
(1980) 10 AHC CK 0028
In the Allahabad High Court
Case No : F.A.F.O. No. 463 of 1979

Union of India (UOI)

APPELLANT

Vs

Amar Singh and Others

RESPONDENT

Date of Decision : 01-10-1980

Acts Referred:

Defence of India Act, 1962 — Section 36, 37(2)

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

Citation : AIR 1981 All 121

Hon'ble Judges : K.N. Singh, J;K.C. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This is an appeal against a judgment of the First Additional District Judge Meerut deciding a reference u/s 37 (2) of the Defence of India Act, 1962 (briefly stated as the Act).

2. In connection with the construction of Hindan Air field at Ghaziabad, the Union of India requisitioned a vast tract of land u/s 29 of the Act. As the whole of the land was occupied for the work of a permanent nature viz., setting up of an air field, and the same had not been released after the period of requisition, the Government of India accorded necessary sanction for the acquisition of the land permanently u/s 36 of the Act Under sub- section (3) of Section 36, notices had been issued to the persons whose lands had been acquired. As a result of the service of notices, the properties stood vested in the Govt. free from all encumbrances. Upon the completion of vesting the proceedings for determination of compensation were taken over u/s 37 of the said Act Under Sub-section (1) of Section 37 compensation was determined. Being aggrieved by the amount of compensation determined in accordance with Sub-section (1) the respondents moved an application to the Central Govt. for referring the matter to an arbitrator. The reference was made to the First Additional District Judge, Meerut. The learned Additional District Judge accepted the reference partly, and

enhanced the compensation holding that the respondents were entitled to get compensation at the rate of Rs. 2.60 p. per square yard. Being aggrieved by the enhancement the Union of India baa preferred this appeal u/s 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952. Before discussing the preliminary objection which had been raised to the maintainability of the present appeal it may be pointed out that the respondents owned 1 bigha and fourteen biswas of land in Village Karehra, Fergana Loni, Tehsil Ghaziabad Distt. Meerut. For determining compensation the Special Land Acquisition Officer divided the land into two belts. The land up to the depth of one hundred yards from the edge of Loni Ghaziabad Road was treated as the First Belt and the remaining land in the Second Belt. The Land Acquisition Officer awarded compensation at the rate of Rs. 3,625/- per bigha in the First Belt, and Rs. 2,900/-, in the second Belt.

3. Reverting to the preliminary objection the argument of the respondents was that the appeal filed u/s 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 was not maintainable as the acquisition of the land in question had been done under the Defence of India Act 1962 and there was a provision in the Defence of India Act under which the appeal could be filed. The submission was that the appeal was therefore, liable to be dismissed on the ground of non-maintainability.

4. The proclamation of emergency issued by the President of India under Art. 352(1) of the Constitution expired on 10th. Jan., 1968. To meet the danger caused by the Chinese invasion the aforesaid emergency had been declared. After the declaration of the emergency the Defence of India Act was enacted to provide for special measures to ensure public safety and interests and for matters connected therewith. Sub-section (3) of Section 1 of the Defence of India Act provided that the said Act would remain in force during the period of operation of the proclamation of emergency issued on the 26th Oct., 1962 and for a period of six months thereafter. u/s 29 (i) of the Act the Union of India having thought it necessary or expedient for securing the defence of India, requisitioned the land belonging to the respondents and several others. As required u/s 30 of the said Act the respondents were paid compensation for the land requisitioned. It however, seems that the land of the respondents and others requisitioned u/s 29 of the Act was required for a permanent purpose viz., construction of an airfield. Therefore the Government of India sanctioned the acquisition of the same. Upon a decision to acquire land being taken the respondents Nos. 1 and 2 were served with notices. With the service of notices the property stood vested in the Government. Thereafter the proceedings for determination of compensation of the land acquired were undertaken u/s 37 of the Act. The compensation payable was notified under Sub-s. (1) of Section 37. But as the respondents Nos. 1 and 2 were aggrieved by the amount of compensation they made an application to the Central Government for referring the matter to an arbitrator. It was thereafter that the Additional District Judge acted as an arbitrator and enhanced or raised the amount awarded by the

Special Land Acquisition Officer under Sub-section (1) of Section 37. Sub-section (4) of Section 37 provides that the decision of an arbitrator required to be made under Sub-section (2) of Section 37 would be final. There is no provision in the Act for an appeal against the determination of compensation by the arbitrator. Section 38 of the Act confers power to make rules. Pursuant to Section 38, rules have been framed to give effect to the purpose and object of Section 37. However, I neither the Union of India, nor the State Government has made any rule" under the aforesaid section making provision for an appeal against an award.

