
(1944) 02 MAD CK 0022
In the Madras High Court

Kewalram

APPELLANT

Vs

Collector of Madras

RESPONDENT

Date of Decision : 02-02-1944

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1944 Mad 285 : (1944) ILR (Mad) 826 : (1944) 57 LW 206

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—On 21st August 1948 the appellant purchased a house known as ""Omar Bagh"" in Nungambakkam, Madras. He acquired the

property as a residence for himself and the members of his family. At the date of the purchase the house was in the occupation of Mr. P.

Venkataramana Razu, Superintending Engineer, (A. R. P. and Aerodromes), Madras. It was inconvenient for Mr. Razu to move at once and he

desired to remain in occupation until he could get a suitable residence elsewhere. We shall refer later in detail to what transpired between the date

of the purchase by the appellant and 18th December 1943 when Mr. Razu vacated the house. For the moment it is sufficient to mention that on

11th December the Collector of Madras requisitioned the house under Rule 75A of the Rules framed under the Defence of India Act, 1939, for

the residence of his successor. This order was served upon the appellant on 15th December. Thereupon he interviewed the then Collector (Mr.

Bhaskara Rao) and the Chief Secretary (Mr. G. W. Priestly) with the object of obtaining the cancellation of the requisition order. He was not

successful and consequently on 17th December he filed in this Court an application u/s 45, Specific Relief Act, for an order quashing the order of

requisition. The application was heard by Bell J. during the Christmas vacation as the matter was one of urgency. The learned Judge held that the appellant had not made out a case for interference with the order and consequently dismissed the application. The appeal is from the judgment of the learned Judge. The appellant avers that the Collector had no power to issue the order of requisition and his learned Counsel has advanced a number of reasons for this assertion. The appellant also says that even if the Collector possessed the power, the order issued by him amounted to an abuse of it.

2. Before the purchase of the house by the appellant it belonged to one Mr. D. D. Italia, who on 4th August 1943, no doubt at the request of the appellant, issued a notice to Mr. Razu to quit by the end of that month. At the time there was a great shortage of houses in Madras. This is so well known that the Court is justified in taking judicial notice of the fact. Having received the notice to quit, Mr. Razu wrote through an advocate of this Court, Mr. Rajaram to Mr. Italia's agent stating that it was impossible for him to comply with the demand that he should vacate the house by the end of August. He would make every endeavour to secure a suitable house and when he had done so he would vacate. He did not comply with the notice and nothing further happened until 20th September when Mr. Shamanna, the appellant's solicitor, wrote to Mr. Razu pointing out how his client was being inconvenienced by being kept out of the house which he had bought for his family residence. His wife and children had been brought from Hyderabad, Sind, to Madras and he had no other suitable residence for them. There was no reply to this letter. On 14th October Mr. Shamanna wrote to Mr. Razu pointing out that the appellant had shown every consideration for him, but he must vacate by the end of October, otherwise he would have to resort to legal proceedings. On 16th October Mr. Sundaram wrote again stating that his client was endeavouring to secure a suitable bungalow and would vacate as early as it was practicable for him to do so. Further correspondence of this nature passed between the lawyers of the appellant and Mr. Razu and the month of December found Mr. Razu still in occupation, although he had reiterated his intention to vacate as soon as he could find some other suitable house. On 7th December Mr. Sundaram wrote to Mr. Shamanna

stating that Mr. Razu would vacate Omar Bagh by 1st January 1944. This letter was followed by a request made on behalf of the appellant that

Mr. Razu should vacate by 13th December and not at the end of the month. On 13th December, Mr. Sundaram wrote to Mr. Shamanna stating

that his client would be leaving the house on the evening of 18th December and that he would give possession at 8-30 A. M. the next day. By this

time the order of requisition had been issued. As we have already mentioned, it was served on the appellant on 15th December.

3. Mr. Bhaskara Rao lived in the next house to Omar Bagh. On 28th November the Provincial Government notified his transfer to Guntur. It was

not convenient for him to take his family with him to Guntur, as his sons were attending a school in Madras. Consequently, it was arranged

between him and Mr. Razu that Mr. Razu should vacate the house on the arrival of the new Collector, Mr. Day on 18th December and that Mr.

Razu should take over the occupation of Mr. Bhaskara Rao's house. This was of great convenience to Mr. Bhaskara Rao. It ensured that his sons

who had to remain in Madras would be looked after and that care would be taken of his furniture. It is no wonder that in these circumstances the

appellant felt that he had been badly treated and the order of requisition had been issued as the result of some arrangement between Mr. Bhaskara

Rao and Mr. Razu. The appellant was not, however, in possession of the full facts and when these are considered it cannot be said that the

requisitioning of Omar Bagh was in any way mala fide. A house had to be found for the incoming Collector, and, of course, it was also necessary

that Mr. Razu, as the Superintending Engineer, A. R. P. and Aerodromes, should have a house in Madras. On 7th December 1943, the Provincial

Government passed a memorandum in which it stated that it had selected Omar Bagh for the residence of Mr. Day who had been posted as the

Collector of Madras. The Collector of Madras was accordingly requested to requisition the building as soon as the then tenant vacated it in order

that it might be ready for the occupation of Mr. Day on his arrival in Madras. This memorandum was issued under the signature of Mr. A. H.

