
(1971) 01 DEL CK 0019
In the Delhi High Court
Case No : Civil Writ No. 726 of 1970

Mushtaq Ahmed

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-01-1971

Acts Referred:

Citation : AIR 1972 Delhi 20

Hon'ble Judges : S.N. Shankar, J

Bench : Single Bench

Advocate : S.B. Saharia, A.B. Saharia, V.B. Saharia and Yogendra Khushbalani, for the Appellant; G.S. Vohra, S.S. Chadha and S.N. Marwah, for the Respondent

Judgement

1. By the this petition under Art. 226 of the Constitution the petitioner has prayed that the Estate Officer be directed to forthwith de-requisition the remaining portions of the property known as York Hotel Building requisitioned in the year 1942 and may further be restrained from delivering possession of the de-requisitioned portions to respondent No. 3 or any other person and respondent No. 3 may be restrained from taking possession of the said property. Respondent imp leaded in the petition are Union of India and Estate Officer. Directorate of Estates, as respondents 1 and 2 Shri ram Pershad respondent No.3 as also eleven other persons as respondents 4 to 14 who are stated to be actually in occupation of the property sought to be de-requisitioned.

2. The petitioner is the owner of the property known as York Hotel Building situated in Block "K" Connaught Circus, New Delhi, comprising old Municipal Numbers 8791 to 8805. By orders dated October 19, 1942 and October 31, 1942 this building with its first and second floors in terms of the petition complete with all appurtenances situated at Connaught Circus. New Delhi was requisitioned by the Central Government in exercise of the powers conferred by sub-rule (1) of Rule 75-A of the defense of India Rules. At the time of requisition the whole property belonged to one Haji Mohammad Din Chhatiwala, the father of the present petitioner who before his death gifted away this property to the

petitioner. The property was requisitioned in 1942 for defense purposes and after the conclusion of the War, the defense Department handed it over to the Estate Officer. Directorate of Estates. Government of India. During this period Haji Mohammad Din Chhatiwala. While he was alive, made efforts to have the property released from requisition but with no apparent success. On June 3, 194, in his lifetime, he entered into an agreement in writing with respondent No. 3 to lease out the property mentioned in the said agreement to him, on its being de-requisitioned.

By order dated August 23, 1965, the Competent Authority appointed under the Requisitioning and Acquisition of Immovable Property Act (XXX of 1952) (hereafter called "the Act") released a part of the requisitioned property consisting of flat Nos. 21, 22, 23, 24 and 26 on the first floor and numbers 28 and 32 on the second floor. By another order dated November 6/8, 1965, the said Authority further de-requisitioned flat No. 25 on the first floor of this Building. By yet another order dated August 17, 1966 it also de-requisitioned flat No. 27 on the first floor of this Building. The remaining portions of the property, continued to be under requisition. In the year 1962, respondent No. 3 on the basis of the agreement to lease, entered into by him with Haji Mohammad Din Chhatiwala, filed a suit against the latter in Civil Court and prayed for a mandatory injunction directing him to hand over possession of the property mentioned in the agreement "as de-requisitioned or as and when the whole or part of it is de-requisitioned". On June 14, 1968, the suit was decreed. Possession of portions of the property namely, the flats above-referred released during the pendency of the suit in 1965, according to the petitioner, was not delivered to Haji Mohammad Din Chhatiwala, and an order under sub-section (4) of Section 6 of the Act was issued in respect of the property but respondent No. 3 took over its possession. In spite of having got the possession of the de-requisition flats he did not pay rent for the same to the owner.

