

(1951) 12 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Miscellaneous (Writ) Case No. 34 of 1951

Jeewan Ram

APPELLANT

Vs

United State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-12-1951

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5), 226, 226(1), 31(2)
Rajasthan Premises (Requisition and Eviction) Ordinance, 1949 — Section 1, 3(3), 3(4), 5

Citation : AIR 1952 Raj 137

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : Lakshmi Narain and Bal Krishna, for the Appellant; L.N. Chagani, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Jeewan Ram under Article 226 of the Constitution of India for the issue of a writ or order in the nature of "mandamus" or prohibition or any other suitable writ against the State of Rajasthan and the Collector of Churu.

2. The application has arisen out of an order by the Collector under the Rajasthan Premises (Requisition and Eviction) Ordinance, 1949 (No. XI (11) of 1949). The Collector has passed an order u/s 3, Sub-section (4) of the Ordinance requisitioning the house of the applicant. The validity of the order has been challenged on various grounds. In the first place, it is submitted that the Ordinance could not remain in force after the 26th of January, 1950, and, therefore, the Collector had no authority to act under it. In the second place, it is urged that the Ordinance is void, as it contravenes Article 19(1)(f) of the Constitution of India, and imposes unreasonable restrictions on the exercise by the applicant of his right to acquire, hold and dispose of property. In the third place, it is submitted that as the Ordinance has not received the sanction of the

President under Article 31(6), it is void in view of the provisions of Article 31(2). Lastly, it is urged that the Collector had no jurisdiction to pass the order in question, because he did not lay the foundation for such jurisdiction.

3. The application has been opposed on behalf of the State, and all the grounds urged by the applicant have been traversed.

4. So far as the first contention of the applicant is concerned, we have not been able to understand how the coming into force of the Constitution of India on the 26th of January, 1950, has, by that very fact alone, brought the Ordinance to an end. It is true that under Article 385 of the Constitution, the Raj Pramukh now promulgates laws by means of Acts; but this Ordinance was promulgated in August, 1949, and, therefore, Article 385 has no application to it. Further, all the existing laws in force have been specifically continued in force under Article 372 of the Constitution, and this Ordinance also, therefore, continues in force after the 6th of January, 1950, unless repealed as provided by law. There is no force, therefore, in this contention.

5. We are further of opinion that there is no force in the second contention that the Ordinance is an unreasonable restriction on the right given to the applicant under Article 19(1)(f) of the Constitution. That Article guarantees the fundamental right of acquiring, holding and disposing of property. The restrictions which can be imposed on that right are mentioned in Article 19(5). Restrictions can be placed on this right, provided they are reasonable restrictions in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Item 36 of List II (State List) of the Seventh Schedule specifically provides for requisitioning of property by a State for all purposes except for the purposes of the Union. Item 42 of List III (Concurrent List) also provides for legislation with respect to principles on which compensation for property requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given. It is, therefore, within the competence of the State Legislature to pass a law relating to requisitioning of property. The preamble to Ordinance No. XI (11) shows that the Ordinance has been passed by reason of the shortage of accommodation in Rajasthan, and power has been given to requisition any premises for any public purpose. It cannot, in our opinion, be said that such requisition is an unreasonable restriction on the right to acquire, hold or dispose of property.

It has been urged that the Ordinance is a permanent Ordinance, and, therefore, the State can requisition any premises for ever. The fact, however, that the Ordinance is a per-manent law does not mean that the requisition would always be made permanent, as the preamble itself shows that the law has been passed because of the shortage of accommodation in Rajasthan, and as and when the shortage disappears, the law will, in all probability, be repealed. Further Section 9 of the Ordinance provides for release of property when it is no longer required. It follows, therefore, that requisition is only for such period as there is necessity

for accommodation and it cannot be said that it is acquisition of property by the State in the guise of requisition. We are, therefore, satisfied that Ordinance No. XI (11) of 1949 is valid, because it only places reasonable restrictions on the right to acquire, hold or dispose of property in the interests of the general public.

6. The next point that is urged is that the Ordinance is invalid in view of the provision of Articles 31(2) and 31(6) of the Constitution. We have not been able to understand what Article 31(6) has to do with this Ordinance. That Article merely provides for certification by the President in certain circumstances, and thereafter the law so certified is not open to question in any Court on the ground that it contravenes the provisions of Article 31(2). In the present case, the applicant is urging that the Ordinance is invalid in view of the provisions of Article 31(2), and he is not barred from urging that, and the Court will have to see whether the provision of Article 31(2) have been complied with, and if they have not been complied with the Ordinance may have to be declared invalid. In this case, however, the provisions of Article 31(2) have, in our opinion, been fully complied with. This will be clear from a perusal of Section 7 of the Ordinance, which fixes the principles on which the compensation would be determined, and the manner in which it would be determined, and by what authority. There is therefore, no force in this contention also.

