

The State of Bombay

Vs

Ali Gulshan

Civil Appeal No. 229 of 1953

(CJI S. R. Dass, Sayed Jafar Imam, T. L. Venkatarama Ayyar, N. H. Bhagwati, N. Chandrashekar Aiyar JJ)

04.10.1955

JUDGMENT

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CHANDRASEKHARA AIYAR J. -

Was the Government of Bombay entitled, under clause (a) of sub-section (4) of section 6 of the Bombay Land Requisition Act, 1948 (Bombay Act XXXIII of 1948), to requisition, as for a public purpose, certain premises for "housing a member of the staff of a foreign consulate" ? , is the question we have to consider in this appeal, which has arisen out of a writ petition filed under article 226 of the Constitution by the respondent in the Bombay High Court to restrain the State of Bombay from taking such action.

On the hearing of the petition before Tendolkar, J., the State succeeded on the ground that the purpose for which the requisition was made was a "public purpose" within the meaning of the Act. But, on appeal, it was held that though the requisition was for a public purpose, the requisition order was invalid, as the public purpose must be either a purpose of the Union, or a purpose of the State and in this particular case the accommodation being required for housing a member of a foreign Consular staff was a Union purpose, which was outside the scope of the powers of the State.

Clause (a) of sub-section (4) of section 6, omitting portions unnecessary for our present purposes, runs in these terms :-

"The State Government may, by order in writing, requisition the premises for the purpose of a State or any other public purpose, and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient".

The validity of the Act is not questioned as unconstitutional or as beyond the scope of the legislative competence of the State. As the premises were required for housing a member of the Staff of a Consulate, there can be no doubt that it was wanted for a public purpose.

The ultimate source of a authority to requisition or acquire property is be found in article 31 of the Constitution. The requisition or acquisition must be for a public purpose and there must be compensation. This article applies with equal force to Union legislation and State legislation. Items 33 and 36 of List I and List II of the Seventh Schedule to the Constitution empower respectively Parliament and the State Legislatures to enact laws with respect to them.

The reasoning by which the learned appellate Judges of the Bombay High Court reached their conclusion is shortly this. There can be no public purpose, which is not a purpose of the Union or a purpose of the State. There are only these two categories to consider under the statute, as the words "any other purpose" in the particular context should be read ejusdem generis with "the purpose of the State". The provision of accommodation for a member of the foreign consulate staff is a "purpose of the Union" and not a "purpose of the State".

We are unable to uphold this view as regards both the standpoints. Item 33 in the Union Legislative List (List I) refers to "acquisition or requisitioning of property for the purposes of the Union". Item 36 in the State List (List II) relates to "acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III". Item 42 of the Concurrent Legislative List (List III) speaks of "the purpose of the Union or of a State or for any other public purpose". Reading the three items together, it is fairly obvious that the categories of "purpose" contemplated are three in number, namely, Union purpose, State purpose, and any other public purpose. Though every State purpose or Union purpose must be a public purpose, it is easy to think of cases where the purpose of the acquisition or requisition is neither the one nor the other but a public purpose. Acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not strictly be a State or Union purpose. When we speak of a State purpose or a Union purpose, we think of duties and obligations cast on the State or the Union to do particular things for the benefit of the public or a section of the public. Cases where the State acquires or requisitions property to facilitate the coming into existence of utilitarian institutions, or schemes having public welfare at heart, will fall within the third category above-mentioned.

With great respect, we are constrained to say that the ejusdem generis rule of construction, which found favour in the court below for reaching the result that the words "any other public purpose" are restricted to a public purpose which is also a purpose of the State, has scarcely any application. Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied. If the words "any other public purpose" in the Statute in question have been used only to mean a State purpose, they would become mere surplusage; Courts should lean against such a construction as far as possible.

Even if it is conceded that the law contemplates only two purposes, namely, State purpose and Union purpose, it is difficult to see how finding accommodation for the staff of a foreign consulate is a Union purpose and not a State purpose. Item 11 in the Union list specifies "diplomatic, consular and trade representation" as one of the subjects within the legislative competence of Parliament, and under article 73 of the Constitution, the executive power of the Union shall extend to all such matters. It can hardly be said that securing a room for a member of the staff of a foreign consulate amounts to providing for consular representation, and that therefore it is a purpose of the Union for which the State cannot legislate. It was conceded by Mr. Rajinder Narain, Counsel for the Respondent, that there is no duty cast upon the Union to provide accommodation for the consulate staff, and this must be so, when we remember that the routine duties of a Consul in modern times are to protect the interests and promote the commercial affairs of the State which he represents, and that his powers, privileges and immunities are not analogous to those of an ambassador. The trade and commerce of the State which appoints him with the State in which he is located are his primary concern. The State of Bombay is primarily interested in its own trade and commerce and in the efficient discharge of his duties by the foreign consul functioning within the State. We are inclined

to regard the purpose for which the requisition was made in this case more as a State purpose than as a Union purpose.

In any event, as already pointed out, "other public purpose" is a distinct category for which the State of Bombay can legislate, as the acquisition or requisitioning of property except for the purposes of the Union, is within its competence under item 36 of the State List.

There is another way of looking at the question involved. An undertaking may have three different facets or aspects, and may serve the purpose of a State, the purpose of the Union and a general public purpose. Even if one may regard the requisition of a room for the accommodation of a member of a Consulate as one appertaining to a Union purpose, it does not necessarily cease to be a State purpose or a general public purpose. In this view also, the requisition in this case must be held to have been validly made.

For the reasons given above, the appeal is allowed and the order of Tendolkar J., is restored with costs payable to the appellant by the respondent throughout.

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