

Fonseca Private Ltd. and Others

Vs

L. C. Gupta and Others

Civil Appeal No. 769 of 1972

(A. N. Grover, A. K. Kukherjea JJ)

12.09.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Delhi High Court in a writ petition filed by M/s. Fonseca Pvt. Ltd. and others challenging an order made by Shri L. C. Gupta, Deputy Secretary to the Government of India, Ministry of Works and Housing, purporting to have been made under Rule 155 of the Defence of India Rules read with Section 3(48) of Defence of India Act, 1971, directing the said company, and others who "may be in occupation", to vacate the building known as 1, Man Singh Road, New Delhi, within seven days from the date of the notice. The writ petition was dismissed by the High Court.

2. It is not necessary to state the facts in detail. In our opinion the matter could be disposed of on one ground and it was wholly unnecessary for the High Court to have decided the other points which were raised before it.

3. The impugned order, dated December 18, 1971, which was addressed to M/s. Fonseca Pvt. Ltd. through its Directors and to other persons mentioned in the order is as follow :

"Whereas I, L. C. Gupta, Deputy Secretary to the Government of India, Ministry of Works and Housing, am satisfied that the premises known as 1, Man Singh Road, New Delhi is a public premises as defined under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971; and

Whereas I am satisfied that the said premises are required in connection with the defence of India and civil defence; and

Whereas I am satisfied that you are in unauthorised occupation as defined under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in the said premises.

Therefore, I, L. C. Gupta, Deputy Secretary to the Government of India, Ministry of Works and Housing, acting under Rule 155 of the Defence of India Rules, 1971, read with Section 3(48) of Defence of India Act, 1971, do hereby direct you to vacate the premises within seven days from the date of issue of the notice, failing which, action as provided under the aforesaid rules shall be taken.

(Sd.) L. C. GUPTA, Deputy Secretary to the Government of India, Ministry of Works and Housing. "##

4. Rule 155 of the Defence of India Rules, to the extent it is material, may next be reproduce :

"155. Eviction of unauthorised persons from public premises. - (1) Where the Central Government is of opinion that any public premises as defined in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), are required for any purpose connected with the defence of India and civil defence, the public safety or interest, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community, and the Central Government is satisfied that such premises are in unauthorised occupation as defined in that Act, the central Government may, after recording the reasons for such satisfaction, make an order of eviction directing that the public premises shall be vacated by all persons who may be in occupation thereof or of any part thereof within such period as may be specified in the order.

(2) If any person refuses or fails to comply with the order of eviction within the period specified therein, any officer authorised by the Central Government in this behalf (hereinafter in this rule referred to as the authorised officer) may evict that person from, and take possession of, the public premises and may for that purpose use such force as may be necessary.

#(3)(4)
.....##

(5) If any person does not vacate the public premises in compliance with an order made under sub-rule (1), such person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#(6) "##

5. Section 3 of the Defence of India Act empowers the Central Government to make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or efficient conduct of military operations or for maintaining supplies and services essential to the life of the community. Under subsection (2) of Clause 48 rules, in particular, can be made with regard to the eviction of unauthorised occupants from such public premises as defined in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as are, in the opinion of the Central Government required for the purposes connected with the defence of India and civil defence etc. The validity of Rule 155 was not canvassed and we shall proceed on the basis, for the purpose of disposing of the present case, that it was a valid rule. Now under this rule it is only the Central Government that has to form the opinion that any public premises are required for any of the purposes mentioned in the rule and has to be satisfied that such premises are in unauthorised occupation as defined in Act 40 of 1971 and then it has to record reasons for such satisfaction while making an order of eviction directing that the public premises shall be vacated by all persons who may be in occupation thereof within a specified period. The consequences of any person disobeying such an order are serious as such a person shall be liable to imprisonment or fine or with both under sub-rule (5) of Rule 155. Any order, therefore, made under that rule must strictly comply with the requirement of the rule itself. It is common ground and cannot be disputed that Shri L. C. Gupta, Deputy Secretary, who made the order could do so only if he had the requisite authority under the Government of India (Transaction of Business) Rules, 1961, which were framed in exercise of the powers conferred by Clause 3 of Article 33 of the Constitution. Rule 11 is in the

following term :

"Responsibility of Departmental Secretaries. - In each department, the Secretary (which term includes the Special Secretary or Additional Secretary or Joint Secretary in independent charge) shall be the administrative head thereof, and shall be responsible for the proper transaction of business and the careful observance of those rules in that department."

