

The Union of India

Vs

Ram Kanwar and Others

Civil Appeal No. 322 of 1960

(P. B. Gajendragadkar, M. Hidayatullah, K. Subha Rao JJ)

29.08.1961

JUDGMENT

SUBBA RAO, J. -

This appeal by special leave is preferred against the judgment of a division bench of the Circuit Bench of the Punjab High Court at Delhi confirming that of a single Judge of that High Court issuing a writ of mandamus against the Union of India directing to restore possession of the flat requisitioned by the said Government to the respondents.

One Babu Ram was the owner of Flat No. 5, Aggarwal Building, Connaught Circus, New Delhi; respondents 1 to 6 are his sons and widow. By an order dated April 14, 1943, the Government of India requisitioned the said flat under rule 75-A (1) of the Defence of India Rules for a period of one year from April 15, 1943 to April 14, 1944. The said flat was put in the occupation of one Hardie of the Indian National Airways. The period of requisition was extended from time to time, and finally by an order dated April 2, 1946, the flat was requisitioned from April 15, 1946, until further orders of the Central Government. After Mr. Hardie vacated the flat, it was allotted to other officers. Babu Ram requested the Government from time to time to de-requisition the said flat for his personal use. He represented that he was suffering from heart trouble and was continuously keeping indifferent health, that two of his sons had got married, and that in those circumstances it had become impossible for him to continue to live in their small house in a narrow lane; but the Government of India rejected his request on the ground that on surrender by the officers of the Indian National Airways it would be required for allotment to Central Government officers. Babu Ram died on October 24, 1951. It appears that four or five months in 1947 the flat was vacant and thereafter it was occupied by refugees from West Pakistan. It was afterwards given to the present respondent No. 7, Triveni Kala Sangam. On November 4, 1952, respondent No. 1 again requested the Government to de-requisition the flat mainly on the ground that the said flat was not in use of the officers of the Central Government but was put in possession of Triveni Kala Sangam, which was a private dance and music school. As no reply was given to that request, the said respondent sent a reminder on June 26, 1953, and to that he received a reply to the effect that "the matter is receiving attention and further communication will follow in due course. " On September 16, 1953, the Government informed the first respondent that he could execute a lease deed in favour of the Government in respect of the said flat. As the appellants did not put the respondents in possession of the said flat, they had no alternative but to file a petition for a writ of mandamus in the High Court of Punjab. The petition was heard by Falshaw, J., and the learned Judge issued a writ of mandamus on October 19, 1954, directing the appellants to put the respondents in possession of the flat. Against the said order, on November 26, 1954, the appellants filed a Letters Patent appeal in the Circuit Bench of the Punjab High Court at Delhi. The appeal was filed within 30 days from the date

of the said order after excluding the time taken for obtaining certified copies of the necessary documents but more than 20 days thereafter. The appeal was heard by a division bench of the said High Court consisting of the Chief Justice and Mehar Singh, J. The learned Judges held that the appeal was filed out of time and that there was not sufficient reason for excusing the delay. They also went into the merits of the case and agreed with Falshaw, J., that a case had been made out for issuing a writ. With the result that the appeal was dismissed. Hence the present appeal.

Learned Attorney-General, appearing for the appellants, contends, that the Letters Patent appeal, it having been filed within 30 days from the date of the judgment of Falshaw, J., was within time, and that, in any view, having regard to the fluid state of the law on the question whether the period prescribed by the Limitation Act or the rule made by the High Court would govern that appeal, there was sufficient cause for excusing the delay. On the merits he argues that the requisition made under rule 75-A of the Defence of India Rules (hereinafter called the Rules) was continued under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947 (Act No. 17 of 1947) (hereinafter called the 1947 Act), whereunder the appropriate Government was given the power to use or deal with a requisitioned land in such manner as may appear to it to be expedient, that in exercise of the said power the said Government put Triveni Kala Sangam in possession of the same, and that under section 24(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter called the 1952 Act), the said requisition shall be deemed to be property requisitioned under section 3 of the said Act and that under the said section the said purpose must be deemed to be a public purpose, being the purpose of the Union and, as that purpose did not cease to exist, the respondents are not entitled to ask for de-requisition of the said flat.

Mr. A. V. Viswanatha Sastri, learned counsel for the respondents, seeks to sustain the order of the High Court both on the question of limitation as well as on merits.