On April 30, 1970 after Haji Mohammed Din had died, the petitioner, Therefore, filed a suit against him for recovery of Rupees 24326.28 on account of arrears of rent due from him in respect of the flats. The respondent denied his liability to pay any rent and in the written-statement dated 29th May, 1970 amongst others. Pleaded that the tenancy created in pursuance of the agreement was to be an indivisible one and that physical possession of the entire premises had to be handed over to him by Haji Mohammed Din Chhatiwala and he having not done so, the suit for recovery of rent was not maintainable. On May 2, 1970, the Competent Authority appointed under the Act sent a letter to the petitioner stating that the Central Government no longer desired to continue the requisition of the remaining portion of the property but having regard to the judgment of the Civil Court in favor of respondent No. 3 in the suit filed by him on the basis of the agreement to lease in his favor the petitioner as successor-in-interest of the defendant in the suit (namely Haji Mohammad Din Chhatiwala) was not entitled to the delivery of possession of the premises even if the same were de-requisition. The letter further called upon the petitioner to state within a week if

he had any objection to the possession of the remaining portions of the requisitioned property being delivered to respondent No.3.

The petitioner sent a reply dated May 15, 1970 raising several objections to the possession being delivered to respondent No. 3 and urged, amongst others, the Government was bound under law to hand over possession of the de-requisitioned property to respondent No. 3. To this Deputy Director of Estate sent a brief reply by letter dated June 29, 1970 to say that "the matter had been examined in detail"" and the objection of the petitioner to the de-requisition in favor of respondent No.3 was not tenable as the judgment of the Civil Court was final and that the petitioner had also not produced any order of the Court requiring the Government not to hand over possession to the said respondent and that same may be forwarded to the said Authority "within a week"s time from the date of issue of this letter". In these circumstances the petitioner filed this petition with the relief set out above.

3. In the counter-affidavit filed by respondents 1 and 2 in preliminary submission (ii), it was stated that the Government had already taken a decision to de-requisition the portion of the property now under requisition occupied by the York Restaurant but "this decision could not be acted upon as a dispute was raised by the petitioner, respondent No. 3 and respondent Nos. 4 to 9, each claiming the possession of the property on de-requisition" and also because one of the occupants of the property Manohar Bakery had filed a writ petition and had obtained a stay order from the High Court.

On merit it was urged in preliminary submissions (iii) and (iv) that according to sup-section (2) of Section 6 of the Act, the Competent Authority was to make an inquiry and to restore possession of the de-requisitioned premises to a person from whom possession was taken and as in the instant case the possession had been taken at the time of requisition from one Nechal Singh and the said Nechal Singh was not traceable, it became necessary to make an inquiry for deciding the person to whom possession of the property should be delivered on de-requisition. In regard to the decision of the controversy between the petitioner and the respondent No. 3 it was stated that after the Central Government decided to de-requisition the property, the petitioner was called upon to show cause if he had any objection to the possession of the premises being handed over to respondent No. 3 who claimed the same on the basis of a judgment and decree dated June 14, 1968 passed by the Civil Court in his favor. To this the petitioner submitted his reply and the matter was examined in detail and it was pointed out to him his objection for de-requisition in favor of respondent No. 3 was not tenable.

4. In the counter-affidavit filed by respondent No. 3 in Para 5 he maintained that he was entitled to delivery of possession of the de-requisitioned property by reason of the lease agreement and the judgment and decree of the Civil Court in his favor and that the Central Government was entitled to refuse to hand over possession to the petitioner as "even his relationship as being the son of Shri

Mohammad Din Chhatriwala and being the only person entitled to the property has not been admitted by the contesting respondent in the suit filed by him for the recovery of rent in the Court of Shri B.B. Gupta, Sub Judge, Delhi".

5. During arguments, learned counsel for the petitioner made a statement that the petitioner did not seek any adjudication of his claim in this petition as against the other respondent Nos. 4 to 14 whom he had imp leaded in the petition

6. I have heard the learned Counsel for the parties. By way of preliminary objection, it was urged by Shri S.S. Chadha, appearing on behalf of the respondents 1 and 2 also by Shri S.N. Marwah, appearing on behalf of respondent No. 3 that the letter dated June 29,1970, Annexure "H" informing the petitioner that his objection against the de-requisition in favor of respondent No. 3 was not tenable was not a final order of Competent Authority u/s 6 of the Act. They urged that the order under this provision had to be in the prescribed form, according to sub-rule (3) Rule 7 of the Requisitioning and Acquisition of Immovable Property Rules, 1953 framed by the Central Government in exercise of the powers conferred by Section 22 of the Act.

