The State of Bombay

Vs

Bhanji Munji and Another

Civil Appeal No. 145 of 1952

(CJI M. C. Mahajan, B. K. Mukherjea, T. L. Venkatarama Ayyar, B. Jagannath Das, Vivian Bose JJ)

12.10.1954

JUDGMENT

BOSE J. -

This judgment will govern Civil Appeals Nos. 146 and 147 of 1952 as well. We will first deal with the questions that are common to them all. They arise out of three petitions made in the Bombay High Court for writs of mandamus under article 266 of the Constitution. The writs have been granted and the State of Bombay appeals.

The facts are these. The Governor of Bombay, acting through the Assistant Controller of Accommodation, issued orders under section 6(4)(a) of the Bombay Land Requisition Act, 1948, in Civil Appeals Nos. 145 and 146 of 1952 and under section 5(1) in Civil Appeal No. 147 of 1952, requisitioning the premises of the three respondents. The question is whether these orders are ultra vires. They are attacked on a number of grounds the first of which goes to the root of the matter. It is contended that these two sections are ultra vires articles 19(1)(f) and 31(2) of the Constitution.

The respondents are either the owners or the tenants of the premises requisitioned. In Civil Appeal No. 145 of 1952 the respondents are uncle and nephew. The uncle, who is the first respondent, is the tenant. The second respondent in his nephew. He and his family live with the first respondent in the requisitioned premises. In Civil Appeal No. 146 of 1952 the premises are owned by a trust. The first and second respondents are the trustees and the third respondents claims to be a licensee living on the premises. The State of Bombay contends that he is a tenant but that is no longer of consequence because of the assurance given by the learned Attorney-General that the possession of the petitioners in this case will not be disturbed for any reason arising out of these proceedings. In Civil Appeal No. 147 of 1952 there is only one respondent, a private limited company which occupies the requisitioned premises as a tenant for the purposes of its business.

The Act of 1948 would have expired in April, 1950, but its life was extended by Bombay Act II of 1950. Later, sections 5 and 6 were amended by Bombay Act XXXIX of 1950. As the later Acts were after the Constitution and as the life of the main Act was extended after the Constitution came into force, it is said that they are all hit by article 19(1)(f) and 31(2), firstly, because the restrictions imposed on the right to hold, acquire and dispose of property are neither reasonable nor in the interests of the general public and, secondly, because the Act does not require that there should be a public purpose.

We will first deal with Civil Appeals Nos. 145 and 146 of 1952 where tenants and licensees are concerned.

In our opinion, article 19(1)(f) does not apply to them. In The State of West Bengal v. Subodh Gopal Bose ([1954] S.C.R. 587), and Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd. & Others ([1954] S.C.R. 674), the majority of the Judges were agreed that articles 19(1)(f) and 31 deal with different subjects and cover different fields. There was some disagreement about the nature and scope of the difference but all were agreed that there was no overlapping. We need not examine those differences here because it is enough to say that article 19(1)(f) read with clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold and dispose of it, and as clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the article postulates the existence of property over which these rights can be exercised. In our opinion, this was decided in principle in A. K. Gopalan v. The State of Madras ([1950] S.C.R. 88), where it was held that the freedoms relating to the person of a citizen guaranteed by article 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen is deprived of his liberty by the law of preventive or punitive detention. In the same way, when there is a substantially total deprivation of property which is already held and enjoyed, one must turn to article 31 to see how far that is justified.

It was argued as against this that this rule can only apply when there is a total deprivation of property and article 19(1)(f) cannot be excluded if there is the slightest vestige of a right on which the article can operate. This has also been answered in substance in Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd. & Others ([1954] S.C.R. 674). These articles deal with substantial and substantive rights and not with illusory phantoms of title. When every form of enjoyment which normally accompanies an interest in this king of property is taken away leaving the mere husk of title, article 19(1)(f) is not attracted. As was said by one of us in Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd. & Others ([1954] S.C.R. 674), at page 734 -

> "By substantial deprivation is meant the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that one must seek."

In the present case, the right to occupy the premises has gone as also the right to transfer, assign, let or sub-let. What is left is but the mere husk of title in the leasehold interest : a forlorn hope that the force of this law will somehow expend itself before the lease runs out.

That brings us to article 31. The Act provides for compensation in section 8, so all we have to see is whether the requisition was for a public purpose.

