
(1985) 07 BOM CK 0038

In the Bombay High Court

Case No : Appeal No. 669 of 1983 in Writ Petition No. 1247 of 1980

State of Maharashtra and Others

APPELLANT

Vs

Omprakash Jaigopal Mehra and Others

RESPONDENT

Date of Decision : 09-07-1985

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 6(4)(a)

Government of India Act, 1935 — Section 102(1)

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 23, 24, 3, 6

Citation : (1985) MhLj 778

Hon'ble Judges : Sujata V. Manohar, J; M.H. Kania, J

Bench : Division Bench

Advocate : L.C. Chogle with R.P. Vyas, Asst. Govt. Pleader, for the Appellant; A.J. Rana with Mrs. U.E. Khanna, For respondents Nos. 1 and 2, P.L. Nain, For respondent No. 6, Miss Arain Wanderwala, For respondents No. 26 and 29, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Kania, J.—This is an appeal against the judgment of a learned single Judge of this Court making the Rule absolute in Writ Petition No. 1247 of 1980. The appellants are the State of Maharashtra, the Collector of Bombay and the Commissioner of Police, Bombay, respectively. They were respondents Nos. 1 to 3 in the Writ Petition. The respondents Nos. 1 and 2 herein were the petitioners in the Writ Petition and respondents Nos. 4 to 6 and respondents Nos. 26 to 30 are co-owners of the building Gopal Mansion at Dhobi Talao, Bombay. Respondent No. 3 is the Union of India and the remaining respondents, namely, respondents Nos. 7 to 25 are the occupants of the 19 flats in question. There is no affidavit of service, and except for the respondents on whose behalf appearances have been mentioned earlier, the rest of the respondents are not present.

2. As we have already pointed out, respondents Nos. 1 and 2 and some of the other respondents are owners of an immovable property called Gopal Mansion at

Dhobi Talao. In the beginning of September 1939, pursuant to the German attack on Poland, hostilities broke out between Germany on the one hand and between United Kingdom and France on the other. On 3rd September 1939, the British Empire declared war against Germany and, on that very day, the Governor General of India declared an emergency in exercise of the powers vested in him u/s 102(1) of the Government of India Act, 1935, and promulgated Ordinance No. V of 1939 for the defence of India. This Ordinance was amended subsequently, and on 29th September 1939 came into effect the Defence of India Act (Act No. XXXV of 1939). The preamble to that Act shows that it was enacted on account of grave emergency caused by the war and as a special measure to ensure safety and interest and the defence of British India. Sub-section (1) of section 2 of that Act confers rule making powers on the Central Government to make such rules as may appear to the Central Government to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order and so on. Sub-section (2) of section 2 states that without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for the matters set out therein. Clause (xxiv) of sub-section (2) of section 2 refers to the requisitioning of any property, movable or immovable, including the taking possession thereof and issue of any orders in respect thereof. Section 2(3)(iv)(a) and (b) make it clear that the rules framed may provide for conferring powers or imposing duties on the Central Government or its officers or authorities or upon the Provincial Government, its officers or authorities although the matter in question may be either in the Provincial Legislative list or Central Legislative list. Pursuant to the powers conferred as aforesaid, the Defence of India Rules were, made by the Central Government and published on 3rd September 1939 in the Gazette of India (Extraordinary). Sub - rule {1} of Rule 76 of these Rules ran as follows :

"The Central Government or the Provincial Government may by order in writing requisition any building, part of a building, or other premises, together with any fixtures, fittings, furniture or other things therein, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning;"

There is a proviso to sub-rule (1) with which we are not concerned. Sub-rule (2) confers powers on the Government which has requisitioned the premises to dispose of and use such premises in such manner as it may consider necessary or expedient. Rule 76 as well as rule 79 were subsequently deleted and substituted by rule 76A, but we are concerned with the situation as it stood before the deletion of rules 76 and 79. By a Notification No. 824-OR/41 dated 4th October 1941, the Central Government inter alia directed that the powers conferred on it by rule 76 and some other rules of the Defence of India Rules shall be exercisable by all Collectors within the limits of their respective jurisdictions. By his order dated 18th March 1942, the Collector of Bombay requisitioned from 1st May 1942 the entire building called Gopal Mansion at