5. Learned counsel for the Union of India admitted that there was no provision in the Defence of India Act or the rules framed thereunder prescribing for appeal against an award made by the arbitrator under Sub-section (2) of Section 37. Counsel, however justified the filing of the appeal u/s 11 of the Requisitioning and Acquisition of Immovable Property (Amendment) Act No, 31 of 1960 with the aid of Section 25 which reads as under:--

"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 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 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 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, notification 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 Govt. in exercise of the powers conferred by or under Chap. 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) that provisions of the Defence of India Act, 1962, and the rules made thereunder in so far as these 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 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 Ad"

The question that arises for consideration is whether filing of the appeal could be justified and resort to Section 25 of the said Act could be taken for the aforesaid purpose. Before dealing with the scope of the said section it is important to be noted that an appeal is not an inherent or constitutional right. It is a creature of statute, A right of entering the superior court and invoking its aid to redress an error of the court below is known as an appeal. It is a continuation of the original proceedings and not the inception of a new action. The appellate jurisdiction is the authority of a superior tribunal to review, reverse, fact or affirm the decisions of inferior authority. Such a power is not a necessary part of the legal system. A litigant has a right of appeal to go to a superior court only when it is conferred by a statute. Upon the conferment of such a power, the court would be entitled to exercise the same only in the manner prescribed. The determination of the appellate jurisdiction depends upon the terms of the statutory provisions in which it has its source. If a matter does not fall, it should be dismissed .

6. We have already stated above that the learned Standing Counsel for the Union of India did not point out any provision in the Defence of India Act which provided for the filing of an appeal under it. The provisions referred to for the said purpose was Section 25 of the Amending Act No. 31 of 1968. The aforesaid section has already been quoted by us above. Section 25 of the Amending Act came into force on 12th August, 1968. It has been noted above that the Defence of India Act expired on 10th July, 1968, i.e. six months from 10th Jan., 1968 the date of revocation of the proclamation of emergency. Under the Defence of India Act a large number of immovable properties had been requisitioned. The Union of India felt that all these properties which had been requisitioned were not required to be acquired inasmuch as the cost of acquisition of all these properties could be prohibitive. Upon the repeal of the Defence of India Act the Union Government could have been compelled to vacate the premises requisitioned under the Defence of India Act. It is to meet this extraordinary situation that the Amending Act No. 31 of 1968 was passed. The Objects and Reasons have been given in Gazette of India (Extraordinary) dated 10th Aug., 1968. Its relevant portion is quoted below:

"A large number of immovable properties have been requisitioned under the Defence of India Act 1962. The cost of acquisition of these properties will be prohibitive. On many of these lands valuable structures have been put up. In the majority of the cases it has not been possible to vacate the land and hand them over to the owners. It is therefore, considered necessary that the properties requisitioned under the Act should continue to be subject to requisitions even after the expiry of the Act. For this purpose it is proposed to amend the Requisitioning and Acquisition of Immovable Properties Act, 1952."

After having glossed the objects and reasons of the Amending Act we may now refer to Section 25 itself. After a consideration we find that Section 25 has no application to the present case. Under Sub-section (1) of the said section the properties which have been requisitioned under the Defence of India Act and which had not been released from such requisition before 10th Jan., 1968 had to be deemed to have been requisitioned under the Requisitioning Act. Section 3 of the Requisitioning Act is similar to Section 29 of the Act which empowers the Competent Authority to requisition any property needed or likely to be needed for a public purpose. Sections 8 and 9 lay down the principles for determining compensation. A dispute with regard to the amount of compensation is required to be decided by an arbitrator u/s 8 of the Requisitioning Act. u/s 11 of the Act a person aggrieved against an award of an arbitrator is entitled to prefer an appeal to the High Court.

7. Section 30 of the Defence of India Act also deals with the payment of compensation it provides for determination of compensation in respect of property requisitioned. There is no provision for an appeal against such an order.

8. Section 25 however, does not deal with acquisition at all. It lays down that in cases where the properties requisitioned under the Defence of India Act had not been released the requisition would be deemed to have, been made under the Requisitioning and Acquisition of Immovable Property Act of 1952. This was the limited purpose for which Section 25 had been enacted. Apart from the purpose, the language employed in Section 25 itself indicates that its application was confined to case of requisition of lands which had not been released. It does not apply to a case of acquisition. The Parliament knew the difference between requisition and acquisition. In cases of requisition the properties acquired were vested free from all encumbrances u/s 36 (3) of the Defence of India Act. Since the properties acquired under the Defence of India Act had already vested in the Union of India, there was no occasion for making provision in their favour with respect to those properties. With the vesting of the properties the right, title and interest of the owners had extinguished. Dispute could only arise in respect of a property requisitioned. Inasmuch as the requisition is a temporary affair, and could be justified only so long as the Defence of India Rules were in force. Upon the repeal of the Act requisitions would have been invalidated and the Government of India would have been compelled to return the properties for this limited purpose when Section 25 of the Act was enacted.

9. Sri V. K. learned Counsel for the Union of India referred to provisos (a) and (b) to Section 25. There is nothing in these provisions which can help the learned Counsel.

