

(1978) 04 KAR CK 0022

In the Karnataka High Court

Case No : Misc. First Appeals No's. 671 and 672 of 1974

T. Thippa Reddy and Another

APPELLANT

Vs

Assistant Commissioner, Bangalore and Another

RESPONDENT

Date of Decision : 19-04-1978

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 11, 25, 25 (1), 25 (2), 30

Citation : AIR 1979 Kar 129

Hon'ble Judges : V.S. Malimath, J;S.R. Rangegowda, J;M.N. Venkatachaliah, J

Bench : Full Bench

Judgement

Malimath, J.—The following question has been referred for the opinion of the Full Bench:-

"Whether an appeal is maintainable under S. 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 against an award passed by the arbitrator appointed under the Defence of India Act, 1962?"

The proclamation of emergency issued by the President on 26-10-1962 under Art. 352(1) of the Constitution expired on 10-1-1968. The Defence of India Act, 1962 (hereinafter referred to as the Act) is a temporary Act which was in force till the expiry of six months from the date of expiry of the proclamation of emergency. Under S. 29 of the Act, certain properties belonging to the appellants were requisitioned in the year 1963. Compensation was fixed by the authorities and paid to the appellants in the year 1970. The appellants not being satisfied with the amounts of compensation made applications for referring the matters to an Arbitrator under the first proviso to S. 30 of the Act. The Arbitrator made his awards in both these cases on 11th Dec. 1973, determining the compensation payable to the appellants. The appellants have challenged the said awards in these appeal under S. 11 read with Section 25 of the Requisitioning and Acquisition of Immovable Property Act 1952 (hereafter referred to as the Requisitioning Act). As two Division Benches of this Court have taken conflicting views on the

maintainability of such appeals, the Division Bench has referred the above question for resolving the conflict.

2. Section 30 of the Act provides for payment of compensation in respect of property requisitioned under S. 29 of the Act. The first part of S. 30 contains the factors to be taken into consideration in determining the amount of compensation. The first proviso to S. 30 entitles the aggrieved person to make an application within the prescribed time to the Central Government or the State Government as the case may be for referring the matter to an arbitrator. The determination of compensation by the arbitrator under S. 30 is final, there being no other provision in that Act for challenging the award made by the arbitrator. Under the second proviso to S. 30, any dispute as to title to receive the compensation or as to apportionment of the amount of compensation has to be referred to an arbitrator appointed by the Central Government or the State Government, as the case may be. S. 25 was added to the Requisitioning Act by the Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance 4 of 1968 and the Ordinance was replaced by Act 31 of 1968. S. 25(1) of the Requisitioning Act provides that properties which have been requisitioned under the Defence of India Act, 1962 and which have not been released from such requisition before 10th January, 1968, shall, from that date, be deemed to have been requisitioned under the Requisitioning Act and all the provisions of that Act apply except to the extent provided in the proviso in sub-section (2). S. 3 of the Requisitioning Act is similar to S. 29 of the Act which empowers the competent authority to requisition any property needed or likely to be needed for any public purpose, being a purpose of the Union. Ss. 8 and 9 of the Requisitioning Act provide for principles and methods of determining compensation and for payment of compensation which provisions are similar to S. 30 of the Act. A dispute in regard to the amount of compensation payable is required to be decided by an arbitrator under S. 8 of the Requisitioning Act. Under S. 11 of that Act any person aggrieved by an award of the arbitrator made under S. 8 of the Requisitioning Act is entitled to prefer an appeal to the High Court within 30 days from the date of the award. These appeals have been preferred invoking S. 11 of the Requisitioning Act, on the ground that the awards made after 10th Jan. 1968 must be deemed to have been made under S. 8 of the Requisitioning Act.