Dhobi Talao in Bombay. A perusal of this order shows that the Collector of Bombay issued the said order in exercise of the powers conferred by rules 76 and 79 of the Defence of India Rules read with the aforesaid Notification No. 824-OR/41. For the reasons which we shall presently point out, it appears that this order was given a go-by to and on 30th March 1942, an order was issued by the then Government of Bombay requisitioning with effect from 1st May 1942 "the block of 19 flats known as Gopal Mansion" situated at Dhobi Talao together with the fixtures and fittings therein. This order is signed by the Secretary to then Government of Bombay, Home Department and the endorsement above his signature shows that it was so signed by the order of the Governor of Bombay. By his letter dated 30th March 1942 addressed to Narain Mehra, the Karta of the joint family owning the said building, the Secretary to the Government of Bombay clarified that the Government of Bombay had decided to requisition the said block of 19 flats as they were required for the accommodation of police officers who had to stay in the locality for the maintenance of law and order. Along with this letter, a copy of the order of requisition dated 30th March 1942 was sent to Narain Mehra. Although there is no specific averment to that effect in the petition, from the copy of the letter dated 24th January 1959. (Exhibit "C" to the petition) addressed by respondent No. 1 herein (petitioner No. 1) as the Karta of the said joint family to the Commissioner of Police it is clear that out of the flats in Gopal Mansion, all the flats except 2 had been requisitioned by the Government of Bombay as aforesaid. The war which had led to the enactment of the Defence of India Act ended in August 1945 and by end of March 1946, there was a formal cessation of hostilities. On 30th September 1945, six months expired from the cessation of hostilities and the Defence of India Act ceased to operate as provided in (sic) sub-section (4) of section 1 thereof. On 26th September 1946, the Government of India Ordinance No. 19 of 1946 was promulgated with (sic)inter alia to save the requisition orders which would have otherwise come to an end on 30th September 1946. This Ordinance was enacted in the form of a statute by the Requisitioned Land (Continuance of Powers) Act, 1947 (Act XVII of 1947). Section 3 of that Act provides that notwithstanding the expiration of the Defence of India Act, 1939 (XXXV of 1939), and the rules made thereunder and the repeal of Ordinance 19 of 1946, all requisitioned lands shall continue to be subject to requisition until the expiry of that Act, namely, Requisitioned Land (Continuance of Powers) Act, 1947, and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient. We may mention at this stage that under the Government of India Act, 1935, public order was included in Entry No. 1 of List II being the Provincial Legislative list. On 26th January 1950, the Constitution of India came into force. Public Order was included in Entry I and Police in Entry 11 of List II being the State List. Prior to the Constitution VIIth Amendment Act, 1956, Entry No. 33 of List I (Union List) read as follows: "Acquisition or requisitioning of property except for the purposes of the Union" and Entry No. 36 of List II (State List) read as follows: "Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of Entry 42 of List

III". Entry 42 of List III which is the Concurrent List as it stood at the relevant time, related to principles on which compensation for property acquired or requisitioned had to be paid. It is not necessary to set out that Entry in detail. To obviate the difficulties which might be caused in the continuation of certain requisition orders, an Act of Parliament called "Requisitioned Land (Continuance of Powers) Amendment Act, 1951" was passed and brought into effect on March 21, 1951. By section 2 of the said Act, the provisions of sub-section (3) of section 1 of the Requisitioned Land (Continuance of Powers) Act, 1947 was substituted by the following provision :

"(3) It shall cease to have effect in Part C States on the 1st day of April, 1952, and in Part A States :

(a) as respects the requisitioned lands which, at the commencement of the Requisitioned Land (Continuance of Powers) Amendment Act, 1951, are subject to requisition by or under the authority of the Central Government, on the 1st day of April 1952, and

(b) as respects other requisitioned lands, on the 1st day of April, 1951....."

