State of Assam and Others

Vs

Banshidhar Shewbhagavan and Company

Civil Appeal No. 321(N) of 1970

(V.D. Tulzapurkar, A. Varadarajan JJ)

01.09.1981

JUDGMENT

VARADARAJAN, J. –

1. This appeal by special leave is by the respondents in Civil Rule 420 of 1966 against the Judgment and Order dated July 30, 1968 passed by the Division Bench of the High Court of Assam & Nagaland, allowing the writ petition with no order as to costs. That writ petition was filed under Article 226 of the Constitution for quashing the order of requisition issued by the Deputy Commissioner, Lakhimpur-Dibrugarh, the second appellant in this appeal and the first respondent in the writ petition - under Memo No. LA/27511-15/R dated October 25, 1966. The Memo was issued in exercise of the powers conferred by Section 29(1) of the Defence of India Act, 1962 (51 of 1962) read with the Notification of the Government of India, Ministry of Home Affairs No. S.O. 1888 dated June 10, 1965 in respect of the properties described in the Schedule attached thereto viz. Sookerating Tea Estate and Budla Beta Tea Estates, situate in Dum-Duma, Mauza Lakhimpur district on the ground that the lands were necessary for securing the defence of the country and efficient conduct of military operations.

2. During the second world war, in 1940, the Government of India acquired for defence purposes a part of Sookerating Tea Estate with its adjoining lands measuring in all 769.20 acres for constructing an air field. The air field was constructed over an area of 469 acres and on the remaining 300.20 acres there were tea bushes which were growing wild and overgrown with thick jungles. After the war was over, the area on which the air field had been constructed viz. 469 acres was transferred to the State Government for its use. In the writ petition it was stated that that area was still lying unused. The Government of India wanted to lease out the said 300.20 acres to some established tea planters with a view to earn foreign exchange. The respondent, a registered partnership firm owning the Bagrodia Tea Estate negotiated with the Military Estates Officer, Assam Circle at Shillong and the Ministry of Defence, Government of India and entered into an agreement of lease dated March 2, 1962 in respect of the land on a rent of Rs. 6304.20 per annum for a term of one year renewable for a period of one year at a time if the land was not required by the lessor. The respondent took possession of the land on March 10, 1962 after paying the annual rent in advance on March 2, 1962. It was alleged in the writ petition that the respondent thereafter improved the land at a cost of Rs. 1,75,000 and made it into a well managed tea garden. The Military Estates Officer was putting off the execution of the lease deed on some pretext or the other, though the respondent had deposited the requisite stamp papers for the execution of the lease deed. When the respondent approached the Government of India through a Member of Parliament, the Deputy Minister for Defence informed the Member of Parliament by his letter dated December 20, 1962 that the land was required for defence purposes and that it would not be possible to extend the

current lease. Subsequently the Defence Minister informed the Member of Parliament by his letter dated April 1, 1963 that as several tea planters have evinced interest in the estate it was decided to auction the leasehold right in the land on an annual basis subject to the condition that that land might be resumed for defence purposes at short notice. No action was taken on the respondent's request made on January 25, 1963 for renewal of the lease. But the Military Estates Officer, Jorhat Circle, the 4th appellant, issued a notice on March 20, 1963 for leasing the land for one year by public auction. The respondent filed a writ petition in the High Court and obtained rule nisi as well as an interim order restraining the appellants from giving effect to the said notice dated March 20, 1963. The petition filed by the appellants on May 28, 1963 for restraining the respondent from plucking tea leaves was rejected. The respondent filed Title Suit No. 30 of 1963 in the Court of the Subordinate Judge, Upper Assam Districts, Dibrugarh on July 18, 1963 for certain reliefs including confirmation of possession of the land and specific performance of the agreement to lease and obtained an interim injunction restraining the appellants from interfering with the possession of the land. The writ petition was not pressed in view of the institution of Title Suit No. 30 of 1963 by the respondent. The respondent filed Title Suits Nos. 6 of 1964 and 13 of 1965 in the same court praying for the same reliefs in respect of the years 1964 and 1965 and obtained temporary injunction. The respondent filed Title Suit No. 4 of 1966 in the same court for the same relief. All those suits were pending on the date of institution of the present writ petition. The respondent received the impugned order of requisition on October 26, 1966 from the second appellant and subsequently filed the present writ petition for the aforesaid reliefs on several grounds.

