

(1964) 11 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 743 of 1961

Bai Kamla

APPELLANT

Vs

B.R. Mane Patil, Competent Authority and Collector,
Ahmedabad and Another

RESPONDENT

Date of Decision : 25-11-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 421, 422, 423
Gujarat High Court (Appellate Side) Rules 1960 — Rule 6
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 10, 3(1), 3(2), 4(1)

Citation : AIR 1966 Guj 37 : (1965) GLR 221

Hon'ble Judges : J.B. Mehta, J; A.R. Bakshi, J

Bench : Division Bench

Advocate : S.B. Vakil, for the Appellant; H.M. Chokshi, Govt. Pleader, for the Respondent

Judgement

Mehta, J.—This petition has been filed by the petitioner under Article 226 of the Constitution for a writ of mandamus or other appropriate

writ to quash the requisition order dated October 21, 1961, and for restraining the respondents from enforcing or acting under the said order.

2. The petitioner is the owner of a house bearing Municipal Census No. 330 situate at Kothni Pole, Raipur Khadiu. Ahmedabad. The said

property consisted of a ground floor and two upper floors. The second floor of the said house was occupied by a tenant. The third floor was with

the petitioner. The ground floor accommodation consisted of one room and an open Chawk with Osri The premises on the ground floor were first

requisitioned under the Bombay Land Requisition Act, 1948, hereinafter referred to as "the Bombay Act", by the order dated July 3, 1950, and

they were allotted to one Dhansukhlal Dave. In May 1961 the said Dhansukhlal Dave vacated the said premises and the petitioner had applied for releasing the said premises on the ground that she bona fide required the same for personal use and occupation. By the order dated June 29, 1961, the Government of Gujarat, released the said premises from requisition under the Bombay Act. Thereafter by the order dated July 7, 1961, the competent authority under the Requisitioning and Acquisition of Immovable Property Act, 1952, hereinafter referred to as "the Central Act", purported to requisition the said premises. Both the said orders dated June 29, 1961 and July 7, 1961 were served on the petitioner on the same day i.e. on July 10, 1961. The petitioner made two representations on July 15, 1961 and August 8, 1961, for having the premises released and to obtain possession from the Government of Gujarat. But as that was not done the petitioner had first filed Special Civil Application No. 481 of 1961 which was admitted on August 7, 1961, and the competent authority was restrained by an Interim order from taking possession. Thereafter the competent authority by another order dated August 11, 1961, released the said premises from requisition and cancelled the earlier order and so the earlier petition had become infructuous and had been withdrawn. Thereat for the petitioner on September 13, 1961, was handed over possession of the ground floor premises in question and on the same day a show cause notice u/s 3(1) of the Central Act was issued to the petitioner to show cause why the same should not be requisitioned for accommodating a Central Government Servant. By the reply dated September 26, 1961, the petitioner submitted her explanation. Thereafter by the order dated October 21, 1961, which is a composite order of requisition u/s 3(2) and a notice u/s 4(1) of the Central Act, the petitioner was asked to deliver possession of the premises in question within 5 days of the service of the notice. The said order was served on the petitioner on October 22, 1961. The petitioner thereafter made a representation without prejudice to her rights of appeal to exchange the premises which were requisitioned by accepting the third floor instead of the ground floor. The said request was turned down by a letter dated November 13, 1961, which was received on November 26, 1961. The petitioner, therefore, filed the present petition on November 29, 1961, to challenge both the order of fresh requisition and the notice issued u/s 4(1)

of the Central Act under the composite order dated October 21, 1961. At the time of admission the petitioner was granted a limited rule only In respect of the notice u/s 4 of the Central Act. The petitioner had challenged the order on the ground that from September 13, 1961, she was in bona fide possession and the property could not be requisitioned in view of the proviso u/s 3(2) The petitioner also challenged the order on the ground that the notice issued u/s 4(1) should have been at least of 30 days and, therefore, the mandatory provision of Section 4(1) was contravened. The petitioner had also challenged the order on the ground that it was vague and mala fide. In the return filed by the competent authority of contended that the premises had been released for accommodating the Central Government employee. It was also contended that Section 4(1) was not mandatory and that in any case 30 days having elapsed since the order was Issued, the petitioner could not challenge the order on that ground.

3. At the hearing Mr. Vakil wanted to challenge the entire order dated October 21, 1961, in so far as it was an order also u/s 3(2) and operated as an order of requisition even though only a limited rule is issued permitting Mr. Vakil, only to challenge the said order in so far as it incorporates the notice required u/s 4(1) of the Central Act. Mr. Vakil would not be entitled to challenge the order u/s 3(2) of the Central Act, Mr. Vakil relied upon the decision of the Supreme Court in Rabari Ghela Jadav Vs. The State of Bombay, In that case the Supreme Court had Interpreted the provisions of Section 422 and 423 of the Code of Criminal Procedure and had come to the conclusion that having regard to the provisions of the Code, even though the Appellate Court had power to dismiss an appeal summarily, if it considered that there was no sufficient ground for interfering, it had no power to direct that the appeal shall lie heard only on the point of sentence. Such an order is not an order of summary dismissal u/s 421 and it was also not an order u/s 422 of the Code. When the appeal was filed it was the appeal against conviction and sentence and it was not permissible for the appellate Court to direct that it shall be heard only on the question of sentence. Mr. Vakil pointed out the Appellate Side Rules, 1960, in Chapter XVII and argued that that rule 5 provides that the Court may either summarily dismiss the application or

order a rule nisi to be issued against the opponent against whom it is sought, as it thinks fit. He urged that this rule is also in the same terms as the

provisions of the Code which have been interpreted by the Supreme Court. We cannot agree with Mr. Vakild that the two provisions are identical

Rule 5 in terms provides a discretion in the Court to issue a rule nisi as it thinks fit. It is, therefore, open to this Court while exercising its

extraordinary jurisdiction under Article 226 to issue the rule as regards all the relief's or partially as regards only particular relief's or as regards

particular parties. The analogy relied upon by Mr. Vakild is entirely misconceived for the mandatory provisions of the Code leave no discretion with

the Court. We, therefore, permitted Mr. Vakild only to attack the notice u/s 4(1) of the Central Act as per the limited rule issued by this Court.

