Sm. Prabhabati Devi vs District Magistrate And Anr. on 6 February, 1952

Equivalent citations: AIR1952ALL836, AIR 1952 ALLAHABAD 836

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution by Srimati Rani Prabhabati Devi arising out of an order, dated 29-11-1951, passed by the District Magistrate of Allahabad by which he requisitioned the newly constructed house situated behind bungalow No. 16. Thornhill Road and facing Clive Road, for the residence of Sri. L.D. Joshi, Member of the Allahabad University Enquiry Committee and Sri Raghunandan Joshi, Assistant Accountant General, Uttar Pradesh, purporting to act under Section 3, U. P. (Temporary) Accommodation Requisition Act, 1947. Briefly the facts are as follows:--

2. The applicant is a permanent resident of the province of Bihar. She is the widow of the late Raja of Banaili. She is aged about 65 years. About 10 years ago she became a widow. She bought house No. 21, Tagore Town, in Allahabad in April, 1943 so that she may pass her old age in this holy city. She states that from that time onwards she has been living in Allahabad. That house, however, got cracked and her Raj Engineer reported that it was risky to live in it. So on 9-2-1951, she sold it. On 16-2-1951, she purchased house No. 16, Thornhill Road, with a view to continue to reside at Allahabad, but that house had several tenants. She applied to the Rent Control and Eviction Officer for permission to evict those tenants, so that she may be able to continue to live here, but this was refused. To carry out her wish to reside at Allahabad she took steps to construct a new house in the compound of No. 16, Thornhill Road and she started the construction early in May last. That house is nearly complete now. Electricity has been laid out and sanitary fittings have been put in, but for want of sanction of the sanitary plans the bath room and lavatory are not connected with water and so the applicant personally has not been able to come and live in it. This house has been named by the lady as "Shri Radha Krishna Ji ka Mandir." One of the rooms in it contains a temple and it is alleged that contiguous to that room are two halls meant for meditation and religious discourses. It is asserted in the application, the allegations in which have been sworn in by an affidavit, that the applicant's staff is even at present occupying this building and the outhouses. It is said that the eventual intention of the applicant is to get possession of the main building for residential purposes and dedicate the new house to the deity installed in it. On 14-12-1951, the applicant received a copy of the requisition order, dated 29-11-1951, from the District Magistrate. She filed an objection to it and requested that she should be given a hearing before the final orders are passed upon the objection. She was not given a hearing and the learned District Magistrate upheld his order of requisition elated 29-11-1951, by his order dated 6-1-1952, It is contended that the order passed by the District Magistrate was illegal and ultra vires. On these facts the prayer is "that the record of the

ease be called for and proceedings for requisition quashed and such suitable orders be passed as are fit and proper". The heading of the application is "Application under Article 226 of the Constitution of India for a writ of Certiorari and Mandamus."'

3. Sri Gopalji Mehrotra, learned standing counsel, has raised a preliminary objection that no writ of Certiorari can issue as the District Magistrate has acted in an administrative and not in a judicial or quasi-judicial capacity. He relies upon Province of Bombay v. Khushal Das S. Advani, A. I. R. 1950 S. C. 222. That was also a case in which certain premises had been requisitioned and it was held that the order passed by the Provincial Government was an administrative order and not a judicial one. Learned counsel for the petitioner distinguishes that case upon the ground that it was a case not under Art. 226 of the Constitution but under Section 45, Specific Relief Act. Be that as it may, the elements necessary to hold an order to be of a judicial or of a quasi-judicial nature do not exist in the present case. In that case it was held that "when the law under which the authority is making a 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. He is under no obligation to call for objections, to take evidence and to give a hearing. We are doubtful whether the order passed by the District Magistrate in the present case was quasi-judicial in its nature. A writ of certiorari is not permissible. Nevertheless, Article 226 is now so wide that if any authority acts against law then an application under that article is maintainable against the authority for the issue of proper directions to act according to law. In the prayer the applicant has asked for suitable orders to be passed as may be thought fit and proper and not for a writ of certiorari only.

4. Another objection raised by the learned Standing Counsel is that in the present case the applicant should be called upon to file a regular suit for the redress of her grievance and this is not a fit case in which the extraordinary procedure of writ should be adopted. In the present case the applicant complains of the infringement of her fundamental right under Article 19(1)(f) to hold her property. While we do not go to the extent of saying that in all cases in which there is an infringement of a fundamental right a relief under Article 226 should be granted necessarily, nevertheless we are of the opinion that we must see in each ease whether in the circumstances it would be more convenient, effectual and beneficial to grant relief by means of a writ than to ask the applicant to seek it by a regular suit. In the present case from the facts before us, which have not been controverted on behalf of the opposite party, it is plain that the petitioner has been living in this city from 1943 onwards to pass her old age and widowhood in piety and with a view to continue to live here she built the house which has been requisitioned. If she is asked to file a regular suit there is bound to be a great delay. She is an old lady and one does not know whether in her lifetime the case will be finally decided. She is already 65. No alternative suitable accommodation has been provided to her. We think that in these circumstances it would be proper to grant her relief, if possible, under Article 226 of the Constitution.