On 26th January 1952, an Ordinance was passed called Requisitioning and Acquisition of Immovable Property Ordinance, 1952. This Ordinance was given a statutory form by the Requisitioning and Acquisition of Immovable Property Act, 1952, which was brought into effect from 14th March 1952. Sub-section (1) of section 23 of that Act provides, very briefly, that if any immovable property purports to have been requisitioned by the State Government for a public purpose being a purpose of the Union and was used or occupied by the Central Government or an officer or authority subordinate to that Government immediately before 26th January 1952, from that date that property would be "deemed to be duly requisitioned u/s 3 of the said Requisitioning and Acquisition of Immovable Property Act, 1952 (referred to hereinafter as "the Act of 1952"). Section 24 deals with repeals and savings and by that section, Requisitioned Land (Continuance of Powers) Act, 1947, the Delhi Premises (Requisition and Eviction) Act, 1947, as well as the aforesaid Ordinance of 1952 were repealed. The controversy in the appeal turns mainly on sub-section (2) of section 24 which turns as follows :

"For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either or the said Acts or the said Ordinance shall, on the commencement of this Act, be deemed to be property requisitioned u/s 3 of the Act, and all the provisions of this Act shall apply accordingly."

There is a proviso after sub-section (2) with which we are not concerned. Section 3 of the Act of 1952 confers powers on the Competent Authority to requisition any property needed or likely to be needed for any public purpose being a purpose of the Union. It also provides the manner in which such an order has to be passed, but we are not concerned with that question. Under sub-section (b) of

sec. 2 "Competent Authority" is, briefly speaking, defined as any person or authority authorised by the Central Government, to perform the functions of the Competent Authority under that Act for such area as may be specified in the notification conferring the authority. Section 6 confers power on the Central Government to release from requisition any property requisitioned under that Act, subject to the rest of the provisions contained therein. We may mention incidentally that in 1948 the Bombay Land Requisition Act, 1948 was enacted by the Legislature of the then Province of Bombay. Under sections 5 and 6 of that Act, as they stood prior to the Constitution, powers were conferred on the then Province of Bombay to requisition land and vacant premises respectively.

3. In spite of repeated requests, the authorities failed to release from requisition any of the said 19 flats, and ultimately, the respondents Nos. 1 and 2 filed the aforesaid Writ Petition praying, in the main, for setting aside the aforesaid order of requisition dated 30th March 1942. There is also a prayer for setting aside the order dated 18th March 1942, a copy of which is at Exhibit "B" to the petition. The said Writ Petition came up for hearing before Bharucha, J. sometime prior to 9th August 1983. Following two decisions of learned Single Judge of this Court, the learned Judge made the Rule absolute in the Writ Petition, and directed the appellants to hand back Possession of the said 19 requisitioned flats following the procedure laid down in Section 6 of the said Act of 1952. The aforesaid decisions, which were followed by the learned Judge, are to the effect that the said Act of 1952 was an Act passed by the Union Parliament, and the Union Parliament had only the power to requisition properties for public purposes which were purposes of the Union. In view of this, the provisions of sub-section (2) of section 24 could not be read as continuing orders of requisition made by the State Government or the Union Government or the Central Government or a Provincial Govt. prior to the Constitution for public purposes which under the scheme of the Constitution were public purposes of the State.

4. The first submission of Mr. Chogle, Learned Counsel for the appellants is that a legal fiction is created under sub-section (2) of section 24 of the Act of 1952 and by reason of that legal fiction all properties which immediately before the coming into effect of the said Act of 1952 were subjected to requisition either under the Requisitioned Land (Continuance of Powers) Act, 1947 or the Delhi Premises (Requisition and Eviction) Act, 1947 or the Requisitioning and Acquisition of Immovable Property Ordinance of 1952 were deemed to be validly requisitioned u/s 3 of the said Act of 1952. It was submitted by him that the language used in sub-section (2) of section 24 was unrestricted in terms and the legal fiction created thereby must be given its full effect, regardless of the consequences. In support of this submission, Mr. Chogle drew our attention to the decision of the House of Lords in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*. (1952) Law Reports A.C. 109 and specially drew our attention to the passage in the speech of Lord Asquith of Bishopstons (p.132) which runs as follows :

"If you are bidden to treat an imaginary state of affairs as real, you must surely,

unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it...."