Section 3 of the Central Act provides for the power to requisition Immovable properly and Section 4 provides for the power to take possession of

requisitioned property. Section 3(1) provides that where the competent authority is of the opinion that any property is needed or likely to be

needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority has to call

upon the owner or any other person who may be in possession of the properly by notice in writing to show cause within fifteen days of the date of

the service of such notice on him, why the property should not be requisitioned. Section 3(2) then provides that if after considering the cause, if any

shown by any person interested In the property or in possession thereof, the competent authority Is satisfied that It is necessary or expedient so to

do, it may, by order in writing, requisition the properly and may make such further orders as appear to it to be necessary or expedient in

connection with the requisitioning. It is only when the property has been requisitioned u/s 3 that Section 4 has to be resorted to before taking

possession thereof Section 4 runs as under:

(I) Where am properly has been requisitioned u/s 3, the competent authority may, by notice in writing, order the owner as well as any other

person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or any person duly

authorised by it In this behalf within thirty days of the service of the notice. (2) If any person refuses or fails to comply with an order made under

subsection (1), the competent authority may take possession of the property and may, for that purpose, use such force as may be necessary".

Section 10 then provides for appeals from orders of requisitioning at the instance of the person aggrieved by an order of requisition u/s 3(2), within

21 days from the date of the service of the order, to the Central Government. The short question which arises for our consideration in this petition

is whether the provision of notice u/s 4(1) is mandatory or directory. The notice required u/s 4(1) is of thirty days, while in the present case the

petitioner was called upon to deliver possession within five days from the receipt of the notice. If, therefore, the provision of notice u/s 4(1) is

mandatory, the order issued by the competent authority asking to deliver possession within five days must be quashed; if the provision was only

directory, it would not have any invalidating consequences. Now, the principles of construction in order to find out whether the provision is

mandatory or directory are well settled. In such case we have to find out and see the intention of the Legislature. As pointed out by Maxwell on the

Interpretation of Statutes, 1962 edition, at page 364, "a strong line of distinction may be drawn between cases where the prescriptions of the Act

affect the performance of a duty and where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction

that certain regulations, formalities or conditions shall be complied with. It seems neither unjust nor inconvenient to exact a rigorous observance of

them as essential to the acquisition of the right or authority conferred and it is therefore probable that such was the intention of the Legislature, But

when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other

specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others

who have no control over those exercising the duty would result if such requirements were essential and imperative" The case with which we are

concerned is not a case where a public duty is imposed upon the competent authority. The case before us is of the exercise of a power to

requisition and take possession of the property of a citizen in the wider interest of the community on the ground of public purpose. The scheme of

the Act, therefore, strikes a just balance between the claim of an individual as against the claim of the society in the wider interest of public

purpose. The individual interests are, therefore, sacrificed to achieve the public purpose. That is why while conferring this wide power of requisitioning a property legislature has provided certain statutory safeguards under the Act. The first safeguard was u/s 3(1) of a show cause notice before an order of requisitioning was made so that before a person was deprived of his property, he would get an opportunity of being heard. After the property was ordered to be requisitioned the further safeguard is provided u/s 4(1), which provides that when the property is requisitioned u/s 3, the competent authority may require the owner or the person in possession to surrender or deliver possession to the competent authority or a person authorised by it within thirty days of the service of notice. The period of 30 days under this section is obviously provided to avoid hardship to the citizen whose property is requisitioned compulsorily by the State on the ground of public purpose. The whole object of this statutory safeguard to avoid unnecessary hardship to the citizen would be completely frustrated if this provision were interpreted as a directory provision and not as a mandatory provision. The citizen's home might be broken up if no sufficient notice was given to him for delivering possession of the property requisitioned by the Government. It also appears that u/s 10 a right of appeal is provided to the person concerned to appeal to the Central Government against the order of requisition u/s 8(2). When right of appeal is provided, the Legislature must have intended that the provision of Section 4(1) of 30 days' notice must be a mandatory provision so that the affected citizen would be in a position to file an appeal during that period. If such notice was not given and the possession was straightaway sought to be taken from the citizen, as in the present case, only within a period of five days, the whole statutory safeguard provided in Section 4(1) would be illusory. When it is the case of power coupled with a duty the enactment must ordinarily be treated as an absolute enactment because the whole power which is conferred would not be acquired until the duty is fulfilled in terms of the enactment which confers such power. In our opinion, therefore, Section 4(1) as regards the notice period must be treated as an absolute enactment. In the present case as the notice u/s 4(1) was not in terms as provided u/s 4(1) and was a notice of only five days, the said notice must be quashed.

4. In the result this petition must be allowed to this limited extent. The order dated October 21, 1961, passed by the competent authority is quashed only to the extent that it incorporates the notice u/s 4(1) of the Central Act and the respondents are hereby restrained from taking possession of the petitioner's premises in question pursuant to the said notice. The rule is, therefore, made absolute only to the extent Indicated above with costs.