
(1985) 03 BOM CK 0016

In the Bombay High Court

Case No : Civil Review Application No. 9 of 1984 in F.A. No. 3 of 1977

Srinivas Ramnath Kamat Bambolkar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-03-1985

Acts Referred:

General Clauses Act, 1897 — Section 6

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 11, 25

Citation : (1985) 87 BOMLR 246 : (1986) MhLj 441

Hon'ble Judges : K. Madhava Reddy, C.J.; Couto, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Madhava Reddy, C.J.—A Division Bench of this Court by its judgment dated March 21, 1984 allowed First Appeal No. 3 of 1977 preferred by the Union of India and set aside the award dated November 29, 1976 made in respect of a plot of land initially requisitioned under the Defence of India Act, 1962 and derequisitioned on June 28, 1973 after The Requisitioning And Acquisition of Immovable Property Act, 1952 (for short "Requisition Act") came into force "so far as it pertained to the additional initial compensation awarded."

2. While several grounds were raised for reviewing that judgment, we do not think any of them merits consideration except the ground that no appeal lay to the High Court against the award of an arbitrator made in a requisition made under the Defence of India Act. The Defence of India Act does not provide for an appeal against an award made thereunder. But this contention is raised having regard to the fact that while the Defence of India Act had expired on January 10, 1968, the award was made on November 29, 1976 in respect of a plot of land requisitioned by the Government under that Act and de-requisitioned on June 29, 1973, after the Requisition Act came to be applied to this requisition. It is urged that though the award was made when the Requisition Act was in force it was in respect of land requisitioned under the Defence of India Act, hence no appeal lay

to the High Court.

3. Under the Defence of India Act itself, there is no provision for any appeal against an award of compensation in case of requisition. Section 11 of the Requisition Act, however, makes provision for an appeal against an award made under the Requisition Act. Whether an appeal lies to the High Court in respect of land requisitioned under Defence of India Act because the award was made after the Defence of India Act ceased to be in force, must depend upon the interpretation of Section 25 of the Requisition Act which was in force when the award was made. It is, therefore, necessary to read the provisions of Section 25 of the Requisition Act. It is in the following words: -

25.(1) Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, under the Defence of India Act, 1962, and the rules made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before the January 10, 1968, shall as from that date, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purpose for which such property was held immediately before the said date and all the provisions of this Act shall apply accordingly:

Provided that-

(a) all determinations, agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from the said date;

(b) anything done or any action taken (including any orders, notifications or rules made or issued) by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, in exercise of the powers conferred by or under Chapter VI of the Defence of India Act, 1962, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this section was in force on the date on which such thing was done or action was taken.

(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 January 10, 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.

4. Section 25(1) creates a fiction of law that whatever requisitions were made under the Defence of India Act shall be deemed to be requisitions made under the Requisition Act. Thereafter, it makes all provisions relating to compensation made in the Requisition Act applicable to those requisitions. However, having created this fiction u/s 25(7), proviso (a) thereof excludes compensation already determined under the Defence of India Act from being determined afresh under the Requisition Act, but makes that payable for the period subsequent to January 10, 1968 as well, that is, the date the Defence of India Act ceased to be in force. Sub-section (2)(b) creates a further fiction with regard to anything done or any action taken by Central Government or by any officer as one done under the Requisition Act. In view of Sub-section (2) of Section 25, the Defence of India Act ceases to operate on and from January 10, 1968, except in so far as it is saved by Sub-section (1) of Section 25, and Section 6 of the General Clauses Act, 1897, is made applicable upon such cessation as a repeal of the Defence of India Act by the Requisition Act. The effect of applying Section 6 of the General Clauses Act is that the cessation of the Defence of India Act shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Defence of India Act or affect any investigation, legal proceedings or remedy in respect of any such right, privilege or obligation, Notwithstanding such cessation any remedy under the Defence of India Act can be instituted, continued or enforced as if the Requisition Act had not been passed. Thus notwithstanding the repeal of the Defence of India Act, the requisitions under the Defence of India Act would have continued and the awards in respect thereof also would have been passed under the Defence of India Act, which did not provide for any appeal. But, Sub-section (2) even, while laying down that the provisions of the Defence of India Act and the rules made thereunder cease to operate from January 10, 1968, saved what was provided otherwise under Sub-section (1) of Section 25. The cumulative effect of Sub-section (2) is, while continuing the requisitions made under the Defence of India Act even after it ceased to operate, to the extent Sub-section (1) of Section 25 created a fiction that they shall be deemed to be requisitions made under the Requisition Act, provided otherwise and made the provisions of the Requisition Act applicable to the awards made in respect of such requisitions. Unless the requisitions made under the Defence of India Act were continued by creating such a fiction, the lands requisitioned under that Act could not continue with the Government after that Act ceased to be in operation. By virtue of the fiction created by Sub-section (1) of Section 25, from January 10, 1968 onwards the lands requisitioned under the Defence of India Act became lands requisitioned under the Requisition Act, In our view, once this fiction is created by the Repealing Act, for all purposes the provisions of the Repealing Act would apply including the remedies provided under the Act. Just as compensation had to be determined and awarded under the Requisition Act for land requisitioned under the Requisition Act and an award so made was subject to an appeal to the High Court, so also for land requisitioned under the Defence of India Act which is deemed to be a requisition under the Requisition Act, an award was to be made and that award also would be similarly subject to an