Lord Asquith has observed that in such circumstances one must not permit one's imagination to boggle when it comes to the inevitable corollaries of the deemed state of affairs. This passage has been quoted with approval by the Supreme Court in the State of Bombay v. Pandurang Vinayak & Ors. AIR 1953 SC 344

5. It was urged by Mr. Chogle that, in view of the decision cited by him, even requisitions of immovable property made as set out earlier, for purposes which were not purposes of the Union should be deemed to have been validly made under sec. 3 of the said Act of 1952 and that this was the effect of the language used in sub-sec. (2) of sec. 24. It was pointed out by Mr. Chogle that sec. 6 of the Act of 1952 dealt with release from requisition. By Act I of 1970 passed by Parliament, sub-sec. (1A) was introduced in sec. 6 under which the Central Government was obliged to release from requisition any property requisitioned or deemed to be requisitioned under the Act of 1952 on or before the expiry of a period of three years from the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970. By Act I of 1973, the period of five years was substituted for the period of three years. By Act II of 1975, the period of five years was substituted by the period of ten years. By Act 35 of 1980, the period of ten years was substituted by the period of 15 years, and now, by Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance, 1985 promulgated on 8th March 1985 (Ordinance II of 1985), the said period has been changed from 15 years to 17 years with the result that requisitions under the Act of 1952 are continued till 1987. We are unable to accept this submission of Mr. Chogle. In the first place, the preamble to the Act of 1952 makes it clear that the object of the Act was to provide for requisitioning and acquisition of immovable property for the purposes of the Union. Section 3 of the Act, which confers on the Competent Authority the powers to requisition immovable property itself makes it clear that the Competent Authority under the Act is entitled to exercise that power only where the Competent Authority is of the opinion that the property is needed or likely to be needed for any public purpose, being a purpose of the Union. Thus, the power to requisition immovable property conferred under that Act is itself limited to cases where the property is required for public purposes of the Union. In view of this, it is apparent that, notwithstanding the apparently unrestricted words of sub-section (2) of section 24, the fiction created therein was intended for the purpose of protecting requisitions of immovable property which were in force only in such cases where the public purpose for which the property in question had been requisitioned was used for a public purpose of the Union. It is well settled that one must carry a legal fiction to its logical conclusion, but it is equally well settled that the scope of the legal fiction should be confined to the purpose for which it was created. Just as one should not allow one's imagination to boggle when it comes to imagine the consequences which would flow from treating an imaginary state of things as

real, it is equally true that one cannot allow one's imagination to run wild and draw all sorts of illogical conclusions and unwarranted inferences from legal fictions. In the present case, as we have already pointed out, the topic of public order as well as the topic of police were both, at the relevant time, State subjects and it was only the Legislature of the State which was competent to legislate on these topics. In view of this, it appears to us reasonable that notwithstanding the wide words of sub-section (2) of section 24, the operation thereof must be confined to continuing current requisitions of property where the properties were being utilised for public purposes which were purposes of the Union. It must be remembered that, if it was considered necessary by the State concerned to continue any property under requisition which was being used for a public purpose of the State, it was open to the State, in this case the then Government of Bombay, to pass the necessary orders under the Bombay Land Requisition Act, 1948, which has been in force since 1948. There is also one other consideration on which the unrestricted language of sub-section (2) of section 24 has to be read in a limited manner and that reason is that, if wide and unrestricted meaning were given to the language used therein, as suggested by Mr. Chogle, the result would be that the sub-section would be open to challenge on the ground of unconstitutionality namely, on the ground that it was beyond the powers of the Parliament to protect or continue requisitions of properties which were being used as for public purposes which were, not purposes of the Union but of the State. We find that some further support for a restricted construction of sub-section (2) of section 24 is found from sub-section (1) of section 23. The object of section 23 is the validation of certain requisitions and acquisitions. Very briefly stated, the relevant portion of sub-section (1) of section 23 provides that all immovable property which purports to have been requisitioned by a State Government for any public purpose, being a purpose of the Union, under any Provincial or State Act and which, immediately before the 25th day of January, 1952, being the date on which the Requisitioning and Acquisition of Immovable Property Ordinance came into effect, was used or occupied by the Central Government or by an officer or authority subordinate to that Government shall, as from that date, be deemed to be property duly requisitioned u/s 3 of the Act of 1952. This would clearly show that where the requisitions had been effected by the State Government under any Provincial or State Act for a purpose of the Union and might have been otherwise liable to challenge on the ground that the purpose for which the property in question was being used immediately before 25th January 1952 was a public purpose of the Union, the requisitions in question were sought to be protected. Thus, the object under the Act only seems to have been to protect and continue the requisitions which were made for the purposes of the Union or where requisitioned properties were in fact being used for the public purpose of the Union.