This sub-rule provides that order under sub-section (2) of Section 6 had to be in the prescribed form "G" annexed to the Rules. It was contended that because the letter in question was not in that form it could not be provision. Confronted with the position that the prescribed form "G" did not require any reasons to be given in support of the conclusion of the Competent Authority as to why the person specified in the order was entitled o the delivery of possession, relying on the wordings of the provisions of sub-section (2) of Section 6 of the Act providing that it was for the Competent Authority to hold or not to hold the inquiry, they urged that inquiry under this provision was purely an administrative inquiry and the order passed administrative order and needed no reasons to be stated.

7. I am unable to accept these contentions. Taking up the second contention first. I find that sub-section (2) of Section 6 of the Act imposes a duty on the Central Government to restore possession of the de-requisitioned property to the person from whom possession was taken at the time of requisition or his successor-in-interest. For the determination as to who that person should be in a case where dispute is raised and rival claims to the possession are put up it also provides for an inquiry to be mad. The inquiry envisaged is for the purpose of deciding the rival conflicting claims and such decision has legal consequences for the contesting parties. According to sub-section (3) of Section 6 of the act, the decision under sub-section (2) has the effect of affording a full discharge to the Central Government from all liability in respect of the property though with out prejudice to the rights of any third person in respect thereto. It further has the effect of placing one of the property of which he is out of possession with all the consequent rights for the time being flowing there from. The function assigned to the Tribunal and the duty enjoined on it under sub-section (2) of Section 6 is obviously Therefore, not a purely administrative matter.

The provision also prescribes the guide-line according to which the competent Authority is to act, namely that it has to determine as to who was the person or the successor in-interest of the person from whom possession had been taken at the time of requisition and then to delivery possession of the de-requisitioned property only to such a person after its finding. An obligation to act judicially on the part of the Tribunal in these circumstances is manifest from the nature of the duty that it is called upon to perform. All these considerations leave no doubt in my mind that the function that the Competent Authority has to discharge which acting under sub-section (2) of Section 6 is not administrative but is quasijudicial. Reference in this connection may be made to *Province of Bombay Vs. Kusaldas S. Advani and Others*, where for determining the nature of the function to be performed by a Tribunal two principles were laid down. It was held that if a statute empowered an authority not being a Court in the ordinary sense to decide disputes arising out of a claim made by one party under Statute, which claim was opposed by another party, the Authority was in fact deciding a "Lis" and prima facie and in the absence of anything else in the Statute to the contrary it was the duty of the authority to act judicially and the decision of the authority was a quasijudicial act. The second principle laid down was that if the statutory authority had the power to do any act which was to prejudicially affect one of the parties that by itself would be a quasi-judicial act if the authority was required to act judicially, even though there may not be two parties apart from the authority, and the contest was between the authority proposing to do the act and the subject opposing it. Even if Therefore, it be assumed that the only object of the decision u/s 6(2) of the Act was to absolve the Government of its liability in respect of the requisitioned property, as contended by the learned counsel for respondent No. 3 (which as I have said already is not the case) still the decision would be quasi-judicial.

