
(1958) 09 BOM CK 0022

In the Bombay High Court

Case No : O.C.J. Miscellaneous Peition No. 273 of 1958

Tulsibai Mangumal

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 30-09-1958

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 4(1), 5

Citation : (1959) 61 BOMLR 1344

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.K. Desai, J.—[His Lordship after stating the facts as above, proceeded.] The sole contention on which the petitioners based their case regarding the invalidity of the requisition order appears in para. 8A of the petition. The petitioners have not pressed before me other grounds as appearing in the petition. Paragraph 8(a) runs as follows:

The portion of Flat No. 4 sought to be requisitioned is not "land" within the meaning of Section 4(1) and Section 5 of the Bombay Land Requisition Act, 1948. Section 5 of the said Act does not empower the Government of Bombay to requisition only a part of flat which is neither let nor intended to be let.

2. In. connection with this contention of the petitioners the relevant provisions of the Bombay Land Requisition Act are as follows:

Section 4(1): "land" includes...buildings....

Section 4(2): "landlord" means any person who is, for the time being, receiving, or entitled to receive, rent in respect of any premises...and further includes in respect of his sub-tenant a tenant who has sublet any premises;....

Section 4.(3): "premises" means any building or part of a building let or intended to be let separately....

Section 5(1): "If in the opinion of the State Government it is necessary or expedient so to do, the State Government may by order in writing requisition any land for purpose of the State or any other public purpose:

Provided that no building or part thereof wherein the owner, the landlord or the tenant, as the case may be, has actually resided for a continuous period of six months, immediately preceding the date of the order shall be requisitioned under this section.

Section 5(2): "Where any building or part thereof is to be requisitioned under Sub-section (1), the State Government shall make such enquiry as it deems fit and make a declaration in the order of requisition that the owner, the landlord or the tenant, as the case may be, has not actually resided therein for a continuous period of six months immediately preceding the date of the order and such declaration shall be conclusive evidence that the owner, landlord or tenant has not so resided.

3. On a reading of these relevant provisions, it is obvious that the jurisdiction to make requisition order is to be found in the first part of Section 5(1) of the Act. The jurisdiction conferred under this section is patently of the widest character. Land which includes buildings can be subject-matter of a requisition order without any limitation. There is in the substantive part of this section conferring jurisdiction on the Government no limitation placed as to the parts of land or parts of buildings which may be requisitioned. Limitation, if any, is to be found in the proviso to Sub-clause (1) of Section 5 and the conditions precedent, mentioned in Sub-clause (2) of Section 5. It is worthy of note that the only conditions precedent are that there is to be an inquiry and that there is to be a declaration. The declaration is in respect of those very facts which are mentioned in the proviso, viz., the facts relating to actual non-residence in the requisitioned premises of the owner, landlord or tenant as the case may be. The declaration to be made is to be accepted as conclusive evidence of the facts declared. The facts declared must relate to the actual non-residence of the tenant, owner or landlord in the requisitioned premises. In the circumstances what is left to be justiciable by Court is not the fact of non-residence in the premises of any of the aforesaid three parties. In the event of the Court finding that there had been no inquiry or no inquiry in fact as required under the provisions of Sub-clause (2) or the declaration not being as required under Clause (2) of Section 5, the Court might consider the contentions raised in that behalf. But if these conditions precedent are satisfied, the jurisdiction of the executive authority to make requisition order would be clearly established, and could not be questioned.