3. The appellants in this appeal and other respondents in the writ petition filed counter-affidavits opposing the petition and contending inter alia that the question of requisition of the land for defence purposes has been decided upon by the Government of India and the impugned order is bona fide and has been made by the competent authority under the Defence of India Act.

4. Two contentions were urged before the Division Bench of the High Court on behalf of the respondent. The first was that the second appellant, the Deputy Commissioner, Dibrugarh, who has issued the impugned order has stated in the order that in his opinion it was necessary to requisition the property, and it was urged before the learned Judges of the High Court that the Deputy Commissioner was not competent to form the opinion.

5. Section 29(1) of the Defence of India Act, 1962 (51 of 1962) reads :

> 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 be order in writing requisition any immovable property and may make such further orders as appears to that Government to be necessary or expedient in connection with the requisitioning :
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> Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

6. Clauses (a), (b) and (c) of Section 40(1) of the Defence of India Act provide for delegation of the power or duty under the Act or by any rule made thereunder and read :

> 40. Power to delegate. - (1) The Central Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also -
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> (a) by any officer or authority subordinate to the Central Government, or
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> (b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any State Government or by any officer or authority subordinate to such Government, or
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> (c) by any other authority.

7. The opinion that the land is necessary for defence purposes can be formed in view of Section 40(1)(c) of the Defence of India Act by any authority to whom the power to requisition under Section 29(1) of that Act has been delegated by the Government of India. The Ministry of Home Affairs had, by Notification No. S.O. 1888 dated June 10, 1965 published in the Gazette of India (Extraordinary) dated June 11, 1965, delegated the power conferred by Section 29 of the Act to all Collectors, District Magistrates, Additional District Magistrates and Deputy Commissioners in the States and all political officers in the North Eastern Front Area. The learned Judges of the High Court have held that the Notification is valid and that the delegation can be unrestricted and found the first contention to be untenable. No argument was advanced before us by learned counsel for the respondent in regard to that contention. The first contention has, therefore, to be held to be untenable.

8. The second contention urged before the High Court successfully on behalf of the respondent was that the impugned order of requisition is mala fide. There can be no doubt that if any authority exercised any power conferred on him by law in bad faith or for collateral purpose, it is an abuse of power and a fraud on the statute. In such a case there can be no difficulty in striking down that act of the authority by the issue of an appropriate writ under Article 226 of the Constitution. It is true that the Deputy Minister for Defence informed the Member of Parliament who appears to have been pleading for the respondent by his letter dated December 20, 1962 (Annexure C to the writ petition) that the current lease of the land could not be extended because the land was required for defence purposes and that in the subsequent letter dated April 1, 1963 (Annexure D to the writ petition) the then Minister for Defence had informed the said Member of Parliament that since several tea planters have evinced interest in the land it would be in the public interest to auction the leasehold right only on an yearly basis subject to the condition that the land can be resumed at short notice for defence purposes. In his affidavit the Deputy Commissioner, Lakhimpur, the second appellant has stated that the land was not required for defence purposes until 1964 and that the need for defence purposes arose thereafter and the impugned order was issued. It must be noted in this connection that it was not disputed before us that the war with Pakistan started in June 1965. This Court could even take judicial notice of that fact. The impugned requisition order was passed on October 25, 1966. Therefore, it cannot be stated that there was no need of the land for defence purposes in October 1966 from the mere fact that the Deputy Minister for Defence had stated in his letter dated December 20, 1962 referred to above that the current lease could not be extended because the land was required for defence purposes and the Minister for Defence had stated in his letter dated April 1, 1963, referred to above, that as several tea planters have evinced interest in the land it would be in the public interest to auction the leasehold right in the land on a yearly basis alone subject to the

