

(1956) 04 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Ref. No. 27 of 1952

Nemi Chand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 09-04-1956

Acts Referred:

Constitution of India, 1950 — Article 31
East Punjab Movable Property (Requisitioning) Act, 1947 — Section 2
Government of India Act, 1935 — Section 100, 104, 299

Citation : AIR 1956 P&H 247

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : Tek Chand and S.C. Mittal, for the Appellant; S.M. Sikri, General, for the Respondent

Judgement

Kapur, J.—This is a reference made by Mr. Mehar Singh Chaddah, Senior subordinate Judge, Gurgaon, dated 18-8-1952, u/s 113, Civil P. C. for the purpose of determining: the legality of the East Punjab Moveable Property (Requisitioning) Act Of 1947.

2. On 12-4-1948, an order was served on the plaintiff Nemi Chand requisitioning his seven lacs Of bricks lying at his kiln under the impugned Act, East punjab Moveable Property (Requisition-ing) Act of 1947. On 13-4-1948, an order was sent to the plaintiff by the Sub-Divisional Officer informing him that the bricks should not be removed as he had been authorised to take possession.

We are told that the bricks were taken over and the plaintiff has now brought a suit for recovery of Rs. 17,750/- for price of baked bricks at Rs. 40/- per thousand, kacha bricks at Rs. 15/- per thousand and damages on account of trespass Rs. 1,000/-. The Advocate-General has informed us that the State was quite prepared to pay the plaintiff the price at the controlled rate but the plaintiff has refused to take it, but that matter is not before us and, therefore, it is not necessary to go into that.

3. The claim of the plaintiff is based on the plea that the Act under which the requisition was made was ultra vires of the Provincial legislature as it then was.

4. The impugned Act, the East Punjab Moveable Property (Requisitioning) Act 15 of 1947, received the assent of the Governor-General on 12-12-1947, and was published in the East Punjab Government Gazette on 13-12-1947. u/s 3 of the Act the State Government has the power of requisitioning moveable property under conditions therein mentioned and then it has the power to acquire it u/s 3.

Section 4 provides for compensation and Section 6 gives the power to the State Government to obtain information and to give directions in regard to the amount of compensation. It is not necessary to refer to any other provision of this Act.

5. The petitioner relies on two provisions of the Government of India Act of 1935--on Sections 299 and 104 of the Act and then submits that there is no item in List 2 (Provincial List) or List 3 (Concurrent List) which gave to the Provincial Government the power to enact the impugned Act.

Section 299, Government of India Act deals with compulsory acquisition of land and it provided that no law authorising the compulsory acquisition for public purposes of land, or any commercial or industrial undertaking, could be made unless the law provided for the payment of compensation and fixed the amount of compensation, or specified the principles on which the manner in which it was to be determined. This section has no application because it deals with land or commercial or industrial undertaking.

In the present case certainly no land was acquired but it was faintly contended that the requisitioning of bricks amounts to compulsory acquisition of commercial or industrial undertaking. In my opinion, no commercial or industrial undertaking was acquired and, therefore, this section, in my opinion, has no application to the present case.

6. Section 104 also has no application, it deals with residual powers of legislation, because the matter, in my opinion, falls within some of the items in the Provincial List.

7. The Advocate-General relied on three items, two of List 2, i.e., items 27 and 29 and one of List 3, i.e., No. 8. These items are:

"List 2.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

29. Production, supply And distribution of goods: development of industries, subject to the provisions in List 1 with respect to the development of certain industries under Dominion control.

List 3.

8. Transfer of property other than agricultural land; registration of deeds and

documents."

He submits that the widest possible meaning should be given to these Lists and they should be interpreted according to the rules which have been laid down in various cases. He firstly relies on a Judgment of the Federal Court in AIR 1941 16 (Federal Court) There the item under consideration was item 21 of List 2:

"Land.....including Courts of Wards.... treasure trove"

and it was held that the subjects dealt with in the List are not always set out with scientific definition and that it would be practically impossible to define each item in the Provincial List in such a way as to make it exclusive of every other item in that List and that Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of broad and general import. Dealing with the item "land" the learned Chief Justice said :

"Thus "Court of Wards" and treasure-trove might not ordinarily have been regarded as included under "land", if they had not been specifically mentioned in item No. 21. I think however that none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it,"

This case was approved of by their Lordships of the Supreme Court in *State of Bombay v. P. N. Balsam* AIR 1951 SC 318 (B) and at page 322 Fazl Ali J. said :

"One of these principles is that none of the items in each List is to be read in a narrow or restricted sense."

