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DAUD AHMED

v.

DISTRICT MAGISTRATE, ALLAHABAD & ORS.

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February 4, 1972

[S. M. SIKRI, C.J., A. N. GROVER, A. N. RAY, D. G. PALEKAR
AND M. H. BEG, JJ.]

U.P. (Temporary) Control of Rent and Eviction Act, 1947, ss. 3, second proviso and 7—Scope of.

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Natural Justice—Duty of inquire whether alternative accommodation exists before requisitioning premises.

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The petitioner owned premises which were in the occupation of a tenant. The tenant vacated the premises and delivered possession to the petitioner who moved into actual occupation and informed the authorities. Thereafter, the District Magistrate passed an order of requisition of these premises, without any enquiry as to whether the petitioner had any other alternative accommodation, and the petitioner challenged the order.

Allowing the petition,

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HELD : (1) The petitioner was in actual residence of the requisitioned premises and his occupation was not unlawful. Section 7 of the Act does not contain any impediment or bar to the landlord taking possession of the premises after the tenant has vacated. [408 E-G]

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(2) The second proviso to s. 3 of the Act, therefore, applies, and under that proviso, the District Magistrate had to form an opinion that alternative accommodation for the person in occupation existed. Alternative accommodation will have to be alternative to the accommodation of which the person was in actual occupation. The existence of an alternative accommodation is a matter of fact and the opinion is to be formed on certain facts. That is, the District Magistrate had to hold an inquiry to ascertain the facts in order to arrive at the opinion that there existed alternative accommodation. It will not be correct to say that without holding such an inquiry or giving an opportunity to the person in occupation the District Magistrate can ascertain as to whether such alternative accommodation exists. [409 A-C, G-H; 410 A-D]

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A. K. Kraipak v. Union of India, [1970] 1 S.C.R. 457, followed.

ORIGINAL JURISDICTION : Writ Petition No. 244 of 1971.

Under article 32 of the Constitution of India for enforcement of the Fundamental Rights.

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V. M. Tarkunde, K. L. Hathi and P. C. Kapur, for the petitioner.

G. N. Dikshit and O. P. Rana, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by—

Ray, J. This is a writ petition challenging the order dated 11 July, 1971 made by the District Magistrate, Allahabad under section 3 of the U.P. (Temporary) Accommodation Requisition Act, 1947 (hereinafter referred to as the Requisition Act) whereby the petitioner's premises 1-A Beli Road, Allahabad was requisitioned for the residence of Mr. Justice D. S. Mathur for a period of "three years or earlier if the purpose is exhausted".

The order further recited "I am further satisfied that the said accommodation is not being occupied by any tenant and the owner who is said to be in possession of the same is living in his own house No. 101/108 Katra Bakhtiari, Allahabad and so no alternative accommodation shall have to be provided to him".

The petitioner owns premises 1-A Beli Road, Allahabad hereinafter called the Beli Road premises. Prior to the impeached order the Beli Road premises had been in the occupation of Mr. Justice Oak of the Allahabad High Court since the year 1955 and prior thereto from the year 1950 when he was the District Judge, Allahabad.

The petitioner was living at 101/108 Katra Bakhtiari, Allahabad. That house is alleged to be situated in a very congested area and is unhygienic because of its situation near a municipal drain. The petitioner further alleged that the health of the members of the petitioner's family suffered because of the condition of the house. According to the petitioner, the house also required reconstruction which would cost approximately Rs. 40,000.

Mr. Justice Oak retired as Chief Justice of Allahabad High Court in the month of May, 1971. The petitioner in the month of November, 1970 made an application to the District Magistrate under the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter called the Eviction Act) for release of the Beli Road premises in his favour after the same would be vacated by Mr. Justice Oak. The application was under Rule 6 of the Rules under the Eviction Act. It was made in view of the fact that the Chief Justice of Allahabad High Court would retire in the month of May, 1971. The petitioner also gave an undertaking that he would vacate the other house 101/108 Katra Bakhtiari and the same could be allotted to any other person. By an order dated 3

A May, 1971 the District Magistrate rejected the application of the petitioner. It may be stated here that the Chief Justice of Allahabad had recommended the petitioner's application for release of the accommodation.

B The petitioner thereafter filed a representation under section 7-F of the Eviction Act against the order of refusal to release the accommodation. The State Government on 6 May, 1971 further stayed all proceedings for allotment in respect of Beli Road premises. After the Chief Justice of Allahabad vacated the premises in the month of May, 1971 he delivered possession to the petitioner who moved into the premises and was then in actual occupation of the Beli Road premises. The petitioner informed the Rent Controller and Eviction Officer, Allahabad that the Chief Justice of Allahabad had vacated the Beli Road premises and given possession thereof to the petitioner and the petitioner was in occupation of the same.

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On 8 July, 1971 the District Magistrate passed an order of requisition of the Beli Road premises. This order is challenged on these grounds. First, no notice of enquiry was given to the petitioner nor was any enquiry made whether suitable alternative accommodation existed for the needs of the petitioner. Secondly, no provision was made for suitable alternative accommodation of the petitioner because the petitioner had stated that the accommodation at 101/108 Katra Bakhtiari was not fit for habitation and that is why the petitioner's whole family was residing at 1-A, Beli Road, Allahabad. Thirdly, it was said that the petitioner had a fundamental right to hold property and he was deprived of it without being heard and without being given an opportunity of redressing his grievances before the property was requisitioned.