3. In respect of properties requisitioned under S. 29 of the Act, appeal is provided against the award made under S. 30 of the Act. The question for consideration in these cases is, as to whether these appeals are maintainable under S. 11 of the Requisitioning Act. As S. 11 of the Requisitioning Act provides for an appeal against an award made by an arbitrator under S. 8, we have to examine whether the awards made in these cases can be regarded as having been made under S. 8. The contention of the appellants is that the awards in these cases are appealable under S. 11 having regard to the provisions of S. 25 of the Requisitioning Act. For the sake of convenience, we shall set out S. 25 of the Requisitioning Act as follows:-

"25. Special provision as to certain requisitions under Act 51 of 1962.-(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 rule made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before 10th Jan. 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, 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 10th Jan. 1968, cease to operate except as respects things done or omitted to be done before such cesser and S. 6 of the Central Clauses Act, 1897 (10 of 18 97), shall apply upon such cesser of operation as if such cesser were a repeal of an enactment by a Central Act." S. 25 applied only to properties which have been requisitioned under the Act and which have not been released from such requisition before the 10th Jan. 1968. Such properties are deemed to have been requisitioned by the competent authority under the provisions of the Requisitioning Act for the same purpose for which they were held immediately before the 10th Jan. 1968. It is on the basis that such properties are deemed to have been requisitioned under the Requisitioning Act with effect from 10th Jan. 1968 that it is provided that the provisions of the Requisitioning Act shall apply to such properties Requisitioning under the Requisitioning Act can be made by resorting to the provisions of S. 3. But, by the operation of sub-section (1) of S. 25, properties requisitioned under the Defence of India Act which have not been released before 10th Jan. 1968 are deemed to have been requisitioned under S. 3 of the Requisitioning Act with

effect from 10th Jan 1968. It, therefore, follows that in respect of properties requisitioned under the Act which have not been released before 10th Jan. 1968, there would be two orders of requisition, the first being the one actually made under the Act which remained in force till 10th Jan. 1968 and the second being the order of requisition deemed to have been made under S. 3 of the Requisitioning Act, by the operation of S. 25 of that Act with effect from 10th January, 1968.

4. We shall now take up for consideration the effect of the provisions to S. 25(1) and (2). For the application of proviso (a) to S. 25(1), the following conditions must be satisfied; (i) There must be a determination or agreement or award for payment of compensation in respect of the property requisitioned; (ii) the determination, agreement or award should be for the period of requisition before 10th Jan. 1968; and (iii) the determination, agreement or award must be in force immediately before 10th Jan. 1968. If these 3 conditions are satisfied, determination, agreement or award shall continue to be in force and shall apply to payment of compensation for any period of requisition from 10th January 1968. It is obvious that the expression "said date" used in proviso (a) means 10th January, 1968, the date referred in sub-section (1) of S. 25. The object of proviso (a) is to avoid fresh determination of compensation payable u/s 8 of the Requisitioning Act for the period of deemed requisition. If there is already a determination, agreement or award for the payment of compensation for any period before 10th Jan. 1968 and in force immediately before the said date, the same will continue to be in force and will apply to the payment of compensation for any period of requisition from that date. The determination, agreements or awards, for the applicability of proviso (a) must be for any period of requisition before 10-1-1968 and immediately in force before that date. Agreements and awards to not pose any difficulty. We shall therefore examine what the word "determination" in the context means. The meaning of the word has to be ascertained from S. 30 of the Act where the word has been used. The first part of S. 30 provided that compensation shall be determined taking into consideration the factors specified therein. This determination has to be made by the Central Government or the State Government as the case may be or by the prescribed authority. If the determination of compensation is accepted or no application is made by the aggrieved person to refer the dispute to an arbitrator within the prescribed time as provided in the first proviso, it will become final. But if the aggrieved person makes an application under the first proviso and the arbitrator makes the award, compensation shall be payable as determined by the arbitrator and not as determined earlier by the appropriate Government or the prescribed authority. In our judgment, the determination contemplated by proviso (a) of S. 25(1) of the Requisitioning Act is the determination which has become final under S. 30 of the Act before 10-1-1968.

