

(1954) 09 AHC CK 0006

In the Allahabad High Court

Case No : Execution Second Appeal No. 1485 of 1951

Mst. Bhagvati Devi

APPELLANT

Vs

Sardar Balwant Singh

RESPONDENT

Date of Decision : 16-09-1954

Acts Referred:

Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 3

Citation : (1955) 25 AWR 157

Hon'ble Judges : Malick, C.J.;V. Bhargava, J;Agarwala, J

Bench : Full Bench

Advocate : N.S. Singhal, for the Appellant; S.S. Dhawan, for the Respondent

Final Decision : Allowed

Judgement

Malik, C.J.—This appeal has been filed on behalf of Shrimati Bhagwati Devi, Plaintiff decree-holder. She was the owner of a shop situate within the cantonment area of Meerut. The Defendant, Sardar Balwani Singh, is a refugee from Punjab and the Plaintiff's case was that he took wrongful possession of the shop without her consent. On this allegation she filed a suit for his ejectment and it was decreed on the 25th of October, 1948. She put the decree into execution but before the Defendant judgment-debtor could be ejected he filed an appeal and got a stay order. In the meantime, on the 18th of December, 1948, the District Magistrate requisitioned the shop u/s 3 of the U.P. (Temporary) Accommodation Requisition Act (No. XXV of 1947,). After the requisition order, the District Magistrate claimed to have taken possession of the shop. He thereafter gave the shop to Sardar Balwant Singh on rent. The order giving the shop to Sardar Balwant Singh is dated May 7, 1949, while the original requisition order is dated the 18th of December, 1948. In spite of the requisition order, the decree-holder continued to proceed with the execution application on the ground that the requisition order was invalid and the decree-holder was entitled to execute her decree, eject the Defendant, and take possession of the property. This contention prevailed with the executing court which granted the execution

application and directed that the Defendant judgment-debtor shall hand over actual possession of the property to the decree-holder. The judgment-debtor appealed and the appeal was allowed by the learned Second Civil Judge of Meerut on the 19th of March, 1951. Against that order this execution second appeal was filed. It came up before a learned Single Judge who was of the opinion that two of the points raised merited consideration by a larger Bench and he, therefore, referred the case for decision by a Full Bench.

2. The first point which was taken before the learned Single Judge, and has been argued before us at some length, is that in so far as the U.P. (Temporary) Accommodation Requisition Act (hereinafter called the Act) purported to affect property situate within cantonment area it was ultra vires the Provincial Legislature. The other point raised is that the Act had ceased to be operative on the 30th of September, 1948, and, therefore, the requisition order dated the 18th of December, 1948, was illegal. A third point raised that the shop could not be requisitioned as it was in the possession of the judgment-debtor was overruled by the learned Single Judge and, though Learned Counsel raised that point before us, he was not able to explain how the District Magistrate's power of requisition u/s 3 of the Act, if the Act was valid, could be affected by the fact that the Plaintiff had obtained a decree for ejectment against the person actually in possession of the property.

3. At the conclusion of his argument, Learned Counsel wanted to raise a new point that the requisition was not for a public purpose but this point was not raised before the learned Single Judge and in the judgment of the lower appellate court it is mentioned that the point was conceded; we cannot, therefore, allow this point to be raised before us.

4. The two points, therefore, that call for decision are, firstly, whether the Act is ultra vires, and, secondly, whether it had ceased to be operative on the 30th of September, 1948.

5. Taking up the second point first, Section 1, Sub-section (5) of the Act provided that--

It shall cease to have effect on the expiration of one year from October 1, 1947, or if the Provincial Government so directs by notification in the official Gazette, on the expiration of two years beginning with that date....

6. In effect the legislature provided two periods--a period of one year from the 1st of October, 1947, or a period of two years from that date if the Provincial Government issued a notification. This Act, as its preamble shows, was enacted by reason of shortage of accommodation in the United Provinces which had become very acute due to large influx of refugees as a result of the partition of the country. How long the situation would continue and how long the refugees would continue to pour into India and in U.P. could not be foreseen by the Legislature and it was therefore, not in a position to fix the life of the Act definitely to one year. It must have been anticipated that in about a year's time things would

settle down but, there being the possibility that the influx would continue for a longer period and a control for a longer period might be necessary, the Legislature gave the U.P. Government the power to issue a notification and it provided that, if a notification was issued, then the Act would remain in force for a period of two years from October 1, 1947.