A similar question arose before the Supreme Court in the case of *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . On page 612 of the report, the Court ruled that in order to determine whether an administrative body was exercising quasi-judicial function, it was necessary to examine in the first instance. Whether it had decided on evidence between a proposal and an opposition and secondly it was under a duty to act judicially in the matter of arriving at its decision. Both these conditions are satisfied in this case. The decision on inquiry in this case had to be on evidence and there was a statutory duty cast on the authority to decide the matter according to the prescribed guide-line already set out. The following passage from the report of the case recently decided by the Supreme Court (*A.K. Kraipak and Others Vs. Union of India (UOI) and Others*,) is also relevant for purposes of this issue. Mr. Justice Hegde speaking for the Court while delivering judgment said :

"The dividing line between administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an, administrative power of a quasi-judicial power one has to look to the nature

of the power conferred, the person or persons on whom it is conferred the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours which is regulated and controlled by the rule of law it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable, that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a "fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasijudicial power.

7-A. Reverting now to the case in hand, respondents 1 and 2 while referring to the decision of the Competent Authority in this case in the preliminary submission (IV) stated as under.

"The petitioner was called upon to show cause if he had any objection to the possession of the premises being handed over to Shri Ram Pershad in terms of the decree as and when the order of the de-requisition is made. The petitioner showed cause in his letter dated 15th May, 1970 and the matter was examined in detail and it was pointed out to him that his objection for de-requisition in favor of Shri Ram Pershad is not tenable".

This leaves no manner of doubt that the Competent Authority in this case decided a "lis" between the petitioner and respondent No. 3. The decision taken by it, Therefore after examining but a quasijudicial decision.

8. Coming now to the second argument in support of the contention that subsection (2) of Section 6 empowered the competent Authority to hold the inquiry or not to hold it, and, Therefore, the order was administrative, it is true that the competent authority has been given this discretion, and very obviously in case where there is no dispute in regard to the person from whom possession had been taken at the time of requisition it would be within its right to say that no inquiry was needed : but when a dispute is raised before it, and a "lis" is created, it is bound to decide in accordance with the guide-line prescribed by subsection (2) of Section 6. The fact that discretion has been provided to the competent authority to hold an inquiry or not to hold it is purely administrative. Likewise the fact that this provision also empowers the said authority "to cause an inquiry to be made" also does not mean that the inquiry was administrative. I have, Therefore, no hesitation in holding that the inquiry envisaged in Section 6(2) of the Act is a quasi-judicial function assigned to the competent authority.

9. This now takes me to the basic objection that decision contained in letter dated June 29, 1970 Annexure "H" is not final. As stated earlier, by letter dated May 2, 1970, Annexure "G", the competent authority, acting u/s 6(2) of the Act, for the purpose of deciding the rival claims of the petitioner and respondent No. 3 informed the petitioner that the attention of the Central Government had been invited to the judgment of the Civil Court relied upon by respondent No. 3 wherein the Court had held that respondent No. 3 was entitled to the mandatory injunction (in respect of the property mentioned in the plaint) directing the defendant to the suit to hand over possession of the property known as York Hotel excepting some portions thereof and that as successor-in-interest of the erstwhile owner, (the defendant to the suit) it was not open to the petitioner to take possession of the premises when the same were de-requisitioned by the Government and that the petitioner should state if he had any objection to the possession of the premises being handed over to respondent No. 3.

To this letter the petitioner sent a reply by his letter dated May 15, 1970. Annexure "I" and amongst others urged that the decree relied upon by respondent No. 3 had nothing to do with the Government and that it did not authorise the Government to hand over possession of the de-requisitioned property to respondent No.3 and that if respondent No. 3 wanted to execute the decree, this could be done by him through the executing court alone and that the handing over the possession of the de-requisitioned property to respondent No. 3 will seriously prejudice his rights. By letter dated June 29, 1970, the Competent Authority said :

"With reference to your letter dated the 15th May, 1970 I am directed to say that the matter has been examined in detail but your objection for de-requisitioning in favor of Shri Ram Pershad is not tenable as the judgment of the Sub-Judge 1st Class. Delhi appears to be final. Further you have not also produced any order of the court not to hand over possession to Shri Ram Pershad. In case you have any such order etc., the same may be sent to us within a week's time from the date of issue of this letter."

