
(1951) 05 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 351 of 1950

Bharat Insurance Co. Ltd.

APPELLANT

Vs

The State of Delhi and Another

RESPONDENT

Date of Decision : 09-05-1951

Acts Referred:

Delhi Premises (Requisition and Eviction) Act, 1947 — Section 3(4), 5

Citation : AIR 1952 P&H 69

Hon'ble Judges : Savinder Singh Sodhi, J;Harnam Singh, J

Bench : Division Bench

Advocate : F.C. Mittal and K.L. Kapur, for the Appellant; Bishen Narain, for the Respondent

Judgement

Soni, J.—This is an application by the Bharat Insurance Company Limited of Delhi against the State of Delhi and the Collector of Delhi for writs under Article 226 of the Constitution of India.

2. The facts giving rise to this application are stated to be that on or about 14-3-1950, the Collector of Delhi gave notice under S 3 (3), Delhi Premises (Requisition and Eviction) Act, 1947, to Mr. Jain, the General Manager of the Company, to show cause why bungalow No. 26, Alipore Road, should not be requisitioned. In reply to that notice objections were filed which were dismissed by the Collector. The Collector by his order of 9-6-1950, requisitioned the bungalow under S 3 (4) of the Act and directed Mr. Jain to deliver possession thereof to the Tahsildar, Delhi, on 16-6-1950. Thereafter appeals were filed both by the Bharat Insurance Company and Mr. Jain u/s 5 of the Act to the Chief Commissioner on 12-6-1950. The grievance of the petitioner is that without an opportunity being given of its being heard in support of the appeal the Chief Commissioner dismissed the same by his order dated 7-7-1950. Intimation of this case was sent to the petitioner by the Home Secretary to the Chief Commissioner by his letter dated 11-7-1950. On receipt of the intimation the petitioner on 12-7-1950, submitted to the Chief Commissioner that the appeal

had been decided without giving the petitioner or its counsel an opportunity to appear and urge their objections and that in the interests of justice the matter may be reconsidered after giving the petitioner an opportunity of being heard. The Chief Commissioner, however, refused to do so and by his letter dated 21-7-1950 his Home Secretary said that the orders already passed on 7-7-1950 would stand.

3. These facts are not denied. In my opinion the grievance of the petitioner is sound. Under Clause (3) of Section 3 of the Act it is stated: --

"Where the competent authority decides that it is necessary to requisition the premises for any public purpose he shall call upon the landlord and the tenant or the person in possession by notice in writing to show cause within seven days why the premises should not be requisitioned."

Cl. 4 says :--

"If after considering the cause, if any, shown by the landlord or the tenant or the person in possession the competent authority is satisfied that it is necessary to requisition the premises for any public purpose he may make an order in writing to that effect :

Provided that where a landlord or tenant is using any premises for the residence of himself or his family the competent authority shall as far as possible provide alternative accommodation which in the opinion of the competent authority is suitable :"

The statute gives the right to persons whose premises are being requisitioned and who are mentioned in Sub-section (3) of Section 3 to show cause. There is no grievance in the present case that the Collector did not carry out what was required of him under Clauses (3) and (4) of Section 3. What is contended is that in deciding the appeal they have not been heard. Section 5 deals with appeals and reads as follows:--

"Any person aggrieved by an order of requisition may within seven days from the date on which it is communicated to him, appeal from such order to the Chief Commissioner, Delhi, on the ground that the provisions of this Act relating to requisitioning have not been complied with."

An appeal is a continuation of the hearing before the subordinate officer. Section 5 gives the general right to appeal without any restrictions and ordinarily the same procedure would be followed regarding the hearing of the appellant - as would be followed by the subordinate officer when hearing his grievances. If at the stage of showing cause, he has a right to be heard then surely he has the same right to be heard when his appeal is being dealt with by the appellate authority. A man may be too poor to engage a counsel or anybody else to represent him. He then has a right to be heard personally. If he has a right to be heard personally by the first officer he has a right to be heard personally by the appellate authority, unless the statute prescribes a special procedure for the

hearing of the appeal. If a procedure is prescribed, where for instance, an appeal is to be preferred in writing and is only to be treated as a representation with no right of personal appearance that would be a different matter, but in the present case there are no restrictions regarding the personal appearance of the appellant at the time of the hearing of the appeal.

4. In my opinion the Chief Commissioner was in error in not giving the appellant an opportunity of being heard before him before he decided the appeal. I would, therefore, set aside his order of 7-7-1950, and all subsequent proceedings taken thereafter and direct that the Chief Commissioner give the petitioner an opportunity to be heard and after giving him the opportunity then to decide the appeal. There will be no order as to costs.

5. Harnam Singh, J.

5. I also am of the opinion that the Chief Commissioner, Delhi, was wrong in refusing audience to the appellant. As the facts, so far as material, are given in the judgment prepared by Soni, J., I do not propose to recapitulate those facts. In these proceedings the question raised is that the appellant was entitled to be heard either by counsel or in person in the appeal under S 5, Delhi Premises (Requisition and Eviction) Act, 1947, hereinafter referred to as the Act.

6. Section 5 of the Act gives an absolute right of appeal to the person aggrieved by any order of requisition passed by the competent authority u/s 3 (4) of the Act. Now, where there is an appeal from an order, the appellant is, in my judgment, entitled to support the appeal either by counsel or in person. This is a fundamental rule of justice which, subject to any limitation that may be placed on this right by statute, governs all appeals, including an appeal from an order passed u/s 3 (4) of the Act. Section 5 of the Act places no limitation on the right of appeal and, therefore, it carries with it the right which is enjoyed by every person entitled to appeal to be heard in support of the appeal. For principles governing such cases "In re The Solicitors Act, 1932" (1938) 1 KB 616 may be seen.

7. No one can doubt that in proceedings under Sub-sections (3) & (4) of Section 3 of the Act, the tenant or the person in possession is entitled to be heard either by counsel or in person. "In a sense" an appeal u/s 5 is a continuation of the proceedings u/s 3 of the Act. Indeed, an appeal u/s 5 is competent only on the ground that the provisions of Section 3 of the Act have not been complied with. If so, in my judgment, the person aggrieved from an order of requisition appealing u/s 5 of the Act is entitled, as a litigant party, to be heard in support of the appeal.

8. On this point the definition of the word "appeal" given in Wharton's Law Lexicon may be seen. In Edn. 14 of that book at p. 67 the word "appeal" is defined to be "the judicial examination of the decision by a higher Court of the decision of an inferior Court". Clearly, if the person appealing u/s 5 of the Act is entitled to be heard either by counsel or in person in proceedings u/s 3 of the Act

that right of audience cannot be refused to him in the appellate proceedings.

9. For the foregoing reasons, I think that the Chief Commissioner was wrong in deciding the appeal without giving audience to the appellant.

10. In the result, I set aside the order passed by the Chief Commissioner, Delhi, on 7-7-1950, & also set aside the proceedings pursuant to that order & direct the Chief Commissioner, Delhi, to decide the appeal "afresh" giving the Bharat Insurance Company Limited an opportunity of being heard in support of the appeal.

11. In the circumstances of the case, I make no order as to costs in these proceedings.