

(2010) 03 BOM CK 0193
In the Bombay High Court
Case No : First Appeal No. 102 of 1999

Shri Mario Cotta Pereira

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Defence of India Act, 1962 — Section 25, 25(1), 25(2), 29, 29(1)

General Clauses Act, 1897 — Section 6

Limitation Act, 1963 — Article 64, 65

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 10, 11, 19, 2, 3

Citation : (2010) 3 ALLMR 801 : (2010) 3 BomCR 88

Hon'ble Judges : Naresh H. Patil, J; N.A. Britto, J

Bench : Division Bench

Advocate : S.D. Lotlikar and R. Menezes, for the Appellant; M. Salkar, A.G.A. for Respondents No. 1 to 3 and G. Teles, for Respondents Nos. 4, 9, 10, 17 to 22, 27, 30, 34, 37 and 41, for the Respondent

Judgement

N.A. Britto, J.—This appeal is directed against order dated 12/04/1999 of the learned Civil Judge, Senior Division at Margao in Special Civil Suit No. 199/1993, by which preliminary issues of limitation and jurisdiction have been decided against the plaintiff and, consequently, the suit filed by the plaintiff has been dismissed.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said Special Civil Suit.

3. The plaintiff filed the aforesaid suit for the recovery of possession of the suit property and in the alternative for recovery of compensation at the rate of Rs. 3 00/- per square meter with interest at the rate of 15% per annum. The suit was filed on or about 9/07/1993. There is no dispute that the suit property known as "MANIQUEM GRANDE" and "MANIQUEM PEQUENO" having land registration No. 30 of old series and presently surveyed under survey Nos. 44/1 to 8, 45/1 to 7, 46/1 to 7, 48, 49/1 to 12 and 50/1 to 4 came to be requisitioned by the then

Administrator of the Union Territory of Goa, Daman and Diu u/s 29 of the Defence of India Act, 1962, by order No. ES/1/64 dated 14/01/1964 for rehabilitation of displaced persons due to the requisition and subsequent acquisition of land for the establishment of 2 STC at Navelim.

4. According to the plaintiff, the defendants took possession of an area of 36,690.00 square meters on 20/01/1964. According to the defendants, the area taken in possession, is 35,690.75 square meters. It is not disputed that the said property originally belonged to Shri Joaquim Francisco Roque Santana Cotta, the uncle of the plaintiff, and, it has been bequeathed to the plaintiff by him by virtue of a will dated 4/02/1984, and, by virtue of the succession deed, the plaintiff has been declared as the sole and universal heir of the said Shri Joaquim Francisco Roque Santana Cotta, as stated by the plaintiff.

5. The case of the plaintiff was that his deceased uncle was a bachelor and was mainly confined to his residential house which was situated at Margao and was not informed by the defendants about the purported requisition of his said property nor was he called upon to make proper representation for the purpose of assessing the compensation for the purported requisition under the provisions of the Defence of India Act, 1962 and after he became aware of the encroachment, his said uncle started making representations whereupon defendant No. 2 (Collector of South Goa) informed plaintiff by his letter dated 25/03/1991 that compensation on account of the purported acquisition was to be paid to the plaintiff and that the Undersecretary (Revenue) had approved a sum of Rs. 54,662.68 to be paid to his said uncle on account of purported acquisition. The case of the plaintiff further is that the suit property was not even notified under the provisions of Land Acquisition Act and, as such, there was no question at all of trying to make said purported payment to the plaintiff on account of the alleged acquisition. The case of the plaintiff was also that the requisition was done under the Defence of India Act, 1962 which contemplated the payment of compensation u/s 30 of the said Act and no procedure as prescribed under the said Act was followed by the Government for assessing the payment of compensation under the said Act. The plaintiff stated that it is clear that the defendants have taken possession of the suit property, otherwise than under due process of law, which amounts to an unjustifiable intrusion into the suit property which has now devolved on the plaintiff. The plaintiff stated that by letter dated 15/10/1992, the defendant No. 3 (Deputy Collector) informed the plaintiff that his application dated 19/09/1992 for arriving at an amicable settlement was referred to defendant No. 1 for decision, but there was no reply on the part of the defendants. The plaintiff also stated, by way of an amendment, that in the written statement filed by defendants No. 1 to 3 it was stated by them that defendants No. 4 to 39 were in occupation of the portion of the suit property and, therefore, it was the case of the plaintiff that legal formalities in the acquisition of the land were not complied with by defendant No. 1, the occupation by defendants No. 4 to 39 was unlawful and without any jurisdiction and, as such, they were liable to restore their possession of land to

the plaintiff in its original state.