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The entire controversy in this case turns on the second proviso to section 3 of the Requisition Act. The first proviso is not set out because it is not material. The relevant provisions in section 3 are as follows :—

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Power of requisition :—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;

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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".

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Counsel on behalf of the State contended that the proviso was not applicable inasmuch as the requisitioned premises was not in the actual occupation of the petitioner. That submission is unacceptable. The affidavit evidence of the petitioner is that the petitioner was in occupation of the Beli Road premises after Chief Justice Oak had vacated the premises. The State did not deny the fact of occupation of the Beli Road premises by the petitioner. The impeached order of requisition also recited that the petitioner was said to be in possession of the Beli Road premises. The State however contended it to be unlawful occupation. It is indisputable that the petitioner was in possession of the Beli Road premises. Chief Justice Oak vacated the premises in the month of May, 1971. The petitioner was the owner. Chief Justice Oak therefore surrendered possession to the owner who accepted it. The petitioner went into actual residence at the Beli Road premises.

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Counsel on behalf of the State relied on section 7 of the Eviction Act in support of the contention that the District Magistrate was to control letting of premises and unless an order was made by the District Magistrate the petitioner could not get into possession. That is totally misreading section 7 of the Eviction Act. Section 7 indicates that both the landlord and the tenant shall give notice of the vacancy of the premises after accommodation becomes vacant by the tenant ceasing to occupy or the tenant vacating it or when there is release from requisition. Section 7(2) states that the District Magistrate may require a landlord to allot or not to allot to any person any occupation which is or has fallen vacant. Section 7 does not contain any impediment and bar to the landlord taking possession of the premises after the tenant has vacated. The petitioner informed the District Magistrate that the premises had been vacated and that the petitioner moved into the premises particularly because the other house where the petitioner had been staying with his family was unhygienic and in dilapidated condition. It is also noticeable that the petitioner made an application under rule 6 of the Eviction Act to the District Magistrate to permit the petitioner to occupy the premises for his personal occupation inasmuch as it was needed by the petitioner. Therefore the petitioner could not be said to be in unlawful occupation.

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A The petitioner was in actual occupation of the premises. The question therefore is whether the second proviso to section 3 of the Requisition Act required that any notice of enquiry was to be given to the petitioner or that any enquiry was to be made by the District Magistrate as to whether suitable alternative accommodation existed for the petitioner or whether alternative accommodation should be provided. On behalf of the State it was submitted that the opinion of the District Magistrate that alternative accommodation existed or had been provided was the subjective opinion of the District Magistrate. The District Magistrate could not form an opinion by imagination. Opinion is to be formed on certain facts. The existence of an alternative accommodation is a matter of fact. The District Magistrate had to form an opinion that alternative accommodation existed. This could not be done without ascertainment of facts and investigation into the question.

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The application of the doctrine of *audi altarem partem* to the exercise of any statutory power depends primarily on the purpose and provisions of the Act. This Court in *A. K. Kraipak & Ors. etc. v. Union of India & Ors.*, [1970] 1 S.C.R. 457 in dealing with the preparation of a selection list for appointment of officers to the Indian Forest Service said that one of the purposes of the rule of natural justice was to prevent miscarriage of justice. The principle of natural justice has been applicable to administrative enquiries or quasi judicial enquiries. It is the nature of the power and the circumstances and conditions under which it is exercised that will occasion 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. The petitioner had made specific request to remain in occupation of the Beli Road premises on the ground that the other house was inadequate and insanitary. The District Magistrate could decide only after due enquiry and investigation on materials whether any alternative accommodation existed.

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G Alternative accommodation will have to be alternative to the accommodation of which the petitioner is in actual occupation. It is incomprehensible as to how the District Magistrate could in the order of requisition state the fact that because the petitioner was living in the other house no alternative accommodation was to be provided.

H The existence of alternative accommodation is something the having of which can be ascertained. It will not be correct to say that without holding an enquiry and giving an opportunity to the

petitioner in that behalf the District Magistrate will be in a position to ascertain as to whether alternative accommodation for the petitioner exists. The existence of an alternative accommodation is a controversy which has to be determined by the District Magistrate. The determination is necessary for correcting or contradicting any relevant statement prejudicial to the view expressed either by the District Magistrate or the petitioner. That is why the principle of *audi altarem partem* is attracted. The opinion as to alternative accommodation is not an impersonal obligation. It is a determination of a fact. The District Magistrate has to arrive at the opinion on the existence of facts by holding an enquiry and not on turning the idea within himself without giving the petitioner any say in the matter. The District Magistrate did not hold an enquiry and failed to comply with the principles of natural justice by finding out the requisite condition to the exercise of his powers that alternative accommodation existed for the petitioner. The order of requisition is illegal and unwarranted.

For these reasons, the petitioner is entitled to succeed. There will be an order quashing the order of requisition of the Beli Road premises. The petitioner is entitled to costs.

V.P.S.

Petition allowed.