10. I am in no doubt that after the issuance of this letter the claim of the petitioner to obtain possession of the de-requisition property as against respondent No. 3 stood finally determined. So far as the competent Authority acting u/s 6(2) of the Act was concerned, this decision had simply to be case in the prescribed form "G". This form is nothing more than the form of the "decree" prescribed in the CPC in which the decision of the Court in the judgment had to be expressed. The fact that it has not been formally cast in that form does not take away the fact that the decision affecting the rights of the contestants has been made by the competent authority giving rise to a cause of action to the aggrieved party to challenge it by invoking Article 226 of the Constitution if this was with out jurisdiction.

11. Mr. Marwah then urged that after the issuance of the letter dated June 29, 1970 the petitioner himself sent a reply to it vide his letter dated July 2, 1970.

Annexure "J" and the matter, there fore, was still under consideration and there was no final decision. The learned counsel for the petitioner in reply argued that after receipt of this letter, the petitioner filed the present writ petition and the admitting Bench. While admitting the petition on the petitioner's application for interim stay directed status quo to continue in the meanwhile. He pointed out that when the stay application, however came up for hearing before the learned single Judge the view taken was that the Government was still considering the matter and Therefore there was no need for a stay and the ex-parte stay granted by the Division Bench was vacated. Aggrieved from this the petitioner went up in appeal and the Division Bench in appeal again granted the interim stay order and directed the petition to be heard within three months. This, the learned counsel said clearly showed that the order had been held to be a final order. It was conceded by him that the Division Bench did not hear the appeal from the order vacating stay its merits. It is Therefore, not possible to sustain the submission that it was ever held by the Division Bench that the impugned decision to be a final order. But looking at the matter independently, it is clear from the letter dated June 29, 1970, extracted above that the competent authority has taken a final decision in the matter so far as Section 6(2) of the Act is concerned, subject to any order to the contrary by a Civil Court, which even otherwise is to prevail in terms of Section 6(3) of the Act. For all these reasons. I see no merit in the submission that there is no final order and the present writ petition for that reason is not competent.

(In Paragraph 12 the order rejects Shri Marwah's contention that disputed questions of title of the petitioner cannot be decided by writ court. There is no need to decide such questions since the Government has accepted the petitioner to be the successor-in-interest of the late owner. It then proceeds):

(In paragraph 13 the rejects the contention that in view of the agreement with petitioner's father and the decree in the civil suit court should not exercise its inherent and discretionary power under Article 226 in favor of the petitioner. It holds that the respondent's defense to petitioner's claim for arrears of rent for portions obtained as far back as 1956 clearly entitles the petitioner to relief in equity provided he establishes the impugned order to be beyond jurisdiction. It then proceeds):

12. Placing reliance on Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras, . The learned counsel then contended that the competent authority under the provisions of sub-section (2) of Section 6 of the Act was competent to make a decision as between the rival claims of the petitioner and respondent No. 3 and even if this decision in this case was wrong the same cannot be interfered with under Article 226 of the Constitution. This contention also disregards the basic grievance of the petitioner that the Competent Authority in taking this decision acted beyond the jurisdiction conferred on it by Section 6(2) of the Act. A decision which suffers from an error apparent or is without jurisdiction is not simply a wrong decision but is decision which has to be

quashed under Article 226 of the Constitution.

