

(1958) 11 BOM CK 0027

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 311 of 1958

Ratilal Virchand Shah

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 06-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 61 BOMLR 990

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.K. Desai, J.—This is a petition under Article 226 of the Constitution challenging the validity of a requisition order dated May 30, 1958, made in pursuance of the Bombay Land Requisition Act and for appropriate reliefs in that connection.

2. The premises in question are plot No. 6, 2nd floor of building known as "Durga Villa", situate at 77-B, Ranade Road, Dadar, Bombay. The petitioner's case is that he had been a tenant of the premises since 1943 and had been residing at the premises continuously right up to the date of the impugned order. In June 1957 the petitioner was called upon to give information regarding these premises to the Accommodation Department. In August 1957, a show cause notice in connection with the enquiry contemplated under the Act was served on the petitioner. In pursuance of that notice, the petitioner gave such information as was required to the Department. By an order dated February 8, 1958, a copy whereof is annexed as exh. A to the petition, after the recital that on enquiry it was found that the petitioner had not actually resided in the premises for a continuous period of six months immediately preceding the date of the order, a declaration was made that the petitioner had not actually resided in the premises for a continuous period of six months immediately preceding the date of the order and the premises were requisitioned. By subsequent correspondence and representations made at an interview with the Deputy Minister for Revenue, the

petitioner contended that the requisition order should not be given effect to. By an order dated March 24, 1958, being exh. B to the petition the premises were derequisitioned.

3. Another notice dated April 28, 1958, was served on the petitioner for showing cause against the requisition of the premises. In May 1958 the petitioner submitted his written-statement and also gave his statement to the authorities in connection with further enquiries which were being made for requisitioning the premises. The petitioner's case is that though in fact he was continuously residing in the premises as intimated to the Accommodation Officer the petitioner left for Sanad and Mount Abu on May 8, 1958. He, within a week thereafter, returned to Bombay and had resided with his son at an Immoveable property which had been purchased in April 1957 by and in the name of the petitioner's wife. This property is situate at Khar. In May 1958 one of the petitioner's sons and his wife (i.e., petitioner's daughter-in-law) were residing in a flat in that property. The petitioner's case is that his daughter-in-law was pregnant, and in delicate health and the petitioner had for that reason to return to Bombay and on return having regard to the delicate condition of the health of his daughter-in-law resided at the property at Khar. The respondent's case is that in connection with the first requisition order the petitioner had made representations that he had no other accommodation and it was only for that reason on sympathetic grounds that the derequisition order dated March 24, 1958, was made. The first order was made in pursuance of information received by Government that the premises were subject matter of suppressed vacancy. After the derequisition order, having regard to the information again received, further enquiries were made and the Government then discovered that the petitioner had in the name of his wife purchased the aforesaid property at Khar, that the petitioner had alternative accommodation and representations made by him were false and that the petitioner's case that he had temporarily gone to reside at Khar with his son was false. It was also ascertained that the petitioner's telephone had been removed from the premises to Khar property some time in July 1957. Having regard to these facts and having held further enquiries the second requisition order dated May 30, 1958, was made. That order contains also a declaration that the petitioner had not actually resided in the premises for a continuous period of six months immediately preceding the date of the order. The petitioner has filed this petition and made diverse contentions challenging the validity of the requisition order dated May 30, 1958.

4. The grounds which are pressed before me are contained in sub-paras. 8(a) and 8(e) of the petition. The other grounds are not pressed seriously before me. In para. 8(a), after reciting the derequisition order dated March 24, 1958, it is submitted that the effect of the derequisition order was to effectively efface and wipe out the requisition made under the requisition order dated February 8, 1958, and the respondent ceased to have any jurisdiction to issue a fresh order of requisition on the basis of continuous non-residence for a period of six months prior to February 8, 1958. The ground in sub-para. 8(e) is that the effect of the

derequisition order was that the authorities had come to the conclusion that there was no case for requisitioning the said premises or that there was no actual non-residence for a continuous period of 6 months of the petitioner in the premises and that it was not permissible for the authority to come to a different conclusion, once having decided the question in issue viz. that of residence of the petitioner in the premises for a period of six months prior to the date of the order.

