prescribes a particular form for an order that form must be followed, but where no such form has been prescribed then the pith and substance of the matter must be seen and not the form. The Defence of India Rule 75-A does not prescribe any form for release from requisition. The order dated 4-3-1946, passed by the State Government and communicated by the Commissioner of Lucknow to the applicant is clear enough that from that day onward the State Government took no responsibility about the property as an authority which had requisitioned it. It is a different matter that the applicant was able to obtain possession actually on 17-9-1947. In the order dated 4-5-1946 the Civil Surgeon for whose residence the bungalow was requisitioned was ordered to shift to some other house. If he did not shift, the applicant could not take the law into his own hands. He had to seek redress in a Court of law and that is what he actually did and was, during the pendency of the litigation, able to obtain possession on 17-9-1947, when the Civil Surgeon, Dr. Yar Muhammad Siddiqi was transferred.

We are of the opinion that when the State Government passed the order dated 4-5-1946, restoring the building to the applicant and directing the Civil Surgeon to shift to some other house the building was derequisitioned or the requisition was cancelled. From that day there was no obstacle in the way of the applicant to take possession of the house by due process of law. It is a building to which the provisions of the Requisitioned Land (Continuance of Powers) Act, 1947 did not apply as it was not under requisition on the date of the commencement of this Act, and that being so, the appointment of Sri M. M. Ansari as arbitrator under Section 6 of the said Act for determination of the amount of compensation payable to the applicant for the building known as 'Gopal Niwas' was illegal and ultra vires.

7. The application is allowed with costs and a writ of prohibition is issued to the opposite parties restraining them from proceeding further with the determination of the amount of compensation payable to the applicant for the building known as 'Gopal Niwas' situated in the Civil Lines, Unnao, in pursuance of the Government Notification no. A-4439-XXV/CX-343/1945, dated 10-9-1951.