Southorn, Deputy Secretary to Government, Public (War) Department. It is in consequence of this communication that Mr. Bhaskara Rao as the

Collector of Madras issued the order of requisition on 11th December. In reply to the affidavit filed by the appellant in support of his application

affidavits sworn by Mr. Southorn and Mr. Bhaskara Rao have been filed. In his affidavit Mr. Southorn states that the Collector of Madras is in

charge of supplies essential for the City of Madras such as rice and firewood and is also the Deputy Civil Defence Commissioner. Mr. Razu as the

Superintending Engineer, A. R. P. and Aerodromes, is employed in Madras solely on works necessary for the prosecution of the war. As no other

suitable residence was available, he suggested to the Chief Secretary to the Government of Madras that the Government should requisition Omar

Bagh. The affidavit proceeds:

There is no question of Mr. P. Venkataramana Razu having prevailed on the Collector to requisition the building. The suggestion to commandeering

the building as already stated, originated with me and there is no truth whatever in the allegation that the Collector of Madras in requisitioning the

building was actuated by improper or malicious motives or that he exercised the power for any collateral or illegitimate purpose.

Mr. Bhaskara Rao in his affidavit states that the circumstances in which the order came to be made are accurately stated in Mr. Southorn's

affidavit. As no other suitable house was available, he was satisfied that Omar Bagh was necessary for the purpose of accommodating the

incoming Collector and therefore he passed the order.

4. Bell J. fixed the hearing of the application for 23rd December. The learned advocate for the appellant wrote to the Crown Solicitor stating that

he required the attendance of Mr. Southorn and Mr. Bhaskara Rao for the purpose of cross-examining them on their affidavits. They attended in

response to this notice, but the learned advocate did not cross-examine them. The explanation of his failure to do so is that the case was being

heard during the vacation and that he had other matters to attend to. We cannot- accept this as a legitimate reason for his decision not to exercise

his right of cross-examination and as they were not cross-examined, the Court must accept their statements without qualification. The affidavits

which go unchallenged completely dispose of the allegation that Mr. Bhaskara Rao acted in abuse of his powers as the Collector of Madras.

5. The contentions of law advanced by Mr. V. V. Srinivasa Ayyangar are six in number, and are these: (1) the requisitioning of the house was

contrary to the provisions of Section 15, Defence of India Act, 1939; (2) the

requisitioning of a house for the incoming Collector was not an act contemplated by Rule 75A of the Rules framed under the Act; (3) Rule 75A required the Central Government to be of the opinion that the requisitioning was necessary or expedient and the power of delegation conferred by Section 2 (4) did not operate to give the delegated authority the right of forming the opinion; (4) there had in any event been no lawful delegation because the provisions of Section 2 (4) had not been complied with; (5) if the power of forming the opinion could be delegated, the opinion must be that of the Collector and not that of Mr. Southorn; and (6) inasmuch as the Land Acquisition Act, 1894, had not been repealed, there could be no power of requisition under the Defence of India Act.

6. Section 15, Defence of India Act, states that an authority or person acting in pursuance of the Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India. This section is directory and must be read in conjunction with Section 16 which says that no order made in exercise of any power conferred by or under the Act shall be called in question in any Court. Of course, this does not preclude the Court from deciding whether a power has been conferred or whether a power which has been conferred has been abused. We have said sufficient to indicate that here there has been no abuse of power. The appellant in his affidavit says that there were other houses available, but no attempt has been made to prove that at the time of requisition there was vacant any other house suitable for the residence of the Collector. In view of the statements made in the affidavits of Mr. Southorn and Mr. Bhaskara Rao it must be taken that there was no other suitable house available. This disposes of the first point.

7. Rule 75A (1) reads as follows:

If, in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order " or the efficient prosecution of the War, or for maintaining supplies and services essential to the life of the community, that Government may, by order in writing, requisition any property, moveable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection

with the requisitioning: Provided that no property used for the purpose of religious worship and no such property as is referred to in Rule 66 or in Rule 72, shall be requisitioned under this rule.

Mr. Srinivasa Ayyangar says that the requisitioning of a house for the Collector cannot be deemed to be an act done for the purpose of maintaining supplies or services essential to the life of the community. We do not agree. The Collector is in charge of supplies which are essential to the lives of the citizens of Madras and moreover he is the Deputy Civil Defence Commissioner. He cannot carry out these important duties efficiently without a suitable residence in Madras. Therefore the provision of a house is something which is necessary for the maintaining of supplies and services essential to the life of the community.