7. We now turn to the last point, which is urged on behalf of the applicant, namely, that the Collector did not lay the foundation for his jurisdiction for action under the Ordinance, and, therefore, all the subsequent proceedings taken by him were without jurisdiction. This argument is met by the reply that the proceedings under the Ordinance are of an administrative nature, and, therefore, this Court has no jurisdiction to issue a writ or order of any kind. In the alternative it is said that the Collector had jurisdiction under the Ordinance, and, therefore, no writ or order should be issued.

8. In order to decide whether the Collector acts merely as an administrative officer or as a quasi-judicial tribunal under the Ordinance, it is necessary to look at the scheme of the Ordinance. Section 3 confers power on competent authority (in this case the Collector) to requisition any premises which is needed or likely to be needed for any public purposes. Under Sub-section (3) to Section 3, where the competent authority decides to requisition any premises, it has to 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. Under Sub-section (4), after considering the cause, if any, shown by the landlord to the tenant or the person in possession, the competent authority passes an order, if it is satisfied that it is necessary to requisition the premises. Thereafter, under Sub-section (5), notice of the order is also served upon the landlord. Then comes Section 5, which provides for appeal within seven days of the communication of the order. The procedure, therefore, provided for requisition, and the provision of appeal that exists in Section 5, clearly, in our opinion, show that the competent authority acts as a quasi-judicial tribunal under the

Ordinance.

Reliance in this connection has been placed on *Province of Bombay Vs. Kusaldas S. Advani and Others*, Where it was held that the order of requisition was an administrative act, and the decision of the Provincial Government about the existence of a public purpose was not regarded as a judicial or a quasi-judicial decision. That case was decided under the Bombay Ordinance which did not provide for the elaborate procedure, which is provided in the Ordinance. Section 3 of the Bombay Ordinance reads as follows:

"If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose."

It was not necessary to hear the objection of the landlord or the tenant or the person in possession; nor was there any provision of appeal from the order of the Provincial Government. It was in those circumstances that the Supreme Court held that the order of the Provincial Government requisitioning any premises was an administrative order. Further the decision in "*KHUSALDAS'S CASE*" was not under the present Constitution. The power of this Court under Article 226 of the Constitution for enforcing fundamental rights is very wide, and is not restricted to the issuing of the well-known writs under the Common Law. A fundamental right guaranteed by the Constitution may be put in jeopardy by the executive, and the Court has been empowered to issue to any person or authority and in an appropriate case even to the Government, directions, orders or writs for the enforcement of rights conferred by Part III of the Constitution. Under these circumstances, the decision in "*KHUSALDAS'S CASE*" has no application to the present case, particularly as we are definitely of the opinion that the competent authority under the Ordinance is a quasi-judicial tribunal,

9. We now turn finally to the question whether the Collector in this case laid the foundation of his jurisdiction under the Ordinance. It goes without saying that the Collector having been appointed competent authority u/s 3 has jurisdiction under the Ordinance to requisition any premises. But that alone, in our opinion, does not dispose of the matter. We have already pointed out that the Collector acts as a quasi-judicial tribunal under the Ordinance, and there is a right of appeal provided against his order. The foundation of his jurisdiction is the notice which he issues u/s 3 (3) of the Ordinance. It is, in our opinion, necessary for the Collector to specify the particular purposes for which the premises are required in order to clothe him with jurisdiction to pass an order of requisitioning under subsection (4) of Section 3. It is true that sub-section (3) has not prescribed the contents of the notice; nor is there any rule to our knowledge prescribing its contents. But where the person whose premises are being requisitioned, is given the right to object to the requisition, it is, in our opinion, the duty of the competent authority to tell him the exact purpose for which the requisition is being made. It is only then that the landlord or the tenant or the person in possession would be in a position, to satisfy the Collector why his premises

should not be requisitioned. If he does not know for what particular purpose the premises are being requisitioned, he will not be able to satisfy the Collector why the premises should not be requisitioned.

Further, even if he fails to satisfy the Collector why the requisition order should not be passed, he has a right of appeal, and he has to satisfy the appellate authority why the requisition order should not have been passed. But if he does not know the exact purpose for which the requisition is being made, he will not be able to satisfy the appellate authority why his premises should not be requisitioned. We are, therefore, of opinion that in order to give the foundation for the jurisdiction of the competent authority it is necessary for the competent authority to specify the exact purpose for which the premises are required in the notice u/s 3 (3), and if that is not done, there is no foundation for the jurisdiction of the competent authority, and all subsequent proceedings are null and void. It has been urged that the applicant did not make it a grievance before the Collector that he had not been informed of the exact purpose in the notice. Even if the applicant failed to do so, that would not confer jurisdiction on the Collector, if in law it could not arise.