4. Mr. Dalal, however, contends that if proper emphasis is laid on the word "wherein" in the proviso to Sub-clause (1) of Section 5 and the word "therein" in Sub-clause (2) of Section 5, it would be found that in the case of premises let out to a tenant for exercising jurisdiction to make a requisition order, the declaration that the tenant has not actually resided must be in respect of the whole of the premises. He contends that the provisions in Section 5 of the Act do

not contemplate such a declaration in respect of a part of a building. Mr. Dalai goes further and says that as regards the owner or the landlord these orders indicate the whole of the building or the total area of the "land" in question, and the declaration that the owner or the landlord has not actually resided must be with regard to the whole of the building and/or the total area of the "land", Mr. Dalai develops his argument by pointing out the difficulties which would arise in the case of an owner of a bungalow consisting of large number of rooms, Such an owner may not be using all the rooms in his bungalow for considerable length of time and may be for his usual residential purposes using a few of the rooms in such a bungalow .He says that it cannot be that in such a case the rooms which are not in every day use but are used only some times could be subject-matter of a requisition order.

5. I am of the opinion that the contention of Mr. Dalai is untenable. The definition of the word "land" read with the first part of Section 5(1) which confers jurisdiction on the Government to make requisition order is extremely wide and without any limitations. The language of the proviso as also Sub-clause (2) of Section 5 in my view only prescribes conditions precedent to be satisfied before exercising jurisdiction. The condition precedent is "actually not resided" which in my view is used as synonymous with "factually not used". The owner or a tenant may be using a building or a part of a building or a part of a tenement and may not be at all using the building or a part of a building or a part of a tenement. If such non-user actually (i.e. in fact) exists for a continuous period of six months, I do not see how limitations mentioned in the proviso could affect the jurisdiction of the Government. In my view the language of the section is clear and leaves no doubt that the jurisdiction is conferred with intent that it may be exercised for all purposes except in connection with the premises which may be actually vised for a continuous period of six months preceding the date of the order. If the premises are in fact being vised the jurisdiction to make the requisition order cannot be exercised.

6. In this connection it is permissible to consider the object of the Act as also the scheme of the whole Act. The object of the Act is obviously for providing for accommodation in difficult times for public purpose. The Legislature does not think fit that any land or building or a part of a building which is in fact not used should not be available for providing accommodation for public purpose. The definition of the word "premises" in Clause (3) of Section 4 of the Act is different from the definition of the word "land" in Clause (1) of Section 4. In the definition of "premises" the words used are "let or intended to be let separately" whilst in connection with the jurisdiction for making requisition orders in respect of buildings u/s 5 the definition of word "land" does not contain such words. Section 6 of the Act provides for requisitioning of the premises originally in occupation of tenants and/or premises which fall vacant. Clause (4) of Section 6 uses the words "notwithstanding anything contained in Section 5" which means that vacant premises could be requisitioned in the case of a vacancy irrespective of provisions of Section 5 of the Act. Section 5 is still wider and the only limitation

in exercising jurisdiction conferred under the section is to be found in the words "has not actually resided therein". It is interesting also to note that the fact regarding actual non-residence is left to the subjective satisfaction of the executive authority and is not left to be decided by a judicial inquiry or by a Court of law. This question of fact which is left to be decided by executive authority indicates that the widest power was intended to be conferred on executive authority in respect of requisition orders to be made u/s 5.

7. Mr. Baptista has drawn my attention to the decision of K.T. Desai, J. in *Kulsumbai v. State of Bombay*. In that petition also the requisition order was in respect of a part of a tenement and it was contended that a portion of a tenement sought to be requisitioned was not "land" within the meaning of Section 4(i) and Section 5 of the Act, and that the Government had no power under the Act to requisition only a part of a flat which was neither let nor intended to be let. The contention was negatived and it was held as follows:—

The proviso itself indicates that a part of the building in which the landlord or the tenant has not actually resided for a continuous period of six months immediately preceding the date of the order can be requisitioned under the provisions of that section. In my view the Government has a right in law to requisition a portion of a building provided the other conditions laid down in that section have been satisfied.

I am in respectful agreement with the decision in that case.

8. Under all the aforesaid circumstances, I negate the contention of the petitioners as raised in para. 8(a) of the petition.

9. [His Lordship after dealing with matters not material to this report, concluded.]

10. In the result the rule is discharged and the petition is dismissed with costs.