Rule 3 says, inter alia, that all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by or under the general or special directions of the Minister in charge.

6. According to the appellants Shri L. C. Gupta was not authorised under the Rules of Business to exercise the power of the Central Government. Although in the return filed by the respondents it seems to have been maintained that the order made by Shri L. C. Gupta was by a competent authority but before the High Court at the stage of arguments it was conceded that he had no authority under the Act to act for and on behalf of the Central Government. The High Court found that the reasons recorded in the order of Shri L. C. Gupta could not be said to be reasons recorded by the Central Government. The High Court, however, proceeded to look at the contents of a file which was produced and the notings made thereon by the Joint Secretary and the Secretary of the Ministry for the purpose of finding out whether the requirements as to formation of opinion and satisfaction as also the recording of reasons for that satisfaction as required by Rule 155 had been fulfilled. The High Court, after taking into consideration the facts relating to the derivative title of the appellants which had been set up, came to the following conclusion :

"The derivative title of petitioner is therefore of no help and on the date of the order they were in unauthorised occupation of the building for precisely the same reasons which were accepted by the Minister."

7. Mr. A. K. Sen, for the appellants has strenuously assailed the decision given by the High Court with regard to the title of the appellants relevant for deciding the question whether they were in unauthorised occupation of the premises in question. That according to Mr. Sen was the subject-matter of separate proceedings under Act 40 of 1971. Indeed in those proceedings the learned District Judge of Delhi had, by order, dated February 5, 1972, directed the Estate Officer, who had issued a notice to show cause against the order of eviction under Section 4 of that Act, to allow the appellants to lead evidence on the question of title which had been shut out by the Estate Officer. Mr. Sen has maintained that the determination of the question whether the property No. 1, Man Singh Road was public premises as defined by Section 2(e) of the aforesaid Act and whether the appellants were in unauthorised occupation within the meaning of clause (g) of Section 2 of that Act had to be made in accordance with the procedure prescribed thereby and the same could not be short-circuited or supplanted by the satisfaction of the Central Government while making an order under Rule 155 of the Defence of India Rules. Mr. F. S. Nariman the learned Additional Solicitor-General, on the other hand, contends that Section 37 of the Defence of India Act provides that the provisions of that Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act. According to him the action taken under Rule 155 is quite independent of the proceedings under Act 40 of 1971. [The Public Premises (Eviction of Unauthorised Occupants) Act, 1971].

8. In our judgment it is wholly unnecessary to decide in these proceedings the above question as

also certain other contentions which were raised by Mr. Sen relating to the applicability of the rule of natural justice even to proceedings under Rule 155 of the Defence of India Rules and the necessity for communication of the order made under that Rule. Mr. Nariman quite properly chose not to go back on the concession which had been made before the High Court that Shri L. C. Gupta who had made the impugned order under Rule 155 had no authority whatsoever to exercise the powers of the Central Government. It is the Central Government alone that is empowered to make an order under that rule and under the Rules of Business it would be the Minister or the Officer empowered thereby who alone could exercise those powers in the name of the President. Shri L. C. Gupta admittedly having no such power the order made by him was wholly illegal, ineffective and void. Such an order on the fact of it deserved to be quashed and ought to have been quashed on that ground alone by the High Court without deciding the other points some of which are sub-judice in proceedings under Act 40 of 1971.

9. For the reasons given above the appeal is allowed and the impugned order, dated December 18, 1971, made under Rule 155 of the Defence of India Rules is hereby set aside. The appellants will be entitled to costs in this Court but the parties will be left to bear their own costs in the High Court.

10. We would like to make it clear that in the view that we have taken any observations made by the High Court or conclusions arrived at on the various points decided by it will not be taken into consideration in any proceedings pending or to be taken in future by either party.

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