

Harish Chander Nigam

Vs

State of U.P. and Others

Civil Appeals Nos. 559-560 of 1970

(N. L. Untwalia, O. Chinnappa Reddy JJ)

21.01.1980

JUDGMENT

UNTWALIA, J. –

These two appeals by special leave have been heard together as common questions of law and fact are involved in them. We shall state the facts of Civil Appeal N. 559 of 1970 in which the appellant is Shri Harish Chander Nigam. The facts of the other appeal viz. Civil Appeal No. 560 of 1970 in which the appellant is Shri Amar Singh are almost identical except one which shall be stated hereinafter. The plot concerned in Nigam's appeal is plot no. 60 and in the other appeal it is plot no. 60 Nigam made an application to the Director of Industries, Uttar Pradesh for allotment of the plot to him for industrial purposes. By an order dated November 22, 1956 the application was "provisionally accepted subject to the final approval of government". Finally he was informed by the Manager of Industrial Estate, Kalpi Road, Kanpur in his letter dated October 31, 1962 "that the State Government has not approved the allotment in your favour and the provisional allotment made in your favour stands cancelled". But it appears after the provisional allotment Nigam was put in possession of the land. Steps were to be taken for his eviction after giving information as to the cancellation of the allotment in the letter aforesaid dated October 31, 1962. But before these steps were taken and possession was recovered from him the District Magistrate, Kanpur requisitioned the plot under Section 29 of the Defence of India Act, 1962, hereinafter called the Act. This order is dated December 7, 1963. The order reads as follows :

Whereas in my opinion it is necessary and expedient to requisition unit no. 60 in the Government Industrial Estate, Kanpur specified below, of which you are the person in possession for efficient conduct of military operations.

And whereas the powers of requisitioning under Section 29 of the Defence of India Act, 1962 (Central Act No. 51 of 1962) have been conferred on me by the government of Uttar Pradesh under Notification No. 5589/IB-I-LA/63, dated January 14, 1963 issued by Revenue (B) Department - /I. B. Bhardwaj, District Magistrate, Kanpur hereby requisition the aforesaid unit and order that possession thereof be delivered by December 11, 1963 to the General Manager, Ordnance Factory, Kalpi Road, Kanpur, after removing therefrom any furniture or other articles.

I further order that the Tahsildar Kanpur shall arrange for the delivery of possession of the aforesaid unit to the General Manager, Ordnance Factory, Kalpi Road, Kanpur at the expiry of the period indicated above, if the possession is not delivered in compliance of the above order.

2. Pursuant to the above order possession was taken from appellant Nigam on January 2, 1964 and

was handed over to the General Manager, Ordnance Factory, Kanpur. No steps were taken by the Industries department for taking formal or symbolical possession of the plot in question after it was requisitioned by the District Magistrate. Then came the derequisitioned order passed by the District Magistrate under Section 35 of the Act on November 20, 1967. In passing it may be mentioned here that the appellant had kept his stores in two of the rooms standing in the land. But this fact is not very material for the purpose of deciding the matter in issue before us.

3. The derequisition order reads as follows :

Regarding requisition of Units Nos. 6 and 60 Industrial Estates for starting Artisan Training School by the Ordnance Factory, Kalpi Road, Kanpur.

#### ORDER

Whereas the property specified in the schedule hereto appended was requisitioned by the order of the District Magistrate, Kanpur dated December 7, 1963 until further order.

And whereas it has now been decided that the said property shall be released from requisition with immediate effect.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 35 of the Defence of India Act 1962 (Act No. 51 of 1962), I, S. S. Sidhu, District Magistrate, Kanpur being the competent authority do hereby declare that the said property is released from requisition, and hereby specify the Director of Industries, Kanpur as the person to whom the possession of the said property shall be given.

4. Thereupon the petitioner filed a writ petition in the Allahabad High Court to issue a writ in the nature of mandamus against the respondent directing to deliver possession of the property in dispute to the appellant and not to deliver possession to any other person. It appears, however, that possession of the property had been given to the Industries department. The petitioner unsuccessfully prosecuted his writ petition before the learned single Judge of the High Court. He failed in appeal also. Hence the present appeal.