10. The notice in this case merely said that the house of the applicant was required for providing accommodation for Government servants or officers. Thus, it seems that upon the time the notice was given the Collector had not even decided whether the house would be required for some Government servant or some Government Office. In his application, the applicant said that "the Collector wanted the house for himself, and when he did not agree to give the house to the Collector, action under the Ordinance was taken. The Collector, however, denies this allegation of the applicant, and we may accept that the Collector's action was not "mala fide". It is only in the order u/s 3 (4) that the Collector said that the house was required for the accommodation of the Collector and the District Magistrate. That, however, would not, in our opinion, cure the defect in the notice, and the competent authority having failed to lay the foundation for its jurisdiction could not proceed further in the matter.

That it is necessary to specify the particular purpose in order to give a chance to the landlord to object properly will be clear from an illustration. Suppose some competent authority requisitioned a house with, say, three living rooms and four bed rooms, and said in its notice that the house was required for, say, a Munsif drawing Rs. 250/- a month. The landlord might very well object that the house was too big for an officer of that status, and should not be requisitioned for him, and this objection, even if not upheld by the Collector, may be up-held by the appellate authority. On the other hand, if no mention is made of the exact purpose for which the premises are required in the notice, the landlord would not be in a position to make all objections which he should be allowed to make in view of the provisions of the law.

It may be pointed out that u/s 8, it is open to the Government once certain premises have been requisitioned, to use them for the purpose mentioned in the

order of requisition, or for any other public purpose. Therefore, the landlord has only one chance of showing cause, when the notice is issued to him, and it seems to us only just and proper that he should be told the exact purpose for which the requisition is being made. If that exact purpose is not set out in the requisition, there is no foundation for the subsequent order under S (4), and the competent authority has no jurisdiction to deal further with the matter.

It is not enough to say in the notice, as has been done in this case, that the premises are required for Government servants or offices. If they are required for a Government servant, the name of the officer or official must be mentioned. If they are required for an office, the name of the office should be given. It is only then, in our opinion, that the landlord would be in a position to make a proper objection to the order of requisition, and it is only then that the foundation is laid for the further order that follows u/s 3 (4). As this has not been done in this case, we are of opinion that the Collector, though he may apparently have jurisdiction, had in reality no jurisdiction to pass an order of requisition for he has failed to lay the foundation for such jurisdiction.

11. In this connection we may refer to two cases of the Bombay High Court. The first case is "STATE OF BOMBAY v. MOHANLAL KAPUR" 53 Bom L R 669. That was a case u/s 6 (4) (a) of the Bombay Land Requisition Act. Under that provision the Provincial Government could requisition premises for the purpose of the State or any other public purpose. The order that was issued merely mentioned the section under which it was issued and did not say anything else. Two contentions were raised in this case. The first was that as the order did not say in so many words that the requisition was for a public purpose, there was no jurisdiction to support it. That was met by the argument that as the section was mentioned, it should be presumed that the requisition was for a public purpose. The second contention was that even if such presumption could be made, this was not enough and the specific purpose for which the requisition was made should have been mentioned. Chagla C. J. put this question in these words:

"Even if we were to accept this argument of Mr. Seervai, the next question that arises--and that is of considerable importance--is whether it is sufficient for the requisitioning authority merely to state that they are requisitioning a certain property for the purpose of the State or any other public purpose, or whether it is necessary for the requisitioning authority to indicate in the order the specific purpose of the State or any other public purpose."

The answer to the question was that the specific purpose must be stated, and the reasoning in support of it is in these words:

"Once it is accepted that the State can only requisition a premises for purpose of the State or any other public purpose and that is the condition precedent for the exercise of its power to requisition, if requisition is done for a purpose other than that indicated in Section 6 (4) (a), then the order of requisitioning is bad. It will immediately be appreciated how necessary it is for the subject to know for what

purpose the requisitioning powers of the Government are being exercised. The validity of the order must appear on the face of the order. The subject who is served with the order should be in a position to know that the order has been validly made. He should also be in a position to know that if the order is defective he has a right to challenge it and he has a right not to obey it. If the order merely states that the property is being requisitioned for the purposes of the State or any other public purpose, it would be impossible for the subject to determine whether in fact the specific purpose for which the order of requisition was passed was a purpose of the State or any other public purpose. The officer or authority exercising the power u/s 6 (4) may honestly and "bona fide" come to the conclusion that a particular specific purpose which he or it had in mind was a purpose satisfying the conditions laid down in Section 6(4) (a), yet in law it may not be a purpose of the State or a public purpose. Whether that is so or not could only be tested provided the specific purpose was set out in the order."