The main Act is pre-Constitution and at that time there were no fundamental rights, accordingly it is understandable that the Act as then framed did not require or specify a public purpose but despite that it did say, in the preamble,

> "whereas it is expedient to provide for the requisition of land",

and sections 5 and 6 as now amended contain the words

> "for the purpose of the State or any other public purpose."

Our present Chief Justice (Mahajan J. as he then was) pointed out in The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga ([1952] S.C.R. 889, 940) that -

> "It is unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purposes of the State or for purposes of the public and that the intention was to benefit the community at large."

Following that decision we hold that the Act is not invalid for this reason.

We now turn to the orders of requisition. They can only be upheld if they conform to the provisions of the Act. The first question, therefore, is, whether they were made for a State or public purpose as set out in sections 5(1) and 6(4) ? Civil Appeals Nos. 145 and 146 of 1952 have similar orders. We will examine them first. They are of different dates but in each case the order runs :

> "Whereas, on inquiry, it is found that the premises specified below had become vacant on/or after - the month of May 1950.
>
> Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act, 1948 (Bom. XXXIII of 1948) the Government of Bombay is pleased to requisition the said premises etc."

The petitions in these two cases were filed on the 30th and 4th of April, 1951, respectively. Affidavits in reply were made on the 18th and 19th of June, and then in August, 1951, the following order was served on the petitioners :

> "In continuation of the order dated etc..... the Government of Bombay is pleased to declare that the premises mentioned in that order were requisitioned for a public purpose, namely housing a person having no housing accommodation on the date of the said order cited above."

It was argued that this subsequent specification of the purpose is of no avail and that in any case it is an evident afterthought and not true.

In our opinion, it is not necessary to set out the purpose of the requisition in the order. The desirability of such a course is obvious because when it is not done proof of the purpose must be given in other ways and that exposes the authorities to the kind of charges we find here and to the danger that the Courts will consider them well founded. But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the Court in some other way. The underlying principle of our decision in Biswabhusan Naik v. The State of Orissa ([1955] 1 S.C.R. 92) applies here.

In the present set of cases there is proof of a public purpose. It is given in the affidavits made on behalf of the State and in the subsequent orders just quoted, namely to house the homeless. At that time the housing situation in Bombay was acute, largely due to the influx of refugees. Questions of public decency, public morals, public health and the temptation to lawlessness and crime, which such a situation brings in its train, at once arose; and the public conscience was aroused on the ground of plain humanity. A race of proprietors in the shape of rapacious landlords who thrived on the misery of those who could find no decent roof over their heads sprang into being. Even the

efficiency of the administration was threatened because Government servants could not find proper accommodation. Milder efforts to cope with the evil proved ineffective. It was necessary therefore for government take more drastic steps and in doing so they acted for the public weal. There was consequently a clear public purpose and an undoubted public benefit.

An attempt was made in argument to view the matter narrowly by concentrating on the individual and picking hole in isolated passages in the affidavit in reply. The argument was as follows. The facts are taken from the affidavit.

In the year 1947 the Government of Bombay passed the Bombay Land Requisition Ordinance and invited applications for the allotment of vacancies from the general public. So far a general public purpose for the public good may be inferred. But the proper working of this scheme depended on the co-operation of the landlords and tenants who were required by the law to give notice of vacancies in occupation as they arose. It was found that in a very large number of cases this was not done with the result that much of the accommodation which should have been available for distribution was suppressed. Government accordingly introduced another class of beneficiaries, namely, those who gave information about what it called "suppressed vacancies" and "nominal occupation". It was decided to allot premises thus discovered to be vacant to the first informant provided he genuinely needed accommodation. The allottees in the present appeals are from that class.

Despite this it was found that the number of applications so far exceeded the number of vacancies that there was not enough accommodation even for Government servants and Government purposes. Accordingly, in 1949, and again in 1950, Government declared that it would not consider further applications from the public as it had decided to restrict the allotments to Government and other public purposes. The result is that at the time of the present allotments there was no intention to benefit the public at large but to keep a privileged preserve for government servants, and in order to put pressure on landlords and tenants to disclose vacancies which could be added to this privileged pool rewards were handed out to houseless first informers by giving them the vacancies they were instrumental in discovering. This, it was hoped, would show landlords and tenants that suppression did not pay and so they might as well obey the law, and that, in turn, would enable Government to benefit the only privileged class of persons it had any real intention of benefiting, namely its own officers and servants. This conclusion is strengthened by the fact that when the decision about suppressed vacancies and first informers was made in 1947, and again when the Bombay Land Requisition Act was passed in 1948, there was no need for a public purpose. So runs the argument.

