
(1951) 06 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 233 of 1951

Sm. Raj Rani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-06-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Delhi Premises (Requisition and Eviction) Act, 1947 — Section 13, 3

Citation : AIR 1952 P&H 383

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : Bhagwat Dayal, for the Appellant; Bishan Narain, for the Respondent

Final Decision : Allowed

Judgement

Kapur, J.—This is a plaintiff's appeal against an appellate decree passed by the 2nd Additional District Judge of Delhi, confirming the decree passed by the trial Court.

2. Raj Rani plaintiff claims to be the owner of the premises in suit. On the 14th of April 1949, a notice was given u/s 3(3) of the Delhi Premises (Requisition and Eviction) Act XLIX of 1947. This notice was addressed to Sham Lal who is the husband of Raj Rani and was accepted by him as indeed it had to be. A copy of the notice was also affixed on the premises and notice was also served on the tenants. The notice was in the following terms:

"Notice for Requisitioning u/s 3(3) of the Delhi Premises (Requisition & Eviction) Act, 1947.

.....

Whereas in my opinion it appears that the premises noted below are needed for Public purpose, and it is necessary to requisition them, now therefore, I. Rameshwar Dayat P. C. S., Collector Delhi, in exercise of my powers u/s 3(3) of

the Delhi Premises (Requisition and Eviction) Act, 1947 call upon the landlord Sham Lal to show cause within seven days why the premises in question should not be requisitioned.

I further direct that the premises as specified below shall not without my permission be disposed of or structurally altered.

SCHEDULE.

4 flats (under construction).

House No. 13-A situate in street Darya Ganj, Delhi in Delhi and owned by Sham Lal.

Sd/ R. Dayal Collector, Delhi,

No. 115/HRC dated Delhi, the 14-4-1949.

Copy forwarded to the Tehsildar, Delhi with two spare copies for service of this notice and order on the landlord and occupier of the premises. If any of them is not readily traceable, the service should be effected by affixing a copy of the notice to any conspicuous part of the premises in question.

Sd/ R. Dayal Collector, Delhi."

3. Objections were raised to the notice of requisition by the tenants and on the 27th of April 1949, the Collector passed the following order :

"The contention that the flats are under occupation is entirely wrong. I located these flats myself and saw them empty. It is a well-known subterfuge to put name plates far in advance. Booking of houses when even not ready is a procedure adopted to charge premiums and requisition.

Sd/ R. Dayal. 27-4-1949."

4. On the 3rd of May 1949, a notice was issued u/s 3(4) of the Delhi Premises: (Requisition and Eviction) Act 1947, hereinafter called the Act. Here also the owner is shown as Sham Lal. "On the 6th of May 1949, Raj Rani, the plaintiff, took an appeal to the Chief Commissioner, Delhi, in which she alleged that the requisitioning order was bad in law as no notice was issued to her and that the owner of the house was she herself and not Sham Lal, her husband. The tenants also filed an appeal to the Chief Commissioner. On the 17th of May 1949, a notice was served u/s 80, Civil Procedure Code, on the Secretary, Ministry of Home Affairs of the Central Government. On the 25th of July 1949, the Chief Commissioner dismissed the appeal holding that a notice to the husband and addressed to him was a good notice as both the husband and wife were living together. He also seemed to be of the opinion that the real owner of the property was Sham Lal and the wife, Raj Rani. was only an ostensible owner. He also dismissed the appeal of the tenants.

5. On the 3rd of August 1948, Raj Rani brought a suit for declaration and

injunction alleging that she was the owner of the property that no notice as required under the Act was served on her, and that the order of requisitioning was illegal and ultra vires and not binding on her. The defence was that the plaintiff was a mere benamidar and notice was served on her husband Sham Lal who was the real owner. The trial Court stated several issues and three of them are relevant at this stage:

"(1) Whether the . plaintiff has the "locus standi" to sue?

"(2) Whether the order requisitioning the premises in suit is illegal, "ultra vires" and not binding on the plaintiff?

""(4) Whether the civil Courts have jurisdiction to entertain the suit in view of Section 13 of the Delhi Premises (Requisition and Eviction) Act, 1947?"