5. One extra fact which need be mentioned in regard to the case of Amar Singh is that after derequisition and after possession of the plot was taken by the Industries department of the government of Uttar Pradesh the plot was allotted to Mrs. B. K. Anand, respondent 5 in Civil Appeal No. 560 of 1970. The other facts of his case are identical.

6. Learned counsel for the appellants submitted before us that irrespective of the disputed question of fact whether there was final allotment in favor of the appellant or not, since requisition order had been served on him and possession had been taken from him, the property and its possession on derequisition ought to have been released to him. It could not be made in favour of the Industries department. Learned counsel for the State, on the other hand, submitted that since the appellant had no semblance of right, title or interest left in the plot after cancellation of the provision allotment in his favour he had no locus stands to ask for a writ of mandamus for delivery of possession of the plot to him. Direction was given for releasing the plot in favour of the Industries department and if the appellant is so advised he may recover possession of the plot on establishment of his right, title or interest in the plot in a competent court in accordance with subsection (2) of Section 35 of the Act. It was further submitted in case of Amar Singh that the plot had been allotted to Mrs. B. K. Anand and she cannot be dispossessed now.

7. We shall read the two provisions first and enunciate the law engrafted in them and then proceed to pass the final orders in the two appeals as their respective facts and circumstances may warrant.

8. Sections 29 and 35 read as follows :

29(1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that government may by order in writing requisition any immovable property and may make such further orders as appear to that government to be necessary or expedient in connection with the requisitioning :

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purpose mentioned in that sub-section.

35(1) Where any property requisitioned under Section 29 is to be released from such requisition, the government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person who appears to the government or, as the case may be, the person authorised as aforesaid, to be entitled to the possession of the property at the time such order is made.

(2) The delivery of possession of the property to the person specified in the order under sub-section (1) shall be a full discharge of the government from all liabilities in respect of the property, but shall not prejudice by any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is delivered.

The requisition was effected by an order in writing addressed to the person in possession of the property in accordance with sub-section (2) of Section 29. He may not be the owner of the property. But on requisition possession was taken from him. The inquiry envisaged under sub-section (1) of Section 35 is necessitated only if facts and events taking place after requisition necessitate it. Otherwise not. As for example, suppose, possession of a property is taken from X and after requisition he dies and dispute starts between his heirs as to who is entitled to get back the property. A summary and prima facie inquiry may be made under sub-section (1) and property may be

released in favour of the person who may be entitled to the possession of it in the opinion of the government. Of course such a decision would be subject to the adjudication of the rights of the parties in accordance with sub-section (2). Facts anterior to the requisition are not necessary to be investigated for release of the property because the property has to be released in favour of the person from whom possession was taken. If it were not so then it would be enlarging the scope of the inquiry envisaged under sub-section (1) of Section 35 of the Act and the power of the government to adjudicate upon anterior title of the various claimants to the property. This is not the scope of the inquiry. It is, therefore, clear to us that technically speaking on a correct interpretation of the law the property on derequisition ought to have been released in favour of the two appellants in the two appeals from whom possession was taken at the time of requisition. But on the special facts of these two appeals we do not feel persuaded to make our unqualified or unconditional order in these appeals filed on grant of special leave under Article 136 of the Constitution as justice requires only a qualified and conditional order. It is plain on the facts placed before us that there was no final allotment of the plots in favour of the appellants. The allotment was only provisional subject to the approval of the government. Possession had been given to them and before requisition the Industries department had not recovered back possession of either of the two plots. In such a situation we make the following orders in the two appeals separately.

Civil Appeal No. 559 OF 1970

9. The possession of plot No. 60 is directed to be delivered to appellant Nigam within a period of six months from today. If during the said period of six months the government takes adequate and legal steps for taking back formal possession of the plot from him, then possession need not be delivered back to Nigam. But on their failure to do so our direction will hold good and possession of plot no. 60 will have to be given to Nigam subject to its recovery back by the government even later. It will be open to the aggrieved party, if necessary, to initiate a proceeding in accordance with sub-section (2) of Section 35. We allow this appeal in part to the extent and in the manner indicated above.

Civil Appeal No. 560 of 1970

10. Since in this case allotment of the plot was made in favour of Mrs. B. K. Anand, we do not consider it just and expedient to direct the government to take steps for completing the formality of taking possession and to dispossess Mrs. Anand. On the special facts of this case we dismiss this appeal in toto.

11. There will be no order as to costs in either of the appeals.

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