6. The case of the defendant-authorities (defendants No. 1 to 3), in brief, is that from the date of requisition i.e. 20/01/1964, the suit property is in their possession, of which they have made 46 plots and have allotted the same to the displaced persons (private defendants), who are in possession of the same and some of whom have put up constructions thereon. It is also their case that one plot was given to the Village Panchayat of AquemBaixo. It appears that some of the defendants to whom the plots were allotted are dead and their names have been subsequently deleted from the array of defendants. Those who were allotted the plots, appear to have paid the compensation to the Government.

7. Admittedly, the suit property of the plaintiff remains under requisition with the defendants pursuant to the said order dated 14/01/1964, without the plaintiff or his predecessor in title having challenged the said order of requisition or the plaintiff having been paid any compensation as required under the Defence of India Act, 1962 or now under the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act of 1952, for short).

8. We have heard learned Counsel on behalf of the parties and, in our view, the first finding given by the learned trial Court needs to be disturbed but the second finding needs to be upheld, partly.

9. Admittedly, and as already stated, the suit property was requisitioned by the then Government under Sub-section (1) of Section 29 of the Defence of India Act, 1962 for the purpose of the Union without specifying any period, although Sub-section (3) of Section 29 provides that whenever any property is requisitioned under Sub-section (1), the period of such requisition is not to extend beyond the period for which such property is required for any of the purposes mentioned in that Sub-section. Since plots have been made and allotted to different displaced persons, it is safe to presume that the suit property was requisitioned on a permanent basis. Section 35(1) of the Defence of India Act, 1962 also provided for derequisitioning or releasing the property under requisition. Section 36 also provided for acquisition of such property. Section 37, inter alia, provided that the compensation payable for the acquisition shall be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition.

10. As regards the issue of limitation, Shri Salkar, the learned Government Advocate, submits that the limitation for filing of the suit ought to have been reckoned from 15/09/1975, being the date of the last letter written by the plaintiff, but learned Counsel is quick enough to concede, and in our view fairly, that the issue of limitation was a mixed question of fact and law and could not have been decided as a preliminary issue. On the other hand, Shri Lotlikar, the learned Senior Counsel on behalf of the plaintiff, submits that the learned trial Court misunderstood the provision of Article 65 of the Limitation Act, 1963, in as

much as, the defendants had not pleaded adverse possession against the plaintiffs, but on the contrary had admitted the plaintiff's title. Learned Senior Counsel further submits that the Government authorities had taken the possession of the suit property for temporary period and that the plaintiff could file the suit even if the plaintiff was out of possession for more than 12 years unless a plea of adverse possession was not set up by the defendants and proved. The learned Senior Counsel has placed reliance on the decision in the case of *Indira v. Arumugam and Anr.* 1998 (1) SCC 61 wherein the Apex Court has held that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendant proves adverse possession of the prescriptive period, the plaintiff cannot be non-suited.

11. Articles 64 & 65 of the Limitation Act, 1963 read as follows:

Description of suit

Period of limitation

Time from which period begins to run

64

For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.

Twelve years

The date of dispossession.

65

For possession of immovable property or any interest therein based on title.

Twelve years

When the possession of the defendant becomes adverse to the plaintiff.

12. Admittedly, the plaintiff is the owner of the property and the defendant-authorities took possession of the same in terms of order dated 14/01/1964, and, if at all the defendants are in possession of the suit property, they are in possession of the same pursuant to the said order of requisition. At preliminary stage, the Court was bound to proceed based on the averments in the plaint and not the pleas taken by the defendants in their written statement. The learned trial Court has proceeded on the basis that in terms of Article 65 of the Limitation Act, the period would be of 12 years for filing of the suit, and, as rightly pointed out by learned Senior Counsel, Article 65 would have been applicable only in case the defendants had set up a plea of adverse possession, and proved it, but that is not their case at least for the present and, therefore, the learned trial Court could not have dismissed the suit on the plea of limitation with reference to either Article 64 or 65 of the Limitation Act. The learned trial Court also did

not consider that the suit was in the alternative for recovery of compensation which prima facie does not appear to have been fixed as then required in law, after hearing the plaintiff. The suit was for recovery of possession based on title. Whether, the plaintiff would ultimately succeed in recovering the possession of the property, which is under requisition, is entirely a different matter. The issue of limitation is wrongly decided against the plaintiff.

13. That takes us to the issue of jurisdiction. The learned trial Court has held that the issue of jurisdiction is a pure question of law and that by virtue of "section 19 of the Act of 1952, the jurisdiction of the Civil Court was ousted.

14. The Act of 1952 was extended to the then Union Territory of Goa, Daman and Diu with effect from 25/03/1967 and Section 25 dealing with certain requisitions done under the Defence of India Act, 1962 came to be introduced to it in the present form with effect from 10/01/1968. Sub-section (1) of Section 25 of the Act of 1952 provides that properties which have been requisitioned under the Defence of India Act, 1962 and which have not been released from such requisition before 10/01/1968 shall as from that date be deemed to have been requisitioned by competent authority under the provisions of the Act of 1952. In other words, the suit property which has remained under requisition beyond 10/01/1968, for nearly 29 years as on the date of the filing of the suit, will now be governed by the provisions of the Act of 1952. Sub-section (2) of Section 25 provides that;

(2) Save as otherwise provided in Sub-section (1), the provisions of the Defence of India Act, 1962, and the rules made thereunder, in so far as those provisions relate to the requisitioning of any such immovable property as is referred to in Sub-section (1), shall as from the 10th January, 1968, cease to operate except as respects things done or omitted to be done before such cesser and Section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation as if such cesser were a repeal of an enactment by a Central Act.

15. Section 2(b) of the Act of 1952 defines "competent authority" to mean any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification. Section 2(a) defines the expression "award" to mean any award of an arbitrator made u/s 8. Then there is Section 3 which deals with the power to requisition immovable property, and Section 4 which deals with the power to take possession of requisitioned property, with which we are not concerned with. Section 6 deals with release of property from requisitioning and we shall revert to this Section little later, in detail. Section 7 deals with the power to acquire requisitioned property. Section 8 deals with the principles and method of determining compensation, and, it, inter alia, provides that where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement and in case where no such agreement can be reached, the Central Government shall appoint an arbitrator, a person who is, or has been, or is qualified for appointment as, a

Judge of a High Court. This Section also, inter alia, stipulates that the compensation payable for the requisitioning shall consist of a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and, Sub-section (3) of Section 8 provides for the compensation payable for the acquisition of any property u/s 7. Section 10 provides for appeals from orders of requisitioning made by the competent authority under Sub-section (2) of Section 3; and Section 11 also provides for appeals from awards in respect of compensation made by an arbitrator. Section 19 reads as follows:

Bar of jurisdiction of civil courts - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken pursuance of any power conferred by or under this Act.

16. Section 6 deals with release from requisitioning and Sub-section (1) of Section 6 gives discretion to the Central Government to release a property from requisition, requisitioned under the Act and for restoration of the property as far as possible in a good condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force. The proviso below Sub-section (1) of Section 6 further stipulates that where the purposes for which any requisitioned property was being used ceases to exist, the Central Government shall, unless the property is acquired u/s 7, release that property, as soon as may be, from requisition. Sub-section (1A) of Section 6 which is next in importance, reads as follows;

(1A) Notwithstanding anything contained in Sub-section (1), the Central Government shall release from requisition -

(a) any property requisitioned or deemed to be requisitioned under this Act before the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970, on or before the expiry of a period of (seventeen years) from such commencement;

(b) any property requisitioned under this Act after such commencement, on or before the expiry of a period of (seventeen years) from the date on which possession of such property was surrendered or delivered to, or taken by, the competent authority u/s 4;

unless such property is acquired u/s 7 within the period of (seventeen years) aforesaid.

Sub-section (2) of Section 6 reads as follows;

(2) Where any property is to be released from requisition, [under Sub-section (1) or under Sub-section [(1A)] 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 possession was taken at the time of the requisition or to the successor in interest of such person.

Sub-section (3) of Section 6 stipulates that 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 to enforce against the person to whom possession of the property is given.

Sub-section (4) of Section 6 provides that 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 also to publish the notice in the official gazette.

Sub-section (5) of Section 6 further provides that from the date of publication of such notice, the property specified in the notice shall cease to be subject to requisition, etc.

Sub-section (6) of Section 6 also provides that where any property requisitioned under this Act or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood or violence of any army or of a mob or other irresistible force, the requisition shall, at the option of the Central Government, be void. The proviso below it stipulates that the benefit of this Sub-section shall not be available to the Central Government where the injury to such property is caused by any wrongful act or default of that Government.

17. As regards the alternate prayer of compensation at the rate of Rs. 300/- per square meter, with further interest at the rate of 15% per annum from the date of filing of the suit sought by the plaintiff, we are of the view that the determination of compensation whether in the manner claimed by the plaintiff or by the method by which it is required to be determined, under the Act of 1952, is a matter which is in exclusive jurisdiction of the arbitrator who is required to be appointed in terms of Clause (b) of Sub-section (1) of Section 8. That the plaintiff has sought the compensation on a square meter basis and not on the basis of a recurring payment, being the method of determination prescribed by Section 8 of the Act of 1952, would make no difference. In other words, compensation payable on account of requisition, when it is not fixed by an agreement between the parties is a matter which has got to be determined by the arbitrator to be appointed u/s 8(1)(c) and in the manner prescribed u/s 8(2) of the Act of 1952. The Civil Court will therefore have no jurisdiction to

determine the same. That the plaintiff has sought compensation on the basis of a different method other than the method the arbitrator is required to follow, is not sufficient to confer jurisdiction on the civil court. Determination of compensation is in the exclusive domain of the arbitrator. As already stated, till date no compensation payable to the plaintiff has been determined either as required under the Defence of India Act, 1962 or the Act of 1952. In the case cited on behalf of the Government in Banto Ram and others Vs. Union of India and others, the learned Division Bench has held that, the authorities under the Act are required to appoint an arbitrator, if the compensation payable for the acquired land, cannot be fixed by an agreement and in case the authorities fail to appoint an arbitrator within a reasonable time, it is incumbent upon the land owner to approach the High Court expeditiously for the directions to the authorities to comply with the statutory duty as enjoined by Clause (b) of Sub-section (1) of Section 8 of the Act. It is further stated therein that a delayed petition is liable to be dismissed on ground of laches.

18. We are therefore entirely in agreement with the submission of Shri Salkar, the learned Government Advocate that the civil court will have no jurisdiction to grant any compensation to the plaintiff on account of the requisition as that matter is required to be determined by an arbitrator. However, we are not inclined to accept his submission that the release or return of the property requisitioned is also a function to be performed by the competent authority as provided by Sub-section (2) of Section 6 of the Act of 1952. As can be seen from Clause (a) of Sub-section (1A) of Section 6 of the Act of 1952, any property which has been requisitioned or deemed to be requisitioned before 11/03/1970 (i.e. the date of commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970) and has not been released for 17 years therefrom is required to be released unless it is acquired within the said period. It appears that the said period of 17 years was prescribed by the Act 20 of 1985 and prior to that there were different periods prescribed from time to time. Clause (b) of Sub-section (1A) also provides that the property requisitioned under the Act of 1952 will also have to be surrendered or delivered within a period of 17 years unless such property is acquired u/s 7, within the said period of 17 years. Admittedly, the suit property was requisitioned and possession thereof was taken on 14/01/1964 and has not been acquired till date and, therefore, was required to be surrendered by the Central Government in terms of Clause (a) of Sub-section (1A) of Section 6 of the Act of 1952.

19. Shri Salkar, the learned Government Advocate referring to sub-section (2) of Section 6 submits that release of the property is also a function to be performed by the competent authority appointed under the Act of 1952, but Shri Lotlikar, the learned Senior Counsel submits that in terms of Sub-section (2) of Section 6 of the Act of 1952, the function of the competent authority is only to inquire and find out the person to whom the possession of the property will have to be given.

20. The plaintiff has filed the suit for recovery of possession of the property. As

can be seen from Sub-section (1A) of Section 6 of the Act of 1952 which contains a non obstante clause, a mandatory duty is cast on the Central Government to release the property from requisition after a period of 17 years unless such property is acquired u/s 7 of the Act of 1952 within the said period. If the Central Government has a duty to release the property in case it remains without being acquired for 17 long years then certainly it would create a right in favour of the plaintiff to recover the possession of the same. The plaintiff has filed the suit for recovery of its possession and such a relief would not be hit by the bar created by Section 19 of the Act of 1952 and to that extent we are of the view that the main relief sought by the plaintiff was certainly cognizable by the civil court and the bar of Section 19 of the Act of 1952 was not applicable. It is to be noted that the exclusion of jurisdiction of a civil court is not to be readily inferred and such exclusion must be either explicitly expressed or clearly implied. Whether the plaintiff would succeed in the main relief sought by the plaintiff is entirely a different matter regarding which we express no opinion and that will have to be decided by the trial Court on the merits of the case. The said main relief is not affected by the bar created by Section 19 of the Act of 1952. In other words, release of the property in terms of Sub-section (1A) of the Act of 1952 is not a matter required to be determined by the competent authority. It is the requirement of law and the duty cast is on the Central Government.

21. In the light of the above discussion, the appeal is bound to succeed, the impugned order is hereby set aside and the case remanded to the learned trial Court to proceed in accordance with law. The issue of limitation will be decided along with the other issues at the trial of the suit. The issue of jurisdiction is partly decided against the plaintiff. The learned trial Court is directed to proceed with the suit in accordance with law as expeditiously as possible. Parties to appear before the learned trial Court on 29/03/20 10 at 10.00 a.m.

22. Before parting, we may like to observe that the suit property was requisitioned on behalf of the Central Government by the then Administrator of Goa, Daman & Diu and for the purposes of the Union i.e. to rehabilitate displaced persons on account of requisition/acquisition of land for the purpose of establishing 2 STC (military Signal Training Centre). The duty to release from requisitioning is also that of Central Government. The trial Court therefore will have also to consider whether the suit can be decreed as prayed for by the plaintiff against the present defendants.