8. In *In re P.S. Venkatasubbier and Another*, a learned Single Judge of the Madras High Court held that the requisitioning of moveable property although not specifically enumerated in the Provincial List is included in more general subjects which find a place in that list. And he further held that an order requisitioning paddy stocks would fall both under item 27. i.e., trade and commerce, and item 29, i.e., production, supply and distribution of goods, and, therefore, the order was not ultra vires of the Constitution.

The Calcutta High Court in *Jasboprosash Mitter v. Deputy Commissioner of Police*. AIR 1946 Cal 194 (D), held that the requisitioning of a motor car fell within item No. 1 of List 2, i.e., public order and that the words "public order" had a very wide meaning and covered legislation in respect of all matters to ensure public order and the Defence of India Act was a matter to ensure public order in India.

9. The learned Advocate-General also relies upon two cases decided by the Federal Court and the Supreme Court. The first is *Lathi Narayan Das v. Province of Bihar*. 1949 FCR 683: (AIR 1950 FC 59) (E). That was a Judgment of Maj. J. where the rule laid down in AIR 1941 16 (Federal Court) was reiterated and the learned Judges also referred to the observations of the Judicial

Committee in *Prafulla Kumar Mukherji v. Bank of Commerce Ltd.* 1947 FCR 28: (AIR 1947 PC 60) (F), where it was observed:

"The overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdiction. Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is true nature and character to be found."

The question to be decided in that case was the vires, of an Ordinance passed by the Governor of Bihar and it was held that the Ordinance was valid as it dealt with the maintenance of public order and fell within item 1 and the offences created and the procedure laid down for arrest and trial were only ancillary without which no effective legislation would have been possible and they applied the Privy Council dictum which I have quoted above.

10. The other case relied upon by the State is *Darshan Singh and Others Vs. State of Punjab*, which was a case under the East Punjab Cotton Cloth and Yarn Control Order of 1947 and the words "trade and commerce" of Section 3, Essential Supplies (Temporary powers) Act of 1946 were held to include export of goods outside the Province including export to Pakistan because even under the purely Provincial List subjects of production, distribution and supply of goods, restriction of import and export was ancillary to production and supply of essential commodities and would fall under the ambit of item 29 of the Provincial List. At page 329 (of SCR) : (at p 86 of AIR), Mukherjea J. observed:

"Even taking the legislation to be purely on the provincial subjects of production, distribution and supply of goods, restriction of export as ancillary to production and supply of essential commodities would, in our opinion, be quite within the scope and ambit of such legislation and in pith and substance it would be an enactment dealing exclusively with these provincial matters."

11. The learned Advocate-General also relied on some English cases in regard to the meaning of the words "ancillary" and "subsidiary". In *Croft v. Dunphy* 1933 AC 156 : (AIR 1933 PC 16) (H). it was held that the authority conferred on Parliament u/s 91, British North America Act, 1867, in relation to custom duties extended to enacting anti-smuggling provisions similar in scope to the provisions operating beyond territorial limits, Lord Macmillan observed at p. 165 (of AC): (at p. 19 of AIR) :

"When a power is conferred to legislate on a particular topic it is important, in determining the scope of the power, to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power."

Thus in considering what might be appropriately and legitimately enacted by the Dominion Parliament under its power to legislate in relation to "bankruptcy and insolvency", it was considered relevant to discuss the usual contents of

bankruptcy statutes: Royal Bank of Canada v. Lane 1928 AC 187 (I). Now from early times the customs legislation of the Imperial Parliament has contained anti-smuggling provisions authorizing the seizure of vessels having dutiable goods on board when found "hovering" off the coast within distances substantially in excess of the ordinary territorial limits."

and at p. 166 (of AC): (at p. 19 of AIR) the principle of effectiveness was laid down.

12. Mr. Tek Chand has relied on a Single Bench judgment of the Bombay High Court in Tan Bug Taim Vs. Collector of Bombay, but that Case has been differed from by a Division Bench of this Court in Pt. Shyam Krishen v. State of Punjab, 1951 93 PLR 391: (AIR 1952 Pun 70) (K) and, therefore, it is not necessary to go into the facts of that case.

13. In my opinion, therefore, the Act is intravires and I would answer the reference accordingly. The costs of the reference will abide that event.

Falshaw, J.

14. I agree.