6. The trial Court held that the plaintiff had locus standi to sue, that the order of requisitioning was not illegal or ultra vires as the plaintiff was only an ostensible owner and the real owner was Sham Lal, and went into the evidence in regard to the source of money and that Section 13 was a bar to the suit. An appeal was taken to the District Judge who held that the plaintiff had "locus standi" to sue, that notice to Sham Lal was given, that source of the purchase price was the firm of which Sham Lal was a partner, that the requisitioning authority had acted within its powers and that Section 13 of the Act was a bar to the suit.

7. In appeal learned counsel for the appellant submits that notice u/s 3 was bad as also the order of requisitioning and that Section 13 was not a bar to the suit. Section 3 of the Act is as follows:

"Section 3. Power to requisition.--(1) Whenever it appears to the competent authority that any premises is needed for any public purpose it shall be lawful for him or for any other person, either generally or specially authorised by such authority in this behalf, after due notice to enter upon and inspect such premises for the purpose of determining whether and if so, in what manner an order under this section shall be made in relation to such premises or with a view to securing compliance with any order made under this Act.

(2) The competent authority, with a view to requisition any premises under this subsection, may by an order--

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the premises as may be so specified;

(b) direct that the landlord, occupier or person in possession of the premises shall not without the permission of the competent authority dispose of or structurally alter the premises.

(3) Where the competent authority decides that it is necessary to requisition the premises for any public purpose he shall call upon the landlord and the tenant or the person in possession by notice in writing to show cause within seven days

why the premises should not be requisitioned.

(4) If after considering the cause, if any, shown by the landlord or the tenant or the person in possession the competent authority is satisfied that it is necessary to requisition the premises for any public purpose he may make an order in writing to that effect:

Provided that where a landlord or tenant is using any premises for the residence of himself or his family the competent authority shall as far as possible provide alternative accommodation which in the opinion of the competent authority is suitable.

(5) A notice under Sub-section (3) and an order under Sub-section (4) shall be served on the landlord and where the notice or the order relates to premises in occupation of the tenant also on such tenant by delivering or tendering to such landlord and tenant a copy of the notice and the order. But where the landlord or tenant is not readily traceable and the notice and the order cannot be served without undue delay or where ownership of the premises is in dispute the notice and the order shall be served by publishing it in the Official Gazette and by affixing a copy thereof to any conspicuous part of the premises to which it relates."

8. This section gives the power of requisitioning where it appears to the competent authority that any premises is needed for a public purpose. Under Sub-section 3 of this section after the authority has decided to requisition the premises he shall call upon the landlord and the tenant by notice in writing to show cause why the premises should not be requisitioned and after considering the objections, if any, he can pass orders for requisitioning of the premises. Sub-section 5 of this section provides for service on the landlord and where the landlord is not readily traceable or where the ownership of the premises is in dispute, the service can be effected by publishing the notice in the Official Gazette or by affixing a copy thereof to any conspicuous part of the premises. Section 5 of the Act gives the power of appeal to any person aggrieved by the order to the Chief Commissioner on the ground that the provisions of the Act have not" been complied with. Section 13 is as follows:

"13. Saving as to order.--(1) Except as otherwise provided for in this Act no order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall presume, within the meaning of the Indian Evidence Act, 1872 (1 of 1872) that such order was so made by that authority."

9. Under the Act the power to requisition is no doubt given to the competent authority, and I take it that the Collector is the competent authority to requisition the premises. The notice is required to be sent to the landlord and it was sent to

Sham Lal who happens to be the husband of Raj Rani. In order to deprive citizens of their rights in property the procedure laid down in the law must be strictly followed and unless that procedure is followed and all the formalities are complied with it cannot be said that a proper notice has been served and foundation for requisition laid. In the present case the landlord as given in public records at least was Raj Rani and ostensibly she was entitled to notice u/s 3 of the Act. The landlord under the Act has the same meaning as under the Delhi and Ajmer-Merwara Rent Control Act. There the word landlord

"includes any person who for the time being is receiving or is entitled to receive the rent of any premises on his own account or as an agent, trustee, guardian, or receiver for any other person, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant."

10. Ostensibly, at any rate, the landlord is Raj Rani. There is no proof of any kind to show that she was not entitled to or was not receiving any rent or would not so receive rent if the premises were let. The power of a competent authority to requisition arises only if it has called upon the landlord to show cause why the property should not be requisitioned. In this case that was not done. It is not open, in my opinion, to an outsider like, the Collector to contest the title of Raj Rani because Raj Rani does come within the definition of the word "landlord". It would indeed be extraordinary state of affairs if not only are citizens deprived of their rights to possession of their property but also are deprived of title by executive officers. As far as I can see there is no provision in the Act for the determination of the question as to who the landlord is. On the other hand, the Act definitely provides that if the landlord is not traceable or if the title is in dispute, then notice can be given by notification in the Official Gazette. In no other case can a landlord as defined in the Act, even though he may be an ostensible owner, be deprived of his right to receive a notice to show cause why requisitioning should not be done.