Three questions fall to be considered in this appeal, namely (1) what is the period of limitation prescribed for an appeal against an order of a Single Judge of the Punjab High Court to a division bench of the same High Court ? (2) if the appeal was preferred out of time, was there a sufficient cause for excusing the delay in preferring the appeal ? (3) are the respondents now legally entitled to ask the Central Government to de-requisition the said premises under the 1952 Act ?

To appreciate the first contention it is necessary to read the relevant provisions of the Limitation Act, the clauses of the Letters Patent and the rules made by the High Court.

The Indian Limitation Act, 1908.

"Section 29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule,..... "

The First Schedule

#Description of appeal Period Time from of which limitation period begins to run.151. From a decree or order of any of the High Courts to Judicature at Fort William, Madras and Bombay, Twenty The date of of the High Court days the decree of Punjab in the or order. exercise of its original jurisdiction.##

LETTERS PATENT FOR THE HIGH COURT OF LAHORE.

Clause 27, And WE do further ordain that it shall be lawful for the High Court of Judicature at Lahore from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adopting as far as possible the provisions of the Code of Civil Procedure, being an Act, No. V of 1908, passed by the Governor-General in Council and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction respectively.

Clause 37. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915; and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.

Rules and Orders of the High Court of Punjab.

Rule 4 : No memorandum of appeal preferred under clause 10 of the Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation.

It is clear from the aforesaid provisions that while under Article 151 of the Limitation Act a period of 20 days is prescribed for preferring an appeal from an order of the High Court of Punjab in the exercise of its Original Jurisdiction, under rule 4 of High Court Rules for an appeal under clause 10 of the Letters Patent a period of limitation of 30 days is provided. If Article 151 applies, the Letters Patent appeal in the present case was clearly barred. But if rule 4 could be invoked, then the appeal was well within time. The combined effect of the provisions may be stated thus : Under clause 27 of the Letters Patent, the High Court of Judicature of Lahore has the power to make a rule prescribing the period of limitation in respect of appeals from orders made by that Court in exercise of its Original Jurisdiction to a division bench of that High Court. Under clause 37 thereof, the provisions of the Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council and, therefore, any rule made in exercise of a power conferred under the Letters Patent must necessarily be subject to the provisions of the Limitation Act which is a law made by the Legislative Council. Article 151 of the Limitation Act prescribes the period of limitation of 20 days for preferring an appeal against an order made by the High Court in exercise of its original jurisdiction, and if there is no other limitation on that section, rule 4 of the High Court Rules must give way to the said Article. But section 29(2) of the Limitation Act limits the scope of that section, for it says that where a special or local law prescribes for an appeal a period prescribed therefore in the said Schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that Schedule, that is, if there is a special or local law prescribing a period of limitation, it will be deemed to be the period of limitation prescribed by the First Schedule to the Limitation Act in respect of an appeal covered by that rule. To state it differently, if rule 4 is a special law, the Limitation Act itself must be deemed to prescribe the period of limitation mentioned under that rule for the class of cases covered by the said rule, and to that extent the rule derogates from Article 151 of the First Schedule to the Limitation Act. Article 151 must be read subject to the special law. In this view, the argument that clause 37 of the Letters Patent makes the rule made by the High Court subject to the Limitation Act and, therefore, that Article 151 shall prevail over rule 4 has no force. Briefly stated, the legal position is this : Under clause 27 of the Letters Patent, the High Court has power to make a rule prescribing the period of limitation for a Letters Patent appeal against an order of a single Judge made in exercise of the original jurisdiction of the High Court, and by reason of

clause 37 thereof, the said rule is subject to the provisions of the Limitation Act; but the Limitation Act itself saves the operation of the said rule. With the result that rule 4 applies to such an appeal, whereas Article 151 of the Limitation Act will govern appeals not covered by rule 4 or appeals, from orders made by other High Courts in exercise of their original jurisdiction, if no rule similar to rule 4 is made by the said High Court or High Courts.

In the premises the only question to be decided is whether rule 4 is a special law within the meaning of section 29(2) of the Limitation Act. Rule 4 is made by the High Court in exercise of the legislative power conferred upon the said High Court under clause 27 of the Letters Patent. As the said rule is a law made in respect of special cases covered by it, it would certainly be a special law within the meaning of section 29(2) of the Limitation Act.