5. Before referring to the contentions raised as aforesaid and developed before me, it is convenient to point out that jurisdiction of the authority to make the order in question is to be considered with reference to the provisions of s. 5 of the Act. These provisions have been construed often by this Court. It has been held and it is well established that the jurisdiction is to be found in Clause (1) of Section 5 and that the jurisdiction cannot be exercised if a case falls within the proviso to Clause (1). The jurisdiction is very wide and in the words of Section 5(1)

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

On a true construction of the provisions of Section 5 the conditions precedent necessary for making the requisition order are only two: (1) existence of a public purpose, and (2) a declaration as is contained in Clause (5) of Section 5. That declaration directly relates to the facts as mentioned in proviso to Clause (1) of Section 5. The effect of these provisions is that the Government has jurisdiction to make a requisition order in all cases where the landlord or the tenant had not actually resided in the premises and there existed a public purpose. Along with these wide powers and/or wide nature of jurisdiction it is further provided that the declaration made by the Government shall be conclusive evidence that the owner, landlord or the tenant had not actually resided in the premises for a period of six months immediately preceding the date of the order. It is not denied and it cannot be denied that such a declaration is contained in the impugned order. It is now well settled that a declaration made under the provisions of Section 5(2), unless it is challenged on the ground of mala fides, cannot be questioned by Court. The declaration contained in the impugned order has not been challenged on the ground of mala fides or on any other ground in the petition before me. I am, having regard to the provisions of the Act, bound to proceed on the basis that the facts mentioned in the declaration are true facts. Having regard to this position, it is certainly very difficult to see how it can be contended that in making the order in question the authority had no jurisdiction as is sought to be contended by the petitioner.

6. Mr. Nariman for the petitioner developed his case by enunciating in his words the following propositions:

1. A release from requisition u/s 9 of the Act operates as liberation of the property from requisition and from all the incidents which justifies the making or

continuance of requisition.

2. That on a true construction of the provisions of the Act it should be held that the Legislature intended finality as regards all questions of facts and that the finding made by derequisition order dated May 30, 1958, amounted to a finding that the petitioner was residing in the premises and that finding could not be again reconsidered for the purpose of making a fresh requisition order.

3. On a true construction of provisions of Section 9 of the Act the release from requisition leads to prevent an exercise of power for making a fresh requisition order since otherwise absurd results would follow.

4. That the provisions of Section 9(1) for derequisition cannot be used for correction of unintentional mistakes made in connection with existing requisition orders; and in such a case the powers which ought to be exercised are to be found in Section 21 of the Bombay General Clauses Act, i.e., in such cases orders should be rescinded from inception and/or as from the date of the order.

I have recited these contentions because in my view giving all due considerations to them I cannot come to the conclusion that the jurisdiction of Government to make requisition u/s 5(1) was in any manner affected by the provisions of Section 9 of the Act.

7. It is true that under Clause (2) of Section 9 on a derequisition order being made possession of the requisitioned premises is to be restored to the appropriate party and there is liability to pay compensation for deterioration if any. u/s 9 an enquiry also has to be made as to the person to whom possession is to be restored and machinery is provided for the purpose of crystallizing the rights and liabilities of Government on the one hand and the party entitled to possession on the other as regards the requisitioned premises. It is, of course, a serious thing that jurisdiction u/s 5 of the Act is available to the Government in respect of derequisitioned premises when liability is created to restore possession to the party concerned under the provisions of Section 9. Mr. Nariman contends that power, if any, in the Government to proceed u/s 5 could not be exercisable in respect of derequisitioned premises until the expiry of six months from the date of the derequisition order. That he says is clear if both the sections are read together. He submits that I should not read Section 5 separately from Section 9 and should give effect to the provisions of these sections by reading them together. Mr. Joshi has pointed out that under the provisions of Section 6 of the Act release of the premises from requisition constitutes a vacancy entitling the Government to make a requisition order of derequisitioned premises immediately upon derequisitioning the same. He in my view rightly submits that it is impossible to construe the provisions of Section 6 so as to hold that Government had no jurisdiction to make a requisition order in respect of derequisitioned premises on the date of derequisition or immediately thereafter. If I upheld the contention of Mr. Nariman, it would be impossible to give effect to the provisions of Section 6 in the matter of requisition of a property where vacancy occurs by

reason of the release of the premises from requisition.

8. As regards the contention that derequisition resulted only from the finding that the petitioner was continuously residing in the premises for a period of six months immediately preceding the date of the requisition order, I do not find any evidence of any kind. It is the case of the respondent that the derequisition order was made not because the petitioner was residing in the premises but on sympathetic ground, viz., that the petitioner's representation that he had no alternative accommodation at that date was accepted by the authorities. The question of the Government reconsidering the finding that the petitioner had not in fact resided in the premises for six months did not arise and the contentions raised on that footing cannot be accepted.

9. It is not necessary for me to consider whether in a case where there is a mistake the Government is not entitled to proceed u/s 9 to derequisition the premises and is bound to rescind the requisition order made. Such a question according to the respondent never arose in this case. They had not made any mistake and they had only on sympathetic ground made the derequisition order. I have no reason to disbelieve the statement made in the affidavit in reply in that connection. I cannot hold in this matter that it was necessary for the Government to proceed to rescind the first requisition order as contended by Mr. Nariman.

10. I have come to the conclusion that the fresh requisition order is validly made. The petition is, therefore, dismissed and rule discharged.

11. Mr. Joshi applies for costs in excess of the fixed costs. I have refused that application.