It may be mentioned that in the Bombay Act, the order of the Provincial Government u/s 6 (4) (a) was final. There is no provision in it for any objection; nor is there any provision for appeal. The Ordinance with which we are dealing provides for objections and appeal, and, therefore, if it was necessary under the Bombay Act to set out the specific purpose, it is all the more necessary in the case of this Ordinance to do so. We are, therefore fortified in the view that we have taken by this case.

12. The second case to which we may refer is "ABDUL MAJID HAJI MOHOMMED v. P. R. NAYAK" 53 Bom L R 621. That was a case under the Administration of Evacuee Property Ordinance. That Ordinance provides for a notice u/s 7 (1), before the Custodian declares property to be evacuee property, and R. 5 (1), framed under the Ordinance, provides for the form and contents of the notice. It was held "inter alia" that

"inasmuch as the notice did not mention any grounds whatsoever on which the property of petitioner No. 1 was sought to be declared evacuee property, the notice was not in compliance with Section 7 (1) of the Ordinance and that the order was therefore without jurisdiction."

The principle of this case, in our opinion, applies to the present case, though in our Ordinance there is no prescribed form of the notice and no rules have been framed prescribing the form and contents of the notice. But as we have pointed out, a landlord, who has to object, cannot do so properly, unless he is told the exact purpose for which the pre-mises is to be requisitioned, and the failure to mention that purpose in the notice, in our opinion, destroys the foundation of the jurisdiction of the competent authority. In so far as in this case the exact purpose was not mentioned in the notice, the Collector did not lay the foundation for his jurisdiction, and the subsequent proceedings taken by him must be set aside as without jurisdiction.

13. It has, however, been urged on behalf of the State that there is a provision

as to appeal, and the applicant should have appealed u/s 5. It is admitted that the applicant has not appealed, and so it is urged that as he has not exhausted his remedy under the Ordinance, no writ should be issued in his favour.

14. In this connection we may point out that a writ of prohibition stands on a different footing from other writs. Para. 1397 of Halsbury's Laws of England, Hailsham Second Edition, Vol. IX, dealing with this matter, says as follows at page 822:

"The Court, in deciding whether or not to grant a writ of prohibition, will not be fettered by the fact that an alternative remedy exists to correct the absence or excess of jurisdiction, or an appeal lies against such absence or excess."

The law in England is settled that a writ of prohibition will issue, even though there may be a right of appeal, and the party had not gone in appeal. We may in this connection refer to "CHANNEL COALING CO. v. ROSS" (1907) 1 K. B. 145. In that case, a writ of prohibition was issued against a County Court, even though the order against which the writ had been applied for could be set aside on an application to the County Judge himself, and there was thus an alternative remedy open to the applicant, which he had not availed of.

15. The next case is "THE KING v. KENSINGTON Income Tax COMMISSIONER" (1914) 3 K. B. 429. In that case the question was whether a certain person could be assessed by Kensington Income Tax Commissioners. It appeared that he had been assessed for a number of years by the Kensington commissioners, though he had not paid the Income Tax except for the first year. He applied for a writ of prohibition forbidding the Kensington Income Tax Commissioners from realising Income Tax from him. The writ was issued in spite of the fact that there was a right of appeal from the order of the Commissioners and the applicant had not appealed.

16. The basis of these decisions is that where an authority or tribunal is acting without or in excess of its jurisdiction, the Court would issue a writ of prohibition, even though there might have been an alternative remedy which might not have been availed of, for the Court having come to know of want or excess of jurisdiction would not allow the authority or tribunal to carry on further in the same manner. Therefore, the fact that the applicant had not appealed in the present case would not matter, if we are satisfied that the Collector has acted without jurisdiction or in excess of it. The order of requisitioning has not yet been carried out, and the Collector has not yet taken possession of the property. Under these circumstances, as we are satisfied that the Collector is acting without jurisdiction, as he had not laid the foundation of his jurisdiction by any valid notice, and as possession has still to be taken, we are of opinion that we should prohibit the Collector from taking possession under the order which is without jurisdiction. We may point out that in "THE KING v. KENSINGTON Income Tax COMMISSIONERS" (1914) 3 K. B. 429, the assessment had been made, but money had not been paid for other years except the first year, and a writ of

prohibition was, therefore, issued with respect to other years. In the present case also, possession has not yet been taken, and, therefore, it is a fit case for issue of a writ of prohibition to the opposite parties not to proceed further on the notice that was issued against the applicant in March, 1951, and the order that was passed on the basis of that notice.

17. We, therefore, allow the application, and prohibit the opposite parties from proceeding further with the dispossession of the applicant on the basis of proceedings taken against him on the notice issued on the 12th of March, 1951. We pass no order as to costs.