5. Proviso (b) provided that so far as it is not inconsistent with the provisions of the Requisitioning Act, 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 Act, be deemed to have been done or taken in exercise of the powers conferred by or under the Requisitioning Act as if S. 25 was in force on the date on which such thing was done or action was taken. This provisions is to some extent similar to S. 24 of the General Clauses Act. S. 29 providing for requisitioning and S. 30 providing for compensation are contained in Chapter VI of the Act. But an order of requisitioning made under S. 29 of the Act cannot be deemed to have been issued under S. 3 of the Requisitioning Act on the date on which it was actually issued under S. 29 of the Act because such deeming will be inconsistent with S. 25(1) of the Requisitioning Act, we must proceed on the basis that there is a deemed order of requisition under S. 3 of that Act with effect from 10-1-1968. It is not disputed and rightly that provision (b) does not apply to matters falling under proviso (a). Therefore, if compensation payable was finally determined or was governed by an agreement or an award under the Act, for any period of requisition before 10-1-1968 and in force before that date, the same continues to be in force and will apply to payment of compensation for any period of requisition from that date. Proviso (b) to sub-section (1) of S. 25 will not be attracted to such cases. Proviso (b) can be invoked only for determining compensation for the deemed period of requisition from 10-1-1968 provided there is no final determination, agreement or award contemplated by proviso (b), it has to be held that under the said proviso compensation can only be determined for the period of deemed requisition from 10-1-1968.

6. From what we have discussed above, it follows that if the case falls under proviso (a), the final determination, agreement or award contemplated by the said provision will govern payment of compensation for the period of requisition under the Act as also for the period of deemed requisition under the Requisitioning Act. But, if the case does not fall under proviso (a), then by the operation of proviso (b), compensation can be determined under the Requisitioning Act for the period of deemed requisition from 10-1-1968. In such cases, the question that will arise for consideration is, as to under what law compensation has to be determined for the period of requisition under the Act till 10-1-1968, if the conditions specified in proviso (a) are not satisfied. The answer to this question has to be found in sub-section (2) of S. 25 which provides that the provisions of the Act and the Rules made thereunder in so far as they relate to requisition of immovable property referred to in sub-section (1) shall as from 10-1-1968 cease to operate except as respects things done or omitted to be done before such cesser and S. 6 of the General Clauses Act, 1897 shall apply upon such cesser of operation as if such cesser were a repeal of an enactment by a Central Act. We must, therefore, proceed on the basis that the Act was repealed by the Requisitioning Act with effect from 10-1-1968 and that S. 6 of the General Clauses Act applied to such repeal. As the right to compensation accrued when the Act was in force, the said right to can be excised as if the repealed Act was in force. It, therefore, follows that in respect of cases which are

not covered by the proviso (a) compensation can be determined under the Act for the period of requisition till 10-1-68. As the old Act must be deemed to have been kept alive for this limited purpose of determining compensation after 10-1-1968 for the actual period of requisition under the Act up to 10-1-1968, what applied is S. 30 of the Act. Compensation has to be determined under S. 30 of the Act by the appropriate Government or the prescribed authority. If the person is aggrieved by such determination, he is entitled to make an application to the appropriate Government for referring the matter to arbitration as provided in the proviso to Section 30. The award made by the arbitrator is final and conclusive as no appeal is provided against the award made by the Arbitrator under the Act.