5. The question now is whether the District Magistrate has complied with the provisions of Section 3, U. P. (Temporary) Accommodation Requisition Act, 1947. The section runs as follows :

> "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 two provisos are important. According to the first proviso, no building or part of a building exclusively used for religious worship can be requisitioned. Learned Standing Counsel has very properly placed before us the file of this case in the office of the Rent Control and Eviction Officer. When the petitioner received the copy of the requisition order her Secretary filed an objection before the District Magistrate on 22nd December 1951. Upon this the Additional District Magistrate passed an order on the same day asking the Rent Control and Eviction Officer to report immediately. In para. 6 of the objection the petitioner stated as follows :

> "That Shrimati Rani Sahaba came to Allahabad in the month of August 1951, and did the Asthapna ceremony of a temple therein (building in question) on an auspicious day on 12th August 1951. Ever since then puja is daily performed by Pujari and occasional Kirtan is done."

In his report, dated 29th December 1951, the Rent Control and Eviction Officer said as follows with reference to this paragraph :

> "In case it is a temple it is a private temple and it does not become a building which is used for religious purposes."
>
> Earlier in his report he had remarked :
>
> "Religious building would not mean a house where a small room has been earmarked for Puja purposes. A religious building would mean a Mandir, a mosque and a chapel. There is no Mandir in this building which can be said to be open to public and thus bring this building into the classification of the religious building. I cannot see any Mandir or temple and in case there is one in a particular room that is only for the sake of family worship. Amongst Hindus in most of the families a small room is generally earmarked for Puja and in case we were to take the phrase "religious place" into a very broad outlook every residence of a Hindu would constitute a religious place."

The important point to note is that on behalf of the opposite party the fact that a formal installation of the idol in a room of this house took place has not been controverted, nor has it been denied that the Puja is daily performed there and occasionally there is Kirtan. It may be that the room in which the idol has been installed is not a public temple, but when the installation has taken place it is a temple, though a private one. It is a room which in the words of the first proviso to Section 3 is "exclusively used for religious worship." The law does not lay down that only buildings or parts of buildings where public can go for worship is exempted from requisition. Whether public or private, if a part of a building is used exclusively for religious worship, it cannot be requisitioned. There can be no doubt that the room in which the idol is installed cannot be requisitioned, as it is used exclusively for religious purpose. The same cannot be said about the two rooms alleged to be used for meditation. There is no proof that they are so used exclusively.

6. The second contention on behalf of the applicant is that this building was "in the actual occupation" of the applicant and therefore in view of the second proviso it could not be requisitioned. Learned Standing Counsel has strenuously urged that, having regard to the facts before us, it cannot be held that the building was "in the actual occupation" of the petitioner. The facts, as we have already seen, are that the building was constructed with the object that the applicant may live in it. It is not yet complete in the sense that the flush system has not been connected with the main, nevertheless it is in the occupation of the applicant because her servants live in it. This is admitted by the Rent Control and Eviction Officer in his report, dated 29th December 1951. He said :

> "At the time of inspection only one or two servants were present. They are staying here to watch the construction of the building and in case it is said that they are staying permanently they can continue to occupy the servants' quarters. No permanent or temporary ration card has been issued from this house; which is an ample proof that the building is not occupied and as such the question of providing alternative accommodation does not arise."

When the idol had been installed a Pujari must he living there permanently. Then there must be other servants to see to the speedy completion of the building. These employees of the applicant are not living there on their own behalf. They are occupying the house as servants of the applicant and to see that the house is completed as quickly as possible so that the lady herself may be able to come and live in it. The fact that no ration cards have been issued from this new house is hardly of any importance. Many persons after shifting from one house to the other continue to draw their rations from the old house or they may be purchasing their ration from the market or they may obtain it from outside the municipal area within the permissible limits. The essential fact remains that the house was not found vacant when it was visited by the Rent Control and Eviction Officer. The words used in the second proviso are "in the actual occupation of any person." This means that if any person occupies an accommodation, whether he be the owner or the servant of the owner, then the accommodation cannot be requisitioned unless an alternative accommodation has been provided. If an owner is temporarily absent leaving his servants in the house, he is in its actual occupation. Actual occupation does not mean occupying it personally.

7. Learned Standing Counsel has contended also that there is no proof of the fact that on 29th November 1951, when the order of requisition was passed this house was in the occupation of anyone. From the file of the case which he has been good enough to place before us it appears that on 28th November 1951, some official of the Rent Control and Eviction Office visited this house and he reported that it was locked and so he could not report precisely about the accommodation in it. The fact that it was locked means that it was in the possession of some one. It may be that at that particular moment when he inspected the house the inmates were out. It cannot, therefore, he said that on 29th November 1951, this house was not in the occupation of any person.

8. Occupation is just the same as possession. There are two elements of possession--animus and corpus. It cannot be disputed that there was animus on the part of the applicant to possess this property. The element of corpus is proved by the fact that she sent her servants in advance to occupy it till she arrived. She visited the house also at the time of the installation of the idol in August 1951.

9. We are of opinion that as the accommodation was "in the actual occupation" of the petitioner's servants at the time when the requisition was made it could not be requisitioned in view of the second proviso to Section 3, U. P. (Temporary) Accommodation Requisition Act, 1947, without providing her with suitable alternative accommodation. No such alternative accommodation has been provided to her. The order passed by the earned District Magistrate was, therefore, not in accordance with law and we direct that it shall not be given effect to unless a suitable alternative accommodation has been provided for her and even in that case the room in which the idol is installed shall not be requisitioned. Parties shall bear their costs.