This view was accepted by the Punjab High Court in Punjab Co-operative Bank Ltd. v. Official Liquidators, Punjab Cotton Press Company, Ltd. (in liquidation) (A. I. R. 1941 Lahore 57 (F. B.)). There, a full bench of that High Court held that the statutory rules framed by the High Court under clause 27 of the Letters Patent under the authority delegated to it by His Majesty who, in turn, was acting under the powers conferred on him by Act of Parliament, are a "special law". We agree with this view. It is not necessary to deal with other decisions cited at the Bar, for in none of them the scope of section 29 of the Limitation Act was considered. Indeed, Mr. A. V. Viswanatha Sastri has not contended that rule 4 is not a special law within the meaning of section 29 of the Limitation Act. If so, it follows that under rule 4 an appeal could be filed within 30 days from the date of the order of Falshaw, J., and the appeal having been filed on the twenty-third day, it was well within time.

In this view, the second question does not fall to be considered in this appeal.

On merits, the question turns upon the construction of the relevant provisions of the Defence of India Rules, the 1947 Act and the 1952 Act. For easy reference and comparison, the relevant provisions may be read at one place.

The Defence of India Rules

Rule 75-A. (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning.

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(2) Where the Central Government or the Provincial Government has requisitioned any property under sub-rule (1) that Government may use or deal with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official Gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

The Requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952).

Section 24. (1) The Requisitioned Land (Continuance of Powers) Act, 1947 (XVII of 1947), the

Delhi Premises (Requisition and Eviction) Act, 1947 (XLIX of 1947) and the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 (III of 1952) are hereby repealed.

(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of either of the said Acts or the said Ordinance shall, on the commencement of this Act, be deemed to be property requisitioned under section 3 of this Act, and all the provisions of this Act shall apply accordingly.

Section 3. (1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority -

(a) shall call upon the owner or any other person who may be in possession of the property by notice in writing specifying therein the purpose of the requisition to show cause, within fifteen days of the date of the service of such notice on him, why the property shall not be requisitioned;

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Section 6. (1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the change caused by reasonable wear and tear and irresistible force :

Provided that where the purpose for which any requisitioned property was being used ceased to exist, the Central Government shall, unless the property is acquired under section 7, release that property, as soon as may be, from requisition.

The Defence of India Rules were issued under the Defence of India Ordinance, 1939, which was repealed by the Defence of India Act, 1939, but the said rules were kept alive by virtue of the provisions of section 21 of the said Act. Under rule 75-A of the said Rules, the power to requisition a property was conditioned by the purposes for which it could be so requisitioned; though it was left to the subjective satisfaction of the Government to decide whether it was necessary or expedient to do so. After requisition, the Central Government was authorized to deal with the property in such manner as might appear to it to be expedient. The expediency in the context can only mean expediency in relation to the purposes for which the property was requisitioned. The wide import of the word "expedient" in Sub-section (2) must necessarily be limited to the purposes under sub-section (1) as otherwise we would be attributing to the Legislature an intention to confer a power on the Government to requisition a property of false pretences. Act 17 of 1947 was enacted to provide for the continuance of certain emergency power in relation to land which, when the Defence of India Act expired, was subject to requisition effected under the rules made under that Act. "Requisitioned land" was defined to mean an immovable property which at the commencement of the said Act was subject to any requisition effected under the said rules. Under section 3 thereof notwithstanding the expiration of the said Act and the rules made thereunder, the requisitioned land was continued to be subject to requisition until the expiry of the said Act, and it authorized the appropriate Government "to use or deal with any requisitioned land in such manner as may appear to it to be expedient". The object of the Act was only to continue the requisition after the expiry of the life of the defence of India Act and not to enlarge the powers of the Government in respect of the requisitioned land. The land requisitioned under the Ordinance continued to be subject to the

requisition. The expression "continue" clearly brings out the idea that the scope of the section was only to give a further lease of life to the order which otherwise would have expired. The words "may use or deal with any requisitioned land in such manner as may appear to it to be expedient" were only a repetition of the words in rule 75-A (2) of the Rules conferring authority on the Government to do certain things in respect of requisition; and the scope of the authority under section 3 of the 1947 Act must be similar to that under rule 75-A (2) of the Rules. Under section 24(1) of the 1952 Act, the 1947 Act was repealed. Under sub-section (2) thereof, it was provided that on the commencement of the Act the properties which were subject to requisition under the provisions of the earlier Act shall be deemed to be property requisitioned under section 3 of the Act and that all the provisions of the Act shall apply accordingly.