8. Section 2 (4) says:

The Central Government may by order direct that any power or duty which by rule under Sub-section (1) is conferred or imposed upon the

Central Government shall in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged

- (a) by any officer or authority subordinate to the Central Government or (b) whether or not the power or duty relates to a matter with respect to

which a Provincial Legislature has power to make laws by any Provincial Government or by any officer or authority subordinate to such

Government, or (c) by any other authority.

There is here full power of delegation, but Mr. Srinivasa Ayyangar suggests that Rule 75A requires the Central Government to form its own

opinion on the question of the necessity for requisition and then direct the subordinate authority to issue the order of requisition under the delegated

power. This is reading into the Act and the Rules something which is certainly not there. When a power has been delegated u/s 2 (4) the person or

authority to whom the delegation has been made has all the power of the Central Government unless the order of delegation contains some

restriction on the exercise of the power. The order of delegation under which the Collector acted contained no restriction on his power to

requisition houses in Madras.

9. There is no more substance in the fourth contention which is that there has been no lawful delegation because the order of delegation does not

specify the circumstances under which the Collector is to exercise the power. The order of delegation was passed on 25th April 1942. It states

that:

In exercise of the powers conferred by Sub-section (4) of Section 2, Defence of India Act, 1939 (35 of 1939) the Central Government is pleased

to direct that, with effect from 16th May 1942, the powers conferred on it by Rule 75A, Defence of India Rules, shall be exercisable also by the

authorities specified in col. 1 of the schedule hereto annexed in respect of the classes of property, and subject to the conditions, if any, specified in

col. 2 of the said schedule.

All Collectors are included in the authorities specified in col. 1. Their powers of requisition are restricted to the properties within their respective

districts. Mr. Srinivasa Ayyangar points to the words ""in such circumstances and under such conditions, if any, as may be specified,"" which appear

in Sub-section (4) of Section 2, and says that the words ""if any"" only apply to ""conditions"" and not to ""circumstances."" This is not so. The power

may be delegated so as to apply only in specified circumstances and under specified conditions but the delegation may be unrestricted. The power

which was here delegated was the power to requisition for any of the purposes mentioned in Rule 75A if the occasion should arise, subject to the

property being within the jurisdiction of the Collector issuing the requisition order.

10. The fifth argument is based on the suggestion that Mr. Bhaskara Rao acted not on his own opinion but merely on the opinion formed by Mr.

Southern. The difficulties of the situation with regard to houses had been brought to the notice of the Provincial Government and Mr. Southern as

the Deputy Secretary concerned in this matter communicated the wishes of the Provincial Government to the Collector, but the Collector formed

his own opinion. His order states:

Whereas, I. T. Bhaskara Rao, Esqr., I.C.S., Collector of Madras, am of the opinion that it is necessary to requisition the building specified in the

schedule annexed hereto for maintaining supplies and services essential to the life of the community. Now, therefore, in exercise of the powers

conferred by Rule 75A of the Defence of India Rules which have been delegated to me in the Government of India, " Defence Co-ordination

Department Notification No. 1336, O.R./1/42, dated 25th April 1942, I hereby

requisition the said building and order. . . .

11. In his unchallenged affidavit Mr. Bhaskara Rao said that he was satisfied that the requisitioning of the house was necessary for accommodating the incoming Collector. There-fore it cannot with reason be said that Mr. Bhaskara Rao merely acted at the behest of the Provincial Government without applying his mind to the situation.

12. The last contention, namely, that there is no power in the Legislature to provide for the requisitioning property for any of the purposes mentioned in Rule 75A so long as the Land Acquisition Act remains on the statute is an astonishing one. The Land Acquisition Act 1944 relates to the acquisition of property, that is the acquisition of absolute ownership when property is required for a public purpose or for a public company.

To say that the Legislature has no power in a national emergency to requisition property without acquiring it under the Land Acquisition Act has

only to be stated to be rejected. Moreover, Section 3, Defence of India Act, states that any rule made u/s 2 and any order made under any such

rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having

effect by virtue of any enactment other than the Act.

13. For the reasons given we hold that the Collector of Madras had authority to issue the order of 11th December 1943 requisitioning the

appellant's house and that the power was lawfully exercised. Consequently the appeal must be dismissed with costs.

ORDER

Leach, C.J.

14. Mr. Srinivasa Ayyangar has applied for a certificate u/s 205, Government of India Act, 1935, on the ground that his argument with regard to

the Land Acquisition Act, 1894, involves a substantial question of law as to the interpretation of the Government of India Act, 1935. He points to

Section 292, Government of India Act, which provides for the continuance of the existing laws until altered or repealed by a competent Legislature

or other competent authority, The Land Acquisition Act has not been repealed, but this does not prevent the Legislature passing the Defence of

India Act, and there is difference between requisition and acquisition. We have already described the contention that the Land Acquisition Act

stands in the way of requisition under the Defence of India Act, as an astonishing one and having heard the learned Advocate-General we are

satisfied that the question is not one of interpretation of the Government of India Act, 1935, but even if it did involve the interpretation of Section

292, the question is not a substantial one. The certificate must be refused.