7. In M. F. As. Nos. 511 to 532 of 1970 (Union of India v. S. V. Venkatappa) decided on 19th, 22nd, 23rd and 24th of November, 1971, the Division Bench has held that the requisition made under the Act must be is deemed to have been done under the corresponding provisions of the Requisitioning Act. If the requisition is deemed to have been made under the Requisitioning Act, it is held that the award must be deemed to have been made under S. 8 of the Requisitioning Act which is appealable under S. 11 of the said Act. For this conclusion, support is drawn from proviso (b) to sub-section (1) of S. 25 of the Requisitioning Act. The deeming provision contained in proviso (b) to sub-section (1) of S. 25 is qualified by the expression "in so far as it is not inconsistent with the provisions of this Act." In the principal part of sub-section (1) of S. 25, it is provided that the property requisitioned and not released before 10-1-68 shall from that date be deemed to have been requisitioned by the competent authority under the provisions of the Requisitioning Act as from 10-1-68. Hence by the operation of proviso (b) to sub-section (1) of S. 25, it cannot be deemed that the property was requisitioned under the Requisitioning Act as from the date on which the property was actually requisitioned under the Act. As full effect is not given to the qualifying clause occurring in proviso (b) of sub-section (1) of S. 25, with great respect we find ourselves unable to agree with the view taken by the Division Bench to the effect that against every award made after 10-1-1968 in respect of property which was requisitioned under the Act but was not released before 10-1-1968, an appeal is competent under S. 11 of the Requisitioning Act. A view contrary to the one taken in M. F. As. Nos. 511 to 522 of 1970 has been taken by another Division Bench of this Court in Special Military Estate Officer v. Munivenkataramayya, reported in ILR (1975) Kant 273, without noticing the earlier decision. The Division Bench which dealt with the second case has held that the expression "determinations, agreements and awards" used in proviso (a) to sub-section (1) of S. 25 do not relate to closed transactions. The effect of proviso (a) is to make applicable determination, agreement or award for payment of compensation for the period of requisition before 10-1-1968 to the deemed period requisition under the Requisitioning Act. That being the position, the word "determinations" occurring in proviso (a) must mean final determination and not a determination which is liable to be challenged by an

aggrieved person by seeking arbitration. There is also no good reason as to why the expression "anything done or any action taken 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" cannot include within its ambit determination made by the appropriate Government or the competent authority of compensation under S. 30 of the Act which has not become final as on 10-1-1968. But a determination which has not become final under the Act can be deemed to be determination made by the competent authority under the corresponding provisions of the Requisitioning Act but only as from 10-1-1968. For the period prior to 10-1-1968 in view of S. 25(2) of the Requisitioning Act. If the conditions in proviso (a) are satisfied, the question of challenging the determination or award in appeal does not at all arise as the determination or award will govern payment of compensation for the actual and deemed period of requisition. It is only if proviso (a) is not applicable, the question of applicability of proviso (b) of sub-section (2) of S. 25 of the Requisitioning Act arises. If the determination by the appropriate authority under S. 30 of the Act did not become final before 10-1-1968, the said determination must be deemed to have been made from 10-1-1968, under the Requisitioning Act. When such determination is challenged and an award is made, it can be appealed against for the period of deemed requisitioning from 10-1-1968 under S. 11 of the Requisitioning Act. The award for the period up to 10-1-1968 being one made under the Act is not appealable under S. 11 of the Requisitioning Act. With great respect, we find ourselves unable to agree with the view taken by the Division Bench that view determination of compensation made before 10-1-1968, the same cannot at all be challenged and an award is made by an arbitrator after 10-1-1968, the same cannot at all be challenged in appeal under S. 11 of the Requisitioning Act.

8-10 For the reasons stated above, we answer the question referred to us follows:

- (1) If the case falls under proviso (a) to sub-section (1) of S. 25, no appeal is competent against the award under S. 11. of the Requisitioning Act.
- (2) If the case does not fall under proviso (a) to sub-section (1) of S. 25, of the Requisitioning Act, the award made by the Arbitrator for the actual period of requisitioning under the Act up to 10-1-1968 is not appealable under S. 11. of the Requisitioning Act.
- (3) The award of the Arbitrator determining compensation for the period of deemed requisitioning from 10-1-1968 is appealable under S. 11 of the Requisitioning Act, provided the case does not fall under proviso (a) to sub-section (1) of S. 25. of the Requisitioning Act.

Answered Accordingly.