Another argument was that in the affidavit in reply the State of Bombay says that the purpose of the legislation was to effect an equitable distribution.

> "The policy of the Government was that having regard to the fact that but for such intimation a vacancy would not have come to light at all, it was fair and just and conducive to an equitable distribution of accommodation that the premises should be allotted to the first informant provided he genuinely needs accommodation."

It was contended, and the contention prevailed in the High Court, that a decision to set apart a section of the much needed vacancies for the use of spies and informers as a reward for their services, whether their need was as great as that of other houseless persons or not, was not equitable, and as the purpose of the legislation was said was said to be the equitable distribution of vacant accommodation this fell outside its scope.

In our opinion, this is not a proper approach to the problem. The Constitution authorises requisitions for a public purpose. The purpose here is finding accommodation for the homeless. If therefore a vacancy is allotted to a person who is in fact houseless, the purpose is fulfilled. It might be possible to attack a given allotment on other grounds, such as fraud, invidious discrimination, nepotism, bribery or corruption, but none of that is alleged here. All that is said is that there was no public purpose.

A wide discretion must be left to Government to carry out the policy of the Act. If the number of vacancies is small and the number of the homeless large, it is evident that there must be some picking and choosing. So long as this is done on broad lines of principle and reasonably, the Courts cannot interfere simply because other methods are also possible, even if the Courts think they are better, for in the end Government must be left to determine which of many possible schemes is the best. Government had to weigh many conflicting factors : the urgency of the situation, the need of reasonable dispatch, the expenditure of public funds which would be inevitable on long and protracted inquiries about the private affairs of thousands of applicants for accommodation, the maintenance of public morale by ensuring that the honest landlord who did his duty did not suffer as against the dishonest person who suppressed his vacancies and made large and illicit profits under his "puggree"; and in addition the equitable maxim that "equity helps the vigilant". We hold that neither the order of requisition nor the order of allotment in Civil Appeals Nos. 145 and 146 of 1952 is ultra vires.

In Civil Appeal No. 146 of 1952 a further question arises. Under the Act only premises (to which a special meaning is given) within the meaning of section 4(3) can be requisitioned. It was urged that the premises in this case were not premises within the meaning of that definition, so it was said they could not be requisitioned. The question turns on whether the premises were "let" or "intended to be let". The learned trial Judge threw the burden of proof on the State Government and told its learned counsel that he should proceed to prove this fact if he so desired. He replied that he did not intend to lead any evidence. It was explained to us that Government took up this attitude as it wanted a decision about where the burden lay as the question arises continually and cannot be decided when both parties adduce evidence. The learned Attorney-General gave an assurance that the possession of the petitioners in this case would not be disturbed; all he wanted was a decision on the point. In the absence of any counter evidence the learned trial Judge accepted the fact proved by the petitioner's affidavit and decided the matter in their favour.

On appeal the learned Chief Justice of the Bombay High Court and Bhagwati J. upheld the view of the learned trial Judge Tendolkar J. In our opinion, the burden was wrongly placed. The petitioners came to Court with the allegation that Government had passed an illegal order against them. On the face of it, the order is not illegal. Government has authority under the law to make such orders, and prima facie the order complies with the provisions of the statute. It was therefore the duty of the petitioners to show that the order was illegal. This is particularly so here as the question whether the petitioners had let or had intended to let the building or a part of it was matter on which they had special means of knowledge. However, in view of the learned Attorney-General's assurance, there is no need to go into this matter any further. This appeal will accordingly be dismissed because of the assurance given and there will be no order about costs throughout.

In Civil Appeal No. 147 of 1952, the order of requisition was under section 5(1) but the same questions arise. As in the other two cases, no public purpose is mentioned and, as before, a second order setting out the purpose, housing a person without accommodation, was made in August, 1951. For the reasons already given, we held that there was a public purpose and that the orders here were

valid.

The only other question, namely, whether a mandamus can issue now, becomes unnecessary. Civil Appeals Nos. 145 and 147 of 1952 are allowed and the petitions in these two cases will be dismissed but here also there will be no order about costs throughout.

Civil Appeal No. 146 of 1952 will be dismissed because of the undertaking given by the learned Attorney-General, and the order of the High Court will stand. In view of this we need not decide whether a mandamus can or should have been issued. As we have said, this appeal will be dismissed but there will be no order about costs throughout.

Appeal dismissed.

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