7. Learned Counsel has urged that this is delegated legislation which is not permitted and, therefore, after the expiration of one year the Act must be deemed to have become inoperative. Reference was made to the decision of a Full Bench in *Ram Kishan Vs. State*, which was based on a decision of the Federal Court in AIR 1949 175 (Federal Court). Whatever may have been the position at the time when those cases were decided, the law has since then been clarified by two recent decisions of the Supreme Court. In re. Article 143, Constitution of India and *Delhi Laws, Act (1922) etc.* AIR 1951 S.C. 332, the learned Judges went in detail into the question of the extent to which delegation of legislative function was permissible and that case has now been explained by a recent decision of the Supreme Court in *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, the various positions that arose in the *Delhi Laws Case* AIR 1951 S.C. 332 and the decision thereon were summarised. The first two propositions mentioned by their Lordships are--

(1)--Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the legislative sway of the Centre to the new area:

(2)--Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances:"

8. It was held by the majority that it was permissible for the legislature to authorise the executive authority to apply the Act to any new area within its jurisdiction. In the case before us, the legislature has permitted the executive authority to apply the Act to the whole of U.P. for one more year. A legislature may pass an Act for a definite period or an indefinite period. Here, the legislature passed the Act for two definite periods, either one year or two years dependent on the circumstances prevailing at the end of the year. The Provincial Government was left merely to decide the question whether the situation had so altered that the Act was no longer necessary, in which case they would not issue the notification. We do not think that this can be classed either as delegated legislation or as delegation which was not permissible. This point, therefore, must be decided against the Appellant.

9. The other point raised by Learned Counsel arises in this way. In the VII Schedule, List I, entry No. 2 of the Government of India Act, 1935, the Federal Legislature had been given the power to legislate with reference to "the regulation of house accommodation in such areas (cantonment areas)". Learned Counsel has urged that the Act "regulates" house accommodation in cantonment

areas and, therefore, it should have been passed, by the Federal Legislature and not by the Provincial Legislature. He has relied on Section 100 of the Government of India Act which rules out the jurisdiction of the Provincial Legislature with reference to any of the matters enumerated in List I in the Seventh Schedule. The question, therefore, for decision is whether the words "the regulation of house accommodation within the cantonment areas" include requisition of houses within the cantonment areas. In other words, whether the word "regulation" is wide enough to include "requisition" in this context. Before we deal with this point, we may point out that there is a decision of Bhagwati, J., of the Bombay High Court in *Tan Bug Taim Vs. Collector of Bombay*, where the learned judge observed that requisition of was a distinct and separate category of legislative powers and requisition of property was not covered by or included in any entry in the three Lists contained in the Seventh Schedule of the Government of India Act, 1935, and that the Central Legislature was not competent and had no authority to legislate in respect thereof. Whether it was by reason of this decision or for any other reason, the Governor General acting u/s 104 of the Government of India Act, issued a notification, dated 21st of October, 1947, which was published in the Gazette of India, Extra-ordinary, dated the 25th of October, 1947, and that notification reads as follows:

In exercise of the powers conferred by Section 104 of the Government of India Act, 1935, as adapted by the India (Provincial Constitution) Order, 1947, the Governor-General hereby empowers all Provincial Legislatures to enact laws with respect to the requisitioning of land, being a matter riot enumerated in any of the Lists in the Seventh Schedule to the said Act.

10. Learned Counsel has urged that this notification is of no avail as the Governor-General could only issue a notification empowering the Federal or Provincial Legislature to enact laws with respect to any of the matters not enumerated in any of the Lists in the Seventh Schedule and the Federal Legislature had the power under entry No. 2 of List I of the Seventh Schedule to enact laws for the requisition of houses in cantonment areas. We have, therefore, to consider whether in view of the entry No. 2, in List I of the Seventh Schedule of the Government of India Act, 1935, the Federal Legislature had the power to legislate for requisitioning of houses in cantonment areas and in that case in spite of the notification the State Legislature would have no such power with respect to the cantonment areas.