condition that it can be resumed at a short notice for defence purposes. That letter of the Minister for Defence does not altogether rule out the possibility of the land being required for defence purposes at any time and being made available for those purposes at short notice. Defence requirements may change from time to time depending upon various factors including intelligence reports about the enemy's movements and preparations for war. The High Court has held in favour of the respondent on the question of want of bona fides on the part of the appellants on the basis that in the aforesaid title suits filed by the respondent it was not pleaded by the appellants that the land was required for defence purposes. The learned Judges of the High Court appear to have accepted the submission made before them on behalf of the respondent in this appeal that no such plea had been raised in the pleadings in the title suits filed by the respondent. That submission is incorrect, and it is unfortunate that the attention of the learned Judges had not been invited to the material on record to show that such a contention was in fact put forward by the fourth appellant in his pleading in the title suits. In the auction notice (Annexure E) dated March 20, 1963 itself it was stated that the lease will be subject to the condition that whenever the Government need the land for defence purposes it will be determined by issue of notice giving 30 days' time without payment of any compensation. In the written statement dated July 17, 1965 filed by the fourth appellant in the Title Suit No. 6 of 1965, it was stated in respect of the allegation made in Para 26 of the plaint in that suit that since the land is required for defence purposes the defendant was not bound to renew the lease and that even in Title Suit No. 6 of 1964 the defendants have filed written statement contesting the claim of the respondent/plaintiff. It was also stated in that written statement in regard to the allegations made in Para 11 of the plaint that the land is required for defence purposes. In regard to the allegations in Para 26 of the plaint it was contended in the written statement that the land is required for defence purposes and that any lease under the present emergency would be detrimental to the interests of the defence of the country. Even in the counter-affidavit dated July 17, 1965 filed in the application for interim injunction moved in the Title Suit No. 15 of 1965 the fourth appellant had stated that the land is required for defence purposes, and there is no question of holding any auction for lease of the land, that if the order of interim injunction is not vacated the defence preparation of the country will be hampered as the land is urgently needed for defence purposes and the interest of the nation will suffer, that no irreparable loss or damage which cannot be compensated in money would result from vacating the injunction and that on the other hand denying the use of the land for defence purposes at this critical juncture would cause irreparable loss to the Government and the nation as a whole. In the written statement dated June 22, 1966 filed in Title Suit No. 4 of 1966 the fourth appellant had stated with regard to allegations made in Para 11 of the plaint that it is asserted that the land is bona fide required for defence purposes. Thus it is seen from the materials on record that at least in Title Suits Nos. 15 of 1965 and 4 of 1966, the plea that the land was required urgently for defence purposes was taken by the fourth appellant who appears to have put forward the defence of the appellants in this appeal as a whole. The learned Judges of the High Court were, therefore, not right in observing in their judgment that the intention of the Government is to lease the land to the highest bidder in the hope of getting a large amount of money because the land had been developed into a working tea garden, that the purpose cannot be said to be bona fide and that it must be held that the land is being requisitioned only for collateral purposes. The only basis for this inference of the learned Judges of the High Court is the supposed failure of the defendants in the title suits filed by the respondent to take the plea that the land is required for defence purposes. That basis being found to be wrong and unavailable, it is not possible to agree with the learned Judges of the High Court that the requirement of the land for defence purposes was not bona fide. The Government of India whose case the fourth appellant had put forward in the respondent's title suits as mentioned above is the most competent authority to know when the need for defence purposes will arise or has arisen, and there is no material on record to hold in this case

that the land was not required on the date of impugned requisition bona fide for defence purposes and that the appellants were putting forward such a case in the impugned order only as a ruse to auction of the land for larger amount of rent. Under the circumstances we find ourselves unable to uphold the judgment of the learned Judges of the High Court. We accordingly allow the appeal with costs and dismiss the writ petition.

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