

(1981) 11 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3454 of 1974

Thakur Madan Pal Singh and Others

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

Date of Decision : 11-11-1981

Acts Referred:

Electricity Act, 1910 — Section 6(1)
National Security Act, 1980 — Section 3
United Provinces Rural Development (Requisitioning of Land) Act, 1948 — Section 16, 2, 2(1), 3
United Provinces Rural Development (Requisitioning of Land) Rules — Rule 3
Electricity Act, 1910 — Section 6(1)
National Security Act, 1980 — Section 3
United Provinces Rural Development (Requisitioning of Land) Act, 1948 — Section 16, 2, 2(1), 3
United Provinces Rural Development (Requisitioning of Land) Rules — Rule 3
Electricity Act, 1910 — Section 6(1)
National Security Act, 1980 — Section 3
United Provinces Rural Development (Requisitioning of Land) Act, 1948 — Section 16, 2, 2(1), 3
United Provinces Rural Development (Requisitioning of Land) Rules — Rule 3

Citation : (1982) AWC 28

Hon'ble Judges : N.D. Ojha, J;A.S. Srivastava, J

Bench : Division Bench

Advocate : V.K.S. Chaudhary, for the Appellant; J.N. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—An order passed by the Tehsildar of Padrauna (Requisitioning Authority) district Deoria, Respondent No. 1 u/s 3 of the United Provinces Rural Development (Requisitioning of Land) Act, 1948 (hereinafter referred to as the Act) requisitioning certain plots of the Petitioners for a public purpose. It is this order which has been sought to be quashed in the present writ petition.

2. It has been urged by counsel for the Petitioners relying on a Division Bench decision of this Court in Brij Kishore v. Tahsildar 1930 AWC 246 that the order of

requisition is invalid inasmuch as Respondent No. 1 had not been validly appointed as the Requisitioning Authority. The basis for this submission is that only such a person could be appointed a Requisitioning Authority by the State Government u/s 2 of the Act who was either a Collector or an Assistant Collector nominated by the Collector. According to counsel for the Petitioners since Respondent No. 1 had never been nominated by the Collector the notification of the year 1960 whereby all the Tehsildars exercising the powers of an Assistant Collector were appointed as the Requisitioning Authorities was not sufficient in the eye of law to confer upon Respondent No. 1 the power of a Requisitioning Authority. Similar was the case in Brij Kishore's case (supra) also and the order passed u/s 3 of the Act in that case was also quashed on the ground urged by counsel for the Petitioners. A counter affidavit as also a supplementary counter-affidavit have been filed on behalf of the Zila Parishad, Respondent No. 4, for whose benefit the plots of the Petitioners were sought to be requisitioned by the impugned notice. annexure I to the supplementary counter-affidavit is a document which according to counsel for the Zila Parishad contains the requisite nomination by the Collector contemplated by Section 2 of the Act in favour of Tehsildar Padrauna. Annexure I to the supplementary counter-affidavit is a letter dated 11th February, 1974, addressed by the Executive Officer, Zila Parishad, Deoria, to the Collector, Deoria, requesting him to issue a direction to the Tahsildar, Padrauna, for taking steps of requisition for purpose of completing the construction of a road. There is an order on that letter by the Collector addressed to the Tahsildar, Padrauna, saving that in public interest it was necessary to take immediate steps on the concerned subject and that necessary steps may be taken at once. The exact words in vernacular are "Janhit Me Ullikhit Vishay Par Tatkal Karyawahi Avashyak Mai Kripya Turant Kadam Uthaye." On its basis it was urged that the relevant notification issued by the government in the year 1960 read with this order of the Collector conforms with the requirement of Section 2 of the Act in the matter of appointment of Requisitioning Authority. For the Petitioners on the other hand it has been urged firstly, that the order of the Collector does not amount to any nomination as contemplated by Section 2 of the Act, and secondly, even if it did since it was not prior to the notification issued in the year 1960 but long thereafter it cannot be taken as sufficient compliance of the requirements of Section 2. We shall consider the second submission first. In this connection it would be necessary to refer to Section 2 (1) of the Act which reads:

"Compensation Officer" and "Requisitioning Authority" means the Compensation Officer and the Requisitioning Authority appointed as such by general or special order by the State Government provided that such person shall be the Collector or an Assistant Collector nominated by the Collector.

The proviso contained in Sub-section (1) of Section 2 of the Act makes it abundantly clear that it is either the Collector or an Assistant Collector who has been nominated by the Collector who alone can be appointed as a Requisitioning Authority by the State Government either by a general or special order. On the

plain language of Sub-section (1) of Section 2 the nomination by the Collector has to precede the appointment by the State Government. Rule 3 of the Rules framed u/s 16 of the Act makes explicit what was implicit in Section 2. The said rule reads as follows:

A Collector may nominate any Assistant Collector subordinate to him to be appointed a Requisitioning Authority or a Compensation Officer for the district, and thereupon the State Government may appoint such officer to be Requisitioning Authority or a Compensation Officer.