11. Learned Counsel has relied on a decision of a bench of this Court in *Mt. Ahmadi Begum v. The District Magistrate of Agra* A.W.R. 1951 (H.C.) 586. In that case the District Magistrate of Agra had requisitioned a house u/s 3 of the U.P. (Temporary) Accommodation Requisition Act, 1947, the house being situate within the limits of the Agra cantonment. Reliance was placed on entry No. 2 of List I of the Seventh Schedule of the Government of India Act, 1935. It was held by the learned Judges that the Provincial Legislature had no jurisdiction to make any enactment with regard to that matter meaning matter covered by entry No.

2 of List I of the Seventh Schedule of the Government of India Act, 1935. On behalf of the District Magistrate no argument was advanced that "regulation of house accommodation" did not include the power to requisition u/s 3 of the Act. The point was more or less conceded at the Bar and it was, therefore, not considered by the Bench.

12. The other case *Raman Das v. The State of U.P.* 1952 A.W.R. (H.C.) 225, to which reference has been made in the referring order, as also by Learned Counsel, does not seem to be of much assistance. In that case a house was built in the Mathura city with respect to which the Rent Control Officer had passed an order u/s 7 of the U.P. (Temporary) Control of Rent and Eviction Act (No. III of 1947). The argument advanced by Learned Counsel was that the Act had been passed before the notification of the Governor-General, mentioned above, was issued and the power of allotment given u/s 7 to the Rent Control Officer amounted in effect to requisitioning of property. It was held that the power to make an allotment u/s 7 of the U.P. (Temporary) Control of Rent and Eviction Act was neither acquisition nor requisitioning of property and the Act came under entry No. 21 of List II of the Seventh Schedule of the Government of India Act, 1935. This case was followed by a Bench of this Court in *Prem Shankar Pandaya v. U.P. Provincial Co-operative Bank Ltd.* 1952 A.L.J.R. 520 in which the learned Judges said--

Controlling the letting of buildings does not mean a restriction on the right of the owner about not letting the building but such a compulsion to let a building cannot amount to requisitioning the building. The Govt. does not get possession of the building and then deal with it in any manner it likes.

13. Learned Counsel has referred us to the meaning of the word "regulate" in Shorter Oxford Dictionary at page 1692, but the meaning given in the dictionary does not support the contention of the Learned Counsel that "regulation of accommodation" means "requisitioning" of property. The dictionary meaning of the word is as follows:

regulate--Control, govern or direct by rules or regulations; subject to guidance or restrictions to adapt to circumstances or surroundings; to bring or reduce a person or body of persons to order.

14. In two recent decisions of the Supreme Court (1) *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and (2) *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, the meaning of the words "acquisition" and "requisition" and how far acquisition may at times include requisition for the purposes of Article 31 of the Constitution have been discussed at some length. Those cases, however, are not of much assistance to the Appellant as their Lordships were not called upon to consider the meaning of the word "regulation" in entry No. 2 of List I of the Seventh Schedule of the Government of India Act nor have they held that it is wide enough to include "requisition" and "acquisition" of property.

15. So far as the property outside the cantonment limits are concerned, we have got the U.P. (Temporary) Control of Rent and Eviction Act (No. III of 1947) which gives the District Magistrate the right to control the manner in which houses shall be let out by the landlord to the tenants. The District Magistrate under that Act has no power to acquire the property or to requisition the property; he can only direct to whom the property is to be let out and on what terms. For the cantonment area an act containing similar provisions in the U.P. Cantonments (Control of Rent and Eviction) Act (No. X of 1952) which was passed by the Central Legislature. It gives the officer commanding the station the same powers with respect to accommodation in the cantonment area which the District Magistrate has under the U.P. Rent Control and Eviction Act with reference to house accommodation outside the cantonment limits.