13. The real question for decision Therefore in this petition is as to the extent of the jurisdiction of the Competent Authority acting u/s 6(2) of the Act. As to the particular person out of the several claimants who would be entitled to the delivery of possession on de-requisition is a matter to be decided by the Competent Authority in accordance with the provisions of Section 6(20) of the Act. This Court in exercise of the powers under Article 226 of the Constitution can, however see that while acting u/s 6(2) of the Act, the competent Authority acts within the jurisdiction conferred on it by law. The Central Government in this case has decided to release the property under requisition. There is no dispute on this point. Respondent Nos. 1 and 2 have stated so in their counter-affidavit. The Act lays down what is to follow this decision. The Competent Authority is now bound to proceed according to sub-sections (2). (3). (4) and (5) of section 6 of the Act so that the de-requisition may be complete to exonerate the Central Government in respect of its liabilities in respect of the requisitioned property. These provisions read as under :

"(2) Where any property is to be released from requisition, the Competent Authority may after such inquiry, if any as it may in any case consider necessary to make or cause to be made specify by order in writing the person to whom possession of the property shall be given and such possession shall as far as practicable, be given to the person from whom requisition or to the successors-in-interest of such person.

(3) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the Central Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law against the person to whom possession of the property is given."

"(4) Where any person to whom possession of any requisitioned property is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the Competent Authority shall cause a notice declaring that the property is released from requisition to be affixed on some conspicuous part of the property and shall also publish the notice in the Official Gazette.

(5) When a notice referred to in sub-section (4) is Published in the Official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the Central Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date."

A perusal of these provisions show, as stated earlier, that sub-section (2) enjoins a duty on the Competent Authority to delivery possession of the de-requisitioned property as far as practicable to the person from whom the same was taken at the time of requisition or to the successor-in-interest of "such person". . it is

admitted between the parties and rightly that the possession envisaged in this clause is physical possession. The intention of these provisions is that on derequisition of these provisions is that on derequisition the status-quo ante as it existed on the date of requisition should be restored and if the tenant was in possession, the possession should be restored and delivered back to him or to his successor-in-interest.

Where the tenant or his successor-in-interest to whom possession is enjoined to be delivered by sub-section (2) is not found and has no agent or other person empowered to accept delivery on his behalf the Competent Authority has no alternative but to act under sub-section (4) of the section. The concluding words "such person" used in sub-section (2) of Section 6 are significant. They refer to successor-in-interest of the person from whom possession was taken. All that the Competent Authority Therefore is empowered to do in the inquiry under this sub-section is to ascertain the person from whom possession was taken at the time of requisition, or his successor-in-interest. It cannot go beyond this. It has no jurisdiction to adjudicate on the rights of any person claiming against the tenant or his successor-in-interest. The later part of sub-section (3) providing that the decision of the Competent Authority shall not prejudice the rights of any third person in respect of the property further supports this conclusion. This conclusion is also borne out by the provisions made in sub-section (4) and sub-section (5) of this section where the Legislature provided that in case the person to whom possession is enjoined to be delivered under sub-section (2) or his successor-in-interest was not found and he had no agent or other person authorised to accept delivery on his behalf the Competent Authority "shall" issue a notice in terms of sub-section (4).

14. It was conceded before me by both the parties and this also. I think rightly that the expression "successor-in-interest" of the tenant from whom possession was taken for purpose of sub-section (2) of Section 6, in a case where the tenant or his successor-in-interest was not found would be the landlord of such a tenant. This is because according to Section 105 of the Transfer of Property Act, a lease of immovable property was a transfer of a right in the property by the landlord in favor of the tenant to enjoy the possession of the demised property. The reversion of this transfer always vested in the landlord. That being the position. In case the Competent Authority was unable to find the tenant from whom possession was taken or his successor-in-interest in that line the landlord would be the rightful person entitled to receive possession under this provision.

15. This is how the Competent Authority acted in this case at the time when some portions of the requisitioned property were de-requisitioned in the year 1965. Annexure "A" is the letter dated August 23, 1965, issued by it on that occasion to Haji Mohammad Din Chhatriwala, the landlord at the time when the property was requisitioned. By this letter the Competent Authority informed him that the properties mentioned in the letter were being released from requisition with effect from 7th August 1965 and that "you may deal with them in such

manner as you may deem fit". To this letter was annexed the formal order issued by the Competent Authority under sub-section (4) of section 6. The propriety, validity and legality of that order is not before this court now and nothing need to be said on that aspect. The Competent Authority for purposes of the present de-requisition has chosen to act differently.