appeal to the High Court. If the requisition made under the Defence of India Act is deemed to be a requisition under the Requisition Act, there is no warrant to limit the operation of that fiction only to the extent of requisition and not apply it to the award made in respect of such requisition. If the award is deemed to be made under the Requisition Act, it would be subject to an appeal u/s 11 of the Requisition Act.

5. The right of appeal accrues even on the date of commencement of the proceedings as laid down in *Colonial Sugar Refining Company v. Irving* (1905) A.C. 369, *Hewman v. Klaumer* (1922) I.K.B. 228, and AIR 1979 745 (SC). That right can be taken away only by express provision or by necessary implication. But nothing prevents a legislature from conferring a right of appeal where there is none. Against awards made under the Defence of India Act in respect of requisitions made thereunder there is no doubt that an appeal does not lie. But when the legislature thought it necessary to continue the requisitions made under the Defence of India Act as if they were requisitions made under the Requisition Act, the legislature could not have intended to deny a right of appeal against such awards while providing a right of appeal against awards made in respect of lands requisitioned under the Requisition Act. That right, in our opinion, has been conferred on the persons aggrieved by the award by the deeming provision in Section 25 of the Requisition Act which directs the requisition made under the Defence of India Act to be deemed to be requisitions made under the Requisition Act and by making Section 6 of the General Clauses Act applicable.

6. The compensation proceedings finally fructified into an award on June 28, 1973 after the Requisition Act was made applicable to such requisitions. The right of appeal provided against the award, u/s 11 springs from that award. When the award was made, Section 11 of the Requisition Act was already in force. Our view finds support from a Full Bench decision of the Karnataka High Court in *T. Thippa Reddy and Another Vs. Assistant Commissioner, Bangalore and Another*. That was a case of requisition made while the Defence of India Act was in force, the initial compensation was fixed in 1970 and an award was made on December 11, 1973. The Full Bench rejected the contention that an appeal against that award was not maintainable u/s 11 of the Requisition Act.

7. A Division Bench of the Allahabad High Court in *Union of India (UOI) Vs. Amar Singh and Others*, considering the case of acquisition of property under the Defence of India Act held that no appeal lay u/s 11 read with Section 25 of the Requisition Act. That was a case of acquisition and not requisition. We are not really concerned with that question. Different considerations may weigh with the Court in determining whether an appeal lay u/s 11 against an award in respect of land acquired under the Defence of India Act after that Act ceased to be in force. In the case of acquisition all right, title and interest vests in the acquiring authority free from all encumbrances. We are, in this case, concerned with an award for requisition of property which does not vest the entire right, title and

interest of the owner in the requisitioning authorities and the owner continues to retain a recurring right to receive compensation for such requisition. Where such requisition continues after the Defence of India Act ceases to be in force, the award cannot be said to be one entirely under the Defence of India Act. The legislature, in our view, in enacting Section 25(2) and in creating a fiction that such requisition continues to be a requisition under the Requisition Act intended to make the provision of appeal contained in the Requisition Act applicable to awards made in respect of such requisition. We are, therefore, unable to accept the contention that the principle laid down by the Allahabad High Court in A mar Singh's case (supra) in relation to an acquisition applies even to a case of requisition. Whether the Allahabad judgment lays down the correct law even in regard to an award in a case of acquisition we express no opinion.

8. For the aforesaid reasons, we hold that the appeal was maintainable and was rightly allowed. This review petition, therefore, fails and is accordingly dismissed, but in the circumstances we make no order as to costs.