16. An examination of the various entries in the Lists given in the Constitution makes it clear that regulation of house accommodation was not intended and could not include "requisition" or "acquisition" of property. In List I of the Seventh Schedule the power to enact laws for the purpose of "regulation" is mentioned in the following entries:

Entry No. 3--for regulation of house accommodation.

No. 43--for regulation and winding up of trading corporations.

No. 44--regulation and winding up of corporation, whether trading or not.

No. 53--Regulation and development of oilfields and mineral oil resources.

No. 54--Regulation of mines and mineral development.

No. 55--Regulation of labour and safety in mines and oilfields.

and No. 56--Regulation and development of inter-State rivers and river valleys.

and then entry No. 33--mentions acquisition or requisitioning of property for purposes of the Union.

17. Similar result would follow on an examination of List II of the Seventh Schedule. The power of acquisition or requisitioning of property in this List is given in entry No. 36. Entry No. 18 of List II deals with land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization. Entry No. 23 deals with regulation of mines and mineral development; entry No. 32 with regulation and winding up of corporations, other than those specified in List I, and universities etc.

18. When a property is requisitioned by the Government all that the person in possession of the house is deprived of is the actual physical possession thereof and not the legal right which had entitled him to remain in possession so that when the requisition order is withdrawn, it is only necessary to restore

possession to the person from whom it was taken, but in the case of acquisition a right is acquired by the State and if the right, title or interest acquired is no longer needed it has to be legally transferred to whomsoever it is decided to give the right, title or interest. Regulation only means that the rights of the owner or the person entitled to possession are restricted and controlled by the requisite authority, the State Government neither acquiring possession nor the right to possession.

19. It is, therefore, that while in the case of acquisition or requisition the State has to pay compensation for what the State has acquired, in the case of "regulation" of house accommodation no compensation is payable, obviously because no rights in the property are acquired or get vested in the State. If this fundamental difference is borne in mind and if the word "regulation" is interpreted to mean, as probably it was intended to mean, that the District Magistrate will only control, restrict and direct how accommodation shall be let out, on what terms and to whom, then it is not possible to include in the word "regulation" the right to requisition or the right of acquisition of such accommodation for the purposes of the Government or for any other public purpose. In our view, therefore, the words "regulation of house accommodation" in entry No. 2 of List I of the Seventh Schedule of the Government of India Act, 1935, do not include the right to requisition the property u/s 3 of the U.P. (Temporary) Accommodation Requisition Act, 1947, and the Act cannot, therefore, be impugned on that ground.

20. In the end Learned Counsel for the Appellant has pointed out that the suit was brought for ejectment of a trespasser as the judgment-debtor had wrongfully taken possession of the shop and we should, therefore, make it clear that the shop in question belongs to the Plaintiff, that the legal possession in the property was in the Plaintiff and that it is from the possession of the Plaintiff that the Collector requisitioned it on the 18th of December, 1948. As the matter of fact the order u/s 3 dated the 18th of December, 1948, specifically mentions that the property was being requisitioned from the Plaintiff Bhagwati Devi. u/s 8 of the Act, the Collector is bound to return the accommodation requisitioned under the Act to the person from whom it was requisitioned. The decree-holder is, therefore, entitled to get formal possession of the land as against the judgment-debtor but she will not be entitled to get actual physical possession of the shop so long as the order of requisition passed by the District Magistrate remains in force. When the District Magistrate releases the property, he shall return it to the Plaintiff decree-holder, Bhagwati Devi, from whose possession he requisitioned it. Sri S.S. Dhawan appearing for the judgment-debtor has no objection to this part of the order.

21. The result, therefore, is that this appeal is allowed in part and the order of the lower court is modified as indicated above. The executing court shall now proceed to deliver formal possession of the property in the manner indicated above but the decree-holder will not be entitled to get actual physical possession

of the premises to eject the judgment-debtor so long as the order of requisition is not withdrawn. We made no order as to costs of this Court.

22. Learned Counsel for the Appellant has asked for leave to appeal under Article 132 read with Article 147 of the Constitution. The leave asked for is granted.