In the letter dated May 2, 1970, it now accepted the petitioner to be the successor-in-interest of the landlord as shown earlier but proceeded further to consider the claim of respondent No. 3 as against the petitioner on the basis of the decree obtained by him against Haji Mohammad Din Chhatiwala. Not only that it also took the decision that the petitioner's objections against the said claim were untenable and that the de-requisition was to be in favor of respondent No. 3 (See, letter dated June 29, 1970 Annexure "H"). No reasons were given by the competent authority in support of this decision but Annexures "G" and "H" unmistakably show that this conclusion was arrived at not because respondent No. 3 was the successor-in-interest of the tenant Nechal Singh from whom possession was taken at the time of requisition but because by virtue of the decree of the Civil Court respondent No. 3 had acquired some rights as against the petitioner which precluded him from claiming possession of the de-requisitioned property according to the competent authority. What right or title respondent No. 3 acquired against the petitioner in this litigation the competent within the jurisdiction of Section 6(2) of the Act to decide.

16. The decree relied upon by respondent No. 3 it is not disputed was passed against Haji Mohammad Din Chhatiwala. It was a decree for mandatory injunction directing Haji Mohammad Din Chhatiwala to hand over possession of the premises mentioned in the decree to respondent No. 3. It was argued that this decree was not binding on the petitioner. Placing reliance on Halsbury laws of England, Article 713, it was urged that the relief of injunction was a remedy of equitable nature and acted in personam and did not run with the land.

It was also pointed out that during the course of the litigation in which the decree was passed, Haji Mohammad Din Chhatiwala after making the gift in favor of the petitioner applied to the Court that the petitioner may be substituted but respondent No. 3 opposed this application and this precluded him from executing the decree against the petitioner. It was further contended that the past conduct of respondent No. 3 clearly disentitled him to seek execution of the decree for injunction or to obtain possession of the rest of the property covered by the agreement and the decree. In short, it was vehemently urged that if respondent No. 3 was to execute the decree on which he relies. These and several other defenses would be open to the petitioner which all stand negatived and shut out without a trial.

It was also argued without prejudice, that even if the petitioner subject to his rights in law, desired to comply with the decree on such terms or under such conditions that may be open to him in law the delivery of possession by the competent authority direct to respondent No. 3 will deprive him (Petitioner) of all

such rights and the untenable objection of respondent No. 3 already taken by him in answer to the claim of rent that be cause the tenancy to be created in pursuance of the agreement was to be indivisible and because possession was not handed over to him by Haji Mohammad Din Chhatriwala, no claim for rent lay against him would still remain open to respondent No. 3. It is not for this Court to anticipate, or comment on the objections that may be open to the petitioner. In fact provisions of Section 47 of the CPC are a bar to such objections as relate to the execution, discharge or satisfaction of the decree being raised any where but the executing Court. Suffice to say that the competent authority, acting within the limited jurisdiction conferred on it by Section 6(2) of the Act, was not competent to decide the decree was binding on and executable against the petitioner and that successor-in-interest of Haji Mohammad Din Chhatriwala was not entitled to take possession because of the judgment and decree. The competent authority was not entitled to decide any dispute between the successor-in-interest and his rival claimant. The competent authority was neither entitled to execute the decree nor to assume the role of a Civil Court to call for, enter upon or decide the petitioner's objections to the decree. If possession of the de-requisitioned property was delivered to the petitioner by the competent authority it was open to respondent No. 3 to execute the decree relied upon by him against the petitioner in accordance with law and the appropriate Court would grant appropriate relief to him. I and. Therefore of the view that the competent authority in this case had no jurisdiction to entertain the claim of respondent No. 3 the basis of the judgment and decree of the Civil Court much less to decide the objections of the petitioner against the claim so based.