Relying upon the deeming clause, it is contended that the requisition of the land and the user of the same by the Government under the 1947 Act should be deemed to be a requisition made, under section 3 of the 1952 Act, for a public purpose, being the purpose of the Union, and as that purpose, namely user by the Triveni Kala Sangam, had not ceased, the appellants were not bound to de-requisition under section 6 of the Act. But the fiction created by section 24(2) of the Act would operate only upon the requisition already made. The fiction could not validate any illegal act of the Government. Therefore, the question is what was the effect of the earlier requisition under the Rules as well as under the 1947 Act. If the requisition originally made was for purposes mentioned in rule 75 of the Rules and continued under section 3 of the 1947 Act only for the said purposes, under section 3 of the 1952 Act the requisition of the property made for the said purposes would be deemed to be a requisition for a public purpose being a purpose of the Union. But the validity of the requisition could be judged on the basis of the pre-existing statutes and not on the basis of the provisions of the sections of the 1952 Act. The result is that the requisition of a property made for public purposes under rule 75-A of the Rules would be deemed to be a requisition under section 3 of the Act and all the provisions of the Act would apply accordingly. It is said that under the Rules a requisition need not have been made for a public purposes; but the express provisions of rule 75-A of the Rules negative this contention. Though no notice stating the purpose is contemplated under rule 75-A of the Rules, the requisition could have been made only for the four public purposes mentioned in rule 75-A of the Rules. We have pointed out that the requisition for the said purposes only continued under the 1947 Act. The purposes for which it was requisitioned must, therefore, be deemed to be the purposes mentioned in rule 75-A of the Rules. Even if section 5 of the Act was excluded on the ground that no notice was issued under rule 75-A of the Rules, the proviso to section 6 of the Act would be attracted. Under that proviso, where the purposes for which any requisitioned property was being used ceased to exist, the Central Government shall release the property, as soon as may be, from requisition. In the present case, on the facts it is manifest that the flat was not used for any of the purposes for which it was requisitioned for a number of years; and indeed, when the Act came into force, it was used only for locating the Triveni Kala Sangam, which is clearly not one of the purposes for which the flat was requisitioned. If so, it must be held that the purpose for which the property was requisitioned ceased to exist and the respondents have acquired a right to be put in possession thereof under the said proviso.

Even so, the learned Attorney General contends that the purpose for which the building is now utilised, namely, for the Triveni Kala Sangam, is a public purpose, being the purpose of the Union, within the meaning of section 3 of the Act, and, therefore, the respondents are not entitled for de-requisition under the proviso to section 6 of the Act.

It is argued that every Union purpose is a public purpose. The argument proceeds that under the Constitution the Parliament may make laws with respect to any of the matters enumerated in List I

of the Seventh Schedule to the Constitution, and also in respect of any matters enumerated in List III thereof, that under Article 73 the executive power of the Union extends to the said matters and that, therefore, the requisition of property made for any of the purposes connected with such matters, whether in regard thereof laws were made or not, would be a requisition for a public purpose, being a purpose of the Union, within the meaning of section 3(1) of the 1952 Act. In support of this contention reliance is placed upon the decision of this Court in *The State of Bombay v. Ali Gulshan* ([1955] 2 S. C. R. 867). There is a fallacy underlying this argument. The effect of the fiction is that the requisition made under rule 75-A of the Rules is a requisition under section 3 of the 1952 Act, that is, if the requisition was made for purposes mentioned in rule 75-A of the Rules, it would be deemed to be one for a public purpose, being the purpose of the Union, within the meaning of section 3 of the 1952 Act. The criterion is not, therefore, whether a particular purpose for which a building was used when the Act came into force was a public purpose, being the purpose of the Union, within the meaning of section 3 of the 1952 Act, but whether it was requisitioned for one of the purposes mentioned in rule 74-A of the rules. If those purposes ceased to exist, the proviso the section 6 of the 1952 Act made in obligatory for the Government to release the property. As the flat was being used for a purpose other than that for which it was requisitioned, the respondents were entitled to be put in possession thereof. In this view, we do not propose to express our opinion on the validity of the contention raised by the learned Attorney-General based upon the decision of this Court.

In the result the appeal fails and is dismissed. Costs will be governed by the order dated 11-8-61.

Appeal dismissed.

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