10. In T. Thippa Reddy and Another Vs. Assistant Commissioner, Bangalore and Another, a Full Bench of the said Court was called upon to consider the scope of Section 25. In the said case appeals had been preferred on invoking Section 11 of the Requisitioning and Acquisition Act on the ground that the awards made u/s 30 of the Defence of India Act in respect of the properties requisitioned must be

deemed to have been made u/s 3 of the Requisitioning Act. The Full Bench was called upon to answer three questions. The answer given by the Full Bench was as follows:

"8-10. For the reasons stated above we answer the question referred to us as 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 Section 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 u/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 u/s 11 of the Requisitioning Act, provided the case does, not fall under proviso (a) to Sub-section (1) of Section 25 of the Requisitioning Act."

From the aforesaid decision it would appear that Section 25 was found to have limited application meant to apply only to cases of requisition. It may be noted that the Full Bench of the Karnataka High Court was not called upon to consider a case of acquisition, but the proposition of law interpreting Section 25 applies with full force to the present case. We find that the reliance placed on Section 25 of the Requisitioning Act was misplaced and that Section 11 of the said Act cannot be applied to justify the maintainability of the appeal in the present case. Section 11 of the Requisitioning Act had nothing in it to justify the filing of the appeal against the award of the Arbitrator made under Sub-section (2) of Section 37 of the Defence of India Act. We have already said above that the Defence of India Act itself had no provision either in it or in rules framed thereunder under which the appeal could be filed against an award.

11. If the Parliament wanted to confer a right of appeal against an award of the arbitrator it should be specifically provided for the same. In the case of Soorajmull Nagarmull Vs. Commissioner of Income Tax, Calcutta, the question involved was whether an appeal would lie where the amount of compensation did not exceed Rs. 5,000/- and it came up for consideration before the Supreme Court. The Supreme Court held that :

"An appeal is a creature of statute. The Arbitrator appointed u/s 19 of the Defence of India Act not being a Court or a Tribunal subject to the appellate jurisdiction of the High Court an appeal would lie only if it is expressly so provided. By the Defence of India Act a right to appeal against the award of the Arbitrator is conferred, but that right is restricted in the manner prescribed by the Rules. It is provided by the second proviso to Rule 19 that an appeal shall not lie against an award where the amount of compensation does not exceed Rs. 5,000/-. The rule does not contemplate that the bar to the maintainability of the

appeal will be effective only if some amount is awarded but the compensation so awarded is less than Rs. 5,000/-." As in the appeal before the Supreme Court the amount awarded was less than Rupees 5,000/- it held that the High Court was justified in not entertaining the appeal. The law laid down in the above case showed that unless a right to appeal has been conferred specifically it cannot be inferred. The right of appeal is only by statute and that it is not in itself a necessary part of the procedure in an action. Reference may be made to the decision of the Privy Council in *Colonial Sugar Refining Co. v. Irving* (1905 AC 369). The same law was laid down in *Newman v. Klausner* ((1922) 1 KB 228). In the previous case the observations made were: "a right of appeal where it exists, is a matter of substance and not of procedure". These cases were followed by the Supreme Court in AIR 1979 745 (SC) wherein Krishna Aiyer, J. speaking for the majority laid down as follows:

"Thus, the right of appeal is paramount, the procedure for hearing canalized so that extravagant prolixity or abuse of process can be avoided and a fair work provided. Amputation is not procedure, but priming may be. Hence in the absence of a specific provision made in the Act, or the Rules conferring power of appeal, it is not possible to hold that the impugned judgment of the Arbitrator can be challenged by an appeal. The submission that since men are fallible, one right of appeal must be deemed to be implied in the procedure, does not appeal to reason. It was for the Legislature to make a provision for appeal, and what has not been done by the Legislature cannot be provided for by the Court."

12. We have already pointed out above that Section 25 provides for deeming of a requisition made under the Defence of India Act to be one under the Requisitioning Act. A fiction is one which is not in actual reality but which the law requires the court to accept as a reality. The legal fiction is created only for some definite purpose, Here the avowed object was to treat the requisitioning by the Defence of India Act to be one under the Requisitioning Act. A fiction meant for use of particular purpose should not be construed to take within its ambit even cases which are not covered by the language employed in a proviso.

13. At this place it is also relevant, to point out that the language of Section 25 is clear and unambiguous. The Courts have primarily to look at the language employed in the section and to give effect to it. The language does not leave any room for an argument that Section 25 could be applied to a case of acquisition as well. Since the language is clear, it is not necessary to take resort to the Objects and Reasons of the Amending Act which has been mentioned above.

14. During the course of the hearing of the appeal since we were tentatively of the opinion that it was not maintainable we enquired from Sri V. K. Burman, Counsel for the Union of India, whether he was prepared to convert this appeal into a writ petition. Sri V.K. Burman expressed his hesitation but thereafter he made a prayer for time being granted to him to contact the authorities for seeking instructions on the point. After hearing the Counsel for the parties we reserved the judgment and gave time to the learned senior Standing Counsel

appearing for the Union of India till 22nd Sep., 1980 to inform us about the course which he wanted to adopt. Sri Burman thereafter informed us that the Union of India was not prepared to convert this appeal. We have failed to understand this adamancy but as the Union of India was sticking to its stand we have no alternative but to dismiss the appeal on the ground of its non-maintainability. We are, therefore, not required to examine the merits of the appeal.

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