6. The next argument of Mr. Chogle was that the topic of "public purpose", although included in the State list under the Constitution should be regarded as a public purpose of the Union as well as of the State. It was urged by him that,

after all, the Union was equally interested in the maintenance of the public order and the security of the States. In this regard, we would point out that by the aforesaid letter dated 30th March 1942 addressed by the Secretary to then Government of Bombay to Naraindas Mehra, it has been made clear that the requisition of the 19 flats in question was effected for the occupation thereof by police officers whose stay there was required for the maintenance of law and order. In the case of *Romesh Thappar Vs. The State of Madras*, page 127, it has been held that public safety is included in wider concept of public order. Thus, even public safety referred to in the Order dated 18th March 1942, to which we have already adverted is only an aspect of a public order, and, at the relevant time, was a State subject. In support of his argument, Mr. Chogle placed strong reliance on the decision of the Supreme Court in the *The State of Bombay Vs. Ali Gulshan*, . In that case, the requisition in question had been effected by the Government of Bombay u/s 6(4) (a) of the Bombay Land Requisition Act, 1948 for "housing a member of the staff of a foreign Consulate". A Division Bench of this Court had taken the view that the aforesaid purpose was a Union purpose, and hence, the Government of Bombay was not entitled to requisition the property for that purpose. The Supreme Court held, overruling the aforesaid decision of this Court, that the categories of public purpose contemplated are three in number, namely, Union purpose, State purpose, and any other purpose. Though every State purpose or Union purpose must be a public purpose, it is easy to conceive of cases where the purpose of the acquisition or requisition is neither the one nor the other, but other public purpose. It was held that, in the case of such a purpose which was a public purpose, but neither a public purpose of the Union nor a public purpose of the State, the State could make an order of acquisition or requisition of property. This decision is clearly based on the language of Entry 33 of List I, namely the Union List and Entry 36 of the State List as they stood prior to 1956. A perusal of these entries makes it clear that the power of requisition or acquisition of property given to the Union was limited to cases where the property in question was required for the purpose of Union whereas the corresponding power given to the State was where the property was required for any purpose other than a purpose of the Union. Thus, the judgment if properly read, in no way supports the contention of Mr. Chogle. Where powers are distributed between the States and the Union Legislatures under the scheme of the Constitution, we are afraid, it is not open to us to indulge in philosophical considerations and to say that the Union as well as all States are interested in a particular public purpose mentioned in the State List or the Union List. If entries in the Legislative Lists were to be read as suggested by Mr. Chogle, the entire division of powers would become meaningless because most of the entries in List I or List II could be said to relate to matters where the Union as well as the States would be interested.