17. Shri Marwah, learned counsel for respondent No.3, urged that subsection (2) of Section 6 conferred sufficient powers on the competent authority to adjudicate all the rival claims and that it was not bound to deliver possession of the de-requisitioned property either to the tenant who was in possession at the time of requisition or to his successor-in-interest. This, he said, was because the word "shall" used in the latter part of sub-section (2) was not to be construed as mandatory as the Act nowhere provided any consequences for the non-observance of this provision by the competent Authority. I have not been able to appreciate this argument. The words in sub-section (2) of Section 6 "and such possession shall, as far as practicable be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person" do not admit of any discretion being reserved to the competent authority in this matter. It is a mandatory command of the Legislature to the competent authority. If on de-requisition the person from whom possession was taken at the time of requisition or his successor-in-interest is found, possession of the de-requisitioned property has to be delivered to him. There was no occasion for providing any express consequence in the Act for the non-observance of this statutory duty by the competent authority. The consequence is obvious. It is that the order passed by the competent authority in disregard of this statutory mandate would be illegal and not sustainable in law.

The word "shall" in subsection (2) of Section 6 Therefore is mandatory.

18. Reference was then made by the learned counsel to Clauses (vi), (vii) and (viii) of Rule 7 of the Requisitioning and Acquisition of Immovable Property Rules, 1953. Rule 7 lays down the procedure to be followed in releasing the property and provides that for purposes of sub-section (2) of Section 6 the competent authority, if it considered necessary so to do may make or cause to be made by an officer empowered in this behalf by it, an inquiry to obtain information in respect of the matters mentioned in Clauses (I) to (XIII). These rules have been framed by the Central Government in exercise of the powers conferred on it by Section 22 of the Act. This section empowers the Central Government to make rules for the purpose of carrying out the purposes of the Act. The jurisdiction of the competent authority is prescribed by Section 6(2) of the Act. The rule providing for procedure to be followed for holding inquiry under this provision cannot, in spite of any procedure provided, enlarge the jurisdiction of the competent authority prescribed by Section 6(2) itself, Clauses (vi), (vii) and (viii) of Rule 7, Therefore, cannot be referred to either to limit or to enlarge the jurisdiction of the competent authority acting u/s 6(2).

It is open to the competent authority to obtain information if the owner of the property on whom the requisition order was first served had sold the property and if so to whom and also whether owner had sold all rights in respect of the property as stated in Clauses (vi) and (vii) of Rule 7 and further also to obtain information as to whether there was any objection to the property being de-requisitioned in favor of the owner from whom the property was requisitioned as envisaged in Clause (viii) of Rule 7 but this does not mean that the competent authority because of this authority to obtain information is also endowed with jurisdiction beyond what is prescribed in the substantive provision of S. 6(2) of the Act. The expression of sub-rule (1) of Rule 7 authorising the competent authority only "to obtain information in respect of the following matters" coupled with the opening words of this Rule "for the purpose of sub-section (2) of Section 6."..... make it abundantly clear that in spite of the information that the competent authority is eligible to collect it was bound to act within the four corners of sub-section (2) of Section 6 and no more. Reference to Clauses (vi), (vii) and (viii) of Rule 7 Therefore does not alter the position in any manner. These clauses do not enlarge the scope of the jurisdiction of the competent authority in so far as its decision u/s 6(2) is concerned.

(In Para 21 the order rejects the claim of Respondents 4, 5 and 6 for possession u/s 6(2) by reason of certain agreements entered into with Respondent 3. It then proceeds:)

19. As a result of the above discussion I am of the view that the decision of the competent authority to de-requisition the remaining portions of the requisitioned property in favor of respondent No.3 is entirely without jurisdiction and deserves to be quashed. C.W.726/70 is Therefore, accepted in the above terms and the matter is remanded to the competent authority for decision in accordance with

law in the light of the above observations.

20. Parties to bear their own costs.

21. Petition allowed.