The words "thereupon" and "such" used in Rule are of significance. These two words unequivocally indicate that the appointment by the State Government of an Assistant Collector as a Requisitioning Authority can be made only after the Collector has made the necessary nomination and the appointment has to be only of such officer who has been so nominated. This is the view which has been taken in Brij Kishore's case (Supra) also with which we respectfully agree. As such it is not necessary to consider the alternative argument that the order of the Collector does not amount to nomination.

3. It was then urged by counsel for the Zila Parishad that the requirement of nomination contained in Section 2 of the Act was not mandatory but directory. In support of this submission reliance has been placed on Sharif-ud-din Vs. Abdul Gani Lone, . It has been held in that case:

The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus : the fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such

permission to rectify the error latter on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

The principles which are to govern the interpretation of statutes in order to determine as to whether they are mandatory or directory are well settled and what has been laid down in Sharif-ud-din's case (supra) is a reiteration of that principles made in earlier cases by the Supreme Court. In our view, however, even after taking into consideration the principles laid down in Sharif-ud-din's case (supra) it is not possible to hold that the requirements of Section 2 are only directory and not mandatory. It would be seen that we are dealing with a case where a person is being deprived of a right of property which cannot be done except in accordance with law. In Madan Gopal Agarwal Vs. District Magistrate, Allahabad and Others, it was held that the right to hold and enjoy the property is a cherished right and requisitioning of the same deprives the owner of the right to hold and enjoy it as he likes. In Gujarat Electricity Board Vs. Girdharlal Motilal and Another, Section 6(1)(a) of the Electricity Act, 1910 (as amended in 1959) came up for consideration before the Supreme Court. The question was as to whether the said provision was directory or mandatory. It was held:

Section 6(1) confers power on the State Electricity Board to take away the property of the licensee. Such a power must be exercised strictly in accordance with law. The legislature has prescribed the manner of its exercise. It must exercise in that manner and in no other way. It must also be seen that the Parliament deliberately changed the form of the notice to be given from what it was before Act 32 of 1959 was enacted. It prescribed that the notice must specifically call upon the licensee to sell the undertaking. The mandate of the law is clear and it must be obeyed. We agree with Mr. M. C. Chagla learned Counsel for the licensee that the issuing of a notice strictly in accordance with the provisions of Section 6 (1) is a condition precedent to the exercise of the power conferred on the State Electricity Board to purchase the undertaking. That being so, we must hold that Section 6 (1) is mandatory and it must be strictly complied with.

4. Reference was also made in that case to the case of AIR 1936 253 (Privy Council) and to an earlier decision of the Supreme Court in Ballabhdas Agarwala Vs. J.C. Chakravarty, for the proposition that if the legislature has prescribed a mode for exercising a power that power can be exercised in that manner and in no other manner. It is in this view of the matter that we are of opinion that the requirement of Section 2 is not directory but is mandatory.

5. Lastly it was urged by counsel for the Zila Parishad that even if the appointment of Respondent No. 1 as Requisitioning Authority was bad the action of the said authority in issuing the impugned order u/s 3 of the Act cannot be challenged. Reliance in support of this contention has been placed on the

decision of the Supreme Court in Gokaraju Rangaraju Vs. State of Andhra Pradesh, where it was held:

A judge de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto Judge may be questioned directly in a proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a Judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of Judge to his office. Otherwise so soon as a Judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the Judge is no Judge. A Judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointment. To question a Judge's appointment in an appeal against his judgment is, of course such a collateral attack.

In our opinion the reply to the submission made by counsel for the Zila Parishad is contained in the observations quoted above themselves. That was a case where in a criminal appeal judgment rendered by a Sessions Judge was challenged on the ground that his appointment had been quashed by the Supreme Court and it was in this connection that the aforesaid observations were made. The distinction which is apparent in the instant case is that here the Petitioners are not challenging the appointment of the Requisitioning Authority in some collateral proceedings in a dispute pending between private parties to which the Requisitioning Authority is not a party. In the instant case on the other hand the Requisitioning Authority has been arrayed as Respondent No. 1 and the challenge made by the Petitioners is that he has no jurisdiction to deprive the Petitioners of their property inasmuch as he had not been validly appointed a Requisitioning Authority as contemplated by Section 2 of the Act. In such a situation the observations made above by the Supreme Court to the effect that the defective appointment of a defacto Judge may be questioned directly in a proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a judge, constitute the distinguishing factor. In *Vashistha Narain Karvaria Vs. State of Uttar Pradesh and Others*, where the liberty of a person was sought to be curtailed by an Additional District Magistrate by passing an order of detention u/s 3 of the National Security Act, 1980. It was held that an Additional District Magistrate even though he may for the time being be empowered to exercise the powers and functions of a

District Magistrate cannot direct detention of a person u/s 3 of the aforesaid Act. The principle laid down in this case will apply to the instant case also.

6. In the result the writ petition succeeds and is allowed and the requisitioning order passed by the Tahsildar, Padrauna, Respondent No. 1 dated 6th March, 1974, requisitioning the plots of the Petitioners u/s 3 of the Act is quashed. The Petitioners shall be entitled to their costs. Petition allowed.