7. Even assuming for a moment that the language of sub-section (2) of section 24 is to be read in an unrestricted manner as submitted by Mr. Chogle, which submission we do not accept, there is, yet a difficulty in holding that the

requisition of the said flats continues to be in force. By the amendment effected by the Central Act XI of 1951, sub-section (3) of section 1 of the Requisitioned Land (Continuance of Powers) Act, 1947, was substituted as set out earlier. A perusal of the said sub-section makes it clear that it was only requisitioned lands which at the commencement of the Amendment Act of 1951 were subject to requisition by or under the authority of Central Government which were to continue under requisition till 1st April 1952 and in respect of other requisitioned lands, the Act of 1947, namely, Act XXVII of 1947 would come to an end on 1st April 1951 so that such requisitions, would come to an end on April 1, 1951. The question which has to be examined in this connection is whether, in the present case, the requisition was by or under the authority of the Central Government, because, in that case, the requisition would have continued till 1st April 1952, and before that day, aforesaid ordinance of 1952, namely, the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 came into effect. We find that the first order of 16th March 1942 was made by the Collector of Bombay in exercise of the powers conferred by Rules 76 and 79 of the Defence of India Rules read with the aforesaid Notification No. 824-OR/41 dated 4th October 1941 which would show that the said powers were exercised by the Collector as the delegate of the Central Government. However, it clearly appears that the said order has been given a go-by and a fresh order of requisition, which is the effective order of requisition in the case, was made by the Governor of Bombay on 30th March 1942. We have already referred to both these orders. If the order of 18th March 1942 had been intended to be given effect to, there was no reason why the second order of requisition should have been made by the Governor of Bombay on 30th March 1942. Apart from this, the earlier order, namely, the order of 18th March 1942 purported to requisition the building Gopal Nivas and premises and land appertaining thereto. The order of 30th March 1942 passed by the Governor of Bombay pertains to the block of the 19 flats in the said building. As we have already pointed out earlier, from the correspondence it is clear that what were, in fact, requisitioned were 19 flats in the said building and not the whole building. Two of the flats were left for the use of the owners. This would clearly show that it was the order of 30th March 1942 which was the effective order. Apart from this, the said letter dated 30th March 1942 addressed by the Secretary to the Government of Bombay. Home Department to Naraindas Mehara makes it clear that it is the order of 30th March 1942 under which the requisition was made. Rule 76 of the Defence of India Rules to which we have already referred, confers powers of requisition on the Central Government as well as the Provincial Governments, and in the present case, it is quite clear that the effective order of requisition was made on 30th March 1942 by the Provincial Government, namely, then Government of Bombay pursuant to its own independent powers conferred under Rule 76 of the Defence of India Rules. The State of Maharashtra is the successor Government to the said Government of Bombay. In view of this, it is clear that the requisition came to an end on 1st April 1951, and hence, when the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 was promulgated on 25th January 1952, there was no

effective order of requisition of the said flats which could be continued. If the said order of 30th March 1942 was not continued, there was no pending order of requisition which could be protected under sub-section (2) of section 24 of the Act of 1952, even giving the wider interpretation to that sub-section as suggested by Mr. Chogle. On this ground also, it must be held that the order of requisition is no longer in force and the respondents are bound to release the premises in favour of the petitioners.

8. Before parting with the case, we must, in fairness, refer to the decision of the Patna High Court in the case of Harinarayan & Ors. v. Union of India & Anr.⁵ on which strong reliance was placed by Mr. Chogle. We are frankly at a loss to understand why this decision was cited, because as far as we can see, it has nothing to do with the questions which are raised before us and the only reason we can think of as to why that decision was cited could be that it relates to provisions of sub-section (2) of section 24 of the Act of 1952. That decision is, therefore, of no assistance in the present case.

9. In the result, the appeal fails and is dismissed with costs.

10. Mr. Chogle applies for leave to appeal to the Supreme Court. Mr. Rana opposes the application. In our view, there is no substantive question of law raised in appeal which requires determination at the hands of the Supreme Court. In view of this, the application is rejected.

11. Mr. Chogle applies that the operation of the order may be stayed for a period of three months to enable the Government to consider the various alternatives open to it. We are afraid, the period asked for is much too long. We direct that the operation of this order is stayed for a period of four weeks from the date of the signing of this judgment.