11. It was also submitted by Counsel for the appellant that no specific issue was raised as to the ostensible nature of ownership of Raj Rani and in the absence of that it was not open to the Court to go into that question. The submission is not without force. If the respondent thought that he could raise and agitate this question in the present suit it was his duty to have this issue specifically raised in the trial Court. No doubt there is some evidence which has been led, but it is of a most perfunctory character and the case seems to have been decided more on presumptions rather than on facts. I am, therefore, of the opinion (1) that notice u/s 3 should have been given to Raj Rani, who was the landlord as contemplated by that section even though she might have been an ostensible owner which is denied in the present case, (2) notice to the husband is not notice as contemplated by the Act, nor is service upon the husband of a notice addressed to him a notice upon the wife which is not addressed to her, (3) it is not open to the Collector to challenge the title of the plaintiff and it is no concern of his as to where a lady gets money from and (4) both the notices u/s 3(3) and 3 (4) are

bad in law. No doubt an appeal was taken to the Chief Commissioner, but even the Chief Commissioner seems to have misdirected himself in so far as although no notice was served on Raj Rani, he held that no notice was necessary to be served on Raj Rani, because she was not the real owner.

12. The next question for determination is whether the jurisdiction of the civil Courts is barred. Section 13 contemplates that an order made in the exercise of any power conferred by or under the Act cannot be called in question in any Court. In "Colonial Bank Of Australasia v. Willan (1874) LR 5 PC 417, it was held that where an order of quasi-judicial authority is objected to before a Court, it has to be seen whether the objection relates to

"defect of jurisdiction, founded on the character and constitution of the Tribunal, the nature of the subject-matter of the enquiry or the absence of some preliminary proceeding which was necessary to give jurisdiction to it."

If any of these things is established, the order is *coram non iudice* and of no effect whatever.

13. In "Municipal Committee, Montgomery v. Sant Singh ILR (1940) Lah 707, it was held that a Municipal Corporation is the creation of a statute and is as much bound to act according to law as the individuals constituting it and if the Corporation does an act in disregard of its charter and intends to burden any individual with the consequences of its illegal act, a recourse by that individual to the general law of the land can, in no circumstances, be denied.

14. Their Lordships of the Privy Council in *Nazir Ahmed v. King-Emperor* 17 Lah 629 held that it is a well-recognized rule of construction that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all--other methods of performance are necessarily forbidden.

15. As I read Section 13 the bar to a suit will only arise if a power is conferred by or under the Act and the power conferred can only be exercised if a notice is given as contemplated by Section 3 of the Act. I have held that no proper notice was given u/s 3 and as proper "notice was not given, it cannot be said that the power has been exercised by or under the Act. As was observed by their Lordships of the Privy Council if a power is given by the Act it can be exercised only in accordance with the provisions of that Act and in no other manner. In this case the power was not exercised in accordance with the provisions of the Act.

16. Counsel for the respondent relied very strongly on "*Krishnamurthy v. S. Parthasarathy* AIR 1949 Mad 780, where it was held that an order of the Rent Controller where he does not decide the question of the notice to quit correctly can be challenged by appeal and would not entitle the defeated party to bring a suit. With that view, I am in respectful agreement. But can it be said that the suit would not have been entertainable if the Rent Controller had exceeded the power which had been conferred upon him? Undoubtedly, there is a distinction between defective jurisdiction and an error or irregularity in procedure, but these

questions, in my opinion, would arise if a power conferred is exercised and in the exercise of the power some procedural error is committed. In the present case the very jurisdiction of the Collector to order requisition arises after he has given notice to the landlord to show cause why the premises should not be requisitioned and the order of requisition can be perfected if after considering any cause shown by the landlord the Collector is still satisfied that it is necessary to requisition the premises for any public purpose and he gives notice to that effect. Neither of these two conditions have been complied with in this case.

17. In my opinion, the judgment and decree of the learned Additional District Judge is erroneous and must be set aside. The appeal is therefore allowed and the